

# REVIEW OF THE HONG KONG REGISTERED DESIGNS REGIME

PUBLIC  
CONSULTATION  
PAPER



**Commerce and Economic Development Bureau**  
The Government of the Hong Kong Special Administrative Region  
of the People's Republic of China



**Intellectual Property Department**  
The Government of the Hong Kong Special Administrative Region  
of the People's Republic of China

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## Abbreviations

AUDA 2003	Designs Act 2003 (Australia)
CEDB	Commerce and Economic Development Bureau of the HKSAR Government
China	The People's Republic of China
CNIPA	China National Intellectual Property Administration
CO	Copyright Ordinance (Cap. 528) (HKSAR, China)
The EU	The European Union
EU Design Regulation	Council Regulation (EC) No 6/2002 on European Union designs as amended by Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024
EU Directive on Designs	Directive (EU) 2024/2823 of the European Parliament and of the Council of 23 October 2024 on the legal protection of designs (recast) (replacing Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs)
EUIPO	European Union Intellectual Property Office
Government	The Government of the HKSAR
Hague Agreement	Hague Agreement Concerning the International Registration of Industrial Designs
Hong Kong / HKSAR	The Hong Kong Special Administrative Region of the People's Republic of China
ID5	The Industrial Design 5 Forum
IP	Intellectual property
IPD	Intellectual Property Department of the HKSAR Government
IPOS	Intellectual Property Office of Singapore
JPO	Japan Patent Office

Locarno Agreement	Locarno Agreement Establishing an International Classification for Industrial Designs
MOIP	Ministry of Intellectual Property of Korea
Paris Convention	Paris Convention for the Protection of Industrial Property
RDLT	Riyadh Design Law Treaty
RDO	Registered Designs Ordinance (Cap. 522) (HKSAR, China)
RDR	Registered Designs Rules (Cap. 522A) (HKSAR, China)
Registrar	Registrar of Designs (HKSAR, China)
Registry	Designs Registry (HKSAR, China)
SGRDA 2000	Registered Designs Act 2000 (Singapore)
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
The UK	The United Kingdom
UKCPDA 1988	Copyright, Designs and Patents Act 1988 (the UK)
UKIPO	United Kingdom Intellectual Property Office
UKRDA 1949	Registered Designs Act 1949 (the UK)
The US	The United States of America
USPTO	United States Patent and Trademark Office
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## Executive Summary

Industrial design, as a registrable IP right, refers to the ornamental or aesthetic aspects of a product that attract customers and influence their purchasing decisions. Hong Kong’s localised registered designs regime has been in place since the enactment of the RDO in 1997.

To uphold an effective and robust IP protection regime, the Government has commenced a comprehensive review of Hong Kong’s registered designs regime to ensure that it remains competitive and responsive to the changing needs of the local design industry, particularly for supporting new industrialisation amidst the development of the digital economy.

This consultation document outlines a wide range of key issues identified during the review process and seeks views from stakeholders to facilitate the Government’s formulation of the requisite policy, measures and legislative package in updating and enhancing the local registered designs regime. A summary of these issues is as follows—

- Chapters 2 to 5 consider the core issues pertaining to the substantive legal protection of designs in nurturing and incentivising the development of the local design industry in support of the digital and knowledge-based economy, while maintaining a proper balance of the legitimate interests among designers, market players and the public.
  - Chapter 2 examines whether the current statutory definitions of “design” and “article” remain fit for purpose, and reviews the legal requirements of the eligibility for protection of a design.
  - Chapter 3 explores the scope of design protection for virtual designs, designs of components and parts, and partial designs of an article as issues of increasing significance in light of technological advancement and growing sophistication of the consumer market.
  - Chapter 4 reviews the current legal requirement of novelty for design registration, and considers the possible introduction of an additional requirement guided by the differences in the overall impression produced by a design from prior arts. This chapter also considers the pros and cons of introduction of substantive examination of novelty at the application stage.
  - Chapter 5 examines the scope of the exclusive rights conferred on registered design owners, statutory exceptions to infringement and ownership issues for commissioned designs.

- Chapters 6 and 7 examine ways to enhance Hong Kong’s registered design system for better facilitating product development and commercialisation, and for streamlining the application and registration procedures, having regard to prevailing international norms and practices.
  - Chapter 6 discusses the possibility of introduction of a broader grace period for filing design applications, and allowing applicants to defer publication of their designs.
  - Chapter 7 discusses various procedural issues pertinent to design application and registration, covering formalities of making a priority claim, duration and renewal of design registrations, etc.
- Chapter 8 analyses the legal complexities arising from the overlap between registered designs and copyright, and considers the implications of unregistered design rights in several jurisdictions. This chapter also explores how best to keep a clear delineation between the respective regimes, ensuring the effectiveness of Hong Kong’s IP framework.
- Chapter 9 explores rooms for further alignment of the local registered designs regime with the international design systems, notably the Hague System and the RDLT, and assesses the potential benefits for Hong Kong’s design industry and international reputation.

The Government invites the public to offer views and suggestions on a range of issues set out in this consultation document on or before 16 March 2026.

## Chapter 1 Introduction

1.1 In recognition of the importance of IP as the cornerstone for incentivising innovation and technology development and creativity, the Government is fully committed to upholding an effective and robust local IP protection regime. The successive Chief Executive's Policy Addresses (2022 to 2025) of this term of the Government contain a series of supporting measures to enhance the strengths and competitiveness of the regime. The vigorous efforts expended and firm commitment made by the Government underpins the internationally recognised IP regime of Hong Kong as an essential component to drive the competitiveness of our economy, the global ranking of which has risen to the third in the World Competitiveness Yearbook 2025 published by the International Institute for Management Development.

### Understanding Industrial Designs

1.2 Industrial design broadly refers to the ornamental aspect of an article in terms of a feature of shape, configuration, pattern or ornament applied to the article by an industrial process. It embodies a designer's intellectual effort and acumen, and is a major component of the IP registration regime<sup>1</sup> of Hong Kong.

1.3 Industrial designs are part of our daily life. With technological innovation and integration of industries, designs that a business applies to its products have become instrumental to promoting the products' success. A well-conceived design which combines visual appeal with enhanced consumer experience can significantly boost the value and competitiveness of a business' products and positively reinforce the uniqueness of its brand identity.

1.4 In Hong Kong, designs play a considerable role in building our economy. From 2019 to 2021 on average, design-intensive industries contributed 21.4% (HK\$574.3 billion) to the gross domestic product of Hong Kong.<sup>2</sup> In driving towards high-value new industrialisation, Hong Kong must continue to afford effective protection for designs which is crucial to incentivising sustainable innovation and creativity, particularly for the design capability of our advanced manufacturing sectors and emerging industries. This synergy between protection and exploitation of industrial designs transforms creativity into industry development and growth, thus spurring business opportunities for success and economic gain in return.

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<sup>1</sup> The other registrable IPs in Hong Kong include patents and trade marks that respectively protect inventions and signs distinguishing the goods / services of one trader from those of others. On the other hand, non-registrable IPs cover copyright in original or other works and trade secrets concerning confidential commercial information.

<sup>2</sup> See [Study on Contribution of Intellectual Property-Intensive Industries to Hong Kong Economy](#) published by the IPD in December 2023.

## Hong Kong’s Registered Designs Regime

1.5 Hong Kong’s registered designs regime, which has been in place since the enactment of the RDO on 27 June 1997, is in compliance with its international treaty obligations under, amongst others, the Paris Convention administered by the WIPO and the TRIPS Agreement of the WTO.<sup>3</sup>

1.6 In essence, legal protection of industrial designs can be obtained in Hong Kong by way of registration as a “registered design” under the RDO. A design application is to be filed with the Registrar whose office is held by the Director of Intellectual Property of the IPD.

1.7 Generally speaking, a design that is new is registrable. Once a design is registered in respect of any article, its registered owner is conferred certain exclusive rights in Hong Kong, for example, to make, import, sell, or hire the article to which that design has been applied<sup>4</sup> within a maximum period of registration of 25 years.<sup>5</sup>

1.8 Over the past five years (2020-2024), the number of designs in force in Hong Kong stayed above 40 000. For the same period, the Registry (administered by the Registrar) on average received applications for over 3 800 designs annually (see Table 1), from applicants in different jurisdictions, mainly Hong Kong, the Chinese Mainland, the US, Switzerland, Germany, etc. (see Table 2).

**Table 1: Statistics on the number of designs applied for and designs in force (2020-2024)**

	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>No. of designs applied for</b>	3 878	3 858	3 286	3 560	4 582
<b>Total no. of designs in force</b>	40 823	41 034	40 448	40 554	40 912

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<sup>3</sup> Prior to enactment of the RDO, design rights and related matters in Hong Kong were governed by the repealed United Kingdom Designs (Protection) Ordinance (Cap. 44) which mainly applied the UKRDA 1949 at the material time by, amongst others, extension of the protection of designs registered in the UK to Hong Kong.

<sup>4</sup> Section 31(1) of the RDO.

<sup>5</sup> Section 28 of the RDO. The initial period of registration of a design is 5 years which is extendable for each additional period of 5 years up to a maximum period of registration of 25 years.

**Table 2: Statistics of origins of applicants of designs applied for (2020-2024)**

Origin of applicants	Share of total designs applied for	No. of designs applied for
Hong Kong	24%	4 579
Chinese Mainland	14%	2 713
The US	13%	2 430
Switzerland	12%	2 276
Germany	9%	1 640
Japan	7%	1 422
France	5%	969
The Netherlands	3%	605
Italy	3%	507
The UK	2%	381
Other origins	8%	1 642

1.9 Articles to which a design is intended to be applied must be identified in the design application, and classified according to the Locarno Classification.<sup>6</sup> The Locarno Classification currently consists of 32 classes and covers a wide range of products. The top three classes applied for registration in Hong Kong over the past five years were Class 11 (articles of adornment), Class 14 (recording, telecommunication or data processing equipment) and Class 9 (packaging and containers for the transport or handling of goods) (see Table 3).

**Table 3: Statistics of main classes<sup>7</sup> of designs applied for (2020-2024)**

Locarno Classification	Share of total designs applied for	No. of designs applied for
Class 11 Articles of adornment	16%	3 043
Class 14 Recording, telecommunication or data processing equipment	11%	2 108
Class 9 Packaging and containers for the transport or handling of goods	9%	1 742
Class 10 Clocks and watches and other measuring instruments, etc.	7%	1 375
Class 12 Means of transport or hoisting	7%	1 242
Class 21 Games, toys, tents and sports goods	6%	1 147
Class 3 Travel goods, cases, parasols and personal belongings, etc.	5%	919
Class 7 Household goods, not elsewhere specified	4%	830
Class 23 Fluid distribution equipment, sanitary, heating, ventilation equipment, etc.	4%	817
Class 24 Medical and laboratory equipment	4%	790
Other classes	27%	5 151

<sup>6</sup> See Chapter 9 for further particulars on the Locarno Agreement, which establishes the “Locarno Classification”.

<sup>7</sup> The class headings in the table are simplified for the sake of conciseness. For full class headings, please refer to the [WIPO Locarno Classification](#).

## Need for Review

1.10 Since the enactment of the RDO, design trends around the world have significantly evolved with new possibilities opening up for growth of the design and manufacturing industries, particularly as a result of technological innovation and advancement. Meanwhile, various jurisdictions have also conducted a number of reviews and reformed different areas of designs laws over the years.

1.11 To ensure that Hong Kong’s registered designs regime is up-to-date and remains competitive, and that the regime can better meet the evolving needs of our creative industries, the Government considers it timely and necessary to conduct a comprehensive review of the regime with the following guiding principles—

- the local registration system should be on par with international norms, mainstream best practices and protection standards;
- the system should be capable of conferring sufficient rights to designs that are considered worthy for protection; and
- the procedures of obtaining, maintaining and enforcing such rights should be effective and efficient.

