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Panel on Commerce and Industry

Meeting on 19 May 2015

**Updated background brief on
promotion of intellectual property trading in Hong Kong**

Purpose

This paper summarizes the views and concerns expressed by Members during previous discussions on promotion of intellectual property ("IP") trading in Hong Kong.

Background

2. Hong Kong is one of the innovative and creative economy leaders in the region. As an established international financial and trading centre, Hong Kong's favourable and secure business environment creates an ideal foundation for the development of IP trading and has the potential to develop into a regional IP trading hub.

3. Pursuant to the Chief Executive's announcement in the 2013 Policy Address, a Working Group on Intellectual Property Trading¹ ("the Working Group") was set up in March 2013 to advise on the overall strategies to promote the development of Hong Kong as a premier IP trading hub, and to identify appropriate policy and other support measures to facilitate IP trading in Hong Kong. In end 2013, the Working Group endorsed a strategic framework ("the Framework") for forging ahead with the development of IP

¹ The Working Group on Intellectual Property Trading is led by the Secretary for Commerce and Economic Development and comprises Government representatives, industry stakeholders and experts from different fields.

trading in Hong Kong. The Framework covers four strategic areas, namely (i) enhancing the IP protection regime; (ii) supporting IP creation and exploitation; (iii) fostering IP intermediary services and manpower capacity; and (iv) pursuing promotion, education and external collaboration efforts. A summary of the Framework is in **Appendix I**.

Previous discussions

Deliberations of the Panel

4. The Panel was briefed by the Administration on the development of IP trading in Hong Kong and the work progress of the Working Group at its meetings on 21 May 2013 and 20 May 2014. Major views and concerns expressed by members were summarized below.

Enhancing the IP protection regime

5. Pointing out that a sound copyright regime that was conducive to the development of the creative industries would facilitate the development of IP trading and contribute to the vibrancy of Hong Kong's economy, Panel members called for early legislation to update the copyright regime in the digital environment and implementation of measures to enhance Hong Kong's IP protection regime. The Administration was urged to submit the relevant legislative proposals to the Legislative Council ("LegCo") to update Hong Kong's copyright law as soon as possible.

6. The Administration advised that the Government had been taking steps to improve Hong Kong's IP protection regime, including the introduction of the Copyright (Amendment) Bill 2014 on 18 June 2014. According to the Administration, the legislative proposals contained in the Bill would help maintain a robust copyright regime and provide a clear legal framework to promote freedom of creation and expression, enhance the business environment and protect IP. The Bill is being scrutinized by the relevant Bills Committee.

Implementation of the Original Grant Patent system

7. Members considered that a robust patent system which was in line with international standard and tailor-designed to meet local needs would facilitate the development of Hong Kong into a regional IP trading as well as innovation and technology ("I&T") hub. In this connection, the Panel supported the strategic directions recommended by the Advisory Committee

on Review of the Patent System in Hong Kong² which included, among others, introducing an Original Grant Patent ("OGP") system. Members urged the Administration to draw up the legislative proposals for implementing the OGP system as soon as possible, and to conduct public education to promote OGP awareness.

8. The Administration advised that legislative proposals to amend the Patents Ordinance (Cap. 514) were being drawn up to implement the OGP system, refine the short-term patent system and introduce interim measures for regulating patent practitioners in Hong Kong. Subject to the progress of the drafting and other preparatory work, an amendment bill was expected to be introduced into LegCo in the 2014-2015 legislative session with a view to implementing the OGP system in 2016-2017.

