

**A CONCISE BOOKLET ON THE
INTELLECTUAL PROPERTY RIGHTS
OF GUANGDONG, HONG KONG
AND MACAO**

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Introduction

The Guangdong/Hong Kong Expert Group on the Protection of Intellectual Property Rights (the Expert Group) was set up in 2003. Members of the Expert Group include representatives from government departments responsible for the protection of intellectual property rights (IPR) in the two places. The Guangdong side is led by the Guangdong Intellectual Property Office (GDIPO), with the Director of GDIPO being the leader of the Guangdong delegation. The Hong Kong side is led by the Intellectual Property Department (IPD) of the Hong Kong Special Administrative Region (HKSAR) Government, with the Director of Intellectual Property being the leader of the Hong Kong delegation. The scope of cooperation of the Expert group includes promotion and education, training, enforcement, research study and information dissemination.

Under the Guangdong/Hong Kong cooperation framework, the IPD of the HKSAR Government and the related intellectual property (IP) authorities of Guangdong invited the IP department of the Macao Special Administrative Region (Macao SAR) to jointly establish the online Intellectual Property Database for Guangdong, Hong Kong and Macao (website:www.ip-prd.net) which provides the latest information on IP of the three places. Users can search for information including legislation, registration systems and related government bodies in different IP areas such as trade marks, patents, registered designs and copyright. The establishment of this database is conducive to the development of a knowledge-based economy and innovative society in the three places.

On the basis of this cooperation, the GDIPO, the IPD of HKSAR and the Economic Services of the Macao SAR Government collaborated once again to compile a booklet on IPR to provide enterprises and the public with information on IPR of the three places, with a view to promoting the creation of wealth by IPR and enhancing the level of IPR development and protection in the three places.

One of the key messages of the Intellectual Property Booklet for Guangdong, Hong Kong and Macao focuses on the territorial nature of IPR protection, highlighting that a registrable IPR (e.g. trade mark, patent and design) registered or granted authorisation in the Mainland, HKSAR, Macao SAR or other countries or places does not automatically receive protection in other countries or places. IPR owners should apply for registration in the Mainland, HKSAR and Macao SAR respectively in order to enjoy protection in the three places.

1 Trade Marks

1.1 Trade Marks Laws and Related Rules

1.1.1 Guangdong Province

1.1.1.1 Laws

Trademark Law of the People's Republic of China

The Law of the People's Republic of China for Countering Unfair Competition

Administrative Punishment Law of the People's Republic of China

Administrative Procedure Law of the People's Republic of China

(Website: www.saic.gov.cn/zcfg/fl)

1.1.1.2 Administrative Regulations

Implementing Regulations of the Trademark Law of the People's Republic of China

Administrative Regulations on Special Marks

Regulations on the Protection of Olympic Symbols

Regulations on Customs Protection of Intellectual Property of the People's Republic of China

(Website: www.saic.gov.cn/zcfg/xzfggfwj)

1.1.1.3 Administrative Rules

Provisions for Recognition and Protection of Well-known Trademarks

Measures for the Implementation of Madrid International Registration of Trademarks

Trademark Review and Adjudication Rules

Provisional Rules on the Procedures of Administrative Punishment of Administrative Departments for Industry and Commerce

Measures for the Implementation of Intellectual Property Protection by the Customs

(Website: www.saic.gov.cn/zcfg/xzgzjgfwj)

1.1.1.4 Judicial Interpretation

Approval Reply of the Supreme People's Court on whether the victim of products infringement cases can bring a civil action against the trademark owner

Interpretation of the Supreme People's Court on issues concerning jurisdiction and the scope of the application of law to the trial of trademark cases

Interpretation of the Supreme People's Court on some issues concerning the application of law in the trial of civil dispute cases over trademark

Interpretation of the Supreme People's Court on issues concerning the application of law to the pre-trial suspension of infringement against the exclusive right of registered trademark and evidence preservation

Provisions of the Supreme People's Court on some issues concerning the trial of civil disputes cases over conflicts between registered trademark, name of enterprise and priority right

Provisions of the Supreme People's Procuratorate and Ministry of Public Security on the prosecution standard of economic crimes

(Website: www.saic.gov.cn/zcfg/sfjs)

1.1.2 The Hong Kong Special Administrative Region

The Trade Marks Ordinance (Cap. 559) and Trade Marks Rules (Cap. 559A) (website: www.ipd.gov.hk/eng/intellectual_property/ip_laws/trademarks.htm) of Hong Kong came into effect on 4 April 2003.

The Trade Marks Ordinance has substantially simplified the procedures for application and examination and allows registration of more types of trade marks. For example, sound marks satisfying the requirements for registration and with distinctive characters can be registered.

1.1.3 The Macao Special Administrative Region

The Industrial Property Code of Macao (General provisions: Article 1-53, Industrial Property Registration: Article 54-59, Trademarks: Article 197-232, Legal recourse: Article 275-283, Monitoring and penalties: Article 284-314) (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link), which was approved by the Decree-Law no. 97/99/M, was published on 13 December 1999 and came into effect on 6 June 2000.

1.2 Signs that Can be Used as Trade Marks

1.2.1 Guangdong Province

Any visible sign that can serve to distinguish the goods of a natural person, legal person, or other organisation from those of others, including any word, design, letter of the alphabet, numeral, three-dimensional symbol and colour combination, or any combination of the above, may be applied for registration as a trademark.

A trademark applied for registration shall bear distinctive characteristics that can be readily identified, and it should not contravene the legitimate rights obtained by any other persons beforehand. (Articles 8-9, Trademark Law of the People’s Republic of China)

1.2.2 The Hong Kong Special Administrative Region

A trade mark is a sign that distinguishes the goods and services of one trader from those of others. A trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging and any combination of the said signs. A sign must be capable of being represented graphically in order for it to be registered as a trade mark. For details, please refer to the chapter on “Deficiencies Checking” of the Trade Marks Registry Work Manual (website: www.ipd.gov.hk/eng/intellectual_property/trademarks/registry/Deficiencies_checking.pdf).

1.2.3 The Macao Special Administrative Region

A trademark is a sign that distinguishes the goods or services of one enterprise from those of others. According to the Industrial Property Code, a trademark may consist of words, letters, numerals, sounds, the shape of goods or their packaging, designs or patterns, or colours and any combination of the said signs. The most basic requirement of being a trademark is that it possesses the feature of facilitating general consumers to distinguish the sources of the goods or services. The common names or straightforward descriptions of goods or services do not possess the feature of a trademark.

1.3 Classification of Goods and Services

1.3.1 Guangdong Province

An applicant for trademark registration should fill in the form the class and name of the goods on which the trademark is to be used in accordance with the specified goods classification list. If an applicant intends to apply for registration of the same trademark on goods in different classes, he should submit an application for each class according to the goods classification list. If a registered trademark needs to be used on other goods of the same class, a separate application for registration shall be filed (Articles 19-21, Trademark Law of the People's Republic of China).

The specified goods classification list referred to above is the International Classification of Goods and Services.

1.3.2 The Hong Kong Special Administrative Region

An applicant should list all the goods and services to be registered for the trade mark concerned and indicate the numbers of the classes to which the goods and services belong. The goods and services should be classified according to the International Classification of Goods and Services under the Nice Agreement (website: www.wipo.int/classifications/nivilo/nice/index.htm (in English and French only)). Applicants may refer to the chapter on "Classification" of the Trade Marks Registry Work Manual (website: www.ipd.gov.hk/eng/Classification_Version8_.pdf).

1.3.3 The Macao Special Administrative Region

An applicant for trademark registration should determine the proposed classes based on all the goods and services to be registered for the trademark concerned. The goods and services should be classified according to the International Classification of Good and Services (Nice Classification) (website: www.economia.gov.mo, and click the "Intellectual Property – Laws

& Regulations” link). The numbers of the classes and the names of the products or services should be stated in the application form.

1.4 Application Methods, Fees, Procedures and Processing Time for Trade Mark Registration

1.4.1 Guangdong Province

There are two ways for an applicant of trademark to file an application for the registration of a trademark: one way is to appoint a qualified trademark agency to handle the case; the other way is to go directly to the Trademark Registration Hall of the Trademark Office of the State Administration for Industry and Commerce (Trademark Office) to submit the application. Currently, the Trademark Office does not accept application for trademark registration by post.

In order to reduce the risk of trademark registration, it is strongly recommended that the applicant should conduct a trademark search before filing an application for registration. Preliminary trademark search can be carried out through guided steps at the official website of the Trademark Office (<http://sbj.saic.gov.cn>). If the applicant intends to obtain a more professional analysis of the search result, he/she can appoint a trademark agency to conduct the search. A trademark agency can provide the following services: (1) To handle trademark application and related matters; (2) To provide trademark legal consultation; (3) To act as a trademark counsel. In addition, administrative region restrictions are not applicable to trademark agencies providing trademark agency services.

The registration fee for an ordinary trademark for items below ten products/services is RMB1,000* per mark; for each additional product/service beyond ten, an additional fee of RMB100* will be charged. The registration fee for certification mark and collective mark is RMB3,000* per mark.

Documentation requirements for application of trademark registration:

- (1) Application Form for Trademark Registration;
- (2) A copy of company business licence should be submitted if the applicant is a company; if the applicant is a natural person in the Mainland, he/she should provide a copy of business licence for individual and commercial household, and a copy of identity card; if the applicant is a natural person in Hong Kong or Macao, no business licence for individual and commercial household is required;
- (3) Six copies of the trademark sample (if specific colours are to be claimed, five copies in colour and one copy in black and white should be submitted); for three-dimensional marks, two copies of samples for each of the five views including the top, front, rear, left side and right side views. The size of the trademark sample should be within the

range of 5 x 5 cm to 10 x 10 cm;

- (4) If a trademark agency is appointed, a Power of Attorney should be submitted (Power of Attorney for joint applicants to be submitted by the representative);
- (5) Documents for priority right if priority right is to be claimed.

1.4.2 The Hong Kong Special Administrative Region

Before applying for the registration of a trade mark, the applicant may consider requesting the Trade Marks Registry to provide Search and Preliminary Advice services. The Trade Marks Registry can conduct a search of the records and supply a list of trade marks that are identical or similar to the proposed trade mark and in respect of the identical or similar goods or services. The Trade Marks Registry could provide preliminary advice as to whether the proposed trade mark is sufficiently distinctive so that it distinguishes the goods and services from those of other traders.

If the Search and Preliminary Advice services of the Trade Marks Registry are to be used, the applicant should submit Trade Mark Form T1 with the appropriate fee (HK\$200* for each service). For the trade mark forms and fees, please visit the website of the Intellectual Property Department (IPD) (website: www.ipd.gov.hk/eng/forms_fees/trademarks_559.htm).

As for the formal application for registration of a trade mark, the applicant should submit Trade Mark Form T2. In addition to Trade Mark Form T2, the applicant is also required to submit Trade Mark Form T2A in the following cases:

- Application for a certification, collective or defensive trade mark;
- Application for a sound or smell trade mark;
- The applicant claims a 3-dimensional shape or a colour(s) as element(s) of a trade mark;
or
- The applicant wishes to include a disclaimer, limitation or condition.

Please refer to the explanatory notes on Trade Mark Forms T2 and T2A under “How to apply to register a trade mark in the Hong Kong SAR?” (website: www.ipd.gov.hk/eng/intellectual_property/trademarks/registry/how2apply.pdf).

All applicants should provide an address for service in Hong Kong. Those who wish to submit their trade mark applications through the e-filing system have to register with IPD as e-filers beforehand. E-filers should possess an e-Cert issued by a recognised certification authority in Hong Kong. For information on e-filing services, please visit the website of IPD (website: <https://iponline.ipd.gov.hk>).

The application fee for the registration of a trade mark for a certain class of goods or services is HK\$1,300*. The application fee for each additional class of goods or services is HK\$650*. Regarding the trade mark application forms and fees, please visit the website of IPD (website: www.ipd.gov.hk/eng/forms_fees/trademarks_559.htm).

If there is no deficiency in the application and all requirements for registration are met, the Trade Marks Registry will publish the details of the application. If no opposition to the application is received from a third party within the 3-month opposition period beginning on the date of publication, the minimum time required for the whole registration process (from the date of receipt of the application by the Trade Marks Registry to registration) is 6 months.

IPD provides free online search services (website: <http://ipsearch.ipd.gov.hk>). Any person may make use of these services to check records of registered trade marks and trade mark applications.

1.4.3 The Macao Special Administrative Region

Before applying for the registration of a trademark, the applicant can make use of the website of the Economic Services (website: www.economia.gov.mo, and click the “e-Services – Information Enquiry” link) or the public computer terminals located at the Reception Center of the Economic Services for searching of identical or similar trademarks in respect of the identical or similar goods or services. Elements of a trademark, i.e. designs, letters, etc., can be the search criteria and the said services are free of charge.

Besides, an applicant for trademark registration may request the Economic Services to provide a search report, which shows a list of trademarks that are identical or similar to the proposed trademark, by completing the “Application of Other Actions” form and paying the fee for access to the registers of MOP 200*. For the form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

As for the formal application for registration of a trademark, the applicant should submit the “Application for Registration of Trademark” form. Where appropriate, the application shall be accompanied by the following documents: Power of attorney, documents proving the priority right claim, translated copies (in Chinese or Portuguese) of certificates or other documents that are not written in any official languages of the Macao SAR, and other supporting documents.

When completing the “Application for Registration of Trademark” form, please note the followings:

- Application forms should be completed in Chinese or Portuguese;
- For those who do not hold valid Macao SAR Resident's Identity Cards, or are not bodies corporate registered in the Macao SAR, they could appoint one of the followings as their agent: lawyer registered with the Macao Lawyers Association; individual who is residing in the Macao SAR; body corporate registered in the Macao SAR. The form should then be signed by the agent;
- Each application form is only applicable to one and only one trademark registration, and should belong to the same class of the International Classification of Goods and Services;
- For applications filed by individuals or by agents as individuals: Macao SAR Resident's Identity Card is required for certification and identification. Signature's authenticity will be examined by the Economic Services. For applications filed by bodies corporate or by agents as bodies corporate: the legal representatives who have the authority should sign the form. Official certification of authenticity is required, through a Notary Office of the Macao SAR.

“Application for Registration of Trademark” forms along with the supporting documents should be handed in to the Industrial Property Application Counter of Reception Center of the Economic Services. The application fee of MOP 1,000* together with the payment slip should be submitted and paid within 8 working days after an application number had been assigned and the payment slip was received. Regarding the “Application for Registration of Trademark” form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

If an application and its supporting documents are in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link). The Economic Services will make a decision on the registration of the trademark, within 6 months after the publication of the notice of application, on the conditions that: no opposition is filed within the 2-month opposition period beginning on the date of publication; and the requirements for registration are met.

All applicants can make use of the website of the Economic Services (website: www.economia.gov.mo, and click the “e-Services – Information Enquiry” link) for searching of the basic information of filed trademarks. The service is free of charge.

***Note: The above fee standards may be adjusted. Please visit the relevant official website for the latest fee details.**

1.5 Trade Mark Examination

1.5.1 Guangdong Province

Trademark examination consists of formal examination and substantial examination.

Formal examination:

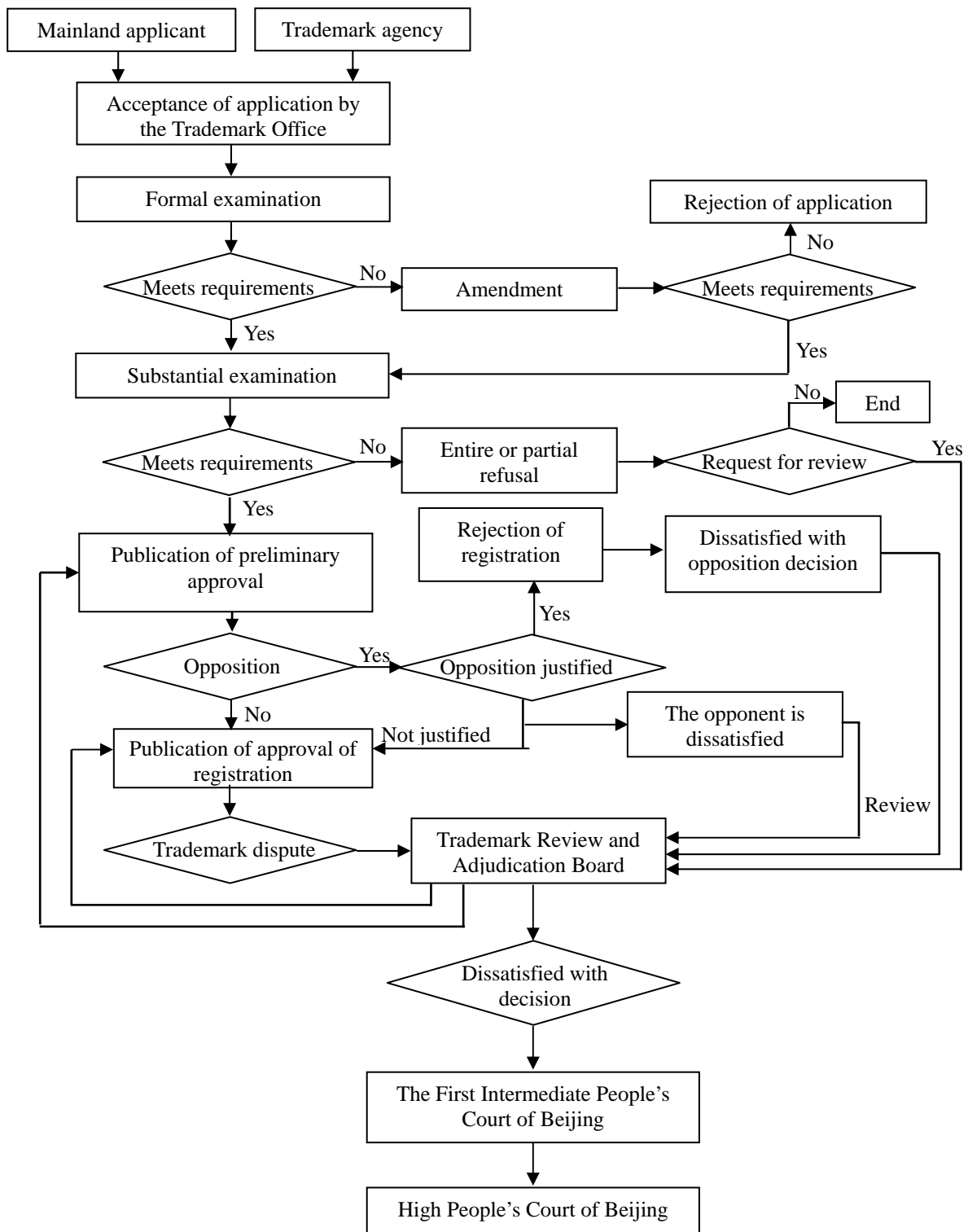
When an application for registration of trademark is filed by an applicant or an agent, the Trademark Office will conduct a formal examination on the documents according to the Trademark Law and the Implementing Regulations of the Trademark Law. If all documents for application are sufficient and completed as required, the Trademark Office will accept the trademark application by returning the Notice of Acceptance; otherwise, the Trademark Office will reject the trademark application and notify the applicant in writing specifying the reasons. In case the application documents are basically sufficient or completed basically as required but amendment is necessary, the Trademark Office will notify the applicant in writing to make the required amendment. Upon receipt of the amendment notification, the applicant should respond to the Trademark Office as required within 30 days. Otherwise, the trademark application will be deemed abandoned.

Substantial examination

For accepted trademark applications, the Trademark Office will carry out a substantial examination according to the Trademark Law and Implementing Regulations of the Trademark Law to check whether the trademark has violated the prohibitive regulations of Articles 10-11 of the Trademark Law and Article 28 concerning similarity to prior registered trademarks or preliminarily approved trademark applications for the same or similar goods. Applications conforming to the relevant regulations entirely or those with specified goods conforming to the relevant regulations will be approved preliminarily and published; applications violating the relevant regulations entirely or those with specified goods violating the relevant regulations will be refused entirely or partially by the Trademark Office who will notify the applicant in writing specifying the reasons.

For those preliminarily approved trademark applications, any third party can raise an opposition within 3 months from the date of publication. Provided that no opposition from any third party has been received before the expiry date of the publication period, the application will proceed to registration and publication.