1.12 In the process of our study, references were made to the corresponding positions in several major overseas common law jurisdictions (notably Australia, Singapore and the UK), the Chinese Mainland, the EU<sup>8</sup> and other jurisdictions of the ID5.<sup>9</sup> We have also taken into account the mainstream international practices and the latest international development, including the RDLT concluded in November 2024 and administered by the WIPO, which sets the basic international standards for the procedures of applying for and registering designs.<sup>10</sup>

1.13 As announced in the Chief Executive’s 2025 Policy Address, the Government is embarking on the next step of the review by launching a consultation on updating the registered designs regime. We have enumerated in this consultation paper a number of issues, findings and, where applicable, recommendations pertinent to the study. We invite the public to offer views and suggestions on these issues, which would contribute

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<sup>8</sup> Substantive laws protecting industrial designs within the EU are harmonised by the EU Directive on Designs. Design protection in national law of EU member states coexists with protection available at the EU level through “EU designs” which are unitary in character and valid throughout the EU as laid down in the EU Design Regulation. For the purpose of this consultation paper, unless otherwise specified, references to the EU laws refer to both the laws of the EU Directive on Designs and EU Design Regulation.

<sup>9</sup> The ID5 is an industrial design cooperative framework comprising the five largest IP offices in the world, namely, CNIPA, EUIPO, JPO, MOIP, and USPTO.

<sup>10</sup> For the purposes of study of the design laws around the world, this consultation paper contains brief and general information about the corresponding position outside Hong Kong. Such information must not be taken as a definitive statement of the relevant laws or practices. Additionally, where the laws of those jurisdictions cited in this paper are not in the language of this document, references to such laws are unofficial translations.

to the subsequent formulation of viable proposals to update and enhance the regime. The concerted efforts of the Government and the stakeholders would support further development and growth of Hong Kong's industries, ultimately creating a stronger impetus for further and sustainable economic growth of Hong Kong in the long run.

## Chapter 2 Definitions of “Design” and “Article”

2.1 Since the enactment of the RDO for establishing Hong Kong’s domestic registered designs regime in 1997, continuous technological advancement has not only brought about remarkable development of consumer products, but also reshaped how modern designs are conceived, applied and appreciated. We have seen new forms of designs made possible by diversified means of mass production. The evolving concept of industrial design calls for a review of whether the current statutory definitions of “design” and “article” are capable of affording sufficient legal protection to modern designs so as to support the development of our design industry in the digital and knowledge-based economy.

### Current Statutory Definitions of “Design” and “Article”

#### *Hong Kong*

2.2 The current statutory definitions of the two fundamental concepts of “design” and “article” in the RDO (modelled on the UKRDA 1949 at the material time) are—<sup>11</sup>

- (a) “**design** (外觀設計) means features of shape, configuration, pattern or ornament applied to an article by any industrial process, being features which in the finished article appeal to and are judged by the eye...”; and
- (b) “**article** (物品) means any article of manufacture and includes any part of an article if that part is made and sold separately.”

2.3 It is apparent that the statutory definition of “design” is quite different from everyday use of the word. The definition in essence refers to four specific features applied to an article, which covers, for all practical purposes, two-dimensional (“2D”) features (i.e. pattern and ornament) and three-dimensional (“3D”) features (i.e. shape and configuration) of the article. We need to consider whether these four exhaustive features can adequately and accurately encompass the contemporary conception of “design”.

2.4 At the same time, the RDO expressly excludes the following from the statutory definition of “design”—

- (a) a method or principle of construction; or
- (b) features of shape or configuration of an article which—
  - (i) are dictated solely by the function which the article has to perform; or

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<sup>11</sup> Section 2(1) of the RDO.

- (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part (commonly known as the “must match” exclusion).

2.5 We consider that the exclusions concerning “a method or principle of construction” and “features dictated solely by function” are justifiable as design law is primarily concerned with the protection of visual appearance of an article rather than its functions, which should aptly fall within the patent protection regime. As regards the “must match” exclusion, the relevant issues are separately addressed in Chapter 3.

### *Other Jurisdictions*

2.6 For the purposes of the current review, it is useful to make reference to how “design” is defined in other major jurisdictions outside Hong Kong—

- (a) In certain major common law jurisdictions (notably Australia<sup>12</sup> and the UK<sup>13</sup>) and also the EU<sup>14</sup>, their respective design laws have been updated and “design” is generally defined as “the *appearance of the product resulting from the features of the product*” (*emphasis added*), instead of certain specified “features” applied to an article. In Singapore<sup>15</sup>, while the definition of “design” refers to specific “features” as in Hong Kong’s statutory scheme, the definition expressly elaborates the features in question as “[giving] *that article or non-physical product*<sup>16</sup> *its appearance*” (*emphasis added*).

Based on the legal positions in these places, we note that while features of an article are still important and relevant as they are the statutory elements that make up the appearance of a product (i.e. the “design”), the features enumerated in law are not just confined to “shape”, “configuration”, “pattern” or “ornament” as in Hong Kong, but have been expanded to cover “lines and contours”, “colours”, “texture” and, in the recent case of the EU, “movement, transition or any other sort of animation of those features” of designs that are

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<sup>12</sup> “Design”, in relation to a product, means “*the overall appearance of the product resulting from one or more visual features of the product*” (section 5 of the AUDA 2003).

<sup>13</sup> “Design” means “*the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation*” (section 1(2) of the UKRDA 1949).

<sup>14</sup> “Design” means “*the appearance of the whole or a part of a product resulting from the features, in particular the lines, contours, colours, shape, texture and/or materials, of the product itself and/or of its decoration, including the movement, transition or any other sort of animation of those features*” (Article 2(3) of the EU Directive on Designs and Article 3(1) of the EU Design Regulation).

<sup>15</sup> “Design” means “*features of shape, configuration, colours, pattern or ornament applied to any article or non-physical product that give that article or non-physical product its appearance...*” (section 2(1) of the SGRDA 2000).

<sup>16</sup> The concept of “non-physical product” is studied further in Chapter 3.

not embodied in a physical object.<sup>17</sup> Furthermore, the respective provisions in Australia, the EU and the UK, apart from defining “design” as the “appearance of a product” resulting from its features, also enumerate the specific features of a design in a non-exhaustive manner, i.e. such features are just illustrative of what may make up a “design”.

- (b) On the other hand, in several non-common law jurisdictions, namely the Chinese Mainland, Japan and Korea, “design” is still defined as certain specific features of a product or an article.<sup>18</sup>
- (c) In Australia, the EU, Singapore and the UK, there is no longer any specific requirement that a design of a product or an article must be applied “by any industrial process”. In addition, the definitions of “product” (in Australia, the EU and the UK) and “article” (in Singapore) have a broader scope to include handicraft or handmade items.<sup>19</sup>

## Issues for Consultation

### A. Definition of “Design”

#### Protection shifted from “features applied to an article” to “appearance of an article”

2.7 In referring to the four specific and exhaustive types of “features” that are applied to an article, and that appeal to and are judged by the eye,<sup>20</sup> Hong Kong’s design law follows the traditional approach in conferring protection on the visual aspects of a product. But the contemporary statutory approach as adopted in Australia, the EU and the UK defines “design” as the “appearance of a product” resulting from its features.

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<sup>17</sup> The protectable design features explicitly provided in statutes and practice guidelines of the major jurisdictions are as follows —

- Australia: shape, configuration, pattern and ornamentation (section 7(1) of the AUDA 2003) and colour, and texture and surface finish to the extent that they are visible (section 9.3 of the IP Australia Designs Examiners’ Manual of Practice and Procedure).
- The Chinese Mainland: shape, pattern, or their combination thereof, or the combination of the colour with shape or pattern (Article 2.4 of the Patent Law of China).
- The EU: see footnote 14.
- Japan: shape, pattern or color, or any combination thereof (Article 2(1) of the Design Act of Japan).
- Korea: shape, pattern, or color (Article 2 of the Design Protection Act of Korea).
- Singapore: see footnote 15.
- The UK: see footnote 13.

<sup>18</sup> Article 2.4 of the Patent Law of China; Article 2(1) of the Design Act of Japan; Article 2 of the Design Protection Act of Korea.

<sup>19</sup> Section 6(1) of the AUDA 2003; Article 2(4) of the EU Directive on Designs and Article 3(2) of the EU Design Regulation; section 2(1) of the SGRDA 2000; section 1(3) of the UKRDA 1949.

<sup>20</sup> The requirement of “eye appeal” is not a criterion on artistic merit: *Re Clarke’s Design* (1896) 13 R.P.C. 351 at 361; *Walker Hunter & Co. v Falkirk Iron Co* (1887) 4 R.P.C. 390 at 391.

2.8 It appears that having the definition of “design” focused on the “appearance of an article” as the subject matter of protection is closer and more intuitive to the common conception of a design and better relates to how product designers approach their creations and consumers experience the designs in the market. This formulation of “design” is also more flexible and adaptive to cater for the constantly evolving needs of the design industry.

#### Removal of the “industrial process” requirement

2.9 Hong Kong’s statutory definition of “design” specifically requires a feature to be applied to an article by an “industrial process”. In the absence of any statutory elaboration, “industrial process” is broadly construed as a process possible of reproducing the design upon articles *en masse*. While industrial process is often done by machinery, it has been suggested that this is not necessarily the case as industrial process may be broad enough to cover manual processes.

2.10 In today’s terms, the specific requirement for application of the design features by an industrial process may be considered as too restrictive. An observable trend is that manufacturers are increasingly integrating emerging technologies into traditional manufacturing methods in applying their designs (e.g. 3D printing). Besides, the design laws in the common law jurisdictions surveyed above and the EU do not contain the “industrial process” requirement.

2.11 This raises the question on whether Hong Kong’s statutory “industrial process” requirement still sits well with the contemporary design industry environment. The removal of such requirement is capable of enabling the legal concept of “design” to capture a broader scope of designs adopting new or valuable techniques, which can potentially encourage the growth of the design industry in modern times.

#### Expanding the list of design features

2.12 As mentioned above, the RDO confines “design” to the four exhaustive features, namely shape, configuration, pattern or ornament. Such a closed definition may not be sufficient to reflect the sophistication of the current design industry, and may inadvertently shut out legal protection for features not specified but which may nonetheless contribute to the value of a product in the contemporary market.

2.13 In particular, we note that the feature of “colour” or “combination of colours”, on which the design industry also puts weight in the product designs, is generally accepted by other jurisdictions nowadays as a protectable design feature.<sup>21</sup>

2.14 Hence, it is worthwhile for us to consider (a) expanding the statutory list of exhaustive features; and (b) on the premise that the subject matter of a “design” would

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<sup>21</sup> The scope of protection does not extend to a single colour *per se*, which is generally considered insufficient to confer novelty.

shift to “appearance of a product”, further making the relevant features non-exhaustive. In any case, the statutory list of design features should enhance the inclusiveness of “design” while in all cases preserving legal certainty of its definition.

*B. Definition of and Reference to “Article”*

Reference to “article” or “product”

2.15 In the respective design laws of Australia, the Chinese Mainland, the EU and the UK, design protection makes reference to “product” (“產品”) instead of “article” (“物品”) as the physical object of manufacture as in Hong Kong’s design law. The mainstream label of “product” (“產品”) apparently better reflects intuitively what it embodies in the modern and everyday use of the language.

Protection for handicraft or handmade products

2.16 “Article” is defined in the RDO as an “article of manufacture”, which, in the absence of further statutory elaboration, in practice refers to “product of manufacturing industry”, as opposed to a singular piece made out of artistic endeavour. Australia, the EU, Singapore and the UK have all expanded the scope of “product” in their own laws to explicitly include a handicraft or handmade item. The expression “product” has also been defined broadly in these jurisdictions to provide for greater flexibility in constructing the scope of design protection.

2.17 The discussion above in moving away from the requirement of industrial application is also relevant here. Technologies nowadays have enabled smaller and individual design businesses to make products at a commercial albeit smaller scale. There may be room for Hong Kong’s registered designs regime to support artisanal businesses to recognise the craftsmanship in producing handmade and uniquely designed products.

