Submission in response to the public consultation on the

Review of the Hong Kong Registered Designs Regime

16th March 2026

This submission is made in response to the public consultation on the Review of the Hong Kong Registered Designs Regime published by the Intellectual Property Department in January 2026. We welcome the Government's initiative to update the Registered Designs Ordinance (Cap. 522) ("RDO") and offer the following comments from the perspective of IP practitioners advising clients across multiple industries and jurisdictions. The present regime mainly covers traditional industrial products, while not sufficiently addressing digital designs, graphical user interfaces, or emerging industrial formats. We recommend expanding the definition of "registered designs" to include digital and virtual designs, new materials, and user interface elements, ensuring the system remains relevant to technological innovation.

2.18 (a) Definition of "design"

(i) 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". The broader definition will provide more flexibility for design creation, and align with the definition adopted in other major jurisdictions. In particular, the EU's new Design Regulation 2024/2822 (effective 1 May 2025) expressly includes "movement, transition or any other sort of animation" in its definition of protectable design features (Article 3(1)). Hong Kong should adopt a similarly broad formulation to ensure coverage of dynamic and animated designs, which are increasingly prevalent in digital interfaces and product displays.

(ii) The specific requirement that a design must be applied to an article "by an industrial process" should be removed to allow for manual designs and custom-made products using 3-D printing other technologies. This is also in sync with the convention adopted in other jurisdictions.

(iii) Relevant features other than shape, configuration, pattern and ornament should also be specified, such as colours, lines and contours, and even moving elements, just as what is being defined in other jurisdictions. Such expansion again shall foster creativity.

(iv) Providing a non-exhaustive list of design features (with specified examples of protectable features) in the definition of "design" would be appropriate so that the legislation be able to keep pace with new ideas and thinkings brought up by the rapidly evolving technological development. This non-exhaustive approach is consistent with the legislative technique adopted in the EU, the UK, and Australia, which use the formula "in particular" to introduce an open-ended list of protectable features. By contrast, Japan, Korea, and Mainland China

maintain exhaustive feature lists. For Hong Kong, a non-exhaustive list is preferable given its common law tradition, where courts are accustomed to interpreting open-ended statutory language in light of the legislative purpose.

2.18 (b) Definition of and reference to "article"

(i) The reference to "article" in the RDO should be replaced by "product" because the international communities all make reference to "product" instead of "article" in their design protection legislation as the meaning is clearer and more direct.

(ii) 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. As pointed out in answer to 2.18(a) (ii), handicraft and handmade items, supported by modern technologies, have become increasingly popular in the design industry.

3.19 (a) Virtual designs

(i) Hong Kong's Registered Designs Regime should evolve to protect virtual designs with clear industrial and commercial application, such as GUIs, digital displays, and AR/VR environments, while excluding functional codes or algorithms, generic, or purely artistic digital works. The latter group either lacks originality or be better protected by copyright or patent law. This balanced approach will strengthen innovation, avoid legal overlap, and align Hong Kong with international best practices.

(ii) As explained in 3.19(a)(i), a balanced approach may be most effective, with primary registrability tied to a product (physical or digital), ensuring clarity and consistency, and supplementary recognition given to designs that are not strictly physical but are integral to human interaction with technology (e.g., GUIs, AR overlays, virtual product designs).

Clear statutory definitions and guidelines would be needed to prevent overlap with other IP rights and to ensure predictability for businesses. This hybrid model would allow Hong Kong to modernize its regime without losing the legal certainty that comes from product-based design protection. Since May 2025, the EU's Design Regulation has extended design protection to non-physical products "materialising in a non-physical form", including GUIs and spatial arrangements in virtual environments (Article 3). Hong Kong should consider whether to adopt this broader EU formulation or the more moderate Singapore/Japan approach, depending on the desired scope of the regime.

(iii) Copyright is appropriate for certain aspects of virtual designs, but it should not be relied upon as the sole or primary form of protection. Copyright can provide supplementary protection for virtual designs, especially for purely artistic or graphical elements. However, it is not sufficient as a primary regime because it does not adequately capture the functional and interactive aspects of virtual designs.

A dedicated design protection framework, potentially expanded to explicitly cover virtual and digital designs, would provide clearer, more tailored protection for innovators and businesses. Harmonization with international practices (e.g., the EU's recognition of GUIs as registrable designs) would strengthen Hong Kong's competitiveness and legal certainty.