Flowchart of Examination of Application for Trademark Registration

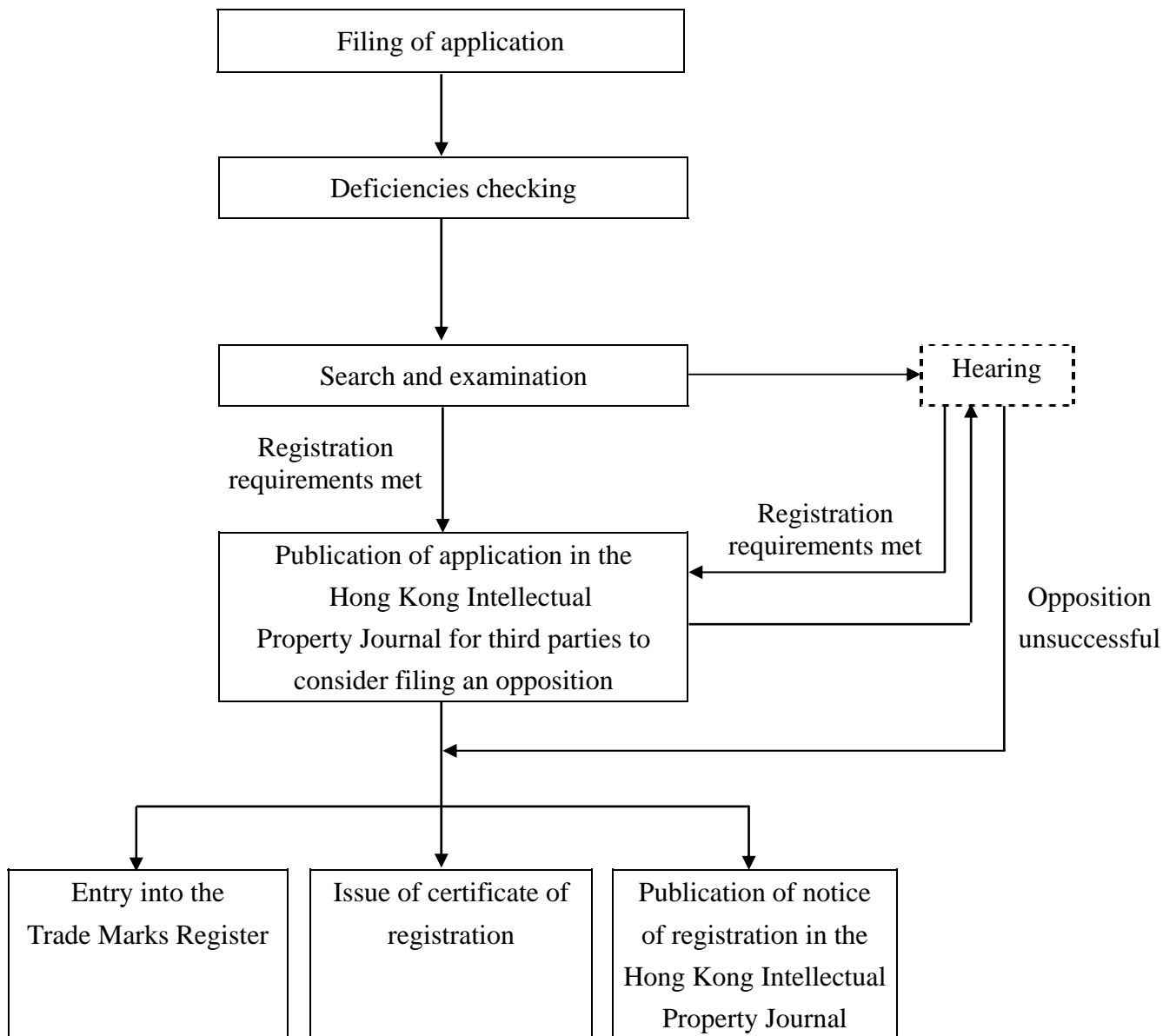


1.5.2 The Hong Kong Special Administrative Region

The examination of an application for registration can be divided into four stages:

- Deficiencies checking;
- Examination of application to see whether requirements of the Trade Marks Ordinance and Trade Marks Rules of Hong Kong are met;
- Acceptance of application and publication of application details; Any person may oppose the application;
- If there is no opposition to the trade mark application or the opposition is unsuccessful, registration and issue of certificate of registration.

Flowchart of Examination of Application for Trade Mark Registration



The first stage – Deficiencies checking

If the application details are insufficient or incorrect, the Trade Marks Registry will issue a “deficiency notice”, asking the applicant to remedy the deficiencies within 2 months from the date of the notice. If everything is in order, the application will proceed to the examination stage.

The second stage – Examination of applications

Search and Examination

The Trade Marks Registry will examine an application to decide if it satisfies the registration requirements laid down in the Trade Marks Ordinance and Trade Marks Rules. A registrable trade mark must have a distinctive character for distinguishing the goods and services of the applicant. Besides, the Registry will conduct a search of the trade marks records to see if the identical or similar trade mark has already been registered or been applied for by other persons in respect of the identical or similar goods or services. If the applicant's trade mark does not meet the requirements for registration, the Registry will issue a notice informing the applicant of his opinion in accordance with Rule 13(1) of the Trade Marks Rules and explaining the grounds for refusal of registration. The applicant will be given 6 months to resolve the problem, and a further 3-month extension may be granted. If the Registry considers that the objections can be overcome by amending the application or by other means, it may suggest ways to do so in the notice.

If the applicant files written submissions or requests for amending the application within the specified time limit but the objection stated in the Registry's notice still cannot be overcome, the Registry will issue a further notice informing the applicant of its opinion. If the applicant wishes to pursue with the trade mark application, he/she will have 3 months from the date of the further notice issued by the Registry to satisfy the registration requirements or call for a hearing. The applicant may ask for an extension of this period only in certain circumstances specified in Rule 13(6) of the Trade Marks Rules.

If the applicant requests a hearing, all the evidence for and against the trade mark application will be considered at the hearing, after which a decision will be issued by the hearing officer.

The third stage – Publication of application details and opposition to registration

Once the trade mark has been accepted for registration, particulars of application will be published in the Hong Kong Intellectual Property Journal (website: www.ipd.gov.hk/eng/ip_journal.htm). Any person may file an opposition notice within 3 months beginning on the publication date.

The fourth stage – Registration

If there is no opposition or the opposition is unsuccessful, the application will proceed to the registration stage. The Trade Marks Registry will issue a registration certificate to the applicant. The relevant notice of registration will be published in the Hong Kong Intellectual Property Journal and the trade mark will be registered as of the filing date of

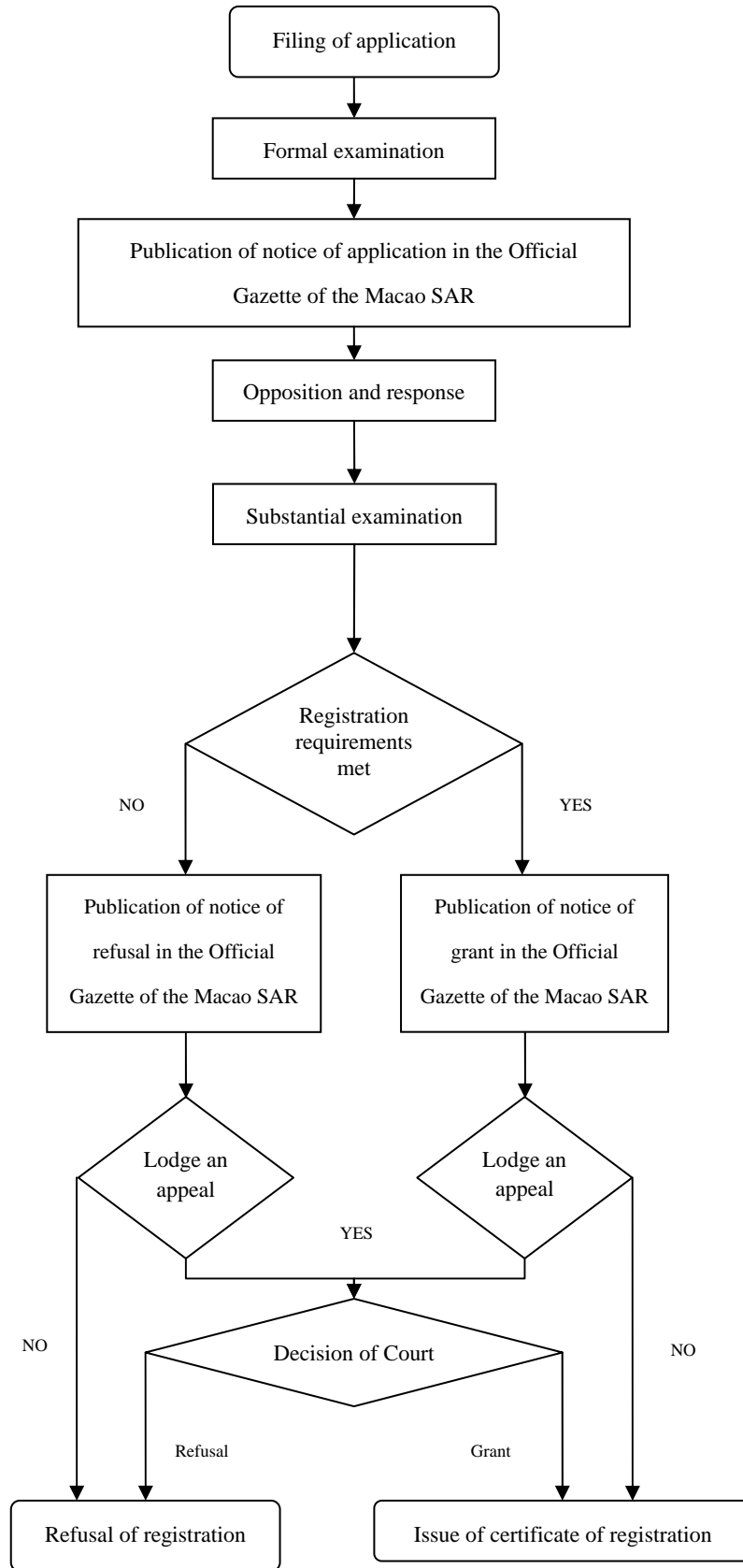
application.

1.5.3 The Macao Special Administrative Region

The examination of an application for trademark registration can be divided into five stages:

- Formal examination;
- Publication of notice of application; Any person may oppose the application;
- Substantial examination; Preparation of examination report;
- Registration; Publication of notice of registration;
- Upon expiry of the appeal period, issue of certificate of registration.

Flowchart of Application Process for Registration of Trademark



The first stage - Formal examination

Once the Economic Services has received the application for trademark registration, it will, within 1 month, proceed to its formal examination to check if the application form and supporting documents satisfy the legal requirements, and to classify the products and services.

If the application lacks any of the required elements, or should it not be in order, the applicant would be notified by the Economic Services. His/her application shall be rectified within 2 months upon the notification. If the applicant is not notified, he/she will have a maximum of 3 months from the filing of the application to make it in order.

The second stage - Publication of notice of application; any person may oppose the application

If an application is in order, the notice of application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link). Any person may file an opposition to the registration during a 2-month period after the publication of the notice in the Official Gazette of the Macao SAR.

A duplicate of the opposition is forwarded to the applicant by the Economic Services. The applicant may respond to the complaint, and it is to be filed within 1 month of the notification.

The third stage - Substantial examination; Preparation of examination report

Once the period for the presentation of oppositions has expired, the Economic Services will proceed to the examination, and then study the applications and appreciate the allegations of the parties, in order to check whether they satisfy the registration requirements under the Industrial Property Code. In addition, the Economic Services will conduct a search of the trademark records to see if any identical or similar trademark has already been registered or been applied for by other persons in respect of the identical or similar goods or services, and then prepare the examination report.

The fourth stage - Registration; Publication of notice of registration

If an application satisfies the registration requirements under the Industrial Property Code and there is no opposition within the specified time limit or the opposition is unsuccessful, the application will proceed to the registration stage. The Economic Services will then publish the notice of registration in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link).

If an application does not satisfy the registration requirements under the Industrial Property Code, the Economic Services will publish the notice of refusal of registration in the Official Gazette of the Macao SAR (same website as above).

The fifth stage - Upon expiry of the appeal period, issue of certificate of registration

An applicant may lodge an appeal to the Court of First Instance against the decision, within 1 month from the date of publication of notice of registration in the Official Gazette of the Macao SAR. Upon the end of the appeal period, or 5 working days after the court decision was made in the event of an appeal, the applicant should submit the original receipt of the application fees at the Industrial Property Application Counter of Reception Center of the Economic Services to obtain the certificate of registration.

1.6 Objection/Opposition Proceedings for Trade Mark Registration

1.6.1 Guangdong Province

According to Article 30 of the Trademark Law, any person may, within 3 months from the date a trademark has been published, raise an opposition against the preliminarily approved trademark. Where no opposition has been received upon expiry of the time limit, the trademark registration will be approved.

In the event of raising an opposition against the preliminarily approved and published trademark, the opponent should submit the application form for trademark opposition in duplicate to the Trademark Office. The application form for trademark opposition should indicate the issue number of the Trademark Gazette on which the opposed trademark is published and the number of the preliminary approval thereof. The application form for trademark opposition should contain the specific requests and factual evidence with relevant proofs and materials attached.

The Trademark Office will send a copy of the application form for trademark opposition to the party being opposed and require it to respond within 30 days from the date of receipt of the copy. Failure to respond to the opposition will not affect the adjudication made by the Trademark Office.

The concerned parties can request for a late submission of evidence after filing the opposition or responding to the opposition, which shall be stated in the first filing of the opposition or response. The supplementary evidence shall be filed within 3 months from the date of the first filing. If no supplementary documents are submitted within the grace period, it is considered that the concerned parties give up the right to supplement further evidence.

After receiving the response of the party being opposed, the Trademark Office will examine the case within a certain time frame. The examination is mainly conducted in written form. The Trademark Office will consider the arguments of both the opponent and the opposed party before ruling a decision.

Either party, if dissatisfied with the Trademark Office's ruling, can apply for a review before the Trademark Review and Adjudication Board within 15 days upon receipt of the opposition decision. The Board shall review both parties' arguments according to the relevant provisions of Trademark Review and Adjudication Rules before ruling a decision. In case the concerned parties are dissatisfied with the Board's decision, they can appeal before The First Intermediate People's Court of Beijing.

1.6.2 The Hong Kong Special Administrative Region

Any person who wishes to oppose the application for registration of a trade mark should file a notice of opposition (Trade Mark Form T6) within 3 months beginning on the date on which particulars of the application are published. The notice of opposition should contain a statement of grounds of opposition. It is desirable for a person who intends to oppose the application to seek the advice of a lawyer or trade mark agent in considering the relevant grounds of opposition. The applicant should file a counter-statement (Trade Mark Form T7) within the specified time limit. Both the opponent and the applicant will have an opportunity, within the specified time limit, to file evidence in support of the opposition and application respectively. After the Trade Marks Registry has received all the evidence, arrangements will be made for both parties to attend a hearing. On completion of the hearing, the Registrar of Trade Marks will make a decision. The successful party in an opposition proceeding will usually be entitled to an award of costs.

Within 28 days after the date of decision of the Registrar of Trade Marks, either party may lodge an appeal to the Court of First Instance against the decision.

For further information on opposition to application for trade mark registration, please refer to the chapter on "Opposition to registration" of the Trade Marks Registry Work Manual (website: www.ipd.gov.hk/eng/intellectual_property/trademarks/registry/Opposition_to_registration.pdf).

For further information on hearings, please refer to the chapter on "Hearings" of the Trade Marks Registry Work Manual (website: www.ipd.gov.hk/eng/intellectual_property/trademarks/registry/Hearings.PDF).

1.6.3 The Macao Special Administrative Region

For trademarks that have been preliminary examined by the Economic Services, any person may file an opposition to their registrations during a 2-month period after the publication of the notice of application in the Official Gazette of the Macao SAR, by completing the “Application of Other Actions” form and paying the opposition fee of MOP 800*. A duplicate of the opposition will be forwarded to the applicant by the Economic Services. The applicant may respond to the complaint, and it is to be filed with a completed “Application of Other Actions” form within 1 month of the notification. Regarding the application form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

On completion of the opposition process, the Economic Services will study the evidence provided and then make the decision. If the opposition is successful, the trademark application will be refused. If the opposition is unsuccessful and the application satisfies the registration requirements under the Industrial Property Code, the trademark will be registered.

For further information on opposition of trademark application, please refer to Article 211 of the Industrial Property Code (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link).

***Note: The above fee standards may be adjusted. Please visit the relevant official websites for the latest fee details.**

1.7 Differences between Trade Mark Registration and Company Registration

1.7.1 Guangdong Province

Different supervisory offices: Trademark registration is approved by the Trademark Office while company registration (registration of trade name) is approved by local Administrations for Industry and Commerce.

There are differences between the function and nature of a trade name and a trademark. The major differences are as follows:

(1) Trademark is mainly used to differentiate goods. It stands for the reputation of goods and its existence depends on the specific goods that it is associated with. Trademark right is a kind of intellectual property right. Trade name is used to differentiate enterprises. It stands for the reputation of enterprises and its existence depends on the specific manufacturer or operator of goods that it is associated with. Trade name right is a kind of right of name and it

is more related to a person or personal identity.

(2) Trademark is registered and used in accordance with the stipulations of the Trademark Law. A registered trademark bears the exclusive right to be used in the Mainland with specified statutory validity period. Trade name is registered in accordance with the Company Law or Corporate Registration Administration Regulations. It also bears the exclusive right which is valid within the area ruled by the local Administrations for Industry and Commerce, and its validity ceases when the company is liquidated.

(3) In the Mainland, trademark right is protected by the Trademark Law while trade name right is only protected by the similar measures on the right of a company's name laid down in the General Principles of the Civil Law of the People's Republic of China.

(4) It is necessary for the trader to register his trademark in a country in which goods bearing the relevant registered trademark and symbol of the trade name of the company are to be sold. However, it is not necessary to re-register the trade name. When some companies register their trade names as trademarks or use their registered trademarks as trade names of companies, their trademarks and trade names will become one name or a part of the name. Such practice is permitted by the Trademark Law, Company Law, and Corporate Registration Administration Regulations.

1.7.2 The Hong Kong Special Administrative Region

In Hong Kong, the registration of company names, business names and trade marks is regulated by different sets of laws and systems. The Companies Registry (website: www.cr.gov.hk) is responsible for the registration of company names, the Inland Revenue Department (website: www.ird.gov.hk) for the registration of business names and the Trade Marks Registry for the registration of trade marks. A business or company name registration is not an indication of trade mark rights or the right to use the name as a trade mark in promoting or dealing in goods or services. In order to obtain protection as a registered trade mark in Hong Kong, an application for trade mark registration should be made to the Trade Marks Registry by the owner of the trade mark.

1.7.3 The Macao Special Administrative Region

In the Macao SAR, the registration of trademarks and commercial names (i.e. company registration) is regulated by different sets of laws, and supervised by different government departments. The Economic Services is responsible for the registration of trademarks and the “Conservatória dos Registos Comercial e de Bens Móveis” (website: www.dsaj.gov.mo/MainFrame.aspx?lang=zh-TW) for the registration of commercial names.

A commercial name registration is not an indication of trademark rights or the right to use the name as a trademark in promoting or dealing in goods or services. In order to obtain protection as a registered trademark in the Macao SAR, an application for trademark registration should be made to the Economic Services by the owner of the trademark.

1.8 Means of Relief for Infringement of Trade Marks

1.8.1 Guangdong Province

Acts of infringement of registered trademarks:

According to the stipulation of Article 52 of the Trademark Law of the People's Republic of China, the following acts shall constitute an infringement of the exclusive rights to the use of a registered trademark:

- (1) Using a trademark that is identical with or similar to a registered trademark in connection with the same or similar goods without the authorisation of the owner of the registered trademark;
- (2) Selling goods that violate the exclusive right to use a registered trademark;
- (3) Counterfeiting, or making, without authorisation, representations of another party's registered trademark, or selling such representations;
- (4) Altering another party's registered trademark without authorisation and selling goods bearing such an altered trademark; and
- (5) Otherwise causing prejudice to another party's exclusive right to use its registered trademark.

Administrative and Civil Remedies:

According to the Trademark Law, when a dispute arises as a result of any of the acts infringing upon other person's exclusive right to the use of a registered trademark, the parties involved shall settle the dispute through negotiation. Where the parties are not willing to negotiate or where the negotiation fails, the owner of the registered trademark or any party concerned may bring a lawsuit before the People's Court or request the administrative department for industry and commerce to handle the matter.