**Summary of Views Sought**

2.18 We would like to invite views on the following—

- (a) Definition of “design”
  - (i) Do you agree that the subject matter for design protection in Hong Kong should shift from the traditional approach of “features applied to an article” to “the appearance of a product”? Please explain.
  - (ii) Do you agree that the specific requirement that a design must be applied to an article “by an industrial process” should be removed in view of the latest and emerging technologies in manufacturing? Please explain.

- (iii) Regardless of whether or not the definition of “design” should be amended, do you agree that relevant features other than shape, configuration, pattern and ornament should also be specified? If so, what other design features do you think should be included to reflect the aspects of the design of a product that are considered valuable and important to its design (e.g. colour, lines and contours, or even moving elements)? Please explain.
  - (iv) Do you think that providing a non-exhaustive list of design features (with specified examples of protectable features) in the definition of “design” would be appropriate? Please explain.
- (b) Definition of and reference to “article”
- (i) Do you agree that the reference to “article” in the RDO should be replaced by “product”? Please explain.
  - (ii) Do you think that Hong Kong’s registered designs regime should also afford protection to designs applied to handicraft or handmade items in addition to industrial items in the traditional sense? Please explain.

## Chapter 3 Scope of Design Protection

3.1 As set out in Chapter 2, the international community has gradually updated the statutory definition of “design” in response to technological advancement and evolving design trends which have brought innovative designs to the market. These relevant updates also lead to the discussion relating to appropriate protection to emerging virtual designs by means of registration, and adjustments to the protection for designs of components and spare parts of a product, and that for partial designs.

### I. Virtual Designs

3.2 As a new driving force for economic development, digital economy has transformed the traditional concept of designs. Designs are no longer confined to the visual appearance of tangible products given the emergence of “virtual designs” of a product in digital format for enhancing user experience and facilitating user interaction. Virtual designs come in various forms and can be in 2D or 3D perspectives. Common ones include static or dynamic graphical user interfaces (“GUIs”) (e.g. the interface of web apps and software), static or animated icons (e.g. icons for mobile applications), projected image designs and 3D designs presented in a virtual environment for use in augmented and virtual reality.<sup>22</sup>

#### *Hong Kong*

3.3 Protection of virtual designs under the RDO is limited to those that are applied to an article of manufacture by an industrial process. Designs not in the form of industrial products (i.e. designs not applied to articles in a physical form) are not eligible for protection.

3.4 GUIs and icons that are applied to physical articles have been allowed for registration in Hong Kong. In fact, designs in respect of screen displays in Class 14-04 under the Locarno Classification for “graphical user interfaces and icons” consist of a considerable share of designs for which local protection is sought, making up around 5% of all designs applied for in recent years.<sup>23</sup>

#### *Other Jurisdictions*

3.5 The extent of registrability of virtual designs differs across jurisdictions—

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<sup>22</sup> A study conducted by the ID5 has identified different types of common virtual designs, see the “Catalogue on the Practices on the Protection of New Technological Design” conducted by the ID5 in 2017 and updated in 2025.

<sup>23</sup> From 2015 to 2024, over 2 000 applications for GUI related designs (including GUIs and icons) were received by the Registry. The number of applications received per year have been in the range of 100 to 300.

- (a) In the EU and the UK, a graphical symbol is considered as a product, and the visual appearance of computer icons, screensaver graphics and GUIs are registrable in their own right. Recent amendments to the EU laws have expressly recognised protection for virtual designs incorporating animation, such as the movement or transition, on products that “*materialises in a non-physical form*”, including “*graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces*”.<sup>24</sup>
- (b) In the Chinese Mainland,<sup>25</sup> Japan,<sup>26</sup> Korea,<sup>27</sup> and Singapore,<sup>28</sup> virtual designs are generally registrable if they are applied to or embodied in an article of manufacture. Designs that are displayed on specific electronic devices and related to human interaction or product functionality (e.g. static or dynamic GUIs and icons) tend to be considered registrable.

The positions on other forms of virtual designs, however, are more diverse. Virtual designs that are displayed in the operation of a device or as a result of the device performing its functions (e.g. holographic designs, projected designs on a windshield, animated characters) may also be considered registrable, particularly as images in Japan and Korea. On the other hand, virtual designs that are merely displayed and do not relate to any human interaction are less likely considered registrable (e.g. wallpapers for electronic devices, screensavers).

In respect of projected designs, a new category of “non-physical products” was introduced into the design law of Singapore in 2017 to cover designs on products that do not have a physical form produced by projection, and are able to perform a utilitarian function.<sup>29</sup>

- (c) Australia currently does not allow for protection of virtual designs, but has in a recent public consultation considered extending protection to numerous forms of virtual products, and to specifically include visual features that only

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<sup>24</sup> Articles 2(3) and 2(4) of the EU Directive on Designs; Articles 3(1) and 3(2) of the EU Design Regulation; sections 1(2) and 1(3) of the UKRDA 1949. The UK is considering whether similar changes as to the EU laws should be made, see Section C of the Consultation on changes to the UK designs framework, launched by UKIPO in September 2025 (“2025 UK design consultation”).

<sup>25</sup> Sections 4.5 and 7.4 of Chapter 3, Part 1 of the Guidelines for Patent Examination of China issued by CNIPA. See also footnote 22.

<sup>26</sup> Article 2(1) of the Design Act of Japan. See also footnote 22.

<sup>27</sup> Articles 2(1) and 2(2-2) of the Design Protection Act of Korea. See also footnote 22.

<sup>28</sup> Section 2(1) of the SGRDA 2000. Also see Practice Direction No. 4 of 2018 issued by IPOS.

<sup>29</sup> Examples of “non-physical products” include virtual musical instruments created by projection of images on a surface and virtual whiteboard using interactive virtual pens. See Section 3 of “Registered Design – A Guide on Non-Physical Products” issued by IPOS in 2020 and updated in 2022.

appear when a product is switched on or in use.<sup>30</sup>

## Issues for Consultation

3.6 As a result of the wave of technological innovation and advancement over the past decades, consumer activities increasingly take place on or through electronic devices and digital platforms, where virtual designs are intensively applied. Virtual designs have taken a significant role to re-shape and propel development of the design industry. There is a case to review how Hong Kong’s design law could confer reasonable protection to virtual designs. In defining the proper legal protection for virtual designs, the logical questions to ask are what and how virtual designs should be included in the parameter of registrability.

3.7 In answering the above questions, we must bear in mind the fundamental principle of registered designs, namely protection is conferred on a design applied to an article of manufacture. In other words, the article to which the design is applied must have some purposes other than that of merely carrying the design. Accordingly, a piece of paper or canvas or, in modern times, a display screen, would not be considered as an “article” if it serves no purposes other than bearing the design.

3.8 In line with the international practice, virtual designs applied to an article, notably GUIs and icons in respect of screen displays are acceptable for registration in Hong Kong. It is observed that different jurisdictions have adopted different approaches in considering the registrability of a virtual design. While some jurisdictions factor in the embodiment of the design in an article of manufacture and the human interaction or product functionality involved in the design, some have widely accepted designs that are not embodied in physical products.

3.9 Conferring monopoly on different types of virtual designs as a registered design requires careful evaluation, in particular those that materialise in a non-physical form and presented on a medium which can be said to merely carry the design. These include intangible items (such as “graphic symbols and logos, surface patterns, ornamentation” under Class 32 of the Locarno Classification) which are not readily registrable in their own right in a number of jurisdictions as mentioned above.<sup>31</sup> The scope of rights for virtual designs should also be sufficiently clear to enable a third party to understand the nature and use of the rights, and to minimise the overlap of design rights with copyright. The risks must be subdued to meaningfully achieve the objective to recognise the value of virtual designs in fostering creativity.

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<sup>30</sup> Australia proposed in a consultation that legislative amendments be introduced to the definitions for “design” and “product” under the AUDA 2003 to include “virtual products” and expanding the scope of “visual features”. See Public Consultation Paper for Protection of Virtual Designs issued by IP Australia in 2023.

<sup>31</sup> In Hong Kong, an applicant for registration of a design in respect of “graphic symbols and logos, surface patterns, ornamentation” must specify the articles of manufacture to which the design is to be applied. For example, an application in respect of an “ornamentation” to be applied to handbags may be stated as “ornamentation for handbags” under Class 3-01.

## II. Design of Spare Parts and Parts of Articles

### *Hong Kong*

3.10 An “article” includes “*any part of an article*”. A design for a “part of an article” is registrable in Hong Kong only if the part satisfies the following specific conditions—<sup>32</sup>

- (a) the part must be “made and sold separately”, which means that the part must “*have an independent life as an article of commerce and not be merely an adjunct of some larger article of which it forms part*”.<sup>33</sup> For example, it was held that the wheel assembly for a luggage case was not made or sold separately and was thus unregistrable.<sup>34</sup>
- (b) Even where a part is made and sold separately, features of shape or configuration of the part which are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part are excluded from registration. This is commonly referred to as the “must match” exclusion. Components for cars, such as the main body panels, doors, and windcreens, for instance, would be excluded if these parts form part of and contribute to the overall shape and appearance of the vehicle, consisting only of features that fall within the “must match” exclusion. It could be distinguished from wing mirrors, wheels, seats and steering wheels of a car that are subsidiary to its essential shape, where substitutions of different looking components are possible leaving the general shape unchanged.

3.11 These qualifications prevent design protection from being extended to component parts that are spare parts of a product, which might otherwise confer an unduly broad monopoly upon the manufacturer for replacement parts of the product.

### *Other Jurisdictions*

3.12 While designs of spare parts remain similarly excluded from registration, the legislative approach for component parts differs across different jurisdictions—

- (a) Component parts of a complex product: Component parts that are intended to be assembled into a “complex product” are protectable as a “product” by themselves under the respective laws of Australia, the EU and the UK. “Complex product” is defined as “*a product which is composed of at least two replaceable component parts permitting disassembly and reassembly of the*

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<sup>32</sup> Section 2(1) of the RDO.

<sup>33</sup> *Ford Motor Co Ltd's Design Appns* [1994] R.P.C. 545 at 554.

<sup>34</sup> *Samsonite Corp v Make Rich Ltd* [2002] 1 HKC 692.

*product*".<sup>35</sup> Designs of visible component parts can therefore be registrable. An example of a component part of a complex product is the chaff cutter in shredders.

- (b) **“Must fit” exclusion:** The design of a product (including parts of a complex product) is excluded from registration if the product must necessarily be reproduced in its exact form and dimension so as to permit the product to be mechanically connected to another product so that either product may perform its function. The rationale, as explained in the EU legislation, is that “*the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings*”.<sup>36</sup> The “must fit” exclusion is also included in the legislation of Singapore and the UK.<sup>37</sup> Examples of this type of excluded designs include prongs of a power plug and lightbulb socket.
- (c) **“Must match” exclusion:** The “must match” exclusion is no longer or is not adopted by Australia, the EU and the UK to exclude the registration of a design of a product. Instead, a right to repair is provided as a limited defence against infringement relating to the use of the design of a “must match” component part for the purpose of repair of a complex product so as to restore its original appearance.<sup>38</sup> On the other hand, Singapore continues to stipulate the “must match” exclusion in parallel with the “must fit” exclusion.

## Issues for Consultation

3.13 Designs of parts of articles that have an independent commercial life and are not adjunct to the greater articles are in principle capable of registration in their own right. Nonetheless, when there is no design freedom for the suppliers of spare parts, they should not be allowed to use registration to monopolise the supply of such parts in a manner that impedes product interoperability (while the design of such parts cannot be registered in its own right, the overall design applied to the whole article to which they form part of remains registrable).

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<sup>35</sup> Section 1(3) of the UKRDA 1949. Similar definitions are adopted in Australia and the EU, see section 5 of the AUDA 2003; Article 2(5) of the EU Directive on Designs and Article 3(3) of the EU Design Regulation.

