

台灣新經濟簡訊

經建會法協中心

法規鬆綁

新《商標法》7月上路

因應新興企業發展，為健全商標審查機制，並與國際商標規範相調和，智慧財產局大舉修正《商標法》，以迎向國際趨勢。智慧局表示，7月1日起新《商標法》上路，任何可喚起消費者產生特定品牌印象的標識，包括影像、全像圖（雷射圖）、氣味或觸覺商標，都可以向智慧局申請商標註冊。

智慧局局長王美花表示，新實施之《商標法》參酌《商標法新加坡條約》（STLT），將商標的定義擴大為「指任何具有識別性之標識」，包括動態（motion marks）、及全像圖（hologram marks）等新型態標識。目前包括美國、歐盟和新加坡的相關法律，均已依照新的定義，開放此類商標申請。

智慧局指出，包括手機開機動態影片或電影片頭等影像與聲音結合使用的型態，只要多數消費者可據以識別其來自特定的商品或服務提供者，該影像就具有商標的性質，業者可以申請註冊取得商標權。申請人也可將整個影片，也就是將影像與聲音併同申請聯合式註冊。

在氣味及觸覺商標方面，智慧局表示，商標認定須符合具識別性及非功能性的要件，才能取得註冊。以氣味商標來說，商品本身的氣味，例如：皮製品的皮革味，或經常使用於商品的氣味及具有功能性的氣味，如在漂白水添加香味以掩蓋刺鼻味，因無法喚起消費者對特定品牌的聯想，不具識別性，因此不能取得商標註冊。

業者申請影像、全像圖（雷射圖）、氣味或觸覺等非傳統商標註冊時，一般須提供商標實際使用情形、使用時間長短、商品銷售量、市占率及廣告促銷活動等資訊，並舉證消費者已將業者欲申請註冊之商標做為識別企業的標識，以協助智慧局審定是否具有商標識別性。有關非傳統商標註冊資訊請參考智慧局「非傳統商標審查基準」（<http://www.tipo.gov.tw/>）。

OBU 業務範圍大幅放寬

為擴大國際金融業務分行（OBU）業務發展空間，金管會繼 2011 年 7 月開放 OBU 承作人民幣業務後，日前再陸續放寬 OBU 可投資無信用評等的香港人民幣債券（俗稱點心債），同時開放 OBU 以人民幣辦理遠期外匯交割、承作連結大陸股票之衍生性金融商品，以增加企業的投資管道及提升 OBU 人民幣資金運用效率。

根據中央銀行統計，在金管會開放 OBU 辦理人民幣業務後，OBU 人民幣存款自去年 8 月份的 0.71 億元，增至今年 5 月的 138.4 億元，大幅成長 195 倍。銀行業者因人民幣衍生避險需求、企業財務規劃等理財服務商機，大量吸收人民幣，但也面臨大筆資金運用的挑戰。

金管會為協助業界提升人民幣資金運用效率，同意 OBU 可投資無信用評等或信用評等未達主管機關認可評等的香港人民幣債券，投資額度最高可達商業銀行前一會計年度淨值的 10%。然而，金管會官員表示，現行規定對於 OBU

可辦理跟兩岸有關的衍生性金融商品仍有限制。無本金交割之外幣對人民幣遠期外匯（NDF）、無本金交割之外幣對人民幣匯率選擇權（NDO）等主要避險商品，交割幣別僅限使用人民幣以外的外幣。

為讓商品更多元化，金管會決定開放遠期外匯、匯率選擇權等避險工具，可以採用人民幣進行交割；同時新增 OBU 可經營連結大陸地區利率、匯率、股權、商品及信用等資產之衍生性金融商品業務，不僅可讓企業有更多投資與避險選擇，也有助銀行獲取應得之利潤。

保險業投資公共建設上限鬆綁

為引導保險業資金投資公共建設，並擴大保險業之資金運用管道，金管會研議放寬保險業投資公共建設對於同一對象的投資上限，由被投資對象實收資本額的 25% 調高到 35%。

根據現行規定，保險業投資交通運輸設施、公用事業設施及國民住宅等公共建設時，對單一對象的投資上限不能超過被投資對象實收資本額的 25%，保險業者因持股比例未達三分之一，對被投資公司重大政策不具否決權，可能有損其權益，而影響投資意願。

金管會為推動保險業投資各項公共建設，因此參考《公司法》對公司重大經營策略之表決權持股比例規定，修正「保險業資金辦理專案運用公共及社會福利事業投資管理辦法」第 7 條及第 9 條。

修法後，保險業投資同一對象的上限提高至 35%，除有助保險業資金運用外，同時因持有被投資對象三分之一以上之公司股權，將可就被投資公司之重大政策適當表達意見，有助提高保險業者之風險控管能力及投資意願。🔗

Taiwan New Economy Newsletter

Deregulation Progress

Major Trademark Act revision implemented in July

A major revision of the Trademark Act, worked out by the Taiwan Intellectual Property Office (TIPO) with the aim of accommodating the rise of new emerging enterprises by strengthening the trademark examination mechanism and bringing Taiwan in line with international trademark norms, was implemented on July 1. Under the revised act, any kind of logo that is able to evoke a specific brand image in the minds of consumers, including an image, a hologram, a specific scent or tactile sensation, can now be registered as a trademark.