When the said department determines that the fact of infringement is established, it shall order the infringer to stop the infringing act immediately, and it shall confiscate and destroy the goods involved and the tools specially used to manufacture the said goods and counterfeit the representations of the registered trademark, and may also impose a fine. Where the party is dissatisfied with the decision of the department, it may, within 15 days from the date on which the notification is received, bring a lawsuit before the People's Court in accordance with the Administrative Procedure Law of the People's Republic of China. Where the infringer neither brings a lawsuit upon the expiration of the time frame nor complies with the decision, the administrative department for industry and commerce may request the People's

Court to enforce its decision. The administrative department for industry and commerce that handles the dispute may, as requested by the party, mediate as a settlement on the amount of compensation for the infringement of the exclusive right to the use of the trademark. Where mediation fails, the party may, in accordance with the Civil Procedure Law of the People's Republic of China, bring a lawsuit before the People's Court.

The administrative department for industry and commerce shall have the power to investigate any act infringing upon the exclusive right to the use of a registered trademark. Where a crime is suspected to have been committed, it shall promptly transfer the case to a judicial department for handling in accordance with law.

The amount of compensation for infringing the exclusive right to the use of a trademark shall be the amount of profits that the infringer has earned as a result of the infringement during the period of infringement, or the amount of losses that the infringed person has suffered as a result of the infringement during the period of infringement, including any reasonable expenses that the infringed person has paid to stop the infringement. In case that the amount of profits earned by the infringer or the amount of losses suffered by the infringed person is difficult to be determined, the People's Court may order an amount of compensation below RMB 500,000 to be paid according to the details of the act of infringement.

Where the owner of a registered trademark or any party concerned has evidence to prove that another party is committing or is about to commit an act that infringes upon his/her exclusive right to the use of his/her registered trademark and that, unless it is stopped promptly, will cause irreparable harm to his/her legitimate rights and interests, he/she may, before filing a lawsuit, apply to the People's Court for an order to stop the relevant act and for property preservation.

In order to stop the act of infringement, the owner of a registered trademark or the party concerned may, under conditions where evidence may be destroyed or hard to be obtained afterwards, apply to the People's Court for evidence preservation before filing a lawsuit. The People's Court may order the applicant to provide a surety. Where no surety is provided, the application shall be rejected.

Criminal Remedies:

Article 59 of the Trademark Law stipulates the criminal remedies for trademark infringement as follows:

(1) Without the authorisation of the owner of a registered trademark, any person who uses a trademark that is identical with that of the owner on the same kind of goods will constitute a crime. He/she shall, in addition to compensating the losses suffered by the infringed person, be subject to criminal sanctions in accordance with law.

(2) Anyone who counterfeits or makes, without authorisation, the representations of another person's registered trademark or sells such representations will constitute a crime. He/she shall, in addition to compensating the losses suffered by the infringed person, be subject to criminal sanctions in accordance with law.

(3) Anyone who knowingly sells goods bearing counterfeit registered trademarks will constitute a crime. He/she shall, in addition to compensating the losses suffered by the infringed person, be subject to criminal sanctions in accordance with law.

According to the Criminal Law of the People's Republic of China, these three crimes leading to criminal sanctions may be subject to a fixed-term imprisonment sentence of not less than 3 years and not more than 7 years with an imposition of fine.

(For details, please refer to Articles 52-59 of the Trademark Law of the People's Republic of China, Articles 213-215 of the Criminal Law of the People's Republic of China.)

1.8.2 The Hong Kong Special Administrative Region

In the case of an infringement of registered trade mark, the owner of a registered trade mark or the exclusive licensee can bring civil proceedings against the infringement. By instituting legal proceedings against the infringement, the plaintiff may be granted the following forms of relief under the Trade Marks Ordinance: damages, an injunction, orders for delivery up (the court orders the defendant to deliver up the infringing goods, materials or articles), an account of the profits derived from the infringement or other forms of relief.

Under Section 9 of the Trade Descriptions Ordinance (Cap. 362), any person who applies a forged trade mark with intent to deceive commits a criminal offence and is liable on conviction to a fine and imprisonment.

1.8.3 The Macao Special Administrative Region

The remedy for trademark infringement in the Macao SAR can be obtained by measures of administration and jurisdiction.

In the Macao SAR, the administrative protection in the field of intellectual property is a relative protection. The duty of the administrating and enforcing department is to prevent, strike and stop the infringing activities in intellectual property. In the case of an infringement of the exclusive right of a registered trademark, the right owner may raise an action via the Macao Customs and other empowered entities in order to protect his/her own right.

The principal measure for remedy of trademark infringement is judicial protection. In the case of an infringement of the exclusive right of a registered trademark, the right owner may have the dispute resolved by instituting a legal process at judicial authorities. Consequently, the

infringer will be imposed sanction against the infringement and thus the violation of the owner's right can be avoided. Therefore, the goal of protecting the interest of the right owner of trademark can be achieved.

2 Patents (not including Designs)

2.1 Patents Laws and Related Rules

2.1.1 Guangdong Province

Patent Law of the People's Republic of China (amended on 27 December 2008)

Implementing Regulations of the Patent Law of the People's Republic of China

Regulation on National Defense Patent

Guangdong Provincial Regulations on the Protection of Patents

Provisions on the Methods for Marking the Patent Marks and Patent Numbers

Measures for the Compulsory Licensing for Patent Implementation

Certain Questions Concerning Implementation of Customs Protection of Patents Provisions

Regulations on Patent Commissioning

(website: www.sipo.gov.cn/sipo2008/zcfg)

2.1.2 The Hong Kong Special Administrative Region

A patent is an exclusive right granted to the inventor of an invention. An invention which is novel and involves an inventive step can be registered as a patent in Hong Kong as long as it is susceptible of industrial application and does not belong to the excluded classes of inventions.

Patents laws and related rules in Hong Kong are as follows:

- Patents Ordinance (Cap. 514)
- Patents (Designation of Patent Offices) Notices (Cap. 514A)
- Patents (Transitional Arrangements) Rules (Cap. 514B)
- Patents (General) Rules (Cap. 514C)

(website: www.ipd.gov.hk/eng/intellectual_property/ip_laws/patents.htm)

2.1.3 The Macao Special Administrative Region

The Industrial Property Code of Macao (General provisions: Article 1-53, Industrial Property Registration: Article 54-59, Invention Patent: Article 60-119, Utility Patent: Article 120-124, Extension of Invention Patent: Article 129-135, Legal recourse: Article 275-283, Monitoring and penalties: Article 284-314) (website: www.economia.gov.mo, and click the "Intellectual Property – Laws & Regulations" link), which was approved by the Decree-Law no. 97/99/M, was published on 13 December 1999 and came into effect on 6 June 2000.

The ruling of Chief Executive no. 59/2004, which was published on 22 March 2004, approved the State Intellectual Property Office (SIPO) as the qualified designated entity to prepare the

report of substantial examination for the application for registration of patent in the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link).

The Cooperation Agreement between the State Intellectual Property Office and the Macao SAR Economic Services in the aspect of Intellectual Property was published on 24 March 2004 by the notice of Chief Executive no. 7/2004 (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link). The period of validity of the Agreement was extended for another 5 years. The notice was published in Series II of Official Gazette no. 12 on 19 March 2008.

2.2 Classification of Patents

2.2.1 Guangdong Province

There are three types patents in China, i.e. invention, utility model and design.

Invention refers to any new technical solution relating to products, processes or improvements thereof. The duration of patent right for invention is 20 years, counting from the date of filing of the application.

Utility model refers to any new technical solutions for the shapes or the structures of products, or a combination of the both, which is fit for practical use. The duration of patent right for utility model is 10 years, counting from the date of filing of the application.

(For details, please refer to Articles 2 and 42 of the Patent Law of the People’s Republic of China (Chinese Patent Law) amended on 27 December 2008.)

For design, please refer to Chapter 3 “Designs” below.

2.2.2 The Hong Kong Special Administrative Region

Patents are classified in accordance with the International Patent Classification (website: www.wipo.int/classifications/fulltext/new_ipc/index.htm (in English and French only)).

2.2.3 The Macao Special Administrative Region

Patents are classified in accordance with the International Patent Classification (same website as above). Applicants can make use of the system of patent classification as a key in patent document searching while making a patent search or identifying the development status in certain technical field.

2.3 Application Methods, Fees, Procedures and Processing Time for Patent

2.3.1 Guangdong Province

1. Application Methods:

A patent application can be filed with the patent administration department under the State Council either by the applicant(s) or by the patent agency authorised by the applicant(s).

2. Procedures:

To file an application for invention or utility model, the applicant is required to file a request along with the application documents including specification, abstract and claims, etc.

For an invention based on genetic resources, the applicant should state the direct source and the original source of the genetic resources in the application documents. Reasons should be specified if the applicant is unable to state the original source.

The date on which the patent administration department under the State Council receives the patent application shall be deemed as the filing date. If the application is sent by mail, the date of the postmark shall be deemed as the filing date.

Where within 12 months from the date on which an applicant first filed a patent application for an invention or utility model in a foreign country, and a patent application for the same subject matter is filed in China, the applicant may enjoy the right of priority in accordance with any agreement entered into between the relevant foreign country and China; or in accordance with any international treaty to which both countries are parties; or on the basis of the principle of mutual recognition of the right of priority.

Where within 12 months from the date on which an applicant first filed a patent application for an invention or utility model in China, and a patent application for the same subject matter is filed with the patent administration department under the State Council, the applicant may enjoy the right of priority.

An invention or utility model patent application shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

(For details, please refer to Articles 26 - 33 of the Chinese Patent Law amended on 27 December 2008.)

3. Fees:

In accordance with the patent-related fee standard amended by SIPO in 2008, the filing fee for an invention patent application is RMB900*. An applicant as a natural person may apply for

a reduction of 85%, and the fee payable after reduction is RMB135*. An applicant as an entity may apply for a reduction of 70%, and the fee payable after reduction is RMB270*. The printing fee of RMB50* cannot be reduced. The substantive examination fee is RMB2,500*, which can be reduced by 85%, i.e. RMB135* after reduction for a natural person; for an entity, the examination fee can be reduced by 70%, i.e. RMB750* after reduction.

The filing fee for a utility model patent application is RMB500*, which can be reduced by 85%, i.e. RMB75* after reduction for a natural person; for an entity, the filing fee can be reduced by 70%, i.e. RMB150* after reduction.

For more information on patent-related fees, please visit the official website of SIPO:
www.sipo.gov.cn/sipo2008/zlsqzn/sqq/zlfy/200804/t20080410_372688.html

4. Processing Time:

In accordance with the Chinese Patent Law, the examination procedures of an invention patent application include acceptance, preliminary examination, publication, substantive examination and grant. While for a utility model or a design application, the examination procedures only include acceptance, preliminary examination and grant, publication at an early stage and substantive examination are not required.

For an invention patent application, after receiving the application and upon preliminary examination, if the patent administration department under the State Council finds that the application complies with the requirements of the Chinese Patent Law, it will publish the application promptly after the expiration of 18 months from the filing date. Upon the request of the applicant, the patent administration department under the State Council may publish the application earlier. Upon request made by the applicant at any time within 3 years from the date of filing, the patent administration department under the State Council will proceed to substantial examination of the application. If the applicant fails to request for a substantial examination within the time frame without any justified reason, the application shall be deemed to have been withdrawn. The patent administration department under the State Council may, on its own initiative, proceed to conduct a substantial examination on any application for an invention patent if it deems necessary. The time required from filing to grant of utility model patent application, is generally shorter than that of an invention patent application since publication and substantive examination are not required.

2.3.2 The Hong Kong Special Administrative Region

There are two types of patents that can be registered in Hong Kong:

- Standard Patent: renewable annually after the end of the third year, up to a maximum

term of 20 years.

- Short-term Patent: renewable after the end of the fourth year, up to a maximum term of 8 years.

Standard Patent

The grant of a standard patent in Hong Kong is based on the registration of a patent granted by one of the three patent offices (called “designated patent offices”):

1. the State Intellectual Property Office, People’s Republic of China;
2. the European Patent Office (in respect of a patent designating the United Kingdom);
3. the United Kingdom Patent Office.

A standard patent application is made in two stages by filing a request to record and a request for registration and grant. The applicant should file the relevant requests according to the time limits specified below:

1. A request to record (on Patents Form P4) in Hong Kong within 6 months after publication of the patent application in the designated patent office (called “designated patent application”); and
2. A request for registration and grant (on Patents Form P5) in Hong Kong within 6 months after grant of the patent by the designated patent office (called “designated patent”), or publication of the request to record by the Patents Registry of IPD, whichever is later.

Short-term Patent

The grant of a short-term patent in Hong Kong is based on a search report from an international searching authority under Article 16, Patent Co-operation Treaty or one of the three designated patent offices mentioned above. An applicant who intends to file a short-term patent application in Hong Kong should submit a request for grant supported by the documents and information required.

Fees and Application Documents and Information

All applicants should provide an address for service in Hong Kong. Those who wish to submit their patent applications through the e-filing system have to register with IPD as e-filers beforehand. E-filers should possess an e-Cert issued by a recognised certification authority in Hong Kong. For information on e-filing services, please visit the website of IPD (website: <https://iponline.ipd.gov.hk>).

At each stage of application, a filing fee of HK\$380* and an advertisement fee of HK\$68* are required for standard patents while HK\$755* and HK\$68* respectively for short-term patents.

For information on patents forms and fees, please visit the website of IPD (website: www.ipd.gov.hk/eng/forms_fees/patents.htm).

For details of application documents and information, please visit the website of IPD (website: www.ipd.gov.hk/eng/intellectual_property/patents/how_to_apply.htm).

Processing time for Registration and Grant of Patents

1. Registration and Grant of Standard Patents

If there is no deficiency in the application and requirements for registration are met, the whole process (from the date of receipt of the request for registration and grant to the issue of the certificate of grant of patent by the Patents Registry) can normally be completed within 3 months.

2. Grant of Short-term Patents

If there is no deficiency in the application and requirements for registration are met, the whole process (from the date of receipt of the short-term patent application to the issue of the certificate of grant of patent by the Patents Registry) can normally be completed within 3 months.

IPD provides free online search services (website: <http://ipsearch.ipd.gov.hk>). Any person may make use of these services to check records of patent registrations and published patent applications.

2.3.3 The Macao Special Administrative Region

There are two types of patents that can be registered in the Macao SAR:

- Invention patent: the duration of the patent shall be up to 20 years from the date of filing and shall be renewable annually after the end of the third year. The renewal should be submitted in the last 6 months of the current validity period.
- Utility patent: the duration of the patent shall be up to 10 years from the date of filing and shall be renewable annually after the end of the second year. The renewal should be submitted in the last 6 months of the current validity period.

Invention Patent

The invention patent may be registered through two types of procedures as below:

1. Extending the Mainland invention patent to the Macao SAR

- In accordance with the Industrial Property Code and the notice of Chief Executive no. 7/2004 of 24 March, the applicants who have an invention patent application submitted in SIPO or the right owners who have an invention patent granted in SIPO may submit a request to extend the application or the patent right to the Macao SAR:

In order to have protection in the Macao SAR, the applicants who have a patent application submitted in SIPO shall complete the form of “Application for Extension of Invention Patent from the State Intellectual Property Office”, along with the respective claims, description and abstract of the invention patent and submit them to the Economic Services. Where appropriate, the application shall be accompanied by Power of attorney and Drawings, etc.

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link), after 18 months from the date of filing in SIPO or, in case a priority right was claimed, from the claimed date.

Within 3 months following the publication of the notice of the grant of the patent in the “Patent Gazette” of SIPO, the applicant should complete the “Application of Other Actions” form and submit “The Copy of Extracts from the Patent Register” and “Patent Specification” issued by SIPO to the Economic Services.

The application for extension of invention patent will be approved within 3 to 4 months after the submission of “The Copy of Extracts from the Patent Register” and “Patent Specification”.

- In order to have protection in the Macao SAR, the right owners who have an invention patent granted in SIPO shall complete the form of “Application for Extension of Invention Patent from the State Intellectual Property Office” along with the respective “The Copy of Extracts from the Patent Register” and “Patent Specification” to the Economic Services within 3 months following the publication of the notice of the grant of the patent in the “Patent Gazette” of SIPO.

The application for extension of invention patent will be approved within 3 to 4 months after the submission of “The Copy of Extracts from the Patent Register” and “Patent Specification”.

2. Submitting a new application for invention patent in the Macao SAR

When filing an application for registration of an invention patent, the applicant should submit “Application for Registration of Invention Patent” form, claims, description and abstract. Where appropriate, the application shall be accompanied by the following documents: Power of attorney, documents proving the priority right claim, drawings, translated copies in Chinese of certificates or other documents that are not written in any official languages of the Macao SAR, and other supporting documents.

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link), once 18 months have elapsed from the date of filing the application or, in case a priority right was claimed, from the claimed date. Starting from the publication of the application notice, and up to the date the patent is granted, any person may file an opposition to a specific application for invention patent registration.

Besides, within 7 years from the date of filing of the application, the applicant should file a request of substantial examination for preparation of examination report by SIPO to the Economic Services by completing the “Application of Other Actions” form, with examination fee of MOP 2,500*, otherwise the application for invention patent registration will be refused. Regarding the application form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

The time period of approval of the registration of invention patent depends upon the time for completion of the examination report by designated examination entity.

Utility Patent

When filing an application for registration of a utility patent, the applicant should submit “Application for Registration of Utility Patent” form, claims, description, drawings and abstract. Where appropriate, the application shall be accompanied by the following documents: Power of attorney, documents proving the priority right claim, translated copies in Chinese of certificates or other documents that are not written in any official languages of the Macao SAR, and other supporting documents.

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link), once 18 months have elapsed from the date of filing the application or, in case a priority right was claimed, from the claimed date. Starting from the publication of the application notice, and up to the date the patent is granted, any person may file an

opposition to a specific application for utility patent registration.

Besides, within 4 years from the date of filing of the application, the applicant should file a request of substantial examination for preparation of examination report by SIPO to the Economic Services by completing the “Application of Other Actions” form, otherwise the application for utility patent registration will be refused. Regarding the application form, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link).

The time period of approval of the registration of utility patent depends upon the time for completion of the examination report by designated examination entity.

When completing the forms of “Application for Extension of Invention Patent from the State Intellectual Property Office”, “Application for Registration of Invention Patent” and “Application for Registration of Utility Patent”, please note the followings:

- Application forms should be completed in Chinese or Portuguese;
- For those who do not hold valid Macao SAR Resident’s Identity Cards, or are not bodies corporate registered in the Macao SAR, they could appoint one of the followings as their agent: lawyer registered with the Macao Lawyers Association; individual who is residing in the Macao SAR; body corporate registered in the Macao SAR. The form should then be signed by the agent;
- Each application form is only applicable to one and only one patent registration;
- For applications filed by individuals or by agents as individuals: Macao SAR Resident’s Identity Card is required for certification and identification. Signature’s authenticity will be examined by the Economic Services. For applications filed by bodies corporate or by agents as bodies corporate: the legal representatives who have the authority should sign the form. Official certification of authenticity is required, through a Notary Office of the Macao SAR.

The forms of “Application for Extension of Invention Patent from the State Intellectual Property Office”, “Application for Registration of Invention Patent” and “Application for Registration of Utility Patent” along with the supporting documents should be handed in to the Industrial Property Application Counter of Reception Center of the Economic Services. The application fee (extension of invention patent: MOP 800*, invention patent: MOP 800*, utility patent: MOP 400*) together with the payment slip should be submitted and paid within 8 working days after an application number had been assigned and the payment slip was received. Regarding the application forms and fees, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

All applicants can make use of the website of the Economic Services (website: www.economia.gov.mo, and click the “e-Services – Information Enquiry” link) for searching of the basic information of filed patents. The service is free of charge.