<sup>36</sup> Recital (20) of the EU Directive on Designs and Recital (10) of the EU Design Regulation.

<sup>37</sup> Article 7(2) of the EU Directive on Designs and Article 8(2) of the EU Design Regulation; paragraph (b)(iii) of the definition of “design” under section 2(1) of the SGRDA 2000; section 1C(2) of the UKRDA 1949. The EU and the UK provide that the “must fit” exclusion does not apply in an exception, where the design serves the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system (e.g. toy bricks) (Article 7(3) of the EU Directive on Designs; Article 8(3) of the EU Design Regulation; section 1C(3) of UKRDA 1949).

<sup>38</sup> Section 72 of the AUDA 2003; Article 19 of the EU Directive on Designs and Article 20a of the EU Design Regulation; section 7A(5) of the UKRDA 1949.

3.14 Careful consideration must be given to what should be the appropriate and accurate exclusions from registration of spare parts under Hong Kong’s registered designs regime.

### **III. Partial Designs**

3.15 In Hong Kong, designs of components that merely form part of the design of the greater article to which they are incorporated (e.g. the back panel of a chair, the handle of a cup), and are not sold separately from the larger article (“partial designs”) do not qualify for protection in their own right.

3.16 In contrast, partial designs are quite widely accepted in other jurisdictions including the Chinese Mainland, the EU, Singapore and the UK as well as the other ID5 offices. In particular, many of these jurisdictions do not require that the part of the product has to be “made and sold separately”.

#### **Issues for Consultation**

3.17 While partial design of a part of a product can be registered together with the overall design of the whole product, the current law may not enable the designer to focus on seeking protection of its partial design that gives an article significant value.

3.18 Considering the growing sophistication in modern design and the consumer market, as well as the legal position elsewhere, there may be a case for permitting registration of partial designs, such as by removing the “made and sold separately” requirement. However, we should be cautious whether, in conferring protection to partial designs which could potentially cover a wide and indeterminate range of articles, such protection would become overly broad and fragmented.

#### **Summary of Views Sought**

3.19 We would like to invite views on the following—

(a) Virtual designs

- (i) What types of virtual designs should or should not be protected under Hong Kong’s registered designs regime? Please elaborate.
- (ii) Do you think that the registrability for virtual designs should correlate to a physical product, or depend on characteristics such as the design’s relevance to human interaction or its functionality in relation to the product? Please explain.
- (iii) Do you think other existing forms of IP protection, in particular copyright, are appropriate forms of protection for virtual designs? Please explain.

(iv) Should registered design protection be extended to virtual designs, would the resulting overlap with other IP rights give rise to legal uncertainty or unintended legal consequences? Please elaborate.

(b) Design of spare parts and parts of articles

(i) Do you think the current legal requirement that a part of an article must be “made and sold separately” is sufficiently accurate to define the scope of component and spare parts, or do you prefer the concept of “complex product” for this purpose? Please explain.

(ii) Do you consider the “must fit” exclusion preferable to the “must match” exclusion for excluding protection for designs of spare parts? Please explain.

(iii) Instead of the “must match” exclusion, would a “right to repair” be a more appropriate means of addressing the right for a consumer to repair a product? Please explain.

(c) Partial designs

Do you think that Hong Kong’s laws should be relaxed so that partial designs, whether made or sold separately, are registrable in their own right as registered designs? Please explain.

## Chapter 4 Requirement of Novelty for Designs and Examination of Novelty

4.1 In climbing the value chain, the design industry thrives on intellectual creativity. Iconic designs are one of the main drivers that have led to many successes of well-received products. “Novelty” of a design that is made possible only by a designer’s skills and efforts lies at the core of what the registered designs regime rewards. This chapter discusses certain material issues underlying novelty as a fundamental legal requirement of design registrability.

### I. Novelty Requirement

#### *“New” Designs*

4.2 The novelty requirement under the RDO means, in simple terms, that only “new” designs are registrable in Hong Kong.<sup>39</sup> A design for which an application for registration is made is not regarded as “new” if—

- (a) the design is the same as a design (“earlier design”) that has already either been registered in Hong Kong, or been published in Hong Kong or elsewhere in the world before the date of application (or the date of priority, if claimed) of the design; or
- (b) the design differs from the earlier design only in immaterial details or in features which are variants commonly used in the trade.<sup>40</sup>

4.3 Common scenarios of “publication” in this context that have the effect of destroying the novelty of a design include disclosure by way of prior paper or online publication depicting an article to which the design is applied (e.g. advertising in newspaper or website); and prior use of the design, whether by its owner or others (e.g. displaying to the public such articles).<sup>41</sup> However, there is no restriction on the manner in which a design comes to be published. Disclosure to any individual member of the public could amount to publication.

4.4 In *Glaxo Group Limited v Chia Tai Tianqing Pharmaceutical Group Co., Ltd.* [2022] HKCFI 1350, Lok J summarised at paragraph 27 the legal principles to be applied in assessing novelty of a design, among which—

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<sup>39</sup> Section 5(1) of the RDO provides that, “[s]ubject to this Ordinance, a design which is new may, upon application by the person claiming to be the owner, be registered in respect of any article or set of articles specified in the application.”

<sup>40</sup> Section 5(2) of the RDO.

<sup>41</sup> There are important exceptions to what constitutes publication under section 9 of the RDO, including circumstances where the disclosure of a design occurs in breach of good faith or confidentiality, or when a design is displayed at an official international exhibition, see Chapter 6.

- (a) After identifying the designs in question, a comparison exercise has to be carried out to see whether the design (the subject matter of the application or registration) is the same as those disclosed in the prior arts, or whether they differ only in immaterial details, or in merely features which are variants commonly used in the trade. If so, then the subject design is deemed not new. The comparison is assessed by reference to the eye of the “interested customer”,<sup>42</sup> not the eye of the court.
- (b) In assessing immaterial details, mere slight variations from articles already manufactured are not registrable. The design must be looked at as a whole. The test is to look at the two designs side by side, but also apart, and a little distance away. The question is whether an article made according to the design under consideration is substantially similar in appearance to an article made according to the alleged anticipation.
- (c) As for differences in common trade variants, the introduction of ordinary trade variants into an old design cannot make it new. The trade variant must be commonly used and assessed through the eye of an “instructed person”.<sup>43</sup>

*Design that has “Individual Character” or Design that is “Distinctive”*

4.5 While novelty of a design is the common denominator of registrability requirement in many jurisdictions, it is noted that some jurisdictions have moved beyond requiring only novelty.

4.6 More specifically, apart from requiring a design to be new, Australia, the EU and the UK require a design must also be “distinctive” (Australia<sup>44</sup>) or has “individual character” (the EU and the UK<sup>45</sup>). In the latter, the EU laws succinctly explain the essence of individual character of a design—

*“The assessment as to whether a design has individual character should be based on whether the **overall impression** produced on an **informed user** viewing the design differs from that produced on that user by any other design that forms part of the existing design corpus; this assessment should take into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it*

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<sup>42</sup> An “interested customer” is a customer who is interested in the design of the articles in question, see paragraph 27(v) of Lok J’s judgment.

<sup>43</sup> An “instructed person” is a person who knows what was common trade knowledge and usage in the class of articles to which the design applies, see paragraph 27(viii) of Lok J’s judgement.

<sup>44</sup> Sections 15(1) and 16(2) of the AUDA 2003.

<sup>45</sup> Articles 3(2) and 5 of the EU Directive on Designs and Articles 4(1) and 6 of the EU Design Regulation; sections 1B(1), (3) and (4) of the UKRDA 1949.

*belongs and the degree of freedom of the designer in developing the design.*<sup>46</sup>  
(*Emphasis added*)

4.7 The following salient points are relevant to the construction of distinctiveness or individual character of a design—

- (a) This additional requirement requires a difference in the overall impression of the design from the existing design corpus rather than on details. Differences in the details alone are insufficient to give validity to a design if it produces the same overall impression as an earlier design. It would appear that in most cases, in addition to the “novelty” requirement, this requirement would impose a higher threshold upon registrability.
- (b) The notional concept of an “informed user” (in the EU and the UK<sup>47</sup>) or a “familiar person” (in Australia<sup>48</sup>) through his or her eyes the comparison is made has been incorporated into the statutory provisions. Such a user/person comes from the consumers and has a certain degree of attentiveness and knowledge of the design corpus.
- (c) The comparison is a case-by-case assessment. The degree of freedom of the designer in developing his or her design must be taken into account in the overall assessment. Where a designer’s freedom is highly constrained by the nature of the product and the industrial sector to which the design belongs, smaller differences are sufficient to confer individual character or distinctiveness than a case where the designer has more freedom to make variations.<sup>49</sup>

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<sup>46</sup> Recital (18) of the EU Directive on Designs and Recital (14) of the EU Design Regulation.

<sup>47</sup> “Informed user” is not statutorily defined. The characteristics are summarised in *Samsung Electronics (UK) Ltd v Apple Inc (No.2)* [2012] EWCA Civ 1339 [2013] F.S.R. 9 at paragraph 10 and *Samsung Electronics (UK) Ltd v Apple Inc (No.2)* [2012] EWHC 1882 (Pat) [2013] E.C.D.R. 1 at paragraph 34, being that (1) the user is particularly observant and pays a relatively high degree of attention when the user uses the products concerned, (2) without being a designer or a technical expert, the user has a certain level of knowledge or awareness depending on the character of the design corpus in the sector concerned, and (3) the user conducts a direct comparison of the designs in issue, and neither merely perceives the designs as a whole and does not analyse details, nor observes in detail minimal differences which may exist.

<sup>48</sup> Under section 19(4) of the AUDA 2003, a “familiar person” means a person who is familiar with the product to which the design relates, or products similar to the product to which the design relates.

<sup>49</sup> The “designer’s freedom” is discussed in the case *H&M Hennes & Mauritz BV & Co KG v OHIM (Yves Saint Laurent intervening)* (T-525/13) [2015] E.C.D.R. 20 (handbags) at paragraphs 28-33, which explained that the degree of freedom of the designer is determined by factors such as “the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product”. Australia adopts a similar concept of “freedom of the creator of the design to innovate” (section 19(2)(d) of the AUDA 2003).

4.8 Other ID5 offices, where designs are within the overall IP system among patents and utility models, take varied approaches in interpreting novelty, which are markedly different from Hong Kong. To illustrate, a design is registrable in the Chinese Mainland if it is “*distinctly different from the existing designs or the combinations of the features of existing designs*”;<sup>50</sup> the concepts of “creative difficulty”, originality and non-obviousness to a person ordinarily skilled in the art are adopted in the laws of Japan, Korea and the US.<sup>51</sup>

### **Issues for Consultation**

4.9 In an increasingly competitive global market serving a group of growingly sophisticated consumers, monopoly should reasonably be granted to a design that the market has not seen and that enriches consumers’ choices and experience as well as the industry as a whole. On the other hand, consideration should be given on whether some run-of-the-mill designs that are barely novel should be precluded from registration in order not to hinder innovation and creation of better designs.

4.10 There appears to be a case to consider whether introduction of an additional registrability requirement of “individual character” or “distinctiveness” for a design may better and more fairly recognise the need of the market for greater differentiation amongst designs, and ensure that designs protected are those resulting from genuine creativity, skills and efforts. The assessment is aided by statutory guidance by assigning a specific notional person to assess the overall impression the design creates, without losing sight of the specific realities and constraints of making the design.

## **II. Examination of Novelty**

4.11 The RDO only requires the Registrar to conduct formality examination for a design application, but does not impose any obligation to conduct substantive examination on the registrability of the design.<sup>52</sup> That said, where the design, on the face of it, is not new or is not registrable for any other reason, the Registrar has the statutory power to refuse such application.<sup>53</sup> The regime caters for trade competitors to challenge the validity of a design registration by way of revocation proceedings or during infringement proceedings.

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<sup>50</sup> Article 23 of the Patent Law of China.

