CONSULTATION PAPER ON REVIEW OF THE HONG KONG REGISTERED DESIGNS REGIME

LAW SOCIETY SUBMISSIONS

1. The Law Society of Hong Kong makes this submission in response to the *Consultation Paper on Review of the Hong Kong Registered Designs Regime* issued by the Commerce and Economic Development Bureau and the Intellectual Property Department on 17 December 2025 ("Consultation Paper").

2. We have carefully reviewed the proposals. In our view, the existing registered design system has operated effectively for many years. While we do not consider a fundamental overhaul necessary, we agree that targeted refinements would be beneficial, particularly where they enhance alignment with international trends and ensure that Hong Kong remains a competitive and user-friendly jurisdiction for design protection.

3. In particular, we support efforts to align Hong Kong's registered design regime with emerging international standards wherever appropriate. In the absence of a clear global consensus on certain issues, we support any reasonable steps toward harmonisation; and we especially note the Riyadh Designs Law Treaty (RDLT) concluded in November 2024, which aims to streamline application and registration procedures and establish minimum international standards.

4. Against that background, we offer the following comments. Those with RDLT background are indicated as such. Given the largely legal-structural nature of the regime, and in view of the clarity of many of the proposals, we do not find it necessary to provide extensive elaboration in most instances. Our responses are set out below.

Proposals We Support

5. We support the following proposals in the Consultation Paper, which in our view modernise the regime and bring it more closely in line with best practices internationally:

(1) **Updating the definition of "design"** to shift from "features applied to an article" to the broader and more internationally aligned concept of the "appearance of an article", with a non-exhaustive list of relevant features, with the inclusion of features such as colour, lines and contours remaining optional.

(2) **Removing the "industrial process" requirement**, which no longer reflects modern methods of production.

(3) **Replacing "article" with "product"**, consistent with terminology used in other jurisdictions and in international treaties.

(4) **Including handicraft and handmade items** within the registered design regime, ensuring fair and modern coverage across industries.

(5) **Removing the "made and sold separately" requirement** for partial designs, which is unduly restrictive and inconsistent with other major jurisdictions.

(6) **Expanding the spare-part defence to a broader "right to repair"**, which reflects consumer and aftermarket realities particularly with the expanded scope of designs.

(7) **Maintaining the current approach to the scope of protection**, whereby a registered design applies only to the (article) product for which it is registered (subject to comments below).

(8) **Maintaining the current scope of exclusive rights**, ensuring that protection remains linked to the specific article or product in which the design is used, and keeping the existing statutory exceptions to infringement which already strike a fair and appropriate balance in addressing reasonable uses of designs by members of the public.

(9) **Aligning ownership rules** with commissioned copyright works, so that the designer of a commissioned design is the first owner unless otherwise agreed.

(10) **Maintaining the current priority claim practice**, which is well understood and effective.

(11) **Extending the grace period from 6 to 12 months, while converting and changing it into an all-purpose 12-month grace period,** as the current exceptions are too limited and often inadvertently penalise designers who disclose their work prematurely in good faith.

(12) **Introducing a publication deferment period of 18 months (RDLT),** provided that the "innocent infringement" defence is preserved so that third parties are not unfairly exposed to monetary remedies during the period of non-publication.

(13) **Making certain minimum information publicly available during deferment,** including the owner's name, the product, and a statement of novelty, even if the design representation itself is withheld. This strikes a fair balance between designer confidentiality and third-party legal certainty.

(14) **Retaining the option to submit a statement of novelty**, and making it **mandatory only** where publication is deferred.

(15) **Keeping the renewal cycle of 5-year terms** up to the existing maximum of 25 years.

(16) **Preserving the current rule for multiple-design applications**, limiting such applications to designs within the same class or the same set of products.

(17) **Improving identification requirements for corporate applicants/owners**, including full name, place of incorporation and registered office, which promotes transparency and legal certainty.

Proposals that Require Further Consideration

6. We consider that the existing registered design regime has operated effectively for many years and therefore we do not consider a fundamental overhaul is required at this stage. We repeat paragraph 2 of our Submission. That said, we recognise that the following proposals raise important policy considerations and may merit further study, evidence-gathering and stakeholder engagement, with a view to being revisited in a later phase once the impact of the currently proposed targeted refinements has been assessed in practice:

(1) **Expanding protection to "virtual designs".** In our view, virtual designs that are applied to an article are currently and adequately protected under registered designs and copyright. We agree that conferring monopoly protection on other types of virtual designs as registered designs requires careful evaluation. In particular, we agree that the scope of any such rights must be sufficiently clear to enable third parties to understand the nature and use of the rights, and that careful attention should be paid to minimising overlap between registered design rights and copyright. We further recognise (as the Consultation Paper notes) the risk that conferring monopoly protection on wider categories of virtual designs may, if not tightly defined, increase legal uncertainty for market participants and

complicate clearance and enforcement. In light of these considerations, we consider it preferable to keep this topic under review and to explore it at a later stage, informed by further comparative and practical material that may emerge through the ongoing policy and consultation process, rather than including it in the current package of reforms.

(2) **Introducing additional registrability criteria** such as "individual character", "distinctiveness" or "overall impression". These concepts, while used in some jurisdictions, are not part of Hong Kong's traditional framework and would add complexity to registration and enforcement.

(3) **Enhancing the current formality-only examination**. Hong Kong's examination model has proven efficient and is well aligned with the needs of users who require a swift, predictable registration system.

(4) **Introducing unregistered design rights**, given that Hong Kong already offers dual copyright and registered design protection, which is functioning well.

Preservation of Hong Kong's Dual Copyright–Design System

7. We note that Hong Kong is among a limited number of jurisdictions with a dual protection framework under both copyright and registered designs law. We consider this dual system valuable and worth preserving. It provides flexibility, particularly for SMEs and independent designers who may wish to rely on automatic copyright protection or require time (during the grace period) to decide whether to pursue a registered design. This system remains a distinctive and beneficial feature of Hong Kong's intellectual property landscape.

The Law Society of Hong Kong
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