***Note: The above fee standards may be adjusted. Please visit the relevant official websites for the latest fee details.**

2.4 Patent Examination

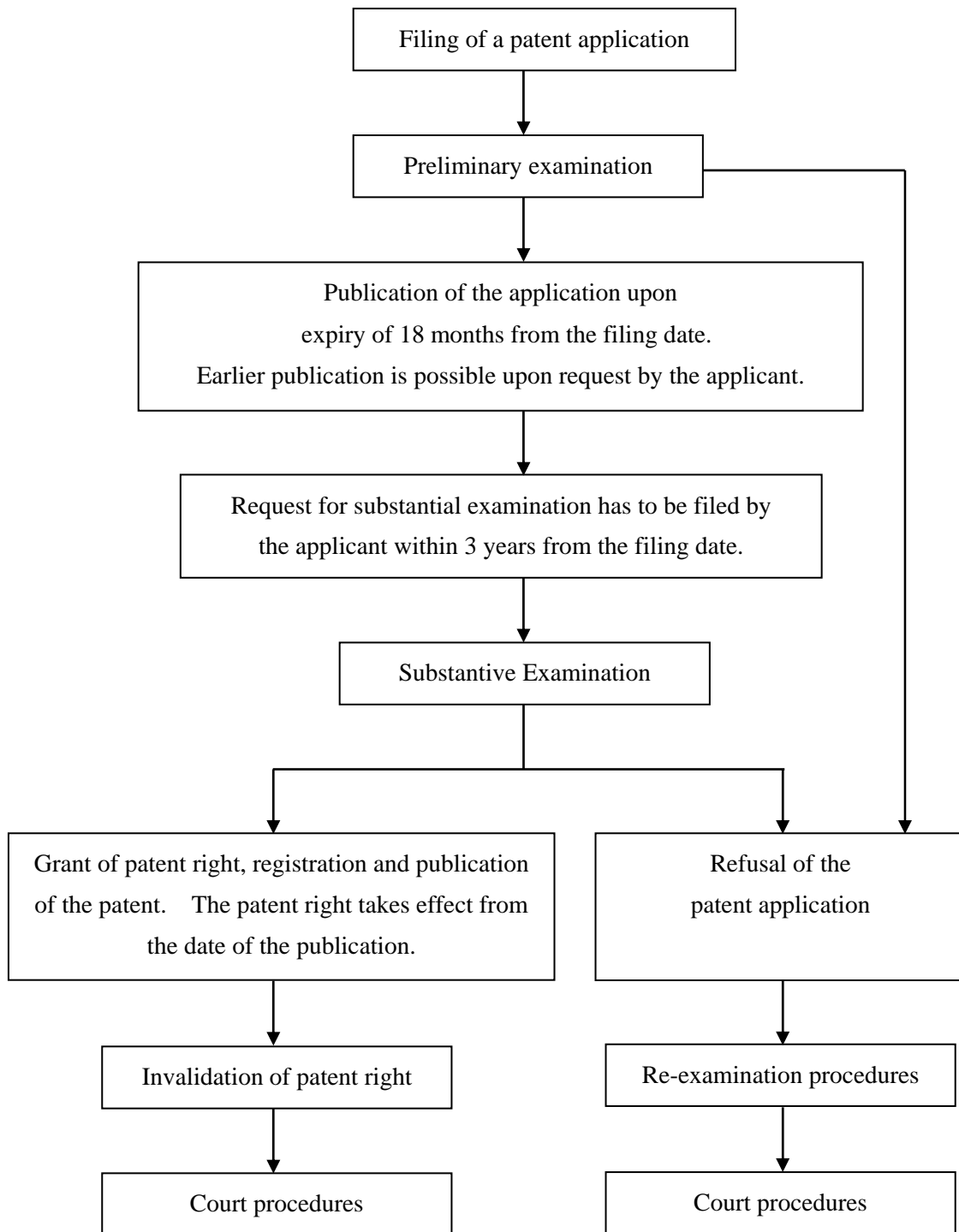
2.4.1 Guangdong Province

Examination of patent applications includes five stages, namely, acceptance, preliminary examination, publication, substantive examination and grant.

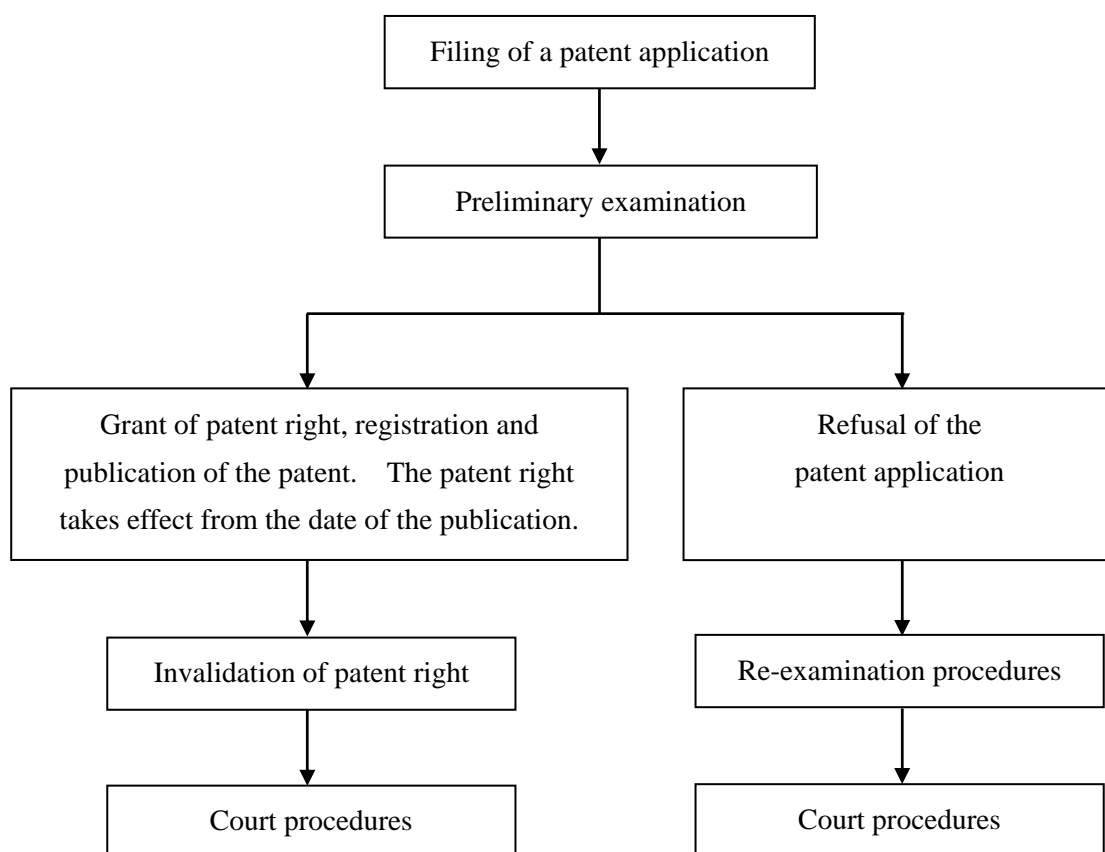
Invention: If the application satisfies the requirements of the Chinese Patent Law of China, the patent administration department under the State Council will publish the application promptly after the expiration of 18 months from the filing date. Upon the request of applicant, the patent administration department under the State Council may publish the application earlier. Upon the request of applicant made at any time within 3 years from the date of filing, the patent administration department under the State Council may proceed to substantial examination of the application. If, without any justified reason, the applicant fails to request a substantial examination within the time frame, the application shall be deemed to have been withdrawn. The patent administration department under the State Council may, on its own initiative, proceed to conduct a substantive examination on any application for invention if it considers necessary. If no cause for refusal of a patent application is found after the substantive examination, the patent administration department under the State Council will make a decision to grant the patent for invention, issue the patent certificate, register and publish the patent for invention. The patent right for invention shall take effect from the date of the publication.

Utility model: If no cause for refusal of the utility model patent application is found after preliminary examination, the patent administration department under the State Council will make a decision to grant the patent for utility model, issue the patent certificate, register and publish the utility model. The patent right for utility model shall take effect from the date of the publication.

Flowchart of Examination of Application for Invention Patent



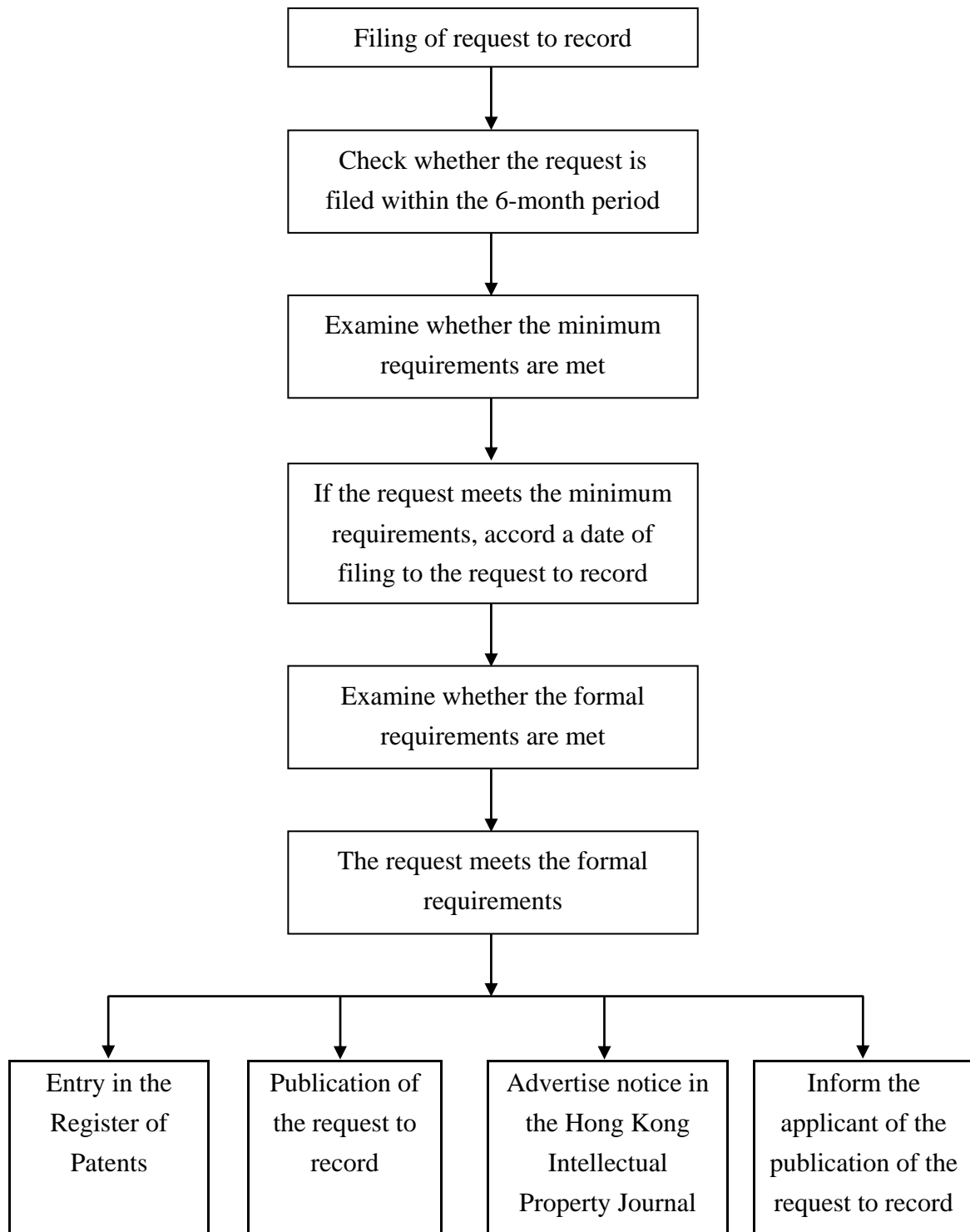
Flowchart of Examination of Application for Utility Model Patent



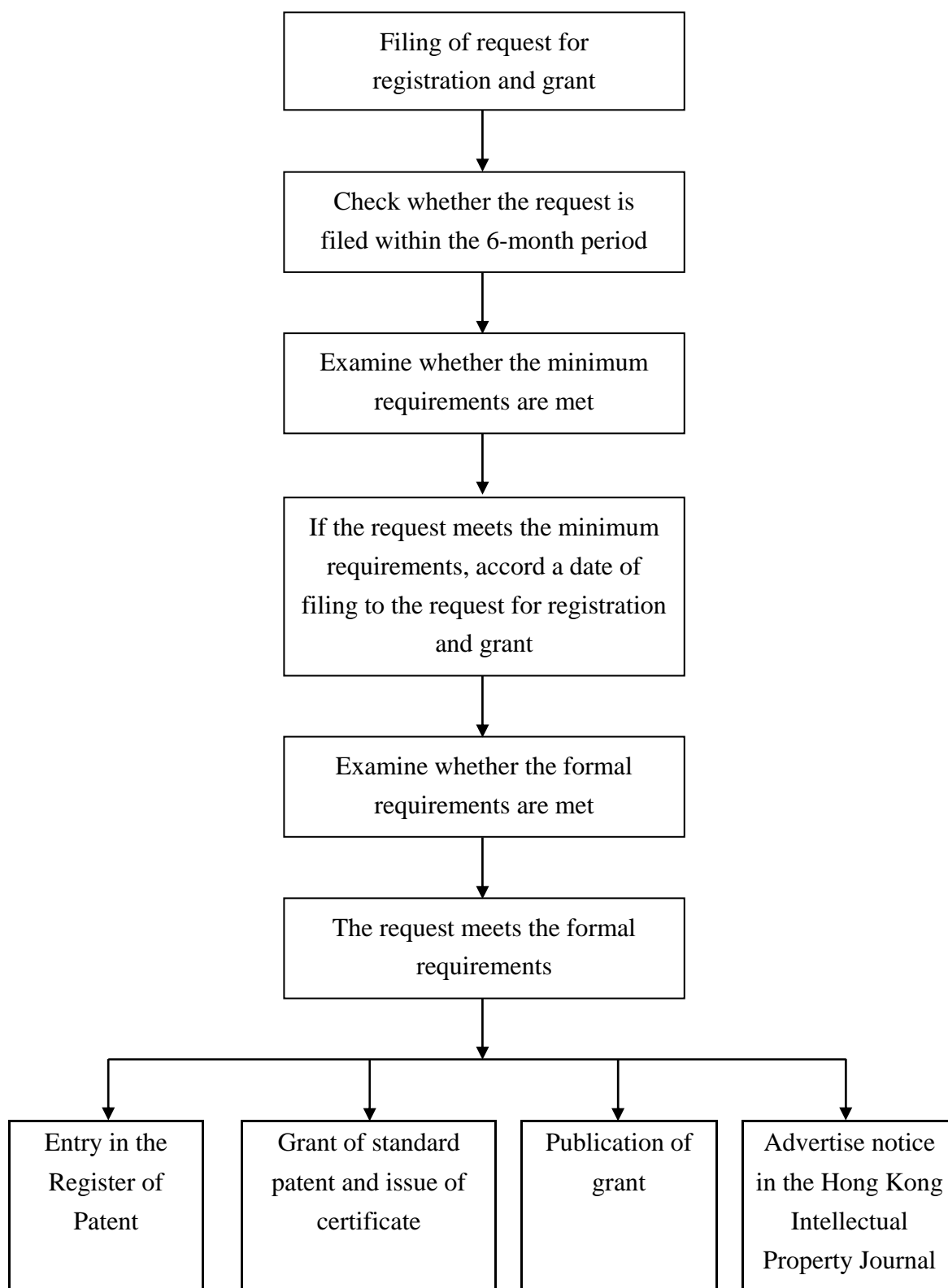
2.4.2 The Hong Kong Special Administrative Region

Upon receipt of an application, the Patents Registry will process the application in accordance with the procedures shown in the following flowcharts and paragraphs.

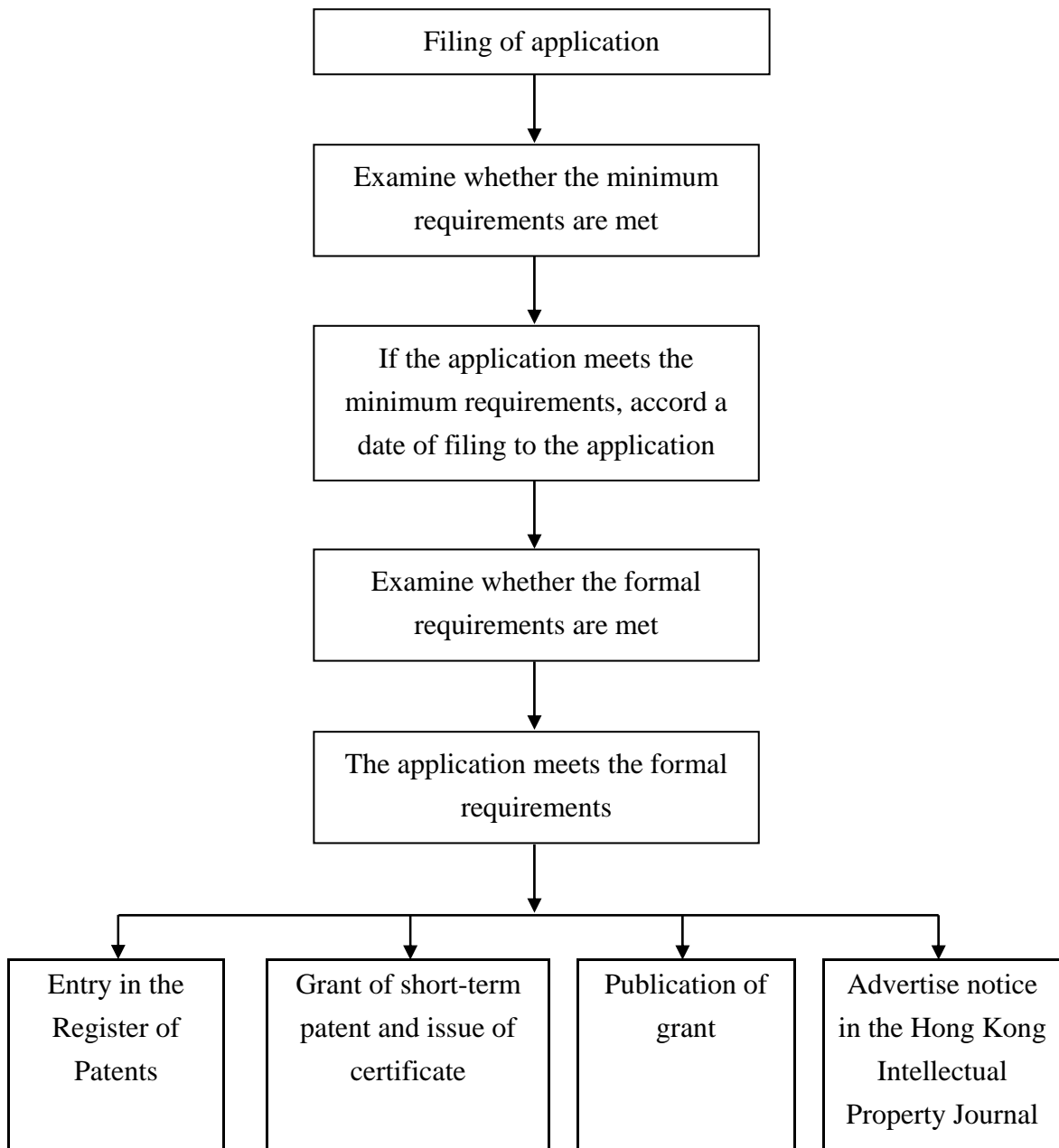
Flowchart of Examination of Request to Record for Standard Patent



Flowchart of Examination of Request for Registration and Grant for Standard Patent



Flowchart of Examination of Application for Short-term Patent



The first stage – Accord a date of filing

Upon receipt of an application, the Patents Registry will inform the applicant of the filing date of the application within about 10 working days.

Standard Patent

1. Date of Filing a Request to Record:

The Patents Registry will accord a date of filing to the request to record when the request states the name of the applicant, specifies the designated patent application and includes the designated patent application number, its publication number and date of publication.

2. Date of Filing a Request for Registration and Grant:

The Patents Registry will accord a date of filing to the request for registration and grant when the request identifies the applicant, specifies the designated patent and includes the publication number of the request to record, the publication number of the designated patent and its date of publication.

Short-term Patent

The Patents Registry will accord a date of filing to a short-term patent application when it states the name of the applicant and describes the invention.

The second stage – Examine on the formal requirements

After notifying the applicant of the date of filing, the Patents Registry will examine whether the formal requirements are met. It is an examination of the information and documents required in the application form. The Patents Registry will neither conduct a substantive examination for the application (e.g. the novelty and innovativeness of the patent), nor search the records of registered patents.

If the application is not in order, the Patents Registry will notify the applicant to correct the deficiencies within 2 months. Failure to correct the deficiencies in time may result in the application being deemed withdrawn.