<sup>51</sup> Article 3(2) of the Design Act of Japan; Article 33(2) of the Design Protection Act of Korea; 35 U.S.C. §103 and §171.

<sup>52</sup> Sections 24(1) and 27 of the RDO and section 21 of the RDR. Formal requirements mean all of the requirements of section 12 of the RDO and sections 3 to 13 of the RDR. The examination involves the checking of whether the formal requirements are fulfilled, for example, whether the application is filed in the specified form with all required information, and whether the applicable fees are paid.

<sup>53</sup> Section 26(1) of the RDO. For example, an application may be refused if the design is applied to printed matter primarily of a literary or artistic character (e.g. book jackets, calendars), which is excluded from registration under section 4 of the RDR.

4.12 The current practice of formality examination in Hong Kong is in line with the examination practice of the IP offices in other major common law jurisdictions (including IP Australia, IPOS and UKIPO) and EUIPO. It offers a shorter registration process that is both cost-effective and accessible to design owners.

4.13 On the other hand, certain larger IP offices (notably the ID5 offices like CNIPA, JPO, MOIP and USPTO) conduct varying degree of substantive examination of novelty of the design and other registrability criteria before granting a design registration.

4.14 Conducting substantive examination of novelty at the application stage can theoretically enhance legal certainty and presumption of validity of registered designs, filter out designs that do not merit registration, and may coincidentally prevent anti-competitive registrations. Conversely, substantive examination of novelty would inevitably lengthen the overall registration process and defer enforcement efforts, offsetting the key advantages offered by the current procedure as rooted in simplicity and speed. Furthermore, considerable resources in manpower and system set-up are required for substantive examination, particularly for the purposes of searching prior arts in determining novelty on a worldwide basis. The respective costs to be borne by the IP office and the design applicants would considerably increase as a result.

#### *Enhancement Measures as an Alternative to Novelty Examination*

4.15 Instead of full-fledged novelty examination, both Australia and Singapore have implemented enhancement measures at different phases of their design application and registration processes in preserving the benefits of their formality examination procedures on the one hand and enhancing the integrity of registrations on the other—

- (a) In Australia, substantive examination of a registered design must have been conducted before the owner commences infringement proceedings.<sup>54</sup>
- (b) Singapore has heightened checks for declaration of novelty. A design application that is clearly not new or not registrable on the face of the application may be refused.<sup>55</sup> In this regard, the Registrar has similar statutory power under the RDO as mentioned in paragraph 4.11 above, and has exercised the same in appropriate cases.

4.16 In its recent consultation, UKIPO, having stated that the benefits of reintroducing to its regime mandatory searching would not justify the costs to the business, is considering alternative options along the measures stated in the preceding paragraph, namely to empower UKIPO to carry out a search or to introduce a two-stage system which requires search and examination prior to enforcement.<sup>56</sup>

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<sup>54</sup> Section 73(3) of the AUDA 2003.

<sup>55</sup> Circular No. 1/2019 and Circular No. 4/2019 issued by IPOS.

<sup>56</sup> See section A1 of the 2025 UK design consultation.

## Issues for Consultation

4.17 There is no one-size-fits-all answer to the question of whether substantive examination should be conducted for a design application, given the unique circumstances of individual jurisdictions, including the capacity of their IP offices, the size of the markets and the practical demands of the market players.

4.18 The formality examination procedure is widely adopted in Hong Kong as well as other common law jurisdictions, and Hong Kong’s design registration regime continues to offer design registration services in a cost-effective and efficient manner. Upon reviewing the overall local circumstances, we do not consider there being a compelling case for Hong Kong to introduce substantive examination into the design application process.

## Summary of Views Sought

4.19 We would like to invite views on the following—

(a) Novelty requirement

- (i) Do you consider the current novelty requirement under the RDO sufficient and effective to meet the needs of the design industry? Please explain.
- (ii) Do you agree that introducing into the legislation an additional registrability requirement guided by the overall impression produced by a design by reference to its individual character or distinctiveness would set a more appropriate threshold for registrability of a design for the contemporary market? Please explain.
- (iii) If your answer to question (ii) is in the affirmative, should the local legislation also lay down the approach and the factors (such as “informed user”, “degree of freedom of the designer”) for assessment of difference in overall impression? Please elaborate.

(b) Examination of novelty

- (i) Do you agree that the current formality examination procedure (i.e. generally requiring only formality examination to be conducted for a design application) should be retained? Please explain.
- (ii) Should your answer to question (i) be in the affirmative, do you consider it justifiable and necessary to consider introducing any enhancement measures adopted by overseas jurisdictions as discussed in paragraphs 4.15 and 4.16 above? Please explain.

## Chapter 5 Exclusive Rights of Registered Designs

5.1. A design registration confers upon its owner certain exclusive rights to protect the economic interests of the owner. This chapter seeks to review the scope of such rights, covering acts constituting infringement and the available statutory exceptions to infringement, in order to ensure that Hong Kong's design law strikes a reasonable balance in addressing the respective legitimate interests of design owners, trade competitors, and the general public. In this connection, issues relating to ownership of a registered design as a personal property must also be properly addressed.

### I. Exclusive Rights

#### *Scope of Exclusive Rights and Infringement*

5.2. The rights conferred on a registered design are in essence a bundle of exclusive economic rights granted to its owner over a limited period of time in respect of exploitation of the design. In Hong Kong, the RDO principally grants the owner of a registered design the exclusive right to make or import for sale, hire or use in trade or business, or to sell, hire, or offer or expose for sale or hire in Hong Kong any article in respect of which the design is registered and to which the design (or a design not substantially different) has been applied.<sup>57</sup>

5.3. Generally speaking, any person who, without the consent of the owner and while the design registration is in force, does anything which the owner has the exclusive right to do, or makes anything for enabling such article to be made in Hong Kong or elsewhere, infringes the right in the registered design.<sup>58</sup>

5.4. On the other hand, the RDO also restricts the scope of the exclusive rights of the owners by providing for various statutory exceptions (see below), coupled with certain limited rights or defences available to third parties known as the "prior use defence"<sup>59</sup> and the "innocence defence".<sup>60</sup>

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<sup>57</sup> Section 31(1) of the RDO.

<sup>58</sup> Section 31(2) of the RDO. The latter refers to acts of making or dealing in items such as moulds or specially adapted tools which are intended to be, or at least capable of being used to make articles falling within the scope of the registered design.

<sup>59</sup> The "prior use defence" affords a third party a limited entitlement to continue using a design which is subsequently registered by its owner if the use or preparations for use are in good faith and has started before the filing date of the application. See section 35 of the RDO.

<sup>60</sup> The "innocence defence" restricts a registered design owner from recovering damages or profits in infringement proceedings if the defendant proves that he or she was not aware, or had no reasonable grounds for believing, that the design in question was registered. See section 51 of the RDO.

## *Other Jurisdictions*

5.5. While the corresponding position in Singapore is broadly the same as that in Hong Kong,<sup>61</sup> the design laws of Australia, the EU and the UK appear to confer upon the owner of a registered design a broader scope of exclusive rights —

- (a) In the EU and the UK, the exclusive rights are referred to as “*the right to use the design*”, which include but are not limited to making, offering, putting on market, importing and exporting a product in which the design is incorporated or to which it is applied.<sup>62</sup> In Australia, similar rights such as making, selling, etc. of a product are individually set out, and the right to “*use such a product in any way for the purposes of any trade or business*” is also provided for.<sup>63</sup>
- (b) In view of the emergence of 3D printing technologies and AI-assisted copying in the industry, the EU design law has recently conferred on design owners a specific right for “*creating, downloading, copying and sharing or distributing to others any medium or software which records the design for the purpose of enabling a product to be made*”.<sup>64</sup>

5.6. The scope of exclusive rights exercisable by an owner of registered design is intrinsically associated with the nature and scope of the design (see Chapters 2 and 3), as well as the interaction between registered design and other types of IP (in particular copyright) (see Chapter 8). Holistic consideration should thus be given to better articulate the exclusive rights under the RDO for facilitating registered design owners to effectively cope with the challenges in exploiting and enforcing their rights in today’s market.

### *Article/Product for which the Design is Registered*

5.7. In Hong Kong, Australia and Singapore, protection of a registered design is in relation to the article/product in respect of which the design is registered. This contrasts with the respective positions in the EU and the UK, where protection extends to *any* article/product in which the design is used, although a design application is still required to indicate the article/product in which the design is intended to be incorporated or to which it is applied.

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<sup>61</sup> Section 30 of the SGRDA 2000.

<sup>62</sup> Article 16 of the EU Directive on Designs; Article 19 of the EU Design Regulation; section 7 of the UKRDA 1949.

<sup>63</sup> Section 10(1) of the AUDA 2003.

<sup>64</sup> Recital (27) and Article 16(2)(d) of the EU Directive on Designs; Article 19(2)(d) of the EU Design Regulation; Recital (14) of Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024.

5.8. An expansion of the scope of monopoly of design rights must be commensurate with the registered design owners' legitimate use of the design. Careful consideration must therefore be given to whether any major expansion of protection of a design in relation to any article/product would be justifiable.

### *Exceptions to Infringement*

5.9. The scope of exceptions to registered design infringement in Hong Kong generally aligns with that in Singapore and the UK, in which private and non-commercial uses, as well as certain acts done for specific purposes such as teaching, are statutory exceptions to infringement.<sup>65</sup> The EU has further introduced a statutory exception in relation to use for the purposes of "*comment, critique or parody*" in its recent legislative amendment.<sup>66</sup> Australia, however, does not provide for any specific exception in its statute.

5.10. Exceptions reflecting fair practices are important to strike a proper balance between protecting legitimate rights of design owners and permitting others' reasonable use of registered designs. Provided that such exceptions do not unreasonably conflict with the normal exploitation of registered designs and do not unreasonably prejudice the legitimate interests of the owners,<sup>67</sup> it is worthwhile to consider what are the reasonable uses of designs in the modern market that should appropriately be excepted.

## **II. Ownership**

5.11. A registered design is a personal property which may be assigned or licensed by its registered owner.<sup>68</sup> Under Hong Kong's design law, the designer of a design is generally treated as the original owner of the design, subject to specific statutory provisions governing ownership arising in various scenarios, amongst others, commissioned designs.<sup>69</sup>

### *Commissioned Designs*

5.12. At present, when a design is created pursuant to a commission for money or money's worth, the person commissioning the design is presumed to be the original owner of the design, unless there is an agreement to the contrary. This is different from the current positions in Singapore, the UK and jurisdictions of the ID5, where ownership of a commissioned design is vested in the designer subject to any contractual arrangement to the contrary.

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<sup>65</sup> Section 31(3) of the RDO.

<sup>66</sup> Article 18(1)(e) of the EU Directive on Designs; Article 20(1)(e) of the EU Design Regulation.

<sup>67</sup> Article 26(2) of the TRIPS Agreement.

<sup>68</sup> Section 32 of the RDO.

<sup>69</sup> Section 3 of the RDO.

5.13. In view of the above, we consider it justifiable to amend Hong Kong’s design law governing ownership of commissioned designs so as to bring our law in alignment with the prevailing international position as aforesaid. In addition, our proposed amendment would achieve consistency with the statutory provision governing ownership of commissioned works in Hong Kong’s copyright law,<sup>70</sup> such that the default ownership of the two rights may vest in the same person, subject to agreement to the contrary.

### **Summary of Views Sought**

5.14. We would like to invite views on the following—

(a) Exclusive rights

- (i) Do you consider the current scope of exclusive rights provided for registered designs under the RDO adequate? Please explain.
- (ii) To facilitate diverse legitimate uses of designs and promote effective commercialisation of the designs, particularly by making use of new technologies or digital platforms, do you consider it preferable for the scope of exclusive rights be broadened, such as to cover any business/commercial use of a registered design? Please elaborate.
- (iii) Do you consider it justifiable for protection of a registered design be limited to the article in respect of which the design is registered, or alternatively be extended to any article in which the design is used? Please explain.
- (iv) Do you agree that the existing statutory exceptions under the RDO adequately strike a fair balance in addressing the reasonable uses of designs by members of the public? If not, please explain and elaborate what specific exception(s) ought to be introduced.