(iv) If Hong Kong extends registered design protection to virtual designs, the interaction with existing IP regimes, particularly copyright, trademarks, and patents, must be carefully considered.

Hong Kong can modernize its regime while minimizing overlap and ensuring legal clarity through the following measures. We should explicitly define "virtual designs" and limit protection to aesthetic/ornamental aspects, not technical functionality. Exclusion clauses should be added to ensure functional elements to remain outside design protection to avoid overlap with patents. Practice notes should be published for practitioners to clarify how design law interacts with copyright and trademarks in digital contexts. We should also consider the approach adopted by the EU and the UK, where GUIs and digital icons are registrable designs but subject to clear boundaries.

3.19 (b) Design of spare parts and parts of articles

(i) The current legal requirement in Hong Kong may not fully capture the realities of modern manufacturing and product design. The "complex product" concept is more accurate and future-proof than the current "made and sold separately" test, which also helps align Hong Kong with international best practices.

Statutory guidance should be published to clarify which components are eligible, with exclusions for repair parts and functional features (e.g., "must-match" components). This approach would modernize Hong Kong's regime, reduce uncertainty, and ensure designers of both standalone and integrated components can access protection. Notably, the EU's Design Regulation (effective May 2025) includes a mandatory repair clause (Article 20 bis): design protection does not apply to parts of complex products used for repair to restore original appearance, subject to information and labelling obligations on the manufacturer. This represents the most significant recent development on spare parts protection internationally and should be considered as a model for Hong Kong.

(ii) The "must fit" exclusion focuses on technical necessity rather than aesthetic appearance, and ensures that functional compatibility is not monopolized through design rights. The "must match" exclusion focuses on aesthetic necessity rather than functional connection, and prevents design rights from being used to block aftermarket competition for repair and replacement parts.

A combined framework is preferred, retaining the must fit exclusion to prevent monopolization of functional connectors, and introducing a limited must match exclusion for repair parts, with clear boundaries to protect consumer interests and competition.

Statutory guidance should be provided to clarify when a design is excluded, reducing uncertainty for manufacturers and repair markets.

(iii) The "right to repair" approach establishes a broader consumer right to repair products, including access to spare parts, repair information, and tools; while the "must match" exclusion prevents design protection for spare parts whose appearance must replicate the original product.

Hong Kong should retain the "must fit" exclusion for functional connectors, and replace or narrow the "must match" exclusion with a broader consumer right to repair regime, which is more comprehensive and future-oriented. Statutory guidance should be provided to balance consumer rights with incentives for design innovation.

3.19 (c) Partial designs

Hong Kong law requires that a part of an article be "made and sold separately" to qualify for design protection. This limits protection to components that are marketed independently, excluding many integral parts of complex products.

Hong Kong's laws should be relaxed to allow partial designs to be registrable, regardless of whether they are made or sold separately. The "complex product" concept should be adopted to define components, aligning with international best practice. This would ensure that designers of integral product components can access protection. With clear exclusions and repair safeguards, this reform would enhance legal clarity and competitiveness without undermining consumer or aftermarket interests.

4.19 (a) Novelty requirement

(i) Under the RDO, a design must be new at the time of filing, meaning it has not been previously published or disclosed anywhere in the world, which is straightforward and easy to apply. The test is absolute novelty, but with limited exceptions (e.g., grace periods for certain disclosures). This aligns with many jurisdictions that adopt global novelty standards.

The current novelty requirement may not fully meet the needs of today's design industry, where rapid global dissemination of designs is common. Retaining absolute novelty while introducing more flexible safeguards, such as extended grace periods or unregistered design rights, would better balance legal certainty with practical realities.

(ii) Introducing an additional registrability requirement based on overall impression and individual character would set a more appropriate threshold for the contemporary market. It would modernize Hong Kong's regime, align it with international standards (the EU and the UK), and ensure that registered designs reflect genuine distinctiveness rather than minor variations. To elaborate, the two requirements serve distinct functions: novelty asks whether the design is identical to any prior design, while individual character asks whether the design produces a different overall impression on the informed user compared to prior designs. A

design may be novel (not identical) yet still lack individual character if its overall impression does not differ sufficiently. This two-tier test — novelty plus individual character — is the standard adopted in the EU (Articles 4-6 of Regulation 2024/2822) and the UK (Sections 1B-1C of the Registered Designs Act 1949), and would set a more appropriate threshold for registration in Hong Kong.