The third stage – Publication and grant

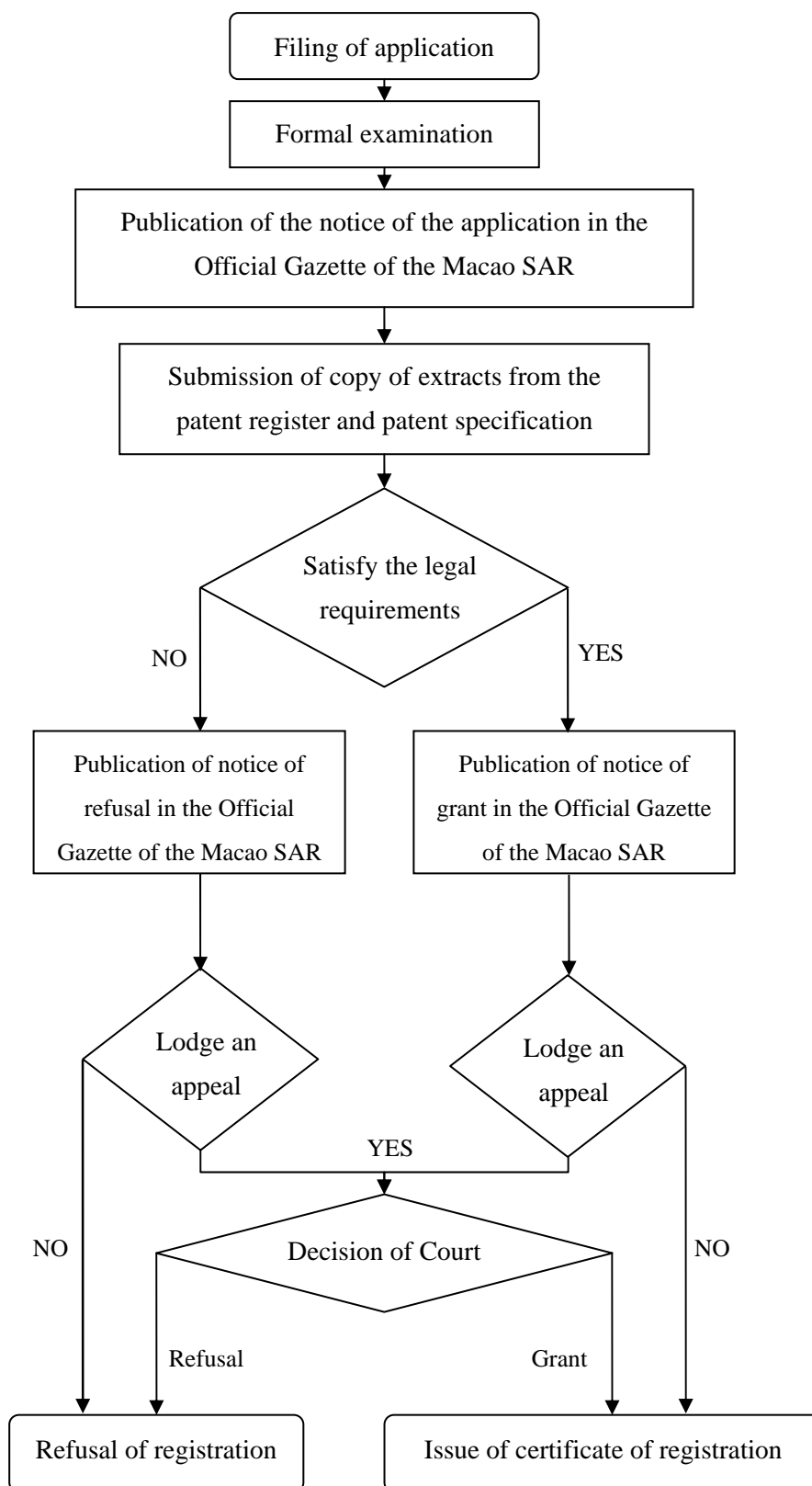
If the formal requirements of the application are met, the Patents Registry will publish the patent application or grant the patent, advertise the publication of application or grant of patent in the Hong Kong Intellectual Property Journal (website: www.ipd.gov.hk/eng/ip_journal.htm) and issue a certificate of grant of patent (applicable only to request for registration and grant of standard patent, and short-term patent application).

2.4.3 The Macao Special Administrative Region

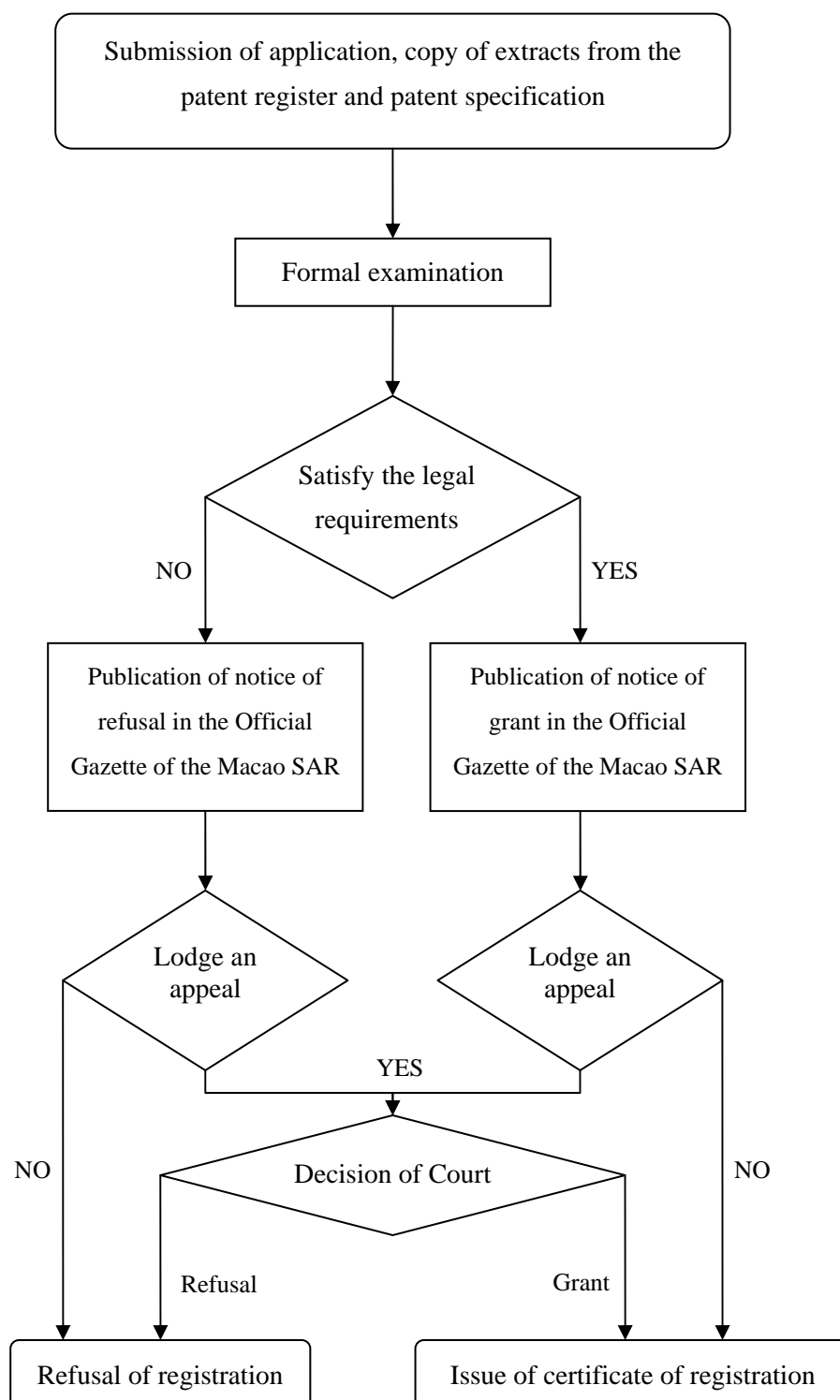
The examination of an application for extension of invention patent from the Mainland to the Macao SAR can be divided into four stages:

- Formal examination;
- Publication of notice of application (only applicable to extension of patent application submitted in SIPO);
- Approval of application for extension; Publication of notice of registration;
- Upon expiry of the appeal period, issue of certificate of registration.

**Flowchart of Application Process for Extension of the
Mainland Application of Invention Patent to the Macao SAR**



**Flowchart of Application Process for Extension of Invention Patent
from the Mainland to the Macao SAR**



The first stage - Formal examination

Once the Economic Services has received the application for extension of invention patent, it will proceed to its formal examination to check if the application form and supporting documents satisfy the legal requirements.

If the application lacks any of the required elements, or should it not be in order, the applicant would be notified by the Economic Services. The application shall be rectified within an indicated time period upon the notification.

The second stage - Publication of notice of application (only applicable to extension of patent application submitted in SIPO)

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link) after 18 months counting from the date of submission in the Mainland or, in case a priority right was claimed, from the claimed date.

The third stage - Approval of application and publication of notice of grant

Once the applicant submits “The Copy of Extracts from the Patent Register” and “Patent Specification” issued by SIPO, the application will proceed to approval stage provided that it satisfies the registration requirements under the Industrial Property Code. The notice of grant will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link) by the Economic Services.

If an application does not satisfy the registration requirements under the Industrial Property Code, the Economic Services will publish the ruling of refusal of registration in the Official Gazette of the Macao SAR (same website as above).

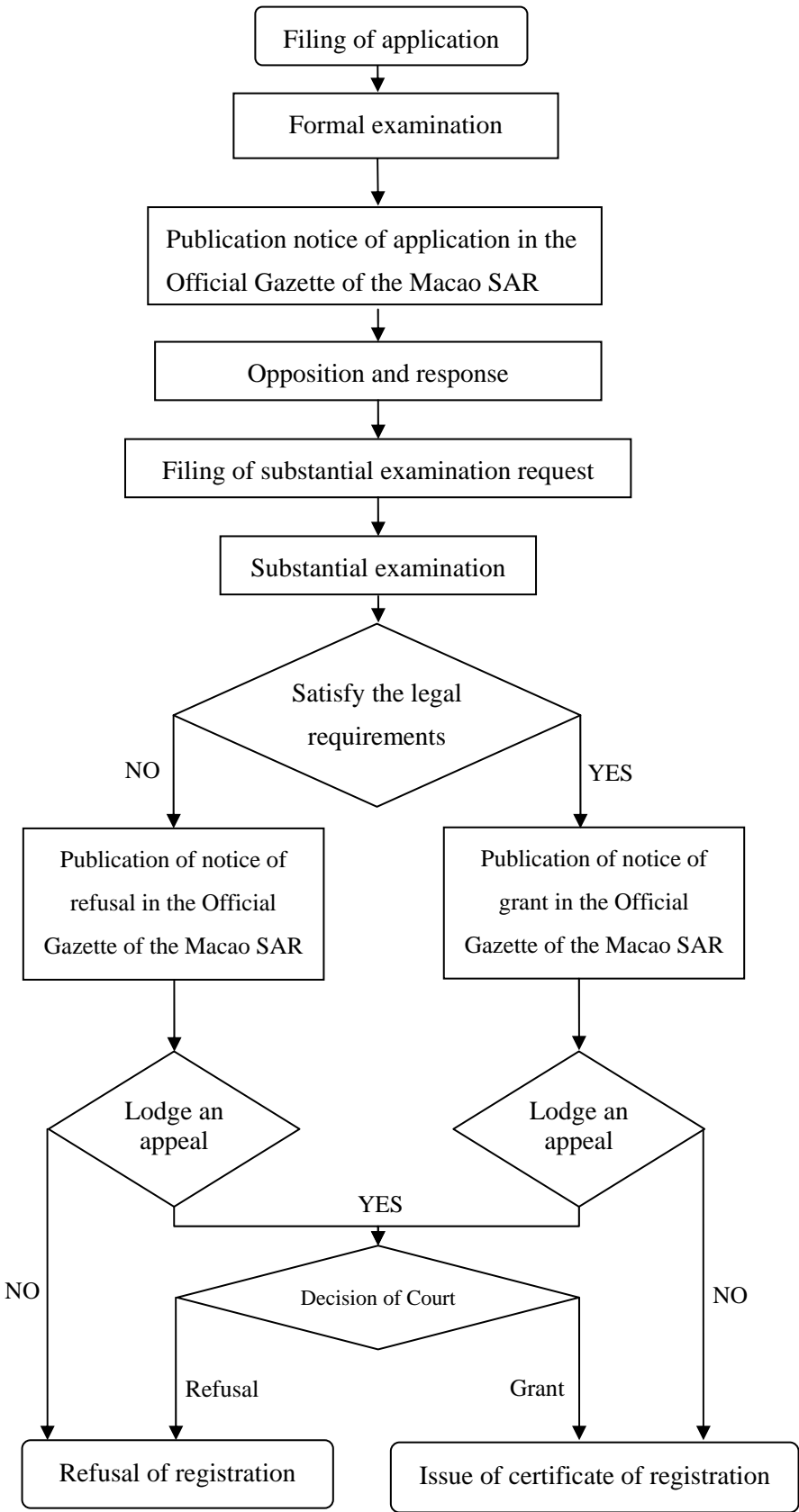
The fourth stage - Upon expiry of the appeal period, issue of certificate of registration

An applicant may lodge an appeal to the Court of First Instance against the decision, within 1 month from the date of publication of notice of grant in the Official Gazette of the Macao SAR. Upon the end of the appeal period, or 5 working days after the court decision was made in the event of an appeal, the applicant should submit the original receipt of the application fees at the Industrial Property Application Counter of Reception Center of the Economic Services to obtain the certificate of registration.

The examination of an application for invention patent and utility patent registration can be divided into five stages:

- Formal examination;
- Publication of notice of application; Any person may oppose the application;
- Substantial examination; Preparation of examination report by SIPO;
- Registration; Publication of notice of registration;
- Upon expiry of the appeal period, issue of certificate of registration.

Flowchart of Application Process for Invention Patent and Utility Patent



The first stage - Formal examination

Once the Economic Services has received the application for patent registration, it will, within 2 months, proceed to its formal examination to check if the application form and supporting documents satisfy the legal requirements.

If the application lacks any of the required elements, or should it not be in order, the applicant would be notified by the Economic Services. The application shall be rectified within 2 months upon the notification. If the applicant is not notified, he/she will have a maximum of 4 months from the filing of the application to make it in order.

The second stage - Publication of notice of application; any person may oppose the application

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link) after 18 months counting from the date of filing the application or, if a priority right was claimed, from the claimed date.

Starting from the publication of the application notice, and up to the date the patent is granted, any person may file an opposition to a specific application for patent registration, and it is to be filed with a completed “Application of Other Actions” form. A duplicate of the opposition will be forwarded to the applicant by the Economic Services. The applicant may respond to the complaint, and it is to be filed with a completed “Application of Other Actions” form within 4 months of the notification. Regarding the application form, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link).

For further information on opposition of patent application, please refer to Article 84 of the Industrial Property Code (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link).

The third stage - Substantial examination; Preparation of examination report by SIPO

Within 7 years from the date of filing, the applicant of invention patent should file a request of substantial examination for preparation of examination report by SIPO to the Economic Services by completing the “Application of Other Actions” form, with examination fee of MOP 2,500*. The applicant of utility patent should also file a request of substantial examination for preparation of examination report by SIPO to the Economic Services by completing the above form, within 4 years from the date of filing. The application for invention patent and utility patent will be refused if the examination request is not made

within the above time period, respectively. Regarding the application form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

Once the applicant files the request of substantial examination, the patent application and the supporting documents will be forwarded to SIPO. SIPO will provide the Economic Services with technical assistance in conducting the substantial examination and elaborating the searching report with comment and examination report. These reports form the basis for registration of the patent application.

The fourth stage - Registration; Publication of notice of registration

After the procedure of substantial examination, Economic Services will make the decision on the registration of patent application based on the examination report prepared by SIPO. If the application satisfies the registration requirements under the Industrial Property Code and there is no opposition within the specified time limit or the opposition is unsuccessful, the application will proceed to the registration stage. The Economic Services will then publish notice of registration in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link).

If the application does not satisfy the registration requirements under the Industrial Property Code, the Economic Services will publish the ruling of refusal of registration in the Official Gazette of the Macao SAR (same website as above).

The fifth stage - Upon expiry of the appeal period, issue of certificate of registration

An applicant may lodge an appeal to the Court of First Instance against the decision, within 1 month from the date of publication of notice of registration in the Official Gazette of the Macao SAR. Upon the end of the appeal period, or 5 working days after the court decision was made in the event of an appeal, the applicant should submit the original receipt of the application fees at the Industrial Property Application Counter of Reception Center of the Economic Services to obtain the certificate of registration.

***Note: The above fee standards may be adjusted. Please visit the relevant official websites for the latest fee details.**

2.5 Means of Relief for Infringement of Patents

2.5.1 Guangdong Province

Patentee's Right:

After the grant of the patent right for an invention or utility model, except where otherwise provided for in the Chinese Patent Law, no entity or individual may, without the authorisation of the patentee, exploit the patent, that is, to make, use, offer to sell, sell or import the patented product, or use the patented process, and use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

Upon the grant of the patent right for a design, no entity or individual may, without the authorisation of the patentee, exploit the patent, that is, to make, offer to sell, sell or import the product incorporating its or his patented design, for production or business purposes. (Article 11 of the Chinese Patent Law of the People's Republic of China)

Administrative and Civil Remedies:

According to the provisions of the Chinese Patent Law amended on 27 December 2008, where a dispute arises as a result of the exploitation of a patent without the authorisation of the patentee, that is, the infringement of the patent right of the patentee, it should be settled through negotiation by the parties concerned. Where the parties are not willing to negotiate with each other or the negotiation fails, the patentee or party concerned may institute a legal proceeding in the People's Court, or request the administrative authority for patent affairs to handle the matter. When the administrative authority determines that the infringement is established, it may order the infringer to stop the infringing act immediately. If the party is not satisfied with the order, he/she may, within 15 days from the date of receipt of the notification of the order, institute a legal proceeding in the People's Court in accordance with the Administrative Procedure Law of the People's Republic of China. Where the infringer neither institutes a legal proceeding upon the expiration of the time frame nor stops the infringement act, the administrative authority for patent affairs may request the People's Court for compulsory execution. The authority handling the matter may, upon the request of the parties, mediate in the amount of compensation for the damage caused by the infringement of the patent right. If the mediation fails, the parties may institute legal proceedings in the People's Court in accordance with the Civil Procedure Law of the People's Republic of China.

The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the actual losses suffered by the patentee as a result of the infringement. If it is difficult to determine the losses, it shall be assessed on the basis of the

profits which the infringer has earned through the infringement. In case that the actual losses suffered by the patentee or the profits earned by the infringer are difficult to determine, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license. The amount of compensation should also include the reasonable expenses that the patentee has paid to stop the infringement.

If it is difficult to determine the losses suffered by the patentee, the profits earned by the infringer as well as the royalty obtained for the patent, the People's Court may, by taking into account such factors as the type of patent, nature and particulars of the infringement, etc., decide on an amount of compensation in the sum of not less than RMB10,000 and not more than RMB1,000,000.

Where the patentee or any party concerned has evidence to prove that another person is committing or is about to commit an act that infringes upon his/her patent and that, unless it is stopped promptly, will cause irreparable harm to his/her legitimate rights and interests, he/she may, before instituting a legal proceeding, apply to the People's Court for an order to stop the relevant act. The applicant should provide a surety at the time of application. Where no surety is provided, the application shall be rejected.

To stop a patent infringement, the patentee or any party concerned may, under conditions where evidence may be destroyed or hard to be obtained afterwards, apply to the People's Court for evidence preservation before instituting a legal proceeding. The People's Court may order the applicant to provide a surety. Where no surety is provided, the application shall be rejected.

Criminal Remedies:

According to the provisions of Article 63 of the Chinese Patent Law amended on 27 December 2008, whoever counterfeits the patent of the others shall, in addition to bearing civil liabilities in accordance with the law, be ordered to make a correction and be announced by the administrative authority for patent affairs; his/her illegal gains, if any, shall be confiscated, and he/she may be fined up to four times the illegal gains. If there is no illegal gain, he/she may be fined up to RMB200,000. If any crime is constituted, he/she shall be subject to criminal liabilities according to law. According to the provision of the Criminal Law of the People's Republic of China, whoever forges another person's patent shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention, and concurrently or independently be sentenced to a fine.