TIPO Director General Mei-hua Wang noted that the revised Trademark Act, which was formulated in reference to the Singapore Treaty on the Law of Trademarks (STLT), expanded the definition of a trademark to be "any kind of mark with a distinctive character," including motion marks, hologram marks, and other new categories of distinctive qualities. The United States, the European Union, Singapore and other regions that have already adopted this new definition have made these new characteristics and traits available for trademark purposes.

TIPO pointed out that a combination of images and sounds, including a cell phone's startup screen or a film's opening credits, has unique qualities and can be registered as a trademark on condition that it can be used to distinguish products or services as coming from a specific provider. An applicant may even apply for joint registration of sounds and images; in other words, an entire film can now be registered as a business trademark.

TIPO also stressed that scents and tactile sensations must comply with the conditions of distinctiveness and non-functionality, otherwise the selection will not be eligible for trademark registration. In regards to scented trademarks,

for instance, the fundamental scent of a product, such as the noticeable smell of leather, or functional aromas that are already in common usage, such as the scent added to bleach to mask its acrid odor, cannot trigger an individual product association nor do they carry any distinctive qualities – hence they cannot be registered as trademarks.

Those applying for non-traditional trademarks such as images, holograms, scents, and tactile sensations must, in general, provide information on the actual use of the proposed trademark, the length of its usage, the sales volume and market share of the relevant product, advertising and promotional activities, as well as proof that consumers see the trademark which is being applied for as a distinctive logo of the provider. This will help TIPO determine the distinctive quality of the proposed trademark. For more information on non-traditional trademark registration, please visit the TIPO website (<http://www.tipo.gov.tw>) and click on "Examination Guidelines for Non-traditional Trademarks."

Government expands business scope of OBUs

The Financial Supervisory Commission (FSC) has greatly expanded the scope for business development by offshore banking units (OBUs) by allowing them to engage in renminbi (RMB) operations in July last year, and more recently by permitting them to invest in unrated Hong Kong RMB bonds (commonly called "dim-sum bonds"). At the same time, the FSC opened the RMB forward settlements and derivatives linked to Chinese shares businesses to OBUs in order to increase corporate investment channels and enhance the efficiency of RMB capital utilization by the OBUs.

According to statistics compiled by the Central Bank of the Republic of China, after the FSC opened RMB operations to OBUs, their RMB deposits rose from 71 million RMB in August last year to 13.84 billion RMB in May

2012, resulting in a 195-fold increase. Bankers have been taking advantage of RMB hedging and corporate financial planning opportunities to absorb large amounts of RMB funds, but they now face the challenge of how to make good use of these funds.

To help banks utilize their RMB funds more efficiently, the FSC has agreed to allow OBUs to invest in Hong Kong RMB bonds that are unrated or have ratings that do not meet the approval of competent authorities. The ceiling for such investment is set at 10% of a commercial bank's net worth in the previous fiscal year.

FSC officials pointed out, however, that current regulations still place restrictions on the types of cross-strait derivative products that OBUs are allowed to handle. The settlement currency for major hedging instruments such as foreign currency-RMB non-deliverable forwards (NDFs) and foreign currency-RMB non-deliverable options (NDOs) is limited to foreign currencies other than the RMB.

To allow for greater diversity in the array of financial products currently being offered in Taiwan, the FSC has decided to lift the ban on the use of RMB for the settlement of foreign exchange forwards, foreign exchange options as well as other hedging instruments. At the same time, newly established OBUs are allowed to operate derivatives businesses linked to interest rates, forex rates, equity, commodities, credit and other financial services in China, allowing businesses more investment and hedging choices while enabling banks to gain their rightful profit shares.

Ceiling raised for insurance investment in public works

With the aims of attracting investment of insurance capital in public works and expanding the channels of capital utilization by insurance firms,

the Financial Supervisory Commission (FSC) has deregulated the rules of investment in public construction projects by insurance companies. The new set of rules have raised the ceiling on the insurance company's investment in a single public construction project from 25% to 35% of the project's paid-in capital.

Under the original regulations, investment by insurance companies in transportation facilities, public utilities and government housing were limited to 25% of the total invested capital. Since the investor holds less than one-third of the total shares in that scenario, the investor does not have the right to veto the invested company's major policies, thus weakening the investor's willingness to invest if the investor cannot object to potentially detrimental policies.

To encourage the insurance industry to invest in public construction projects, the FSC took into consideration the provisions of the Company Act in regards to the shareholding ratio required for the right to vote on major operational strategies. The subsequent revisions were made to Articles 7 and 9 of the Regulations Governing Use of Insurers' Funds in Special Projects, Public Utilities and Social Welfare Enterprises.

The amended regulations have raised the ceiling on the insurance company's investment in a single public project to 35%. Aside from creating an outlet for more efficient use of capital, the revisions also made it possible for the investor to own more than one-third of the shares, which allows for the investor to have a voice in the invested company's major policies. Overall, the revised rules are aimed at boosting the nation's insurance companies in terms of their risk-control capabilities and their willingness to invest in public facilities. 