(iii) Hong Kong's legislation should lay down the approach and key factors, such as the "informed user" and "degree of freedom of the designer", to guide assessment of overall impression. This would enhance legal certainty, align with international standards (the EU and the UK), and provide clarity for the design industry. Detailed application should be left to guidance and case law to preserve flexibility.

4.19 (b) Examination of novelty

(i) The current formality examination procedure should be retained. It ensures efficiency, accessibility, and alignment with international practice. However, Hong Kong should strengthen the legislative framework by introducing clearer and enhanced registrability requirements and guidance (e.g., "overall impression" and "individual character"), while leaving substantive assessment to enforcement proceedings. This strikes a balance between speed and legal certainty.

(ii) It is justifiable and necessary for Hong Kong to consider introducing enhancement measures adopted by overseas jurisdictions. Such enhancement measures should be most relevant to Hong Kong's industries (e.g., partial designs, virtual designs, overall impression test). Industry, legal practitioners, and consumer groups should be engaged to identify which overseas practices are most beneficial. Doing so would modernize its registered designs regime, align it with international best practice, and strengthen its competitiveness. However, reforms should be selectively adopted, locally adapted, and phased in to ensure balance and legal certainty.

5.14 (a) Exclusive rights

(i) The current scope of exclusive rights under the RDO is adequate in principle, but it does not fully meet the needs of the contemporary design industry. Enhancements, particularly extending protection to virtual and partial designs, clarifying assessment standards (introducing the "overall impression / individual character" test), and balancing consumer repair rights, would modernize Hong Kong's regime and ensure it remains competitive and relevant. Statutory factors (e.g., informed user, designer's freedom) should also be introduced to aid courts and practitioners in assessing infringement.

(ii) Broadening the scope of exclusive rights to cover business and commercial use is justifiable and desirable, so as to address new technologies and digital platforms. In particular, exclusive rights should be expanded to explicitly cover digital and virtual commercial uses (e.g., GUIs, icons, AR/VR product representations), while maintaining

exclusions for functional and repair-related uses. This expansion should be carefully targeted to avoid overreach, overlap, and unintended consequences. With clear statutory safeguards, Hong Kong can modernize its regime to promote effective commercialization while maintaining balance between innovation and competition. In particular, the scope of infringing acts should be expanded to cover 3D printing-related infringement. The EU's reformed Design Regulation (Article 19(2)(d)) expressly prohibits "creating, downloading, copying, sharing or distributing any medium or software" reproducing the design for the purpose of manufacturing a product. Given Hong Kong's position as a technology and trading hub, incorporating 3D printing within the scope of design infringement would be forward-looking and commercially significant.

(iii) It is justifiable to retain the current rule that protection is limited to the article in respect of which the design is registered, as this ensures clarity and avoids overreach. However, introducing flexibility mechanisms to broaden protection in specific contexts, such as multi-class registrations and digital/virtual applications, would modernize and future-proof the regime and promote effective commercialization without undermining legal certainty.

(iv) The existing statutory exceptions under the RDO do not fully address the needs of the contemporary design industry and consumers. Additional exceptions, particularly for repair and digital interoperability, would better balance exclusive rights with public interests, ensuring Hong Kong's regime remains modern, fair, and internationally competitive. As such, statutory exceptions allowing the use of designs for repair and maintenance of products, and limited use of designs for ensuring compatibility between digital platforms, GUIs, and software systems should be considered. Consideration should also be given to introducing exceptions for referential use and for parody, commentary, or criticism, as currently provided under the EU's reformed Design Regulation (Article 20 bis). These exceptions are consistent with Hong Kong's robust free expression traditions and would align with comparable exceptions in Hong Kong's copyright law (Copyright Ordinance, Cap. 528, Sections 39-40).

5.14 (b) Ownership

It is more proper to treat the designer as the original owner of a commissioned design, subject to any agreement to the contrary. This approach recognizes the designer's creative contribution, aligns Hong Kong with international standards, and preserves contractual freedom for commissioners and designers to negotiate ownership terms. Given the practical significance of this change for Hong Kong's active commissioning market — particularly in the fashion, jewellery, and graphic design sectors — the Government should also consider introducing clear transitional provisions and, ideally, publishing default contractual guidance or model clauses to assist both commissioners and designers in adapting to the new ownership default.