(For details, please refer to Articles 60 to 67 of the Chinese Patent Law amended on December 27, 2008, Article 216 of the Criminal Law of the People's Republic of China)

2.5.2 The Hong Kong Special Administrative Region

In the case of an infringement of patent, the proprietor of a patent or an exclusive licensee can bring civil proceedings against the infringement. By instituting legal proceedings against the infringement, the plaintiff may be granted the following forms of relief under the Patents Ordinance: an injunction, orders for delivery up (the court orders the defendant to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which the product is inextricably comprised), damages, an account of the profits derived from the infringement and a declaration that the patent is valid and has been infringed by the defendant.

2.5.3 The Macao Special Administrative Region

The remedy for patent infringement in the Macao SAR can be obtained by measures of administration and jurisdiction.

In the Macao SAR, the administrative protection in the field of intellectual property is a relative protection. The duty of the administering and enforcing department is to prevent, strike and stop the infringing activities in intellectual property. In the case of an infringement of the exclusive right of a registered patent, the right owner may raise an action via the Macao Customs and other empowered entities in order to protect his/her own right.

The principal measure for remedy of patent infringement is judicial protection. In the case of an infringement of the exclusive right of a registered patent, the right owner may have the dispute resolved by instituting a legal process at judicial authorities. Consequently, the infringer will be imposed sanction against the infringement and thus the violation of the owner's right can be avoided. Therefore, the goal of protecting the interest of the right owner of patent can be achieved.

3 Designs

3.1 Designs Laws and Related Rules

3.1.1 Guangdong Province

Patent Law of the People's Republic of China (amended on 27 December 2008)

Implementing Regulations of the Patent Law of the People's Republic of China

Regulation on National Defense Patent

Guangdong Provincial Regulations on the Protection of Patents

Provisions on the Methods for Marking the Patent Marks and Patent Numbers

Measures for the Compulsory Licensing for Patent Implementation

Certain Questions Concerning Implementation of Customs Protection of Patents Provisions

Regulations on Patent Commissioning

(website: www.sipo.gov.cn/sipo2008/zcfg)

3.1.2 The Hong Kong Special Administrative Region

Registered designs laws and related rules in Hong Kong are as follows:

➤ Registered Designs Ordinance (Cap. 522)

➤ Registered Designs Rules (Cap. 522A)

(website: www.ipd.gov.hk/eng/intellectual_property/ip_laws/designs.htm)

The registration of a design is valid for a maximum of 25 years and the registration is renewable every 5 years. The owner has the exclusive right to the design in relation to the article for which the design is registered.

Only the owner of a design is entitled to register a design. Any person may obtain ownership by commissioning the creation of the design, or engage another person under an employment contract to create the design or by assignment of the design, etc.

Only new designs are registrable. Design owners should keep the design confidential until they file an application to register it. If the design owners use the design in manufacturing, publish it, or disclose it (for example by publishing it in a catalogue or placing an order to manufacture the design product) before filing an application, the registration will be invalid even though the design has been registered because the design could not be considered new on the application date.

It is only under limited circumstances that the disclosure of a design will not destroy its novelty. Section 9 of the Registered Designs Ordinance of Hong Kong provides for the specific circumstances and requirements for confidential disclosure. If it is necessary for a

design owner to disclose the details of a design before filing an application, he/she should seek advice from a lawyer or intellectual property agent to ensure that the disclosure of the new design will not destroy its novelty.

3.1.3 The Macao Special Administrative Region

The Industrial Property Code of Macao (General provisions: Article 1-53, Industrial Property Registration: Article 54-59, Industrial Designs and Models: Article 150-196, Legal recourse: Article 275-283, Monitoring and penalties: Article 284-314) (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link), which was approved by the Decree-Law no. 97/99/M, was published on 13 December 1999 and came into effect on 6 June 2000.

3.2 Product Classification

3.2.1 Guangdong Province

“Design” refers to any new design of the shape, the pattern or their combination, or the combination of the colour with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application. The duration of a design patent is 10 years, counting from the date of filing of the application.

The third amendment was made to the Chinese Patent Law on 27 December 2008 and became effective on 1 October 2009. The Chinese Patent Law amended on 25 August 2000 was still in effect before 1 October 2009. According to Article 27 of the Patent Law of 2000, when a design patent application is filed, the product incorporating the design and the class to which that product belongs should be specified. Under the Announcement of the Chinese Patent Office (No. 7), the International Patent Classification (4th Edition) is adopted by the SIPO to classify the Invention and the Utility Model, and the Classification for Design has also been published.

The Classification for Design includes classes and sub-classes. For details of the Announcement of the Chinese Patent Office (No. 7), please refer to the following website: www.sipo.gov.cn/sipo/flfg/zl/bmgfxwj/200706/t20070614_174991.htm

3.2.2 The Hong Kong Special Administrative Region

When filing an application for registration of a design, the applicant has to specify the class of the article to be registered in accordance with the classification of the International Classification for Designs (the Locarno Classification). Applicants may check details of the Locarno Classification at www.wipo.int/classifications/nivilo/locarno/index.htm (in English

and French only).

3.2.3 The Macao Special Administrative Region

In the Macao SAR, design is called industrial design or model. The International Classification for Designs (the Locarno Classification) (same website as above) is used for classification.

3.3 Application Methods, Fees, Procedures and Processing Time for Design Registration

3.3.1 Guangdong Province

1. Application Methods:

Design is regarded as a type of patent in the Mainland. A design patent application can be filed with the patent administration department under the State Council either by the applicant(s) or by the patent agency authorised by the applicant(s).

2. Procedures:

To file a design patent application, the applicant is required to file a request together with the drawings or photographs of the design, and the product incorporating the design and the class to which the product belongs should be indicated.

The date on which the patent administration department under the State Council receives the patent application shall be deemed as the filing date. If the application is sent by mail, the date of the postmark shall be deemed as the filing date.

Where, within 6 months from the date on which an applicant first filed a design patent application in a foreign country, and a design patent application for the same subject matter is filed in China, the applicant may enjoy the right of priority in accordance with any agreement entered into between the relevant foreign country and China; or in accordance with any international treaty to which both countries are parties; or on the basis of the principle of mutual recognition of the right of priority.

An application for a design patent should be limited to one design. As to two or more similar designs for the same product or for products which fall into the same class and are sold or used in sets, may be filed as one application.

(For details, please refer to Articles 27 - 33 of the Chinese Patent Law amended on 27 December 2008)

3. Fees:

The fee for filing a design patent application is RMB500*. The reduction rate is as follows: For non-duty application, the filing fee is reduced by 85%, i.e. RMB75; for duty related application, the filing fee is reduced by 70%, i.e. RMB150*.

4. Processing Time:

The examination procedure for a design application includes acceptance, preliminary examination and grant. For designs, since no publication or substantive examination is required, it takes significantly less time from filing to grant than an invention patent application.

3.3.2 The Hong Kong Special Administrative Region

All applicants should provide an address for service in Hong Kong. Those who wish to submit their design applications through the e-filing system have to register with IPD as e-filers beforehand. E-filers should possess an e-Cert issued by a recognised certification authority in Hong Kong. For information on e-filing services, please visit the website of IPD (website: <https://iponline.ipd.gov.hk>).

To apply for the registration of a design, the applicant should complete and submit a Designs Form D1. The application fee for registration of a single design includes a filing fee of HK\$785* and an advertisement fee of HK\$155*. For details of the application forms and fees, please visit the website of IPD (website: www.ipd.gov.hk/eng/forms_fees/design.htm).

If an application is in order and meets the registration requirements, the minimum time required for the whole process is 2 months (from the date of receipt of the application to the date of registering the design by the Designs Registry).

IPD provides free online search services (website: <http://ipsearch.ipd.gov.hk>). Any person may make use of these services to check records of registered designs.

3.3.3 The Macao Special Administrative Region

When filing an application for registration of an industrial design or model, the applicant should submit the “Application for Registration of Industrial Design or Model” form, abstract and the drawings. Where appropriate, the application shall be accompanied by the following documents: Power of attorney, documents proving the priority right claim, translated copies (in Chinese or Portuguese) of certificates or other documents that are not written in any official languages of the Macao SAR, and other supporting documents.

When completing the “Application for Registration of Industrial Design or Model” form,

please note the followings:

- Application forms should be completed in Chinese or Portuguese;
- For those who do not hold valid Macao SAR Resident's Identity Cards, or are not bodies corporate registered in the Macao SAR, they could appoint one of the followings as their agent: lawyer registered with the Macao Lawyers Association; individual who is residing in the Macao SAR; body corporate registered in the Macao SAR. The form should then be signed by the agent;
- Each application form is only applicable to one and only one industrial design or model registration;
- For applications filed by individuals or by agents as individuals: Macao SAR Resident's Identity Card is required for certification and identification. Signature's authenticity will be examined by the Economic Services. For applications filed by bodies corporate or by agents as bodies corporate: the legal representatives who have the authority should sign the form. Official certification of authenticity is required, through a Notary Office of the Macao SAR.

“Application for Registration of Industrial Design or Model” form along with the supporting documents should be handed in to the Industrial Property Application Counter of Reception Center of the Economic Services. The application fee of MOP 1,000* together with the payment slip should be submitted and paid within 8 working days after an application number had been assigned and the payment slip was received. Regarding the “Application for Registration of Industrial Design or Model” form and fee, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link and the “Intellectual Property – Fees” link).

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link), once 12 months have elapsed from the date of filing the application or, in case a priority right was claimed, from the claimed date. Starting from the publication of the application notice, and up to the date the registration is granted, any person may file an opposition to a specific application for industrial design or model registration.

Besides, within 30 months from the date of filing of the application, the applicant should file a request of examination to the Economic Services by completing the “Application of Other Actions” form, otherwise the application for industrial design or model registration will be refused.

All applicants can make use of the website of the Economic Services (website: www.economia.gov.mo, and click the “e-Services – Information Enquiry” link) for searching of the basic information of filed industrial designs or models. The service is free of charge.

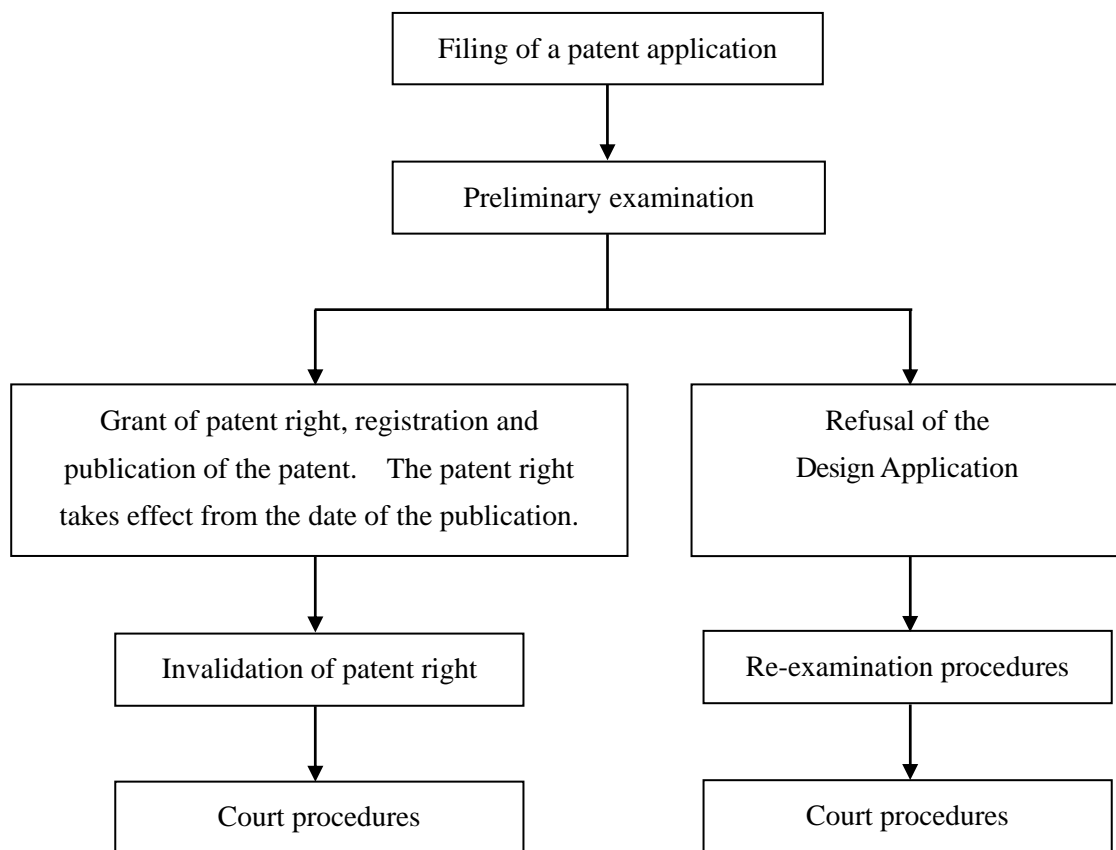
***Note: The above fee standards may be adjusted. Please visit the relevant official websites for the latest fee details.**

3.4 Design Examination

3.4.1 Guangdong Province

If no cause for refusal of the design patent application is found after preliminary examination, the patent administration department under the State Council will make a decision to grant the patent right for the design, issue the patent certificate, register and publish it. The patent right for design shall take effect from the date of the publication. The examination process of the application for design patent is the same as that for utility model patent.

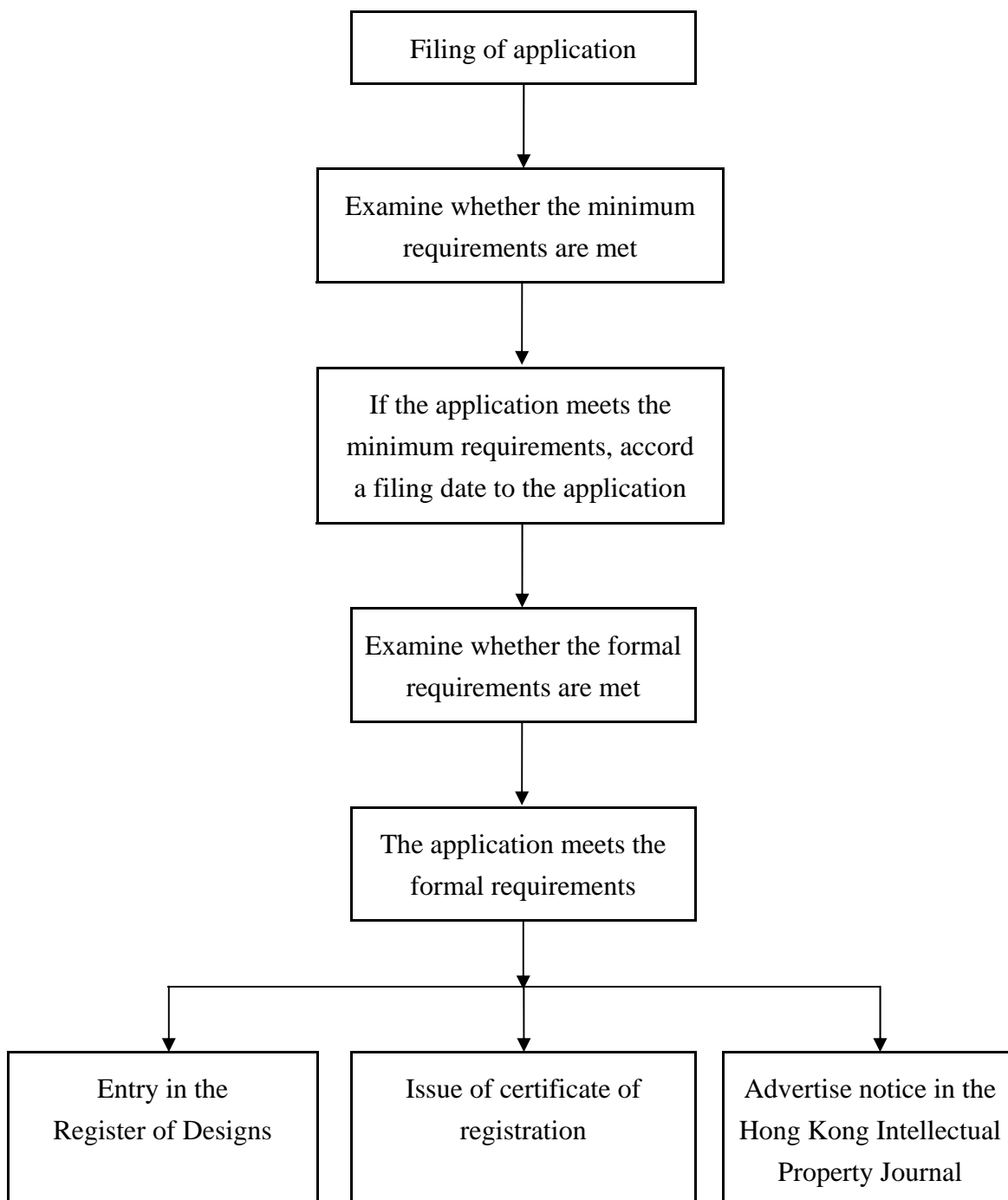
Flowchart of Examination of Application for Design Patent



3.4.2 The Hong Kong Special Administrative Region

Upon receipt of an application, the Designs Registry will process it in accordance with the procedures shown in the following flowchart and paragraphs.

Flowchart of Examination of Application for Design



The first stage – Accord a filing date

Upon receipt of an application, the Designs Registry will notify the applicant of the filing date of the application within about 10 working days.

The filing date is the date on which the Designs Registry receives the following documents and fees:

- a request for registration of the design;
- a representation of the design which must be suitable for reproduction;
- the applicant's name and address; and
- the prescribed fees.

Once the design is registered, the validity of the registration counts from the filing date of the application. It is also the date for determining the novelty of the design (unless priority is claimed).

The second stage – Examine on the formal requirements

After notifying the applicant of the filing date, the Designs Registry will examine whether the formal requirements are met. It is an examination of the information and documents required in the application form. The Designs Registry will neither conduct a substantive examination for the application (e.g. whether the design is new), nor search the records of registered designs.

If the application is not in order, the Designs Registry will notify the applicant to correct the deficiencies within 3 months. Failure to correct the deficiencies in time may result in the application being deemed withdrawn.

The third stage - Registration and publication

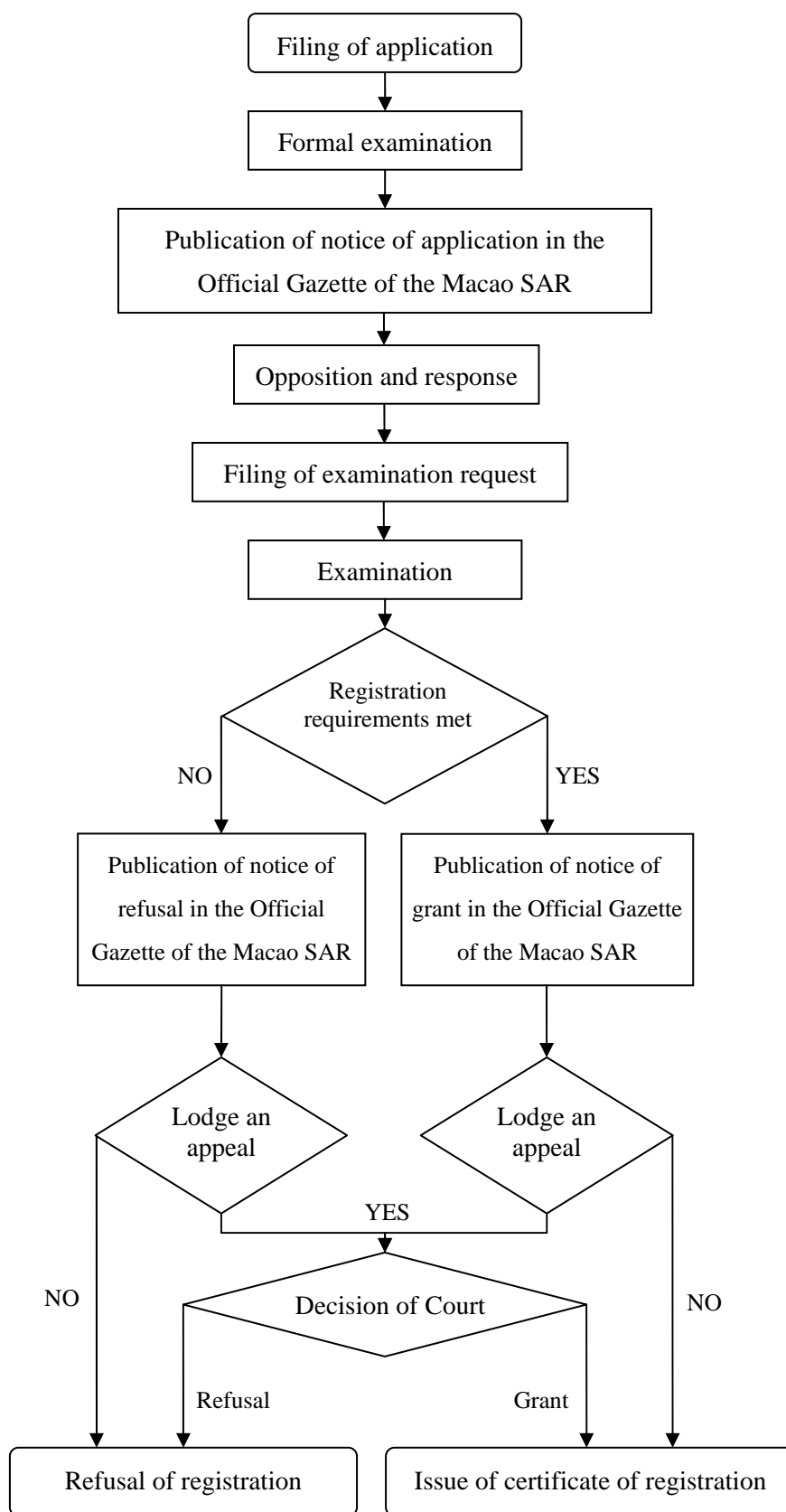
If the formal requirements of the application are met, the Designs Registry will register the design, publish the registration in the Hong Kong Intellectual Property Journal (website: www.ipd.gov.hk/eng/ip_journal.htm and issue a certificate of registration).

