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Panel on Commerce and Industry

Meeting on 15 March 2016

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

Purpose

This paper provides updated background information on the promotion of intellectual property ("IP") trading in Hong Kong. It also summarizes the views and concerns expressed by Members during previous discussions on 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 trading in Hong Kong. The Framework covers four strategic areas, namely

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.

(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.

4. Upon completion of its work, the Working Group released a report ("the Report") in late March 2015 with 28 recommended measures which fall under the four strategic areas of the Framework above. The Government had accepted the recommended measures to position and promote Hong Kong as the IP trading hub in Asia. A summary of the 28 measures, extracted from the Report is in **Appendix I**.

Previous discussions

Deliberations of the Panel on Commerce and Industry

5. The Panel on Commerce and Industry ("the Panel") was briefed by the Administration on the promotion of IP trading in Hong Kong, as well as the development of the work progress and recommended measures of the Working Group at the Panel meetings on 21 May 2013, 20 May 2014 and 19 May 2015 respectively. Major views and concerns expressed by members and the latest development of the issues concerned were summarized below.

Enhancing the IP protection regime

6. Members pointed 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. They urged the Administration to submit relevant legislative proposals to the Legislative Council ("LegCo") to update the copyright regime in the digital environment and implementation of measures to enhance Hong Kong's IP protection regime.

7. 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 ("Copyright (A) Bill") on 18 June 2014. According to the Administration, the legislative proposals 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.

8. The Bills Committee on the Copyright (A) Bill has completed the scrutiny process and reported to the House Committee on 13 November 2015. Hon CHAN Kam-lam, as Chairman of the Bills Committee on the Copyright

(A) Bill, had given notice to move a total of 12 Committee stage amendments ("CSAs") to the Copyright (A) Bill on behalf of the Bills Committee. Hon WONG Yuk-man had also given notice to move a total of 903 CSAs to the Copyright (A) Bill. The President of LegCo ruled that of the 12 CSAs proposed by Hon CHAN Kam-lam, 10 CSAs on contract override, fair use and user-generated content were admissible, while of the 903 CSAs proposed by Hon WONG Yuk-man, 42 CSAs were admissible². The motion for the