6.18 (a) Grace period

(i) It is justifiable to relax the scope of the grace period under the RDO to cover disclosure of a design by the design owner for any purpose. Nonetheless, a fixed grace period (e.g., 6-12 months) should be maintained to ensure certainty and prevent indefinite extensions. Clear evidence that the disclosure is made by the design owner should be required, and the grace period to disclosures by the owner, not third parties. Statutory guidance on acceptable forms of disclosure (e.g., online postings, exhibitions, commercial launches) should be provided. This reform would modernize Hong Kong's regime, align it with international standards, and better reflect contemporary design practices, while safeguards can mitigate risks of abuse and uncertainty.

(ii) As illustrated in the answer to 6.18(a)(i), it is justifiable and necessary to increase the grace period from 6 months to 12 months. This reform would modernize Hong Kong's regime, align it with international standards, and better reflect the realities of contemporary design practices, while safeguards can mitigate risks of abuse and uncertainty.

(iii) Allowing design owners to disclose and use a design before filing without prejudicing novelty would positively support commercialization and innovation, especially for SMEs and independent designers. However, it could introduce uncertainty for competitors and enforcement challenges. Mitigation measures, such as limiting disclosures to those made by the owner, requiring clear evidence, encouraging voluntary disclosure notices or registries to reduce uncertainty for competitors and maintaining a fixed grace period, would be necessary to balance flexibility with legal certainty.

6.18 (b) Deferment of publication of designs

(i) Introducing an option to defer publication of designs would be beneficial. It would provide designers with commercial flexibility, align Hong Kong with international practice, and support SMEs. Nonetheless, a maximum deferral period (e.g., 12-30 months) should be specified, additional fees for deferrals be required to discourage abuse, and publication must occur before enforcement of rights against third parties, which are necessary safeguards to balance transparency and legal certainty.

(ii) Deferment should be introduced, and the maximum period should be set at 30 months, aligning Hong Kong with international best practice (the EU and the UK). This period offers designers and manufacturers sufficient flexibility to manage product launches and commercialization strategies, while safeguards, such as requiring publication before enforcement, can mitigate risks of uncertainty and abuse.

(iii) Deferment of publication would positively impact businesses by offering greater commercial flexibility and confidentiality, particularly for SMEs and industries reliant on seasonal or strategic launches. However, it could also reduce transparency and increase risks of inadvertent infringement. Mitigation measures, such as limiting the deferment period,

requiring publication before enforcement, and introducing safeguards, would be essential to balance business needs with legal certainty.

7.15 (a) Priority claims in applications

(i) It is justifiable to dispense with the current statutory requirement for filing priority documents with the Registrar. This reform would modernize Hong Kong's regime, reduce administrative burdens, and align with international best practice. However, safeguards should be retained to allow the Registrar to request documents when necessary, ensuring the integrity of the system is not compromised.

(ii) It is justifiable to permit restoration of the right of priority for Hong Kong design applications filed after expiry of the 6-month period, but only under strict conditions. Restoration should be limited to cases where the applicant demonstrates due care, files within a short extension window (e.g., 2 months), and pays an additional fee. This approach balances fairness to applicants with the need for legal certainty and international alignment.

7.15 (b) Applications for multiple designs

The current requirement that multiple designs must relate to the same class or set of articles is administratively sound but increasingly impractical in modern design practice. It is justifiable to introduce greater flexibility, such as multi-class filings or grouping based on common design concepts, while retaining safeguards against abuse. This would reduce costs, support SMEs, and modernize Hong Kong's regime in line with international best practice. It is noted that since May 2025, the EU has removed the class unity requirement entirely, permitting up to 50 designs per multiple application regardless of product class (Regulation 2024/2822). Hong Kong should consider going further than merely permitting multi-class filings and removing the class restriction altogether, in line with the EU approach. This would be particularly beneficial for Hong Kong's diverse applicant base, including SMEs with cross-category product portfolios.

7.15 (c) Mandatory requirement of application on statement of novelty

It is more appropriate to remove the mandatory requirement for a statement of novelty and instead make it optional. This would modernize Hong Kong's regime, align it with international best practice, and reduce unnecessary burdens on applicants, while still allowing designers to highlight or disclaim features where beneficial.