3.4.3 The Macao Special Administrative Region

The examination of an application for industrial design or model registration can be divided into five stages:

- Formal examination;
- Publication of notice of application; Any person may oppose the application;
- Examination; Preparation of examination report;
- Registration; Publication of notice of registration;
- Upon expiry of the appeal period, issue of certificate of registration.

Flowchart of Application Process for Registration of Industrial Design or Model



The first stage - Formal examination

Once the Economic Services has received the application for industrial design or model registration, it will, within 1 month, proceed to its formal examination to check if the application form and supporting documents satisfy the legal requirements.

If the application lacks any of the required elements, or should it not be in order, the applicant would be notified by the Economic Services. His/her application shall be rectified within 2 months upon the notification. If the applicant is not notified, he/she will have a maximum of 3 months from the filing of the application to make it in order.

The second stage - Publication of notice of application; any person may oppose the application

If an application is in order, notice of the application will be published in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link), once 12 months have elapsed from the date of filing the application or, in case a priority right was claimed, from the claimed date.

Starting from the publication of the application notice, and up to the date the registration is granted, any person may file an opposition to a specific application for industrial design or model registration, and it is to be filed with a completed “Application of Other Actions” form. A duplicate of the opposition will be forwarded to the applicant by the Economic Services. The applicant may respond to the complaint, and it is to be filed with a completed “Application of Other Actions” form within 2 months of the notification. Regarding the application form, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link).

For further information on opposition of industrial design or model application, please refer to Article 166 of the Industrial Property Code (website: www.economia.gov.mo, and click the “Intellectual Property – Laws & Regulations” link).

The third stage - Examination; Preparation of examination report

Within 30 months from the date of filing of the application, the applicant should file a request of examination to the Economic Services by completing the “Application of Other Actions” form, otherwise the application for industrial design or model registration will be refused. Regarding the application form, please visit the website of the Economic Services (website: www.economia.gov.mo, and click the “Intellectual Property – Download Application Forms” link).

On completion of the examination, the Economic Services will make a decision on the registration of the industrial design or model.

The fourth stage - Registration; Publication of notice of registration

If an application satisfies the registration requirements under the Industrial Property Code and there is no opposition within the specified time limit or the opposition is unsuccessful, the application will proceed to the registration stage. The Economic Services will then publish the notice of registration in the Official Gazette of the Macao SAR (website: www.economia.gov.mo, and click the “Intellectual Property – Official Gazette” link).

If an application does not satisfy the registration requirements under the Industrial Property Code, the Economic Services will publish the ruling of refusal of registration in the Official Gazette of the Macao SAR (same website as above).

The fifth stage - Upon expiry of the appeal period, issue of certificate of registration

An applicant may lodge an appeal to the Court of First Instance against the decision, within 1 month from the date of publication of notice of registration in the Official Gazette of the Macao SAR. Upon the end of the appeal period, or 5 working days after the court decision was made in the event of an appeal, the applicant should submit the original receipt of the application fees at the Industrial Property Application Counter of Reception Center of the Economic Services to obtain the certificate of registration.

3.5 Means of Relief for Infringement of Designs

3.5.1 Guangdong Province

Design is regarded as a type of patent in the Mainland and the channels for obtaining relief for infringement of designs are the same as those for patent infringement. Please refer to “2.5 Means of Relief for Infringement of Patents” above for the part on Guangdong Province.

3.5.2 The Hong Kong Special Administrative Region

In the case of an infringement of design, the registered owner of a design or the exclusive licensee can bring civil proceedings against the infringement. By instituting legal proceedings against the infringement, the plaintiff may be granted the following forms of relief under the Registered Designs Ordinance: damages, an injunction, orders for delivery up (the court orders the defendant to deliver up the infringing articles or anything specifically designed or adapted for the making of infringing articles), an account of profits derived from the infringement or other forms of relief.

3.5.3 The Macao Special Administrative Region

The remedy for industrial design or model infringement in the Macao SAR can be obtained by measures of administration and jurisdiction.

In the Macao SAR, the administrative protection in the field of intellectual property is a relative protection. The duty of the administrating and enforcing department is to prevent, strike and stop the infringing activities in intellectual property. In the case of an infringement of the exclusive right of a registered industrial design or model, the right owner may raise an action via the Macao Customs and other empowered entities in order to protect his/her own right.

The principal measure for remedy of industrial design or model infringement is judicial protection. In the case of an infringement of the exclusive right of a registered industrial design or model, the right owner may have the dispute resolved by instituting a legal process at judicial authorities. Consequently, the infringer will be imposed sanction against the infringement and thus the violation of the owner's right can be avoided. Therefore, the goal of protecting the interest of the right owner of industrial design or model can be achieved.

4 Copyright

4.1 Copyright Laws and Related Rules

4.1.1 Guangdong Province

Copyright Law of the People's Republic of China

Implementing Regulations of the Copyright Law of the People's Republic of China

Computer Software Protection Regulations

Publication Administration Regulations

Measures for Implementation of the Administrative Punishment of Copyright

Other policies and rules relating to copyright

(Website: www.xwcbj.gd.gov.cn/news/html/zcfg/index.html)

4.1.2 The Hong Kong Special Administrative Region

(A) Copyright Ordinance (Cap. 528)

(website: www.ipd.gov.hk/eng/intellectual_property/ip_laws/copyright.htm)

The Ordinance came into effect on 27 June 1997. Since then, it has undergone a number of amendments for improvements and modernisation. The Ordinance complies with the relevant standards for copyright protection as laid down in the international conventions and maintains a balance between the rights of copyright owners and the interests of society as a whole.

The Hong Kong Special Administrative Region (HKSAR) Government is reviewing the Ordinance so as to strengthen copyright protection in the ever changing digital environment. Legislative work will commence after consensus among different sectors has been reached.

(B) Prevention of Copyright Piracy Ordinance (Cap. 544)

(website: www.ipd.gov.hk/eng/intellectual_property/ip_laws/copyright.htm)

The Ordinance came into effect on 29 May 1998. It mainly aims to regulate optical disc manufacturers in the HKSAR to combat the production of pirated optical discs. Any person wishing to manufacture optical discs in the HKSAR must apply for a licence from the Customs and Excise Department (C&ED). The optical discs must be manufactured in a licensed premises. Optical discs produced by a licensed manufacturer must be marked with the manufacturer's code for identification purpose. The Ordinance has undergone a number of amendments. One of the major amendments which became effective on 1 April 2001 mainly aims to deter bootlegging activity in places of public entertainment. Under the amended ordinance, a person will commit a criminal offence if he/she, without lawful

authority or reasonable excuse, brings video recording equipment into a cinema, theatre or concert hall.

4.1.3 The Macao Special Administrative Region

The Code of Author's Right and Related Rights was approved by Decree-Law no. 43/99/M on 16 August 1999 and came into effect on 1 October 1999. (website: <http://www.economia.gov.mo/public/docs/LR/legislation/en/DL43-99-e.pdf>)

The Code consists of 6 chapters and there are totally 223 articles. It regulates the content, relegation, protection period, international protection scope and usage of the author's right. In the meantime, it regulates the legal responsibility for action of infringing the author's right.

4.2 Categories of Work subject to Copyright Protection

4.2.1 Guangdong Province

According to Article 3 of the Copyright Law of the People's Republic of China, the term "works" under the protection of the Copyright Law includes works of literature, art, natural sciences, social sciences, engineering and technology created in any of the following forms:

- (1) Written works;
- (2) Oral works;
- (3) Musical, dramatic, singing, choreographic and acrobatic works;
- (4) Works of fine arts and architecture;
- (5) Photographic works;
- (6) Cinematographic works and works created by a process analogous to cinematography;
- (7) Graphic works such as drawings of engineering designs and product designs, maps and sketches, and model works;
- (8) Computer software; and
- (9) Other works as provided for in laws and administrative regulations.

4.2.2 The Hong Kong Special Administrative Region

Under the Copyright Ordinance, the following works are protected by copyright:

- original literary works (such as books and computer software), musical works (such as musical compositions), dramatic works (such as plays) and artistic works (such as drawings, paintings and sculptures);
- sound recordings (such as compact discs);
- films (including music videos);
- broadcasts;

- cable programmes;
- typographical arrangement of published editions of literary, dramatic or musical works.

Copyright is an automatic right which subsists in a work when it is created and recorded. No registration formalities are required for a copyright owner to obtain copyright protection. The copyright law also protects the works created in and outside the HKSAR, irrespective of the nationality and domicile of the authors.

Apart from the above copyright works, performers of live performances are also entitled to a separate right to prevent unauthorised exploitation of their performances, such as making a fixation of the performance or broadcasting live the performance.

4.2.3 The Macao Special Administrative Region

The protection granted by the Author's Right Law presumes the manifestation of the work. In accordance with the Code, the followings in particular are protected works in so far as they are original:

- literary, journalistic, scientific and other writings, including computer programmes;
- lectures, speeches, addresses and sermons;
- dramatic and dramatic-musical works and the direction thereof;
- works of choreography or mime that are expressed in written or any other form;
- musical compositions, with or without words;
- cinematographic, television, video and other audiovisual works;
- works of drawing, tapestry, painting, sculpture, ceramics, glazing, engraving, lithography and architecture;
- photographic works and works produced by processes analogous to photography;
- works of applied art, industrial designs or models and designer works that constitute artistic creations;
- illustrations and maps;
- plans, sketches and three-dimensional works relating to architecture, geography or other sciences;
- slogans or mottoes, even if of an advertising nature;
- parodies and other literary or musical compositions, even if inspired by the theme or subject of another work;
- databases and other compilations that are original in the arrangement of their subject matter or the selection of their contents.

The author's right is an automatic right in the Macao SAR. Once the work is finished, no matter its disclosure, publication, use or economic exploitation, the author will enjoy the right protected by law without any registration formalities. However, the author's right is a

prescriptive right in general. In accordance with the law, the right shall mainly lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously. Nevertheless, the actual protection period of work may depend on classification of the work.

The Code not only protects the author's right, it also regulates the protection for the performers, producers of phonograms and videograms, broadcasting organisations and performance contractors who obtained other author's right by law. Their performance, records and broadcasting programmes will also enjoy the protection.

4.3 Exclusive Rights of Copyright Owners

4.3.1 Guangdong Province

According to Article 10 of the Copyright Law of the People's Republic of China, copyright includes the following personal rights and property rights:

- (1) The right of publication, that is, the right to decide whether to make a work available to the public;
- (2) The right of authorship, that is, the right to claim authorship in respect of, and to have the author's name mentioned in connection with, a work;
- (3) The right of revision, that is, the right to revise or authorise others to revise a work;
- (4) The right of integrity, that is, the right to protect a work against distortion and mutilation;
- (5) The right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work, or by other means;
- (6) The right of distribution, that is, the right to provide the original copy of reproductions of a work to the public by selling or donating;
- (7) The right of rental, that is, the right to authorise others to use temporarily a cinematographic work or a work created by a process analogous to cinematography, or computer software, except where the software itself is not the essential object of the rental;
- (8) The right of exhibition, that is, the right to publicly display the original copy or reproductions of a work of the fine arts or of a photographic work;
- (9) The right of performance, that is, the right to publicly perform a work, and to publicly communicate the performance of a work by any means or process;
- (10) The right of presentation, that is, the right to publicly present a work of the fine arts, a photographic work, a cinematographic work, a work created by a process analogous to cinematography, or other works, by projector, slide projector or any other technology or instrument;

- (11) The right of broadcasting, that is, the right to broadcast a work or disseminate it to the public by any wireless means, to communicate the broadcast of a work to the public by wire or by rebroadcasting, and to publicly communicate the broadcast of a work by loudspeaker or any other analogous instrument transmitting signs, sounds or images;
- (12) The right of communication through information network, that is, the right to make a work available to the public by wireless means, so that people may have access to the work from a place and at a time individually chosen by them;
- (13) The right of cinematography, that is, the right to fix an adaptation of a work in a medium by cinematography or a process analogous to cinematography;
- (14) The right of adaptation, that is, the right to change a work into a new one with originality;
- (15) The right of translation, that is, the right to change the language in which the work is written into another language;
- (16) The right of compilation, that is, the right to compile by selection or arrangement of pre-existing works or passages therefrom into a new work; and
- (17) Other rights to be enjoyed by copyright owners.

Copyright owners may authorise another person to exercise the rights provided for under Subparagraphs (5) to (17) of the preceding paragraph and receive remuneration in accordance with the terms of contracts or the relevant provisions stipulated in this law.

Copyright owners may transfer, wholly or in part, the rights provided for in Subparagraphs (5) to (17) of the first paragraph in this Article and receive remuneration in accordance with the terms of contracts or the relevant provisions stipulated in this law.

4.3.2 The Hong Kong Special Administrative Region

Generally speaking, the author of a copyright work is the first owner of any copyright in it. For works created by employees in the course of employment, the employer is the first copyright owner of the works unless alternative agreement has been made. For commissioned works, the ownership of copyright depends on the agreement between the author and the commissioner of the work.

Copyright is a private property right and is transmissible by assignment or by testamentary disposition.

A copyright owner has an exclusive right to his/her work. He/she may restrict any third party from doing certain acts without his/her consent. Such acts include:

- copying the work;
- issuing copies of the work to the public;

- renting copies of the work, such as a computer programme, a sound recording, a film and a comic book¹, to the public;
- making available copies of the work to the public (for example, through the Internet);
- performing, showing or playing the work in public;
- broadcasting the work or including it in a cable programme service;
- making adaptations of the work.

Any person who without the licence of the copyright owner of a work does, or authorises another to do, any of the acts restricted by the copyright is deemed to have infringed the copyright in the work and shall be held legally liable.

To strike a balance between the rights of the copyright owners and the public's need for reasonable use of copyright works, certain permitted acts are provided for in the copyright law. It is not an infringement of the copyright in a work if the work is used under certain prescribed conditions. The permitted acts include:

- fair dealing with the work for the purposes of research or private study;
- fair dealing with the work for the purposes of criticism, review or news reporting;
- reasonable use of the work at libraries, archives and schools.

4.3.3 The Macao Special Administrative Region

Author's right is the right of author to his/her works. In general situation, work is generated based on the creation of the author, therefore the author should possess the author's right. However, due to the diversity of the ways to create work, in certain situations, creator may not possess the author's right. According to the Code, the ownership of the economic rights in a work made on behalf of another person, either in fulfilment of official duties or under an employment contract, shall be determined in accordance with what has been agreed.

The author shall enjoy personal rights and economic rights in the protected work. The author's personal rights shall be independent of his/her economic rights, and they are inalienable, unrenounceable and imprescriptible rights. After the author's death, as long as the work does not fall into the public domain, the exercise of personal rights shall accrue to his/her successors. The Macao SAR shall be responsible for protecting the authenticity and integrity of works in the public domain.

The author's personal rights include: to keep the work unpublished; to claim authorship of the work and to be identified as the author on the original, on each copy and in any publicity; to

¹ Provisions on rental rights for comic books have yet to come into effect. The effective date, once decided, will be published in the HKSAR Gazette.

withdraw his/her works from circulation as provided in the law; to ensure the authenticity and integrity of his/her work and object to any mutilation or distortion of it and in general to all and any acts that detract from it and might adversely affect his/her honour and reputation as an author.

The author's economic rights include: to use and economically exploit the work, and to authorise its use and economic exploitation, in whole or in part, by a third party; to receive remuneration for the use that a third party makes of the work, where the author's permission for that use is dispensed with by law.

According to the Code, the author shall have the exclusive right to use his/her work, in whole or in part, including notably the right to disclose, publish and economically exploit it in any form, either directly or indirectly, within the limits of the law. The benefits deriving from exploitation of the work is the basic objective of legal protection.

The author shall have the exclusive right to choose freely the process and conditions for the use and economic exploitation of the work, and may take any known or as yet unknown form according to the type and nature of the work in economic exploitation of the work, and its use in general.

As regulated by the Code, the author shall have the exclusive right to carry out or authorise the following: publication by printing or by any other method of graphic reproduction; performance, recitation, execution, display or presentation in public; cinematographic reproduction, adaptation, performance, distribution and presentation; communication to the public by wire or wireless means; distribution to the public of the original or copies of the work by any means; translation, adaptation, arrangement of the work; total or partial, permanent or temporary, direct or indirect reproduction of the work; construction of an architectural work according to the relevant plans, etc.

The above-mentioned exclusive rights are mutually independent, and the adoption of one of them by the author or an authorised user shall not prejudice the adoption of the other forms also by the author or by an authorised user.

To give expression to the double aims that copyright law protects the interests of author and other copyright holder and promotes broad communication of information, the Code regulates the private use of protected works which shall be free unless otherwise provided, in particular, reproduction of the work exclusively for the private purposes of the person who does it; and the performance of a dramatic or dramatic-musical work, the showing of a cinematographic work, the recitation of a literary work, the performance of a musical work and any other action of communication of a work already disclosed or published, when done without gainful intent and in a place open to the public.

Besides, the following actions of use of work shall be lawful without the consent of the author, which include: the partial or total reproduction of previously published or disclosed works, provided that it is done by a public library, non-commercial documentation centre or scientific institution and that the reproduction is not intended for the public and is limited to the requirements of the institution's own activities; partial reproduction by educational establishments that is exclusively for teaching purposes in those establishments and without gainful intent; the inclusion in one's own work of quotations or summaries from another's, whatever their nature, in support of one's own opinions or for the purposes of criticism, discussion or teaching; the fixation of works of art located in public places by means of photography, videography, cinematography or other similar means, etc.

Though the law permits fair use of protected works in private, the user shall not prevent the normal economic exploitation of the protected work or unjustifiably prejudice the legitimate interests of the author.

4.4 Liability of Business End-Users

4.4.1 Guangdong Province

According to the Copyright Law, Computer Software Protection Regulations and relevant judicial interpretations, business end-user may also be liable to legal responsibility for use of infringing reproductions.

According to Item 1 of Article 48 of the Copyright Law, "anyone who commits the acts of infringement of "reproducing, distributing, performing, presenting, broadcasting, compiling a work or making it available to the public through information network, without permission of the copyright owner", except where otherwise provided for in law, shall "depending on the circumstances, bear the civil liabilities which include ceasing the infringement, eliminating the impacts, making an apology, paying compensation for damages; where public rights and interests are impaired, the administrative department for copyright may order the person to discontinue the infringement, confiscate his unlawful gains, confiscate or destroy the infringing reproductions and may also impose a fine; where the circumstances are serious, the administrative department for copyright may, in addition, confiscate the materials, tools and instruments mainly used to produce infringing reproductions; where a crime is constituted, criminal liabilities shall be investigated in accordance with law."

According to Item 1 of Article 24 of the Computer Software Protection Regulations (promulgated on 20 December, 2001), except where otherwise provided for in law, anyone who commits the acts of infringement of "reproducing wholly or partially the software of the copyright owner, shall "depending on the circumstances, bear the civil liabilities which include ceasing the infringement, eliminating the impacts, making an apology, paying

compensation for damages; where public rights and interests are impaired, the administrative department for copyright may order the person to discontinue the infringement, confiscate the unlawful gains, confiscate or destroy the infringing reproductions and may also impose a fine ; where the circumstances are serious, the administrative department for copyright may, in addition, confiscate the materials, tools and instruments mainly used to produce infringing reproductions; where a crime is constituted, criminal liabilities shall be investigated in accordance with law under the provisions of the Criminal Law on crime of infringing on the copyright and crime of selling the infringing reproductions .”

