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# 香港專利制度檢討

## Review of the Patent System in Hong Kong

商務及經濟發展局 (CEDB)  
知識產權署 (IPD)

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# 背景

## Background

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- 政府在工商事務委員會2011年5月17日的會議上向委員簡介香港專利制度檢討的擬議範圍  
At the Panel on Commerce and Industry meeting on 17 May 2011, the Administration briefed the Panel on the proposed scope of the review of the patent system in Hong Kong.
- 2011年10月4日發出公眾諮詢文件  
Issued public consultation paper on 4 October 2011

# 現行的專利制度

## Current Patent System

由1997年6月開始實施

In operation since June 1997

- 標準專利 – 「再註冊」，以國家知識產權局、英國專利局或歐洲專利局為基礎（「指定專利當局」）  
Standard Patents – Based on a patent granted by SIPO, UK Patent Office or European Patent Office (“designated patent offices”)
- 短期專利 – 直接在香港申請，不需實質審查  
Short-term Patents – Direct application in Hong Kong, no substantive examination
- 專利代理服務 – 並非受規管的專業  
Patent Agency Service – Not a regulated profession

# 檢討的目的

## Purpose of Review

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- (1) 確保制度繼續切合需要  
Ensures the system continues to meet present-day circumstances
- (2) 配合推動香港發展成為區內創新科技樞紐的願景  
Ensures its future positioning is in alignment with the Government's vision to develop Hong Kong into a regional innovation and technology hub

# 諮詢涵蓋的主要議題

## Key Issues for Consultation

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### 標準專利

#### **Standard Patents**

- (i) 香港應否設立「原授專利」制度

Whether an Original Grant Patent (OGP) system should be introduced in Hong Kong

- (ii) 不論對問題 (i) 的答案如何，應否保留現行的「再註冊」制度；如應保留的話，應否作出適當修改

Irrespective of the answer to (i) above, whether the current “re-registration” system should be maintained, and if so, whether the system should be modified as appropriate

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# 諮詢涵蓋的主要議題

## Key Issues for Consultation

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### 短期專利

#### **Short-term Patents**

- (iii) 應否保留短期專利制度，與標準專利制度相輔而行  
Whether the short-term patent system should be retained as a supplement to standard patents
  
- (iv) 如應保留短期專利制度，應否及如何制訂措施，以強化該制度  
Assuming that the short-term patent system is to be retained, whether and if so what measures should be introduced to enhance the efficacy of the system

# 諮詢涵蓋的主要議題

## Key Issues for Consultation

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### 規管專利代理服務

#### *Regulation of Patent Agency Services*

- (v) 應否規管在香港提供的專利代理服務；如應規管的話，應採納什麼形式的制度。

Whether the provision of patent agency services in Hong Kong should be regulated, and if so, what form the regulatory system should take.

# 「原授專利」制度？ Original Grant Patent (OGP) System ?

## 優點

### Merit

- 毋須先在「指定專利當局」提交申請  
No need to apply at designated patent offices
- 方便只需在香港取得標準專利或希望以香港作申請首站人士  
Useful to applicants required patent protection in Hong Kong only, or wishing to first file in Hong Kong

⇒ 創新科技及專利代理業務發展

Development in innovation & technology and patent agency business



# 「原授專利」制度？ Original Grant Patent (OGP) System ?

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## 缺點

### Drawbacks

- 相對高昂的註冊費  
Relatively high registration fees
  - 對已在某「指定專利當局」遞交申請的人士不便  
Not convenient to applicants who have applied at a designated patent office
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# 「原授專利」制度？ Original Grant Patent (OGP) System?

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實質審查的安排

Arrangement for substantive examination

- 自行審查 vs 外判  
In-house vs Outsource

# 可能方案

## Possible Options

- (1) 設立「原授專利」制度，把實質審查外判予其他專利當局，以取代現行的「再註冊」制度  
Introduce OGP system with substantive examination outsourced to other patent office(s) - to replace the current “re-registration” system
- (2) 設立「原授專利」制度，同時保留現行的「再註冊」制度  
Introduce an OGP system and maintain the current “re-registration” system (with appropriate modifications)
- (3) 不設立「原授專利」制度，保留現行的「再註冊」制度  
Do not introduce an OGP system and maintain the current “re-registration” system

# 「再註冊」制度 Re-registration System

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- 若保留「再註冊」制度，考慮適當修改：如增加指定專利當局數目？

If “re-registration” is retained, consider appropriate modifications : expand the no. of designated patent offices?

# 短期專利

## Short-term Patents

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- 應否保留短期專利制度

Whether to retain the short-term patent system

- 如保留短期專利制度，可能的優化措施（例如引入實質審查，使專利有效性更為確定）

Possible refinements of the short-term patent system if retained (e.g. introduce substantive examinations to enhance certainty on patent validity)

# 專利代理服務

## Patent Agency Services

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- 是否設立專利代理服務提供者規管制度  
Whether to establish a regulatory regime for providers of patent agency services

考慮：平衡成本效益及對服務使用者的益處  
Need to consider : Balance between cost effectiveness and benefit to users

# 香港專利制度檢討諮詢委員會

## Advisory Committee on Review of the Patent System in HK

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- 成員包括專業法律、專利代理，學術及科研，工業等界別  
Members consist of : legal professionals, patent practitioners, members of the academia, research and development, and industrial sectors
- 提供改革路向的意見  
Provide advice on direction of the reform
- 建議落實改革的最佳安排  
Suggest best implementation plan

## 下一步工作 Next Step

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- 諮詢期至2011年12月31日  
Consultation period will end on 31 December 2011
- 計劃於2012年上半年公布政府建議的未來路向  
Plan to publish the Government's proposed way forward in the first half of 2012



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謝謝  
**Thank You**