(b) Ownership

In respect of commissioned designs, do you agree that it is more proper to treat the designer as the original owner of the design, subject to any agreement to the contrary? Please explain.

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<sup>70</sup> The author of a work is the first owner of any copyright in the work. Where a work is made on the commission of a person and there is an agreement between the author and the commissioner of the work providing for the entitlement to the work, the copyright ownership of the commissioned work is governed in accordance with the agreement. See sections 13 and 15 of the CO.

## Chapter 6 Facilitation Measures for Application for Registration of Designs

6.1. In principle, when formulating filing strategy, a design owner must avoid public disclosure of a new design before filing a design application so as to preserve the novelty of the design. As a matter of course, the design will be disclosed to the public at the time of registration.

6.2. In practice, preparation for the launch of a product with a new design is a strategic process that involves taking timely actions at various stages of product development and commercialisation. There are legitimate reasons to disclose the design to selected parties at an early stage, such as for product testing and securing financing. Conversely, there may also be strategic advantages to defer public disclosure after registration, for example, to coordinate a more impactful product launch.

6.3. An effective registered designs system should help design owners strategise a product's development while balancing the interests of other market players. This chapter explores the possible introduction of facilitation measures in this regard.

### I. Grace Period

#### *Hong Kong*

6.4. Designs which have been disclosed to the public before they are filed for registration are generally not regarded as new and are not registrable, unless the disclosure falls within one of the exceptions covering disclosures such as one made in breach of good faith.<sup>71</sup> Among such exceptions, the RDO currently provides for a 6-month grace period for filing a design application first disclosed at and in connection to an "official international exhibition".<sup>72</sup> However, such prescribed exhibitions are rarely held in practice and many local exhibitions do not qualify as such.

#### *Other Jurisdictions*

6.5. Australia, the EU, Japan, Singapore, Korea, the UK and the US have introduced a 12-month grace period for filing a design application, which generally allows a designer or his or her successor-in-title to disclose a design (which is to be the subject of the application) for any purpose. Novelty is also preserved during the grace period from disclosures by third parties, whether in consequence of the information provided by the designer or in consequence of an abuse of the designer's rights.

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<sup>71</sup> Sections 9(1)(a)-(d) of the RDO.

<sup>72</sup> See section 9(2) of the RDO. "Official international exhibition" is defined in section 9(3) of the RDO to mean "an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on 22 November 1928, and any protocols to that Convention, as revised or amended from time to time."

6.6. On the other hand, not all jurisdictions provide for an all-purpose grace period. For example, the Chinese Mainland currently only provides for a 6-month grace period under specified circumstances, including disclosure at certain international exhibitions and disclosure by others without the applicant's consent.

6.7. It is noteworthy that the RDLT (see Chapter 9) also provides for a harmonised international standard by requiring its contracting parties to provide for a mandatory 12-month grace period for disclosure of a design for all purposes.<sup>73</sup>

### **Issues for Consultation**

6.8. Product testing at the right time window provides valuable metrics for assessing the commercial potential of a product. It allows an early decision on whether to incur further resources and to pitch for investment for product development, as well as to obtain legal protection. A grace period for disclosure of a design for all purposes would confer greater flexibility for these commercial activities which may lead to development of better designs. It would also provide certain protection to inadvertent disclosures by designers, especially those with less experience with the registration system.

6.9. While a grace period of a wider scope would afford greater protection for a design, it may also add legal uncertainty, namely trade competitors may be unsure if a design already disclosed to the public has lost its novelty or will still be filed for registration by making use of any applicable grace period. Such risk is addressed to a certain extent where competitors may avail themselves of the statutory "prior use defence"<sup>74</sup> currently available under the RDO to continue with any use of the design in good faith.

6.10. Further, if a certain jurisdiction provides a grace period for registering a design after its disclosure, that grace period applies to that jurisdiction only. However, such disclosure may prejudice the novelty of the design in other jurisdictions which offer a shorter or no grace period. As mentioned above, many jurisdictions currently provide for a 12-month grace period which aligns with the harmonised standard under the RDLT. It can be seen as the benchmark for a reasonable balance of interests for all market players.

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<sup>73</sup> Article 7 of the RDLT.

<sup>74</sup> See footnote 59.

## II. Deferment of Publication of Designs

### *Hong Kong*

6.11. Upon the Registrar’s acceptance of an application for registration of a design, a representation of the design is registered in the Register of Designs and published in the Hong Kong Intellectual Property Journal.<sup>75</sup> There is no option for a design owner to defer the Registrar’s publication of a registered design even if the owner has a strategic or commercial reason to keep the design undisclosed for a longer time.

### *Other Jurisdictions*

6.12. Many jurisdictions provide an option for design owners to defer publication of their registered designs (i.e. the design is not disclosed to the public immediately at registration). The maximum deferment period varies among jurisdictions, with some examples cited below—

**Table 4: Maximum deferment period for publication of a design provided by selected jurisdictions**

Jurisdictions	Maximum Deferment Periods
Australia	6 months
The UK	12 months (Proposed to be extended to 18 months in a recent public consultation)
Singapore	18 months
The EU	30 months
Chinese Mainland	36 months
Japan	
Korea	

6.13. It is also noteworthy that the RDLT provides for a mandatory treaty requirement for contracting parties to allow an applicant to request deferment of publication of a design for at least 6 months from the filing date of a design application.<sup>76</sup>

### **Issues for Consultation**

6.14. Some products require considerable lead time before they are put on the market, and designers may wish to have publication of their designs deferred until time is ripe for product launches. For a product comprising both novel design and technical invention, a deferment would also afford the rights owner some more time to consider a potential patent application before the underlying invention loses novelty by virtue of publication of the corresponding design of the product.

<sup>75</sup> Section 25 of the RDO and section 25 of the RDR.

<sup>76</sup> Article 10 of the RDLT and Rule 6 of the Regulations under the Riyadh Design Law Treaty.

6.15. On the other hand, when considering whether to offer designers the flexibility to defer publication of designs, we also need to factor in the legitimate interest of any third party who, without any knowledge of the deferred publication of designs and during the deferment, may have invested in the exploitation of another design that is the same as or not substantially different from the design. Such exploitation may infringe the deferred design from the date of its registration, and the third party may bear liability and thus suffer loss in investment.<sup>77</sup> In this regard, the RDO provides for the “innocence defence” against recovery of damages or account of profits from the innocent third party in infringement proceedings.<sup>78</sup>

6.16. Separately, we note that some jurisdictions, in balancing conflicting interests of different parties, provide for some measures of transparency when an applicant for design registration requests deferment of publication, such as by means of making certain information of the application (but not the representation of the design itself) public.

6.17. There is no international norm on the maximum period of deferment. A reasonable balance has to be struck between offering flexibility to designers and safeguarding third parties’ freedom to operate with legal certainty.

### **Summary of Views Sought**

6.18. We would like to invite views on the following —

(a) Grace period

- (i) Do you agree that the scope of the current grace period prescribed in the RDO should be relaxed to cover disclosure of a design by the design owner for any purpose? Please explain.
- (ii) Regardless of paragraph (i), do you agree that the duration of the grace period should be increased from 6 months to 12 months? Please explain.
- (iii) If a design owner is allowed to disclose and use a design before filing an application as described in (i) and (ii) without prejudice to novelty, would there be any impact on your business and whether any mitigation would be needed? Please explain.

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<sup>77</sup> Infringement proceedings can only be taken against the third party on or after the date on which the certificate of registration of the design is issued (section 48(3) of the RDO).

<sup>78</sup> See footnote 60.

(b) Deferment of publication of designs

- (i) Do you agree to introduce an option for applicants to defer publication of designs? Please explain.
- (ii) Should the aforesaid option for deferment be introduced, what should be the maximum period of deferment in order to offer designers or manufacturers sufficient flexibility? Please explain.
- (iii) On the other hand, would deferment of publication of designs have any impact on your business and whether any mitigation would be needed? Please explain.

## Chapter 7 Application and Registration Formalities

7.1 This chapter discusses several application and registration formalities in Hong Kong and explores room to streamline and enhance the registration process of the registered designs system with reference to prevailing international norms and practices.

### I. Priority Claims in Applications

7.2 An applicant who has filed a design application in a Paris Convention country or WTO member outside Hong Kong (“earlier application”) may claim priority of the earlier application in the corresponding application subsequently filed in Hong Kong (“priority claim”), provided that the corresponding application is filed within 6 months after the filing date of the earlier application.<sup>79</sup>

7.3 Where a Hong Kong application contains a priority claim, the applicant has to file with the Registry the “priority documents” (namely a copy of the earlier application and a copy of the official certificate concerning the earlier application) in support of the claim. The 6-month period for making a priority claim is not extendable under the RDO, i.e. a priority claim can no longer be made after expiry of the period.

7.4 The formalities for making a priority claim vary amongst jurisdictions. While the Chinese Mainland and the EU also require filing of priority documents, some jurisdictions (such as Australia, Singapore and the UK) do not have such a requirement. Jurisdictions outside Hong Kong in general also observe the same strict 6-month priority claim period. That said, under the RDLT, a request can be made to restore the right of priority of an earlier application within at least 1 month from the date on which the priority period expires, provided that the failure to file the subsequent application in time occurred in spite of due care required by the circumstances having been taken or was unintentional.<sup>80</sup>

### II. Applications for Multiple Designs

7.5 In Hong Kong, a single design application may contain more than one design (“multiple designs application”) provided that the designs in question relate to the same class of articles or the same set of articles.<sup>81</sup> While the applicant may file individual application for each design, a reduced fee applies to a multiple designs application.<sup>82</sup> Upon registration, each design is registered individually.

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<sup>79</sup> Sections 15 to 17 of the RDO and section 11 of the RDR.

<sup>80</sup> Article 16(2) of the RDLT.

<sup>81</sup> Section 13 of the RDO.

<sup>82</sup> Please refer to [the fees for Form D1](#) for details.

7.6 The filing requirements for a multiple-design application vary amongst jurisdictions. For example, multiple designs of articles belonging to the same class are similarly eligible for a multiple designs application in Australia and Singapore whereas there is no specific condition in making a multiple designs application in the EU and the UK.

### **III. Mandatory Requirement of Application on Statement of Novelty**

7.7 A Hong Kong design application must contain a statement of novelty, being a statement describing the feature(s) of the design which the applicant considers to be new.<sup>83</sup> The applicant may provide this statement in the application form, either by way of using the checkbox(es) to indicate features of “pattern”, “ornament”, “shape” and/or “configuration” under the section “statement of novelty”,<sup>84</sup> or providing one’s own statement in writing.

7.8 On the other hand, provision of a statement of novelty in a design application is not a mandatory requirement in certain jurisdictions (like Australia and the UK). Instead, an applicant may provide an optional statement to accompany the representation of one’s design in order to highlight any specific feature(s) in a design which the applicant considers new, or disclaim protection of any other part(s) of the design. For EU designs, a statement of disclaimer is not acceptable, and any disclaimer made by an applicant must be apparent from the representation of the design itself.

### **IV. Design Registration Term and Renewal of Registration**

7.9 Protection of registered designs is subject to a finite term of protection during which an owner enjoys monopoly over the registered design. Upon expiry of the registration, the design would become part of the public domain for free use.

7.10 The TRIPS Agreement requires the duration of protection available to an industrial design shall amount to at least 10 years. Under the RDO, the initial registration term of a design is 5 years, which can successively be renewed, each for an additional period of 5 years, up to a maximum term of 25 years.<sup>85</sup>

7.11 In defining the maximum term of protection for a registered design, a reasonable balance must be struck between the legitimate interests of the right owners and the general public. While a longer term affords the owner more time to fully exploit the design, an excessive term of protection can stifle competition and, as a result, slow down market innovation.