Collaboration with the innovation and technology sector and neighbouring countries and cities

9. Members held the view that the development of IP trading would encourage I&T development, enhance local research and development ("R&D") capability, facilitate technology transfer, and promote commercialization of R&D results and branding development. Some members advised that IPD should strengthen communication with the I&T sector and the Innovation and Technology Commission in matters relating to promotion of IP trading in Hong Kong. Members also called on the Administration to leverage on Hong Kong's advantages as an international financial centre and the gateway to China to collaborate with neighbouring countries and cities, in particular cities in the Mainland, to develop IP trading and brand Hong Kong as a regional IP trading hub. The Administration advised that continued efforts would be made to attract overseas/Mainland IP creators, users and intermediaries to use Hong Kong as a marketplace, and to collaborate with the Mainland, overseas and international IP authorities in fostering the development of IP trading in Hong Kong.

Positioning of Hong Kong in IP trading

10. To underpin Hong Kong's positioning in IP trading, some members suggested that relevant statistical information on IP trading-related activities should be collected to analyze the competitive edge of Hong Kong against its potential competitors in the region. The Administration was requested to

² The Secretary for Commerce and Economic Development appointed an Advisory Committee on Review of the Patent System in Hong Kong in October 2011 to advise on –

- (a) how the Administration should position the patent system, having regard to the issues outlined in the public consultation paper of October 2011 and the responses received; and
- (b) how best to implement changes to the patent system, in the light of decisions made by the Administration on the way forward.

formulate a concrete two to five years' work plan with specific policies and support measures to drive the promotion of Hong Kong as an IP trading hub and to complement Hong Kong's efforts to become a regional I&T hub. The Administration undertook to report to the Panel the findings of the statistical survey on IP trading commissioned by the IPD and provide a comparison with the relevant statistics of other jurisdictions in the region as appropriate.

Providing the necessary underpinnings for development of IP trading

11. Some members urged the Administration to provide the necessary hardware and software underpinnings in terms of policy measures, funding, human resource development and public education so as to create an ecosystem that was conducive to the sustained development of IP trading in Hong Kong. As the increase in the demand for high value-added IP intermediary services arising from the development of IP trading would help create quality jobs in Hong Kong, members suggested that the Administration should look into the career development opportunities for Hong Kong professionals in the relevant sectors to be brought about by the development of IP trading. The Administration assured members that the Working Group would formulate specific measures to foster the development of specialized IP intermediary services and manpower capacity in Hong Kong.

12. Members of the Panel also called on the Administration to step up its efforts in promoting respect for IP rights and heightening the business sectors' awareness of IP trading to encourage IP creation, exploitation, and commercialization. They were of the view that local enterprises, especially small and medium enterprises ("SMEs"), should be given more support to help them protect and capitalize on their intellectual assets and increase their competitiveness through branding and upgrading. The Administration was urged to consider promoting the wider application of IP rights through tax deduction.

IP arbitration and mediation

13. Members noted IPD's collaboration with the Hong Kong International Arbitration Centre ("HKIAC") to promote the use of mediation to resolve IP disputes and were concerned that the Government's support in this regard was inadequate. They called for additional resources to support the work of the HKIAC in promoting Hong Kong as an international arbitration and mediation service centre in the Asia Pacific region. Members also suggested that more international arbitration conferences be hosted to demonstrate Hong Kong's capability in dispute resolution. The Administration advised that the Commerce and Economic Development Bureau would collaborate with the Department of Justice in promoting Hong

Kong as an international IP arbitration and mediation centre.

Deliberations of the Establishment Subcommittee

14. During the discussion on the Administration's proposal for the creation of one supernumerary post of Assistant Director of Intellectual Property in the IPD for a period of three years with effect from 1 April 2014 to carry out the work relating to the implementation of the OGP system and the promotion of Hong Kong as an IP trading hub, some members of the Establishment Subcommittee ("ESC") expressed concern that IP trading might drive up IP prices and impede the development of the local creative industries, in particular those involving young entrepreneurs in small business start-ups with little capital. Members urged the Administration to step up promotion of IP knowledge to help young people start their own business in the creative industries. Consideration should also be given to setting up low-fee online trading platforms or providing subsidies to private IP trading platforms to lower the IP trading cost for local creative industries, as well as helping IP buyers and sellers in resolving legal disputes in IP trading.

