
STATUTORY INSTRUMENTS

1990 No. 2291

PROTECTION OF TRADING INTERESTS

The Protection of Trading Interests
Act 1980 (Hong Kong) Order 1990

Made - - - - 20th November 1990

Coming into force - - 12th December 1990

At the Court at Buckingham Palace, the 20th day of November 1990

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 8(8) of the Protection of Trading Interests Act 1980(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Protection of Trading Interests Act 1980 (Hong Kong) Order 1990 and shall come into force on 12th December 1990.

2. It is hereby directed that the Protection of Trading Interests Act 1980(2) shall extend, with the exceptions, adaptations and modifications required to give it effect, as specified in the Schedule to this Order, to Hong Kong.

G. I. de Deney
Clerk of the Privy Council

(1) 1980 c. 11.

(2) Section 7 was amended by section 38 of the Civil Jurisdiction and Judgments Act 1982 (c. 22).

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SCHEDULE TO THE ORDER

THE PROTECTION OF TRADING INTERESTS ACT 1980, AS EXTENDED TO HONG KONG

1.—(1) If it appears to the Governor—

- (a) that measures have been or are proposed to be taken by or under the law of any overseas country for regulating or controlling international trade; and
- (b) that those measures, in so far as they apply or would apply to things done or to be done outside the territorial jurisdiction of that country by persons carrying on business in Hong Kong, are damaging or threaten to damage the trading interests of Hong Kong.

the Governor may by order direct that this section shall apply to those measures either generally or in their application to such cases as may be specified in the order.

(2) The Governor may by order make provisions for requiring, or enabling the Governor to require, a person in Hong Kong who carries on business there to give notice to the Governor of any requirement or prohibition imposed or threatened to be imposed on that person pursuant to any measures in so far as this section applies to them by virtue of an order under subsection (1) above.

(3) The Governor may give to any person in Hong Kong who carries on business there such directions for prohibiting compliance with any such requirement or prohibition as aforesaid as he considers appropriate for avoiding damage to the trading interests of Hong Kong.

(4) Orders made by the Governor under subsection (1) or (2) above shall be deemed to be subsidiary legislation for the purposes of section 34 of the Interpretation and General Clauses Ordinance (3).

(5) Directions under subsection (3) above may be either general or special and may prohibit compliance with any requirement or prohibition either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions; and general directions under that subsection shall be published in such manner as appears to the Governor to be appropriate.

(6) In this section “trade” includes any activity carried on in the course of a business of any description and “trading interests” shall be construed accordingly.

2.—(1) If it appears to the Governor—

- (a) that a requirement has been or may be imposed on a person or persons in Hong Kong to produce to any court, tribunal or authority of an overseas country any commercial document which is not within the territorial jurisdiction of that country or to furnish any commercial information to any such court, tribunal or authority; or
- (b) that any such authority has imposed or may impose a requirement on a person or persons in Hong Kong to publish any such document or information,

the Governor may, if it appears to him that the requirement is inadmissible by virtue of subsection (2) or (3) below, give directions for prohibiting compliance with the requirement.

(2) A requirement such as is mentioned in subsection (1)(a) or (b) above is inadmissible if it infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong.

(3) A requirement such as is mentioned in subsection (1)(a) above is also inadmissible—

- (a) if it is made otherwise than for the purposes of civil or criminal proceedings which have been instituted in the overseas country; or

(b) if it requires a person to state what documents relevant to any such proceedings are or have been in his possession, custody or power or to produce for the purposes of any such proceedings any documents other than particular documents specified in the requirement.

(4) Directions under subsection (1) above may be either general or special and may prohibit compliance with any requirement either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions; and general directions under that subsection shall be published in such manner as appears to the Governor to be appropriate.

(5) For the purposes of this section the making of a request or demand shall be treated as the imposition of a requirement if it is made in circumstances in which a requirement to the same effect could be or could have been imposed; and

(a) any request or demand for the supply of a document or information which, pursuant to the requirement of any court, tribunal or authority of an overseas country, is addressed to a person in Hong Kong; or

(b) any requirement imposed by such a court, tribunal or authority to produce or furnish any document or information to a person specified in the requirement,

shall be treated as a requirement to produce or furnish that document or information to that court, tribunal or authority.

(6) In this section “commercial document” and “commercial information” means respectively a document or information relating to a business of any description and “document” includes any records or device by means of which material is recorded or stored.

3.—(1) Subject to subsection (2) below, any person who without reasonable excuse fails to comply with any requirement imposed under subsection (2) of section 1 above or knowingly contravenes any directions given under subsection (3) of that section or section 2(1) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine of \$30,000.

(2) A person who is neither a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British National (Overseas) nor a body corporate incorporated in Hong Kong shall not be guilty of an offence under subsection (1) above by reason of anything done or omitted outside Hong Kong in contravention of directions under section 1(3) or 2(1) above.

(3) No proceedings for an offence under subsection (1) above shall be instituted except with the consent of the Attorney General.

4. A court in Hong Kong shall not make an order under Part VIII of the Evidence Ordinance⁽⁴⁾ for giving effect to a request issued by or on behalf of a court or tribunal of an overseas country if it is shown that the request infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong; and a certificate signed by or on behalf of the Governor to the effect that it infringes such jurisdiction shall be conclusive evidence of that fact.