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<sup>83</sup> Section 8 of the RDR.

<sup>84</sup> For example, if the applicant ticks all the boxes, the statement of novelty is presented as “the features of the design for which novelty is claimed are the pattern, ornament, shape, configuration of the article as shown in the representations”.

<sup>85</sup> Sections 28(1) and (2) of the RDO.

7.12 As tabulated in Table 5 below, the maximum term of design registration in major jurisdictions ranges from 10 to 25 years. Hong Kong is one of the cited jurisdictions that offers a long maximum term of registration, capable of protecting designs having a relatively longer commercial lifespans.

**Table 5: Maximum term of protection for a registered design and the interval for renewal of registration in selected jurisdictions**

Jurisdiction	Maximum Term of Protection	Renewal Interval
Hong Kong	25 years	Renewable every 5 years
The EU (for EU Designs)		
The UK		
New Zealand		
Singapore	15 years	Renewable every year
Australia	10 years	
Japan	25 years	
Korea	20 years	
Chinese Mainland	15 years	Granted in one fixed term
The US	15 years	

7.13 Table 6 below provides the statistics of renewals of registered designs in Hong Kong due for renewal in 2020-2024. It indicates that roughly 60% of the registrations are renewed for each of their respective next terms and that some registered design owners will seek the full term of protection of their registered designs, though this comes in an expectedly smaller number. This shows that renewals are by and large requested on the basis of conscious business decisions, reflecting the different residual commercial values of individual designs, rather than as a routine exercise.

**Table 6: Statistics of renewals of registered designs in Hong Kong due for renewal in 2020-2024**

Term of Renewal Due by the End of 2020-2024	Term of Protection Acquired after Renewal	Number of Registrations Eligible for Renewal for This Term	Number of Registrations Renewed for This Term	Percentage of Renewal among Eligible Registrations
First term (for designs registered in 2015-2019)	10 years	23 684	13 473	57%
Second term (for designs registered in 2010-2014)	15 years	10 819	6 212	57%
Third term (for designs registered in 2005-2009)	20 years	4 773	2 787	58%
Fourth term (for designs registered in 2000-2004)	25 years (maximum)	1 639	1 032	63%

7.14 The periodic renewal structure with a 5-year interval adopted by Hong Kong's registered designs regime recognises the fact that the optimal period of protection for a registered design varies across industries and is dependent on the life cycles of individual products. It offers flexibility for design owners to protect their own designs for so long as there is a commercial value without undue administrative and financial burdens,<sup>86</sup> and on the other hand encourages designs which have ceased to have commercial value to enter into the public domain to fuel further innovation. This is also reflected in the renewal fee structure (with a higher fee for each of the subsequent 5-year term) to discourage renewal of registered design that ceases to have commercial value.

### **Summary of Views Sought**

7.15 We would like to invite views on the following—

(a) Priority claims in applications

- (i) Do you consider it justifiable that the current statutory requirement on filing priority documents with the Registrar be dispensed with? Please explain.
- (ii) For those Hong Kong design applications filed after expiry of the 6-month priority claim period, should (and if so under what conditions) the applicants be permitted to request restoration of the right of priority? Please explain.

(b) Applications for multiple designs

Do you consider the current requirements for filing multiple designs applications appropriate and practical, namely that the designs must relate to the same class or to the same set of articles? Please explain.

(c) Mandatory requirement of application on statement of novelty

Do you consider it appropriate to retain the mandatory requirement for a design application to contain a statement of novelty, or should the requirement be removed by making it optional for an applicant to make a statement to highlight the design feature(s) which is/are considered to be new or specifying the part(s) of the design to be disclaimed for protection? Please explain.

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<sup>86</sup> The Registrar may entertain a request for renewal filed out of time provided that the request is filed within 6 months after expiry of the registration, accompanied with payment of an additional fee for late renewal (section 28(5) of the RDO and section 29(2) of the RDR). Only 1.8% of all renewal requests received by the Registrar during the 5-year period from 1 April 2020 to 31 March 2025 were filed out of time.

(d) Design registration term and renewal of registration

Do you agree that the *status quo* in relation to the term of design protection and renewal of registration should be maintained? If you consider that there is room to enhance any aspect of the current renewal procedures, please elaborate.

(e) Other formality issues

In your experience, is there any real practical issue/matter relating to Hong Kong's registered design application and registration procedures (notably requirements of formalities, documentary requirements or time limits to follow) that you consider should be reviewed or enhanced? Please elaborate.

## **Chapter 8 Interplay between Registered Design Rights and Other IP Rights**

8.1 While each type of IP rights serves to protect a specific form of creation of human mind,<sup>87</sup> a clear delineation of the protection provided for an industrial product under the respective IP regimes is not always straightforward. In particular, the overlapping protection provided by the respective laws of industrial design and copyright is a well-recognised area of complexity in various jurisdictions. It is therefore not always easy to determine whether a product design in a particular case could be protected by registered design rights, copyright or both.

8.2 In principle, copyright of an artistic work protects the original expression of ideas in the work, whereas registered design rights protect new design features of mass-produced products. A number of common law jurisdictions have enacted specific statutory provisions to limit the extent of overlap between the registered design and copyright protection provided for an industrial design, notably by restricting the copyright protection of the underlying copyright work(s) of the industrial product in question to the extent that it relates to the corresponding design rights.

8.3 The issues are further complicated by the introduction of the unregistered designs regime, which confers a “lesser” right (notably in the EU and the UK), such that a design may potentially be subject to protection under this third IP right apart from consideration of the respective laws of registered design and copyright.

### **I. Overlapping Protection of Registered Design Rights and Copyright**

#### *Hong Kong*

8.4 The overlap of registered design rights and copyright is specifically addressed under sections 86 to 88 of the CO. In relation to a product design in which an underlying work (e.g. in the form of an original design drawing) is protected by copyright as an artistic work, 3D reproduction of the artistic work by the making of articles bearing the design would continue to enjoy copyright protection in Hong Kong, but only for a shortened duration rather than for the full term of copyright protection.

8.5 More specifically, copyright in an original artistic work in the form of a drawing featuring a product design generally expires at the end of the period of 50 years from the end of the calendar year in which the author dies.<sup>88</sup> However, once such artistic work has been exploited by the owner or with his or her consent through the making of articles applying the design in question by an industrial process and then marketing such articles in Hong Kong or elsewhere, the term of the relevant copyright

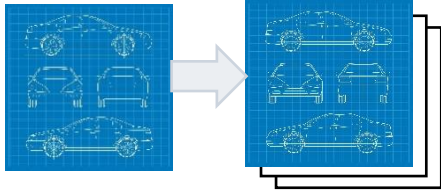
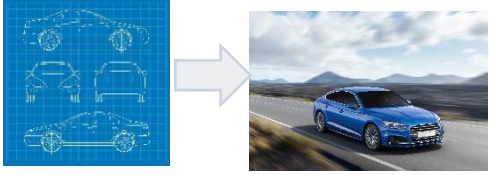
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<sup>87</sup> See footnote 1.

<sup>88</sup> Section 17(2) of the CO.

protection for the underlying artistic work is reduced to 25 years (if the relevant design has been registered under the RDO) or 15 years (if the relevant design has not been registered), from the end of the calendar year of the first marketing of the articles.<sup>89</sup> By way of illustration, a design of a motor vehicle featuring new shape and configuration registered under the RDO could be protected in Hong Kong for up to 25 years, while a reproduction of the same original 2D drawing by making it into a motor vehicle is concurrently and separately protected by copyright, but only for a similar duration of 25 years instead of the typical full copyright term. The diagram below illustrates the overlap.

**Table 7: Overlapping protection of registered design rights and copyright when a copyright work is exploited to make an article by industrial process**

	 <p><b>Act of reprographic copying of the blueprint (e.g. making a magazine cover)</b></p>	 <p><b>Act of copying the blueprint by making an article (e.g. a car)</b></p>
<p>If the design is registered the owner has:</p>	<p><b>COPYRIGHT</b> for the life of the designer plus 50 years <b>unaffected</b></p>	<p>Maximum 25 years <b>REGISTERED DESIGN RIGHTS</b></p> <p><b>AND</b></p> <p>Shortened 25 years <b>COPYRIGHT</b> from the article first being marketed</p>
<p>If the design is <b>NOT</b> registered the owner has:</p>		<p><b>No REGISTERED DESIGN RIGHTS</b></p> <p><b>AND</b></p> <p>Shortened 15 years <b>COPYRIGHT</b> from the article first being marketed</p>

(Image sources: Waiki Creative/Shutterstock.com; Rajiv\_am96/Shutterstock.com)

**Note:** The above images are for illustrative purposes only. Any copyright or registered design protection is subject to the applicable statutory requirements. Any design application must also comply with the filing requirements (including those in relation to representation) stipulated under the RDO and the RDR.

<sup>89</sup> Section 87 of the CO.

## *Other Common Law Jurisdictions*

8.6 In Australia<sup>90</sup> and Singapore,<sup>91</sup> the potential overlapping protection of a product design under the registered designs and copyright regimes is likewise addressed by their respective domestic copyright legislation. Once a design derived from an artistic work has been registered as a registered design, or industrially applied (if not registered), the general rule is that the copyright of the underlying artistic work is restricted. Accordingly, the doing of an act which would have been within the exclusive rights of the design if it had been registered would be excluded from the copyright enjoyed by the underlying artistic work, and it would not be an infringement of copyright of the said artistic work to perform such act. Referring to the same example of a motor vehicle cited in paragraph 8.5 above, failure to register the design of the motor vehicle in the jurisdictions concerned would result in no protection of the design under either design or copyright law for the making of the motor vehicle. These statutory provisions serve to limit the extent of dual protection for the underlying copyright work(s) afforded by the copyright regime in which the product design as the subject of the work should only be protected under the registered designs regime.<sup>92</sup>

8.7 In the UK, the correlation between registered design and copyright protection for a 3D shape or configuration has been severed. Instead, the UKCDPA 1988 has introduced a “lesser” unregistered design right for a design owner to make an article applying a design of shape and configuration, and a new set of provisions to achieve the limitation of the application of copyright in designs applied industrially on mass-produced products.<sup>93</sup> The unregistered design right generally replaces artistic copyright protection for much of the 3D industrial designs (see paragraphs 8.13 to 8.14 below for further discussion).<sup>94</sup>

### **Issues for Consultation**

8.8 In Hong Kong, copyright subsisting in an artistic work co-exists with the exclusive rights of a registered design derived from the work, but is shortened to tally with the maximum protection term of the registered design. It is a means to address and manage the interplay of registered design rights and copyright. There however exists different approaches: Australia and Singapore prevent dual protection by principally removing the scope of registered design rights from copyright protection, while the UK allows co-existence of the two types of rights but replaces the copyright by a similar but separate and “lesser” unregistered design right.

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<sup>90</sup> Sections 74 to 77A of the Australia Copyright Act 1968.

<sup>91</sup> Sections 270 to 276 of the Singapore Copyright Act 2021.

<sup>92</sup> The legislation in Australia and Singapore goes further to provide better particulars as to how the line between the registered designs and copyright regimes should be drawn. For example, a design is generally considered to have been “industrially applied” in these jurisdictions if it has been applied to more than 50 articles.

<sup>93</sup> Part III of the UKCDPA 1988.

<sup>94</sup> Section 51 of the UKCDPA 1988.

8.9 We agree in principle that it is important to keep a clear delineation as much as possible between the respective regimes for registered designs and copyright. Its importance is evident in industries of designs that are primarily functional rather than aesthetic in nature, where the boundaries between these two rights are easily blurred. At the same time, we would like to ensure that the current mechanism for addressing the overlap of rights is functioning as intended in today's market by clarifying and balancing the scope of protection under the respective regimes of registered designs and copyright, and identifying areas for enhancement.