7.15 (d) Design registration term and renewal of registration

The current term and renewal structure (25 years, renewable every 5 years) should be maintained, as they are internationally aligned and balanced. To enhance renewal

procedures, Hong Kong should introduce automated reminders, grace periods, and streamlined digital processes. These improvements would reduce administrative burdens, support SMEs, and modernize its regime without altering the fundamental balance of rights.

7.15 (e) Other formality issues

While Hong Kong's registered design application and registration procedures are fundamentally sound, there are practical issues relating to documentary requirements, strict time limits, formalities, and digital modernization that should be reviewed. Enhancements such as optional novelty statements, restoration of priority rights, multi-class filings, and improved digital systems would modernize the regime, reduce burdens on applicants, and align Hong Kong with international best practice. Specific digital modernisation features should include: (a) accepting video files or animation sequences as supplementary design representations (as permitted under the Riyadh Design Law Treaty (2024) and proposed in the EU; (b) integration with the WIPO Digital Access Service (DAS) for priority document exchange; and (c) an online portal with real-time application status tracking.

8.18 (a) Overlapping protection of registered design rights and copyright

(i) The current statutory treatment of the interplay between registered design rights and copyright under the CO is conceptually sound but not sufficiently clear in practice. Enhancements, particularly statutory clarification for digital designs, improved guidance for creators, and limited transitional overlap (e.g., transitional copyright protection for designs before registration), would make the system more effective in achieving its objective of balancing protection with certainty. The EU's 2024 design reform expressly confirms that cumulative protection by design law and copyright is permitted, provided the work meets copyright's originality requirement (recitals of Regulation 2024/2822). Hong Kong should consider a similar express statutory confirmation to eliminate ambiguity over whether a design can simultaneously benefit from both registered design protection and copyright.

(ii) Practical difficulties do arise from the blurring lines between registered design rights and copyright in enforcement. While the current framework is conceptually sound, it is not always sufficiently clear in practice, particularly for borderline cases and digital designs. Enhancements through statutory clarification, judicial guidance, and awareness initiatives would make enforcement more effective and predictable, ensuring that rights holders and third parties alike can navigate the system with greater certainty.

8.18 (b) Unregistered design rights

(i) There is a significant gap in Hong Kong's current regime, as unregistered designs receive inadequate protection once disclosed, particularly in fast-moving industries and digital

contexts. Introducing a limited unregistered design right, similar to the EU model, would modernize the regime, support SMEs, and align Hong Kong with international best practice, while maintaining balance through shorter terms and narrower scope.

(ii) Introducing an unregistered designs regime in Hong Kong would provide important benefits, particularly for SMEs, short-lived designs, and industries with rapid turnover, while aligning Hong Kong with international best practice. However, drawbacks such as legal uncertainty, evidential burdens, and potential overlap with copyright must be carefully managed.

(iii) If Hong Kong introduces enhanced protection for unregistered designs, the proper scope should cover industrial and digital designs, last for up to 3 years from first disclosure, and be limited to cases of deliberate copying. Exclusions for functional features, independent creation, and clear evidential requirements would mitigate legal uncertainty for other market players while ensuring designers receive meaningful protection.

9.9 (a)

Registered design protection outside Hong Kong is regularly considered as part of an overall IP strategy. The jurisdictions most often prioritized include Mainland China, the EU, the UK, the US, Japan, South Korea, and key ASEAN countries, reflecting both market importance and enforcement strength. This international approach ensures that clients' designs are adequately protected in the regions most critical to their business operations.

9.9 (b)

Application of the Hague Agreement to the HKSAR would bring real benefits. It would simplify international filings, promote business development across multiple jurisdictions, and consolidate Hong Kong's role as a regional IP trading centre. While administrative adjustments and education for SMEs would be necessary, the advantages in terms of efficiency, competitiveness, and global integration outweigh the drawbacks.

It is noted that Mainland China acceded to the Hague Agreement in 2022, but it has not yet been extended to the HKSAR. The Government is urged to seek this extension as a priority, enabling Hong Kong applicants to access the one-stop international filing mechanism covering up to 99 countries. Furthermore, many of the reforms recommended in this submission — including the 12-month grace period, optional novelty statement, simplified filing requirements, and priority restoration — align with the standards set by the Riyadh Design Law Treaty (RDLT), adopted by WIPO in November 2024. Framing these reforms as RDLT-preparatory measures would strengthen Hong Kong's position for future accession and demonstrate its commitment to international harmonisation.