5.—(1) A judgment to which this section applies shall not be registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance⁽⁵⁾ and no court in Hong Kong shall entertain proceedings at common law for the recovery of any sum payable under such a judgment.

(2) This section applies to any judgement given by a court of an overseas country, being—

(a) a judgment for multiple damages within the meaning of subsection (3) below;

(4) Chapter 8 of the Laws of Hong Kong.

(5) Chapter 319 of the Laws of Hong Kong.

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- (b) a judgment based on a provision or rule of law specified or described in an order under subsection (4) below and given after the coming into force of the order; or
- (c) a judgment on a claim for contribution in respect of damages awarded by a judgment falling within paragraph (a) or (b) above.

(3) In subsection (2)(a) above a judgment for multiple damages means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment is given.

(4) The Governor may for the purposes of subsection (2)(b) above make an order in respect of any provision or rule of law which appears to him to be concerned with the prohibition or regulation of agreements, arrangements or practices designed to restrain, distort or restrict competition in the carrying on of business of any description or to be otherwise concerned with the promotion of such competition as aforesaid.

(5) Orders made by the Governor under subsection (4) above shall be deemed to be subsidiary legislation for the purposes of section 34 of the Interpretation and General Clauses Ordinance.

(6) Subsection (2)(a) above applies to a judgment given before the date of the extension of this Act to Hong Kong as well as to a judgment given on or after that date but this section does not affect any judgment which has been registered before that date under the provisions mentioned in subsection (1) above or in respect of which such proceedings as are there mentioned have been finally determined before that date.

6.—(1) This section applies where a court of an overseas country has given a judgment for multiple damages within the meaning of section 5(3) above against—

- (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas); or
- (b) a body corporate incorporated in Hong Kong; or
- (c) a person carrying on business in Hong Kong,

(in this section referred to as a “qualifying defendant”) and an amount on account of the damages has been paid by the qualifying defendant either to the party in whose favour the judgment was given or to another party who is entitled as against the qualifying defendant to contribution in respect of the damages.

(2) Subject to subsections (3) and (4) below, the qualifying defendant shall be entitled to recover from the party in whose favour the judgment was given so much of the amount referred to in subsection (1) above as exceeds the part attributable to compensation; and that part shall be taken to be such part of the amount as bears to the whole of it the same proportion as the sum assessed by the court that gave the judgment as compensation for the loss or damage sustained by that party bears to the whole of the damages awarded to that party.

(3) Subsection (2) above does not apply where the qualifying defendant is an individual who was ordinarily resident in the overseas country at the time when the proceedings in which the judgment was given were instituted or a body corporate which had its principal place of business there at that time.

(4) Subsection (2) above does not apply where the qualifying defendant carried on business in the overseas country and the proceedings in which the judgment was given were concerned with activities exclusively carried on in that country.

(5) A court in Hong Kong may entertain proceedings on a claim under this section notwithstanding that the person against whom the proceedings are brought is not within the jurisdiction of the court.

(6) The reference in subsection (1) above to an amount paid by the qualifying defendant includes a reference to an amount obtained by execution against his property or against the property of a

company which (directly or indirectly) is wholly owned by him; and references in that subsection and subsection (2) above to the party in whose favour the judgment was given or to a party entitled to contribution include references to any person in whom the rights of any such party have become vested by succession or assignment or otherwise.

(7) This section shall, with the necessary modifications, apply also in relation to any order which is made by a tribunal or authority of an overseas country and would, if that tribunal or authority were a court, be a judgment for multiple damages within the meaning of section 5(3) above.

(8) This section does not apply to any judgment given or order made before the extension of this Act to Hong Kong.

7.—(1) If it appears to the Governor that the law of an overseas country provides or will provide for the enforcement in that country of judgments given under section 6 above, the Governor may by Order provide for the enforcement in Hong Kong of judgments of any description specified in the Order which are given under any provision of the law of that country relating to the recovery of the sums paid or obtained pursuant to a judgment for multiple damages within the meaning of section 5(3) above, whether or not that provision corresponds to section 6 above.

(1A) Such an Order may, as respects judgments to which it relates—

(a) make different provisions for different descriptions of judgment;

and

(b) impose conditions or restrictions on the enforcement of judgments of any description.

(2) An Order under this section may apply, with or without modification, any of the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance.

8.—(1) This Act may be cited as the Protection of Trading Interests Act 1980.

(2) In this Act “overseas country” means any country or territory outside the United Kingdom or Hong Kong other than one for whose international relations Her Majesty’s Government in the United Kingdom are responsible.

(3) References in this Act to the law or a court, tribunal or authority of an overseas country include, in the case of a federal state, references to the law or a court, tribunal or authority of any constituent part of that country.

(4) References in this Act to a claim for, or to entitlement to, contribution are references to a claim or entitlement based on an enactment or rule of law.

(5) The Shipping Contracts and Commercial Documents (Hong Kong) Order 1964⁽⁶⁾ (which is superseded by this Act) is hereby revoked.

(6) Subsection (5) above shall not affect the operation of the said Order of 1964 in relation to any directions given under that Order before the extension of this Act to Hong Kong.

⁽⁶⁾ S.I.1964/1847.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the Protection of Trading Interests Act 1980 to Hong Kong with certain exceptions, adaptations and modifications; the text of the Act, as extended to Hong Kong, is set out in full in the Schedule to the Order.