According to Article 21 of the Interpretation of the Supreme People’s Court on some issues concerning the application of law in trial of copyright civil dispute cases (Law Interpretation [2002] No. 31), “the computer software user uses commercially the computer software without permission or uses it beyond permission scope, he/she shall bear the civil liabilities under provisions of item 1 of Article 48 of the Copyright Law and item 1 of Article 24 of the Computer Software Protection Regulations.”

According to Article 30 of the Computer Software Protection Regulations, “the holder of the software reproduction who does not know or has no reasonable grounds to know that the software is an infringing reproduction shall not bear the compensation responsibility; however, he/she shall stop using and destroy the infringing reproduction. If the cease of using and destruction of the infringing reproduction would cause a serious loss to the reproduction user, the reproduction user may continue the use after making a reasonable payment to the copyright owner of the software.”

4.4.2 The Hong Kong Special Administrative Region

A business end-user² may be subject to legal liabilities for using any infringing copy of a copyright work in the course of business.

(A) Possession of an Infringing Copy of a Copyright Work

If a business organisation knowingly possesses an infringing copy of a copyright work for use in the course of business, the organisation and the individual(s) concerned may be subject to civil liability. Furthermore, if the copyright work is a computer programme, movie, TV drama or musical recording (including musical visual and sound recording), then the business organisation and the directors/partners responsible for the internal management of the organisation may also commit a criminal offence.

² “Business end-user” refers to an organisation which makes use of copyright works in the course of its business even though it does not deal in the copyright works, e.g. an accountancy firm uses computer software in handling its clients’ accounts.

(B) Parallel-imported Copies of Copyright Works³

A business organisation may import or possess a parallel-imported copy of a copyright work for use in the course of business, subject to the following restrictions:

- (i) the parallel-imported work should not be used for commercial dealing purposes (including selling, hiring or distributing for profit); or
- (ii) if the parallel-imported work is a movie, TV drama or musical recording (including musical sound or visual recording), it should not be used for playing or showing in public.

The above restrictions, however, are not applicable to parallel-imported copies of computer software. In other words, it is not illegal for a business organisation to import or possess parallel-imported copies of computer software for commercial dealing purposes.

If a business organisation contravenes the above restrictions on parallel importation, the organisation and individual(s) concerned may be subject to civil liability. Furthermore, if the parallel-imported copy of work involved in the case is imported into the HKSAR within 15 months from the time the work has been first published anywhere in the world, then the organisation and directors/partners responsible for the internal management of the organisation may, in addition to civil liability, commit a criminal offence.

(C) Copying and Distributing Infringing Copies of a Copyright Work

If a business organisation copies a copyright work and/or distributes the infringing copies of the work for use in the course of business without the copyright owner's authorisation, the organisation and individual(s) concerned may be subject to civil liability.

Furthermore, if the organisation regularly or frequently makes copies of copyright works published in books, newspapers, magazines or periodicals and/or distributes infringing copies of such works in the course of business without the copyright owners' authorisation, and the number/value of the copies made exceeds the numeric limits ("safe harbour") prescribed in the copyright law, then the business organisation and directors/partners responsible for the internal management of the organisation may, in addition to civil liability, commit a criminal offence⁴.

³ Generally speaking, parallel-imported copies of copyright works refer to genuine copies which are produced outside the HKSAR and originally destined for sale in markets outside the SAR, but are subsequently imported into the SAR without the consent of the copyright owner.

⁴ The relevant provisions have yet to come into effect. The effective date, once decided, will be published in the HKSAR Gazette.

4.4.3 The Macao Special Administrative Region

(Not applicable)

4.5 Duration of Copyright Protection

4.5.1 Guangdong Province

According to the Copyright Law of the People's Republic of China, no time limit shall be set on the term of protection for an author's right of authorship and revision and his right to protect the integrity of his work.

In respect of a citizen's work, his/her right of publication, reproduction, distribution, rental, exhibition, performance, showing, broadcasting, communication through information network, cinematography, adaptation, translation, compilation and other rights to be enjoyed by copyright owners, that is, the term of protection for the right of publication and the rights as provided for in Subparagraphs (5) to (17) of the first paragraph in Article 10 of the Copyright Law of the People's Republic of China shall be the lifetime of the author and 50 years after his death, expiring on 31 December of the 50th year after his death. For work of joint authorship, the term shall expire on 31 December of the 50th year after the death of the last surviving author.

In respect of the work of a legal entity or other organisation, or the work which is created in the course of employment and the copyright (except the right of authorship) is enjoyed by a legal entity or other organisation, the term of protection for the right of publication, reproduction, distribution, rental, exhibition, performance, showing, broadcasting, communication through information network, cinematography, adaptation, translation, compilation and other rights to be enjoyed by copyright owners shall be 50 years, expiring on 31 December of the 50th year after the first publication of such work. However, such work shall no longer be protected under the Copyright Law of the People's Republic of China if it is not published within 50 years after the completion of its creation.

In respect of a cinematographic work, a work created by a process analogous to cinematography or a photographic work, the term of protection for the right of publication, reproduction, distribution, rental, exhibition, performance, showing, broadcasting, communication through information network, cinematography, adaptation, translation, compilation and other rights to be enjoyed by copyright owners shall be 50 years, expiring on 31 December of the 50th year after the first publication of such work. However, such work shall no longer be protected under the Copyright Law of the People's Republic of China if it is not published within 50 years after the completion of its creation.

4.5.2 The Hong Kong Special Administrative Region

The general rule is that copyright lasts until 50 years after the creator of the work dies. However, there are minor variations to this rule, depending on the type of work or individual circumstances.

Type of Copyright Work/Right	Duration of Copyright Protection
Original literary, musical, dramatic or artistic works	From the date the work is made until 50 years after the author dies
Sound recordings	50 years after the recording is made (or if during this period the recording is released, 50 years after its release)
Films	From the date the film is completed until 50 years after the last of the creators dies (creators refer to the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for and used in the film)
Broadcasts or cable programmes	<ul style="list-style-type: none">• 50 years after broadcast• 50 years after inclusion in the cable programme service
Typographical arrangements of published editions of literary, dramatic or musical works	25 years after first publication
Performers' rights	50 years after performance (or if during this period a fixation of the performance is released, 50 years after its release)

4.5.3 The Macao Special Administrative Region

In accordance with the Code, in the absence of any special provisions, the right shall lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously. The right in works of joint authorship shall lapse 50 years after the death of the last surviving co-creator. The right in a collective work shall lapse 50 years after the first disclosure or publication. The right in an anonymous work shall lapse 50 years after the first disclosure or publication.

Type of work/author's right	Duration of protection of author's right
Original literary, musical and artistic works	50 years after the death of creator
Audiovisual works	50 years after announcement
Applied art works	25 years after completion
Photographic works	25 years after completion
Rights for Performer	50 years after deduction or performance
Rights for producer of phonograms and videograms	50 years after fixation
Rights for broadcasting organisation	20 years after broadcast

The work shall fall into the public domain on the expiry of the right. The Macao SAR government will be responsible to its integrity and protection of authorship.

4.6 Means of Relief for Infringement of Copyright

4.6.1 Guangdong Province

Situations where civil remedies are applicable:

According to Article 47 of the Copyright Law of the People's Republic of China, anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the impacts, making an apology or paying compensation for damages:

- (1) publishing a work without permission of the copyright owner;
- (2) publishing a work of joint authorship as a work created solely by oneself, without permission of the other co-authors;
- (3) having one's name mentioned as author in another person's work in the creation of which one has taken no part, in order to seek personal fame and gain;
- (4) distorting or mutilating a work created by another person;
- (5) plagiarising a work created by another person;
- (6) exploiting a work for exhibition or cinematography or a process analogous to cinematography, or for adaptation, translation, annotation, or for other purposes, without permission of the copyright owner, except where otherwise provided for in this law;
- (7) exploiting a work created by another person without paying remuneration as one should;
- (8) renting a cinematographic work or a work created by a process analogous to cinematography, computer software, or products of sound recording or video recording,

without permission of the copyright owner or the owner of the rights related to the copyright, except where otherwise provided for in this law;

- (9) exploiting the typographical design of a published book or periodical, without permission of the publisher;
- (10) live broadcasting, communicating to the public, or recording a performance, without permission of the performer; or
- (11) committing other acts infringing upon the copyright and the rights related to the copyright.

Situations where civil and administrative remedies are applicable:

According to Article 48 of the Copyright Law of the People's Republic of China, anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the impacts, making an apology or paying compensation for damages; where public rights and interests are impaired, the administrative department for copyright may order the person to discontinue the infringement, confiscate the unlawful gains, confiscate or destroy the infringing reproductions and may also impose a fine; where the circumstances are serious, the administrative department for copyright may, in addition, confiscate the materials, tools and instruments mainly used to produce infringing reproductions; where a crime is constituted, criminal liabilities shall be investigated in accordance with law:

- (1) reproducing, distributing, performing, presenting, broadcasting, compiling a work or making it available to the public through information network, without permission of the copyright owner, except where otherwise provided for in this law;
- (2) publishing a book the exclusive right of publication in which is enjoyed by another person;
- (3) reproducing or distributing a sound recording or video recording of a performance, or making a performance available to the public through information network, without permission of the performer, except where otherwise provided for in this law;
- (4) reproducing or distributing a product of sound recording or video recording or making it available to the public through information network, without permission of the producer, except where otherwise provided for in this law;
- (5) rebroadcasting a radio or television programme or reproducing such a programme without permission, except where otherwise provided for in this law;
- (6) intentionally circumventing or sabotaging the technological measures adopted by a copyright owner or an owner of the rights related to the copyright to protect the copyright or the rights related to the copyright in the work or products of sound recording or video recording, without permission of the owner, except where otherwise provided for in laws or administrative regulations;
- (7) intentionally removing or altering any electronic rights management information attached to a copy of a work, a product of sound recording or video recording, etc.

without permission of the copyright owner or the owner of the rights related to the copyright, except where otherwise provided for in laws or administrative regulations; or
(8) producing or selling a work the authorship of which is counterfeited.

Situations where criminal remedies are applicable:

According to Article 217 of the Criminal Law of the People’s Republic of China, anyone who commits any of the following acts of infringement upon copyright for the purpose of reaping profits shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not less than 3 years and not more than 7 years, and concurrently be sentenced to a fine:

- (1) reproducing and distributing, without permission of the copyright owner, his/her written works, musical works, cinematographic works, television works, video works, computer software and other works;
- (2) publishing a book of which another person has the exclusive publishing right;
- (3) reproducing and distributing, without permission of the phonogram or videogram producer, the phonogram or videogram produced by him; or
- (4) producing and selling a work of art bearing the forged signature of another person.

According to Article 218 of the Criminal Law of the People’s Republic of China, whoever sells, for the purpose of reaping profits, those which he/she well knows are infringing reproductions specified in Article 217 of this law shall, if the amount of his illegal gains is huge, be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention, and concurrently or independently be sentenced to a fine.

Relevant Provisions for Remedy:

Anyone who infringes upon the copyright or a right related to the copyright shall pay compensation for the actual losses suffered by the right owner; or where the actual losses are difficult to calculate, pay compensation to the amount of the unlawful gains of the infringer. The compensation shall include the reasonable expenses that the right owner has paid for to stop the infringement. Where the actual losses of the right owner or the unlawful gains of the infringer cannot be determined, the People’s Court shall, in light of the circumstances of the infringement, decide on a compensation amounting to not more than RMB500,000.

Where a copyright owner or an owner of the rights related to the copyright has evidence to prove that another person is committing or is about to commit an act that infringes upon his/her right and that, unless it is stopped promptly, will cause irreparable harm to his/her legitimate rights and interests, he/she may, before instituting a legal proceeding, apply to the People’s Court for an order to stop the relevant act and for property preservation.

In order to stop the act of infringement, a copyright owner or an owner of the rights related to the copyright may, under conditions where evidence may be destroyed or hard to be obtained afterwards, apply to the People’s Court for evidence preservation before instituting a legal

proceeding. The People's Court may order the applicant to provide a surety. Where no surety is provided, the application shall be rejected.

When trying a case where the copyright or a right related to it is infringed upon, the People's Court may rule to confiscate the unlawful gains, the infringing reproductions and money and things of value used for illegal activities.

A publisher or a producer of reproductions who fails to prove that he/she is legally authorised in publishing or producing of the reproductions, or a distributor of reproductions or a renter of reproductions of a cinematographic work or a work created by a process analogous to cinematography, computer software, sound recording or video recording who fails to prove the legal source of the reproductions that he distributes or rents, shall bear legal liabilities.

Any dispute over copyright may be settled through mediation, it may also be submitted to an arbitration body for arbitration under a written arbitration agreement between the parties or under the arbitration clause in the copyright contract. Any party may take legal proceedings directly in a People's Court where there is neither a written arbitration agreement between the parties nor an arbitration clause in the contract.

(For details, please refer to Articles 47-55 of the Copyright Law of the People's Republic of China, Articles 217-218 of the Criminal Law of the People's Republic of China)

4.6.2 The Hong Kong Special Administrative Region

(A) Civil Liability

A copyright owner can bring civil proceedings against any person who infringes his/her copyright in court. The court may grant an injunction to prevent further infringing acts, and order the infringer to deliver up all infringing items, disclose details of the infringement and give an account of the profits derived from the infringement or pay damages to the copyright owner.

(B) Criminal Liability

C&ED of the HKSAR is responsible for carrying out criminal investigation into infringement activities, and the Department of Justice will initiate criminal prosecution against the suspected infringers. Any person can report infringement related crimes to C&ED. Regarding the criminal liability of the business end-user mentioned in Section 4.4, the business end-user, upon conviction, is liable to a term of imprisonment of up to 4 years and a maximum fine of HK\$50,000 per infringing article.

4.6.3 The Macao Special Administrative Region

The remedy for author's right and related right infringement in the Macao SAR can be obtained by measures of administration and jurisdiction.

In the Macao SAR, the administrative protection in the field of intellectual property is a relative protection. The duty of the administrating and enforcing department is to prevent, strike and stop the infringing activities in intellectual property. In the case of an infringement of author's right and related right, the right owner may raise an action via the Macao Customs and other empowered entities in order to protect his/her own right.

The principal measure for remedy of author's right and related rights infringement is judicial protection. In the case of an infringement of author's right and related right, the right owner may have the dispute resolved by instituting a legal process at judicial authorities. Consequently, the infringer will be imposed sanction against the infringement and thus the violation of the owner's right can be avoided. Therefore, the goal of protecting the interest of the right owner of author's right and related rights can be achieved.

4.7 Software Asset Management

4.7.1 Guangdong Province

For the purpose of protecting the rights and interests of computer software copyright owners, regulating interest-relations in the development, dissemination and use of computer software, encouraging the development and application of computer software and promoting advancements in the software industry and information-based national economy, the Computer Software Protection Regulations have been drawn up in accordance with the Copyright Law of the People's Republic of China.

For details of the regulations, please refer to the following website:
www.xwcbj.gd.gov.cn/news/html/xzfg/article/3305157410660.html

4.7.2 The Hong Kong Special Administrative Region

To promote knowledge of software asset management (SAM) among Hong Kong enterprises and to combat business software piracy, the Genuine Business Software Campaign was launched in 2006. The Campaign was initiated by IPD and C&ED of the HKSAR Government and the Business Software Alliance to promote respect for copyright of software assets and encourage business software legalisation.

Under the Campaign, the Business Software Certification Programme (website: www.ipd.gov.hk/eng/promotion_edu/educational_corner/gbsc/bsc_leaflet.pdf) was held from

October 2006 to March 2007 to further enhance SAM awareness. 30,000 small and medium-sized enterprises were approached and provided with information and guidance related to proper SAM and licensing of software. 160 enterprises completed a SAM audit, while 122 of them were found in full compliance and awarded a certificate to give recognition to their compliance. The programme was proved to be a great success.

In October 2007, the Campaign was further expanded. IPD and the Business Software Alliance, in collaboration with 7 business associations, launched the Software Asset Management Consultancy Programme (website: www.ipd.gov.hk/eng/promotion_edu/educational_corner/gbasc/sam_leaflet.pdf). Under the Programme, appointed SAM Contractors were commissioned to visit participating organisations to offer free SAM consulting service. SAM seminars and service offers relating to software legalisation, etc. were also provided. The Programme aims to enhance the SAM knowledge of Hong Kong enterprises, especially small and medium-sized ones, enabling them to understand Hong Kong's new provisions of the copyright law concerning the criminal liability of directors and partners in relation to end-user software piracy so as to minimise their risk of liability. During the programme period from October 2007 to July 2008, over 50,000 organisations were approached. Among them, 648 organisations received the SAM consulting service and were awarded a certificate of participation.

4.7.3 The Macao Special Administrative Region

(Not applicable)

5 References

5.1 Measures to Protect Intellectual Property Rights in Guangdong, Hong Kong and Macao

	Trade Marks	Patents (not including designs)	Designs	Copyright
Guangdong Province	Civil Criminal Administrative	Civil Criminal (only applicable to counterfeiting the patent of the others) Administrative	Civil Criminal (only applicable to counterfeiting the patent of the others) Administrative	Civil Criminal Administrative
The Hong Kong Special Administrative Region	Civil Criminal	Civil	Civil	Civil Criminal
The Macao Special Administrative Region	Civil Criminal Administrative	Civil Criminal Administrative	Civil Criminal Administrative	Civil Criminal Administrative

5.2 Intellectual Property Database for Guangdong, Hong Kong and Macao

With the trend of development towards a knowledge-based economy, it has become an important issue for enterprises nowadays to raise their awareness and capacity of using intellectual property system as well as to sharpen their competitive edge and facilitate their growth through intellectual property and continuous innovation. To help enterprises in Guangdong, Hong Kong and Macao grasp the basic information of the intellectual property systems, various government departments in Guangdong Province, the HKSAR and the Macao SAR, including the Guangdong Intellectual Property Office, the Administration for Industry and Commerce of Guangdong Province, the Administration of Press and Publication (Copyright Bureau) of Guangdong Province, the IPD of the HKSAR and the Economic Services of the Macao SAR, jointly established and officially launched the Intellectual Property Database for Guangdong, Hong Kong and Macao in December 2003.

The database provides a ready access for enterprises, investors and the public to obtain information on intellectual property systems in the Mainland, HKSAR and Macao SAR, as well as searching the laws and regulations, application procedures for registration and

procedures for reporting infringement relating to trade marks, patents, designs and copyright. The database also provides handy references for protecting one's own intellectual property rights or avoiding infringement of the rights of others. In recent years, Guangdong, Hong Kong and Macao keep on enriching and updating the contents of the database to enhance its service quality. The database serves as an effective platform for enterprises and the public in the three places to acquire information relating to intellectual property.

The website of the Intellectual Property Database for Guangdong, Hong Kong and Macao is www.ip-prd.net.

5.3 Websites of Intellectual Property Related Organisations in Guangdong, Hong Kong and Macao

- **Guangdong Province**

Website of the Guangdong Intellectual Property Office:

www.gdipo.gov.cn

Website of the Administration for Industry and Commerce of Guangdong Province:

www.gdgs.gov.cn

Website of the Administration of Press and Publication (Copyright Bureau) of Guangdong Province:

www.xwcbj.gd.gov.cn

Website of the Public Security Department of Guangdong Province:

www.gdga.gov.cn

Website of the Guangdong Sub-Administration of China Customs:

http://guangdong_sub.customs.gov.cn

Website of the Guangdong Higher People's Court:

www.gdcourts.gov.cn

- **The Hong Kong Special Administrative Region**

Website of the Intellectual Property Department:

www.ipd.gov.hk

Website of the Customs and Excise Department:

www.customs.gov.hk

- **The Macao Special Administrative Region**

Website of the Economic Services of the Government of the Macao SAR:

www.economia.gov.mo

Website of the Macao Customs Service:

www.customs.gov.mo

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Important Notice

This booklet only gives a brief introduction to the protection of trademarks, patents, designs and copyright in the Guangdong Province, HKSAR and Macao SAR. It does not seek to be exhaustive and is not meant to give legal advice. For legal advice on intellectual property protection, please seek professional advice from an intellectual property lawyer or agent.

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