15. The Administration advised that a number of online platforms on IP trading were set up by private companies to facilitate IP trading between IP sellers and buyers. The fees charged by such platforms were usually low and affordable to the start-ups. To promote IP trading, the Hong Kong Trade Development Council ("HKTDC") had established an IP trading platform in December 2013. The HKTDC's Asia IP Exchange had showcased more than 25 000 IP listings and formed strategic alliances with 28 partners from overseas, the Mainland and Hong Kong.

16. Some ESC members also expressed concern about the absence of a facilitating legal and taxation framework in Hong Kong to complement the work on promoting IP trading. They urged the Administration to review the legal and taxation framework to enhance the attractiveness of the licensing regime. The Administration undertook to relay the relevant view to the Working Group.

Motion passed at Council meeting

17. At the Council Meeting on 20 March 2013, a motion on "Promoting Hong Kong's economic restructuring" moved by Hon Martin LIAO and amended by Hon Kenneth LEUNG, Hon Christopher CHEUNG, Hon TANG Ka-piu, Hon SIN Chung-kai, Hon IP Kin-yuen and Hon Charles Peter MOK was passed. The motion urged the Administration to, among others, restructure public finances and properly use budget surplus to increase recurrent expenditure to promote Hong Kong's economic restructuring, so as

to alleviate social conflicts. Regarding the innovation and information technology industry, the Administration was urged to implement a series of measures, among which included comprehensively reviewing the existing scientific research assistance policies, formulating support policies to attract overseas or mainland enterprises to co-operate with the local scientific research sector, and allocating additional resources to encourage enterprises to undertake R&D projects, so as to develop Hong Kong into an international IP trading hub, thereby creating more quality employment opportunities in scientific and technological industries.

Recent developments

18. On 25 February 2015, the Financial Secretary announced in the 2015-2016 Budget Speech that the Government would set aside \$23 million in the coming three years to roll out a series of new support measures which included launching an IP Consultation Service Scheme to provide free initial IP advice to SMEs, organizing and sponsoring IP manpower training, facilitating the provision of highly specialized IP intermediary services, and launching promotion and public education campaigns. As regards tax deduction for capital expenditure incurred on the purchase of IP rights, consideration will be given to extending the scope to cover more types of IP rights as appropriate.

19. On 23 March 2015, the Working Group released a report³ with recommendations on 28 measures that are drawn up on the basis of the Framework to position and promote Hong Kong as a premier IP trading hub in Asia. The Government has endorsed the Working Group's recommendations for implementation.

Latest position

20. The Administration will brief the Panel on 19 May 2015 on the recommendations of the Working Group in promoting the development of IP trading in Hong Kong and issues relating to promotion of wider application of IP rights through tax deduction.

³ The Report of the Working Group on Intellectual Property Trading was issued to members vide [LC Paper No. CB\(1\)680/14-15\(01\)](#) on 25 March 2015.

Relevant papers

21. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
13 May 2015

Strategic Framework

Vision

Position and promote Hong Kong as the premiere IP trading hub in Asia.

Mission

Leverage and further Hong Kong's advantages in financial, legal and physical infrastructure, IP regime, professional services and specific role as "gateway to China", in attracting international IP trading and management activities to take place in Hong Kong

Build up the necessary clusters conducive to the overall development of Hong Kong as a knowledge-based economy that spearheads exploitation and commercialisation of IP and supports enterprises to make the most of IP as a core business asset that should be built, managed, valued and leveraged strategically to drive innovation and growth

Explore means to promote Hong Kong's creative industries, innovative technologies and IP economies through IP creation, protection, exploitation, management and trading

Strategic Areas

I. Enhancing the IP protection regime

Focus Strategies

1. Develop an Original Grant Patent (OGP) system in Hong Kong in parallel with the existing re-registration system, and encourage quality filings from local, Mainland and overseas