## II. Unregistered Design Rights

8.10 The EU and the UK provide protection of unregistered designs by automatically conferring on them certain rights without the need of registration. These can be considered as “lesser” rights for the main reasons that they only last for a shorter period of time in comparison to their registered counterparts and the protection is against copying only (i.e. there is no infringement if the design was created independently by another designer). The EU and the UK systems are otherwise quite different in their legal bases, as broadly discussed below.

### *EU Unregistered Design Rights*

8.11 Unregistered design rights are provided alongside registered design rights as a third layer of rights for a design under the EU IP framework. The EU Design Regulation recognises that “*some... sectors produce large numbers of designs for products frequently having a short market life where protection without the burden of registration formalities is an advantage and the duration of protection is of lesser significance*”.<sup>95</sup>

8.12 The scope of design contemplated under an EU unregistered design is the same as that under a registered design (i.e. protection does not extend to merely functional shapes), and the design has to be new and has an individual character.<sup>96</sup> Unregistered rights last for 3 years (as opposed to the maximum protection of 25 years for registered design rights) from the date the design being first made available to the public within the EU.<sup>97</sup>

### *UK Unregistered Design Rights*

8.13 An unregistered design in the UK is protected for 10 years after the relevant article was first sold, or 15 years after the design was first recorded or made, whichever ends first (as opposed to the maximum protection of 25 years for registered designs). In comparison to a registered design which must be new and has an individual character, an unregistered design right only subsists in an original design. A design is not original

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<sup>95</sup> Recital (16) of the EU Design Regulation.

<sup>96</sup> For the definition of “individual character”, see Chapter 4.

<sup>97</sup> Articles 1, 5, 6 and 11 of the EU Design Regulation.

if it is “commonplace”.<sup>98</sup> Additionally, entitlement to an unregistered design right is subject to certain residency requirements of the designer in the UK or a qualifying country.

8.14 As noted in paragraph 8.7 above, the origin of the UK unregistered design rights is inherent within the copyright regime.<sup>99</sup> It was intended to protect functional products for which copyright protection was considered excessive. A “design” under the UK registered and unregistered design regimes are not identical. While the two types of design rights may co-exist, what may be protected as a registered design is not necessarily protected by an unregistered design right and *vice versa*. Notably, registered design does not protect merely functional shapes, whereas unregistered design does not protect 2D surface decoration (which remains the subject of copyright protection).

### **Issues for Consultation**

8.15 Among the major jurisdictions under our survey, only the EU and the UK provide unregistered rights for a design. While a design owner (in particular those in industries focusing on designs with a short shelf-life) may benefit from this additional form of automatic right, other market players would face considerably more legal uncertainty and incur more costs in IP clearance. It may be difficult for owners to assess ahead of time whether the “lesser” rights are sufficient if infringement happens (e.g. proof of copying), when it might already be too late to apply for registration. It may also discourage the use of the registration system to a certain extent, and diminish the effectiveness of public disclosure in the register.

8.16 Both Australia and Singapore, after public consultations, have decided not to introduce unregistered design rights, citing similar concerns. The UK is also currently considering different options of how the unregistered design rights could be consolidated with another co-existing form of supplementary unregistered design rights<sup>100</sup> in the UK.

8.17 Considering that it is relatively easy and speedy to obtain registration for a design under Hong Kong’s current registered designs regime, the assessment of whether to introduce a new form of unregistered design rights should be carefully weighed.

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<sup>98</sup> “Commonplace” is not statutorily defined, but generally it has been held that it does not impose a requirement of novelty; all that is required is that the design must in some respects be different from other designs, so that it can be fairly and reasonably described as not commonplace.

<sup>99</sup> Section 213 of the UKCPDA 1988.

<sup>100</sup> After Brexit, the supplementary unregistered design rights were provided for designs in the UK to mirror the EU unregistered design rights.

## Summary of Views Sought

8.18 We would like to invite views on the following—

- (a) Overlapping protection of registered design rights and copyright
  - (i) Do you consider that the current treatment of the interplay of registered design rights and copyright under the CO is sufficiently clear and effective in achieving its objective, and if not, whether and how the current statutory arrangements should be enhanced? Please explain.
  - (ii) Have you encountered any real and practicable difficulty arising from the blurring lines between registered design rights and copyright in enforcing your design rights? Please elaborate.
- (b) Unregistered design rights
  - (i) Do you consider that there is any significant gap in the current domestic registered designs regime (if not otherwise filled in by the copyright regime) resulting in inadequate protection for certain unregistered designs? Please explain.
  - (ii) What are the potential benefits and drawbacks for introducing an unregistered designs regime in Hong Kong?
  - (iii) If you consider there is a compelling case that Hong Kong should offer certain enhanced protection for unregistered designs, what is the proper scope of such protection, particularly in terms of the kinds of protectable design products, the duration of the protection and the exclusions/limitations pertinent to mitigating the legal uncertainty that may likely be brought onto other market players?

## Chapter 9 Alignment with the International Design Systems

9.1 This chapter focuses on exploring further alignment of Hong Kong's registered designs regime with the international design systems in order to echo our country's proactive participation in the development of the global IP governance system while strengthening the advantage of the HKSAR's connectivity with both the Chinese Mainland and the world, thereby continuously consolidating Hong Kong's position as a regional IP trading centre.

### Application of International Treaties on Designs to the HKSAR

9.2 Currently, Hong Kong's registered designs regime is aligned with the standards of several major international IP treaties, including the Paris Convention and the Locarno Agreement administered by the WIPO, as well as the TRIPS Agreement administered by the WTO.<sup>101</sup>

9.3 On the other hand, with regard to industrial designs, apart from the Locarno Agreement, the following two international treaties administered by the WIPO have yet to be applied to the HKSAR—

- (a) the Hague Agreement for establishing an international registration system for industrial designs; and
- (b) the RDLT for laying down the international standards for the application and registration procedures regarding industrial design protection.

#### *The Hague Agreement*

9.4 Like other types of IP, design rights are territorial in nature. Traditionally, if design owners wish to seek protection for their designs through registration in different jurisdictions, they are required to make individual applications to each and every jurisdiction and manage their registrations in different regions separately. To facilitate design owners to apply for and manage individual registrations in various jurisdictions, the international community established the Hague System through the Hague Agreement concluded in 1925.<sup>102</sup> The system allows design owners to obtain an international registration simply by filing a single international application with the WIPO, through which the owners may seek local territorial protection in multiple contracting parties concurrently and manage their design rights in different regions

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<sup>101</sup> The Locarno Agreement, concluded in 1968, established an international classification for industrial designs, known as the Locarno Classification. China acceded to the Locarno Agreement in 1996. Although the Locarno Agreement has not been formally applied to the HKSAR, the Registry has adopted the classification under the Locarno Agreement for classifying design articles since the establishment of the local registered designs regime.

<sup>102</sup> The Hague Agreement has undergone several revisions, and the version currently in operation is [the Geneva Act signed on 2 July 1999](#).

through a one-stop process.

9.5 The development of the Hague System has become more mature. At present, design owners can apply for registered design protection in as many as 99 countries or regions via the Hague System. While China already acceded to the Hague Agreement in 2022, the said Agreement has yet to be extended to the HKSAR.

9.6 We need to explore the need to seek extension of application of the Hague Agreement to the HKSAR in the future and assess whether it can bring benefits to Hong Kong's design industry, as well as enhance the reputation of Hong Kong's registered designs regime. Relevant considerations include the following—

- (a) there are currently 82 contracting parties to the Hague Agreement worldwide,<sup>103</sup> including China and many other principal trading partners of Hong Kong such as the EU, Japan, Korea, Singapore, the UK, the US and Vietnam,<sup>104</sup> as well as major sources of foreign applications for design registration in Hong Kong (e.g. Germany and Switzerland);
- (b) whether members of the local design industry can, according to their own business strategies, flexibly make use of the one-stop procedure provided by the Hague System to file applications for design registration in other jurisdictions and subsequently manage their portfolios of registered designs, thereby facilitating the exploration of global business opportunities;
- (c) whether applicants from other jurisdictions can apply for design protection in Hong Kong in a more convenient and cost-effective manner through the Hague System, thereby enhancing the appeal of Hong Kong to attract enterprises and investment; and
- (d) how the enactments and amendments of local laws, registration system and related procedures as well as the practice of local agents may assist applicants in developing and implementing IP strategies under the Hague System.

#### *RDLT*

9.7 The RDLT was concluded at the WIPO Diplomatic Conference held in Riyadh, Saudi Arabia in November 2024.<sup>105</sup> The negotiation for this treaty spanned nearly 20 years. China has proactively participated in the negotiation process and facilitated the successful conclusion of the treaty. In the light of the varying design protection

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<sup>103</sup> Only sovereign states or qualified inter-governmental organisations (currently including the EU and the African Intellectual Property Organisation) can become contracting parties to the Hague Agreement.

<sup>104</sup> For information on Hong Kong's principal trading partners in 2024, please refer to [the statistics](#) on the website of the Trade and Industry Department of the HKSAR Government.

<sup>105</sup> The full text of the RDLT can be accessed [here](#).

procedures in different jurisdictions, the RDLT aims to harmonise and streamline the application and registration procedures for industrial designs in the global system, and establish the basic international standards for those procedures. By making the procedures less complex and more predictable, the RDLT will provide greater convenience for design owners to protect their innovative outcomes both in home markets and overseas.

9.8 While China has yet to sign the RDLT and the treaty has yet to come into force,<sup>106</sup> such treaty provides forward-looking and objective reference or guidance for updating and enhancing the registered designs regime of Hong Kong. We have taken into account and outlined specific standards as stipulated in the RDLT in other relevant chapters of this consultation paper for considering the enhancement of our local regime in a holistic manner, so as to keep our regime up-to-date and closely aligned with the latest international standards and practices prescribed in the treaty. Furthermore, should China formally accede to the RDLT and considers extending the application of the treaty to the HKSAR, the local laws and associated procedures will be able to dovetail with the application.

### **Summary of Views Sought**

9.9 We would like to invite views on the following—

- (a) When formulating an overall IP strategy for designs or when you are handling related matters for clients as an agent, have you ever considered obtaining registered design protection in jurisdictions outside Hong Kong? If so, which jurisdictions are usually within your consideration?
- (b) Do you agree that application of the Hague Agreement to the HKSAR would bring real benefits/advantages to not only promoting your business development in multiple jurisdictions but also consolidating the development of Hong Kong as a regional IP trading centre? Please explain.

9.10 As mentioned above, China has already acceded to the Hague Agreement. Should the Hague Agreement be extended for application to the HKSAR, the Central Government has to make a formal notification to the WIPO. With the views collected from the consultation, we will further discuss with the Central Government about the possible extension of application of these international treaties to the HKSAR.

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<sup>106</sup> The RDLT will enter into force 3 months after there have been 15 ratifications or accessions by contracting parties.

## Chapter 10 Invitation for Views

10.1 You are invited to provide your views and supporting evidence on the issues set out in this consultation document on or before 16 March 2026 by email, post or fax at the following addresses and fax number—

**Email:** design\_consultation@cedb.gov.hk

**Post:** Division 3  
Commerce and Economic Development Bureau  
23rd Floor, West Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar, Hong Kong

**Fax:** 2147 3065

10.2 This consultation document is available on the websites of CEDB ([www.cedb.gov.hk](http://www.cedb.gov.hk)) and IPD ([www.ipd.gov.hk](http://www.ipd.gov.hk)).

10.3 Submissions received will be treated as public information, which may be reproduced and published in whole or in part and in any form for the purposes of this consultation exercise and any directly related purposes without seeking permission of or providing acknowledgement to the respondents.

10.4 It is voluntary for any respondent to supply his or her personal data upon providing comments. The names and background information of the respondents may be posted on the websites of CEDB and IPD, referred to in other documents published for the same purposes, or transferred to other relevant bodies for the same purposes. If you do not wish your name and/or your background information to be disclosed, please state so when making your submission. For access to or correction of personal data contained in your submission, please write to CEDB via the above means.