2. Keep the other components of our IP regime (copyright, registered design, trademarks, etc) under constant review to ensure that the system follows international norms, on par with IP regimes of advanced economies, and conducive to IP trading

II. Supporting IP creation and exploitation

3. Support industries in meeting strategic needs through creation, exploitation, acquisition and management of IP

4. Support R&D, technology transfer, and acquisition and commercialisation of IP

5. Support creative industries in engaging in licensing and franchising arrangements

III. Fostering IP intermediary services and manpower capacity

6. Facilitate the provision of highly specialised professional services in IP trading, e.g. –

- IP valuation
- IP financing
- IP insurance
- IP arbitration and mediation
- IP due diligence
- IP matching services (e.g. IP trading platforms)

7. Attract and nurture talents in IP activities, support the building of strong IP related professions

IV. Promotion, education and external collaboration

8. Brand and market Hong Kong as a premiere IP trading hub to attract overseas/ Mainland IP owners and users, as well as inter-mediararies

9. Foster an IP awareness culture in society especially among SMEs and the younger generation, and promote the importance and opportunities brought by IP management and trading

10. Collaborate with Mainland, overseas and international IP authorities in fostering the development of IP trading inter-nationally and in the region

Promotion of intellectual property trading in Hong Kong

List of relevant papers

Date of meeting	Meeting	Minutes/Paper
23/1/2013	Panel on Commerce and Industry	Administration's paper on "2013 Policy Address Policy Initiatives of Commerce, Industry and Tourism Branch and Innovation and Technology Commission, Commerce and Economic Development Bureau" (LC Paper No. CB(1)436/12-13(03)) Minutes of meeting (LC Paper No. CB(1)694/12-13)
19/2/2013	Panel on Commerce and Industry	Administration's paper on "Review of the Patent System in Hong Kong" (LC Paper No. CB(1)534/12-13(05)) Updated background brief on the patent registration system in Hong Kong (LC Paper No. CB(1)534/12-13(06)) Minutes of meeting (LC Paper No. CB(1)830/12-13)
20/3/2013	Council	Motion on "Promoting Hong Kong's Economic Restructuring" moved by Hon Martin LIAO (Hansard) (Page 7648-7782) Motion on "Promoting Hong Kong's Economic Restructuring" (Progress Report)
21/5/2013	Panel on Commerce and Industry	Administration's paper on "Fostering the development of Intellectual Property trading in Hong Kong" (LC Paper No. CB(1)1026/12-13(06)) Background brief on the development of intellectual property trading (LC Paper No. CB(1)1026/12-13(07)) Minutes of meeting (LC Paper No. CB(1)1485/12-13)

Date of meeting	Meeting	Minutes/Paper
17/12/2013	Panel on Commerce and Industry	<p>Administration's paper on "Proposed Creation of one Supernumerary Post of Assistant Director of Intellectual Property in the Intellectual Property Department" (LC Paper No. CB(1)516/13-14(05))</p> <p>Updated background brief on the review of the patent system and development of intellectual property trading in Hong Kong (LC Paper No. CB(1)516/13-14(06))</p> <p>Minutes of meeting (LC Paper No. CB(1)883/13-14)</p>
15/1/2014	Establishment Subcommittee	<p>Proposed creation of one supernumerary post of Assistant Director of Intellectual Property (DL2) in the Intellectual Property Department for three years with effect from 1 April 2014 (EC(2013-14)19)</p> <p>Minutes of meeting (LC Paper No. ESC36/13-14)</p>
20/5/2014	Panel on Commerce and Industry	<p>Administration's paper on "Promotion of intellectual property trading in Hong Kong" (LC Paper No. CB(1)1420/13-14(04)</p> <p>Updated background brief on promotion of intellectual property trading in Hong Kong (LC Paper No. CB(1)1420/13-14(05))</p> <p>Minutes of meeting (LC Paper No. CB(1)1916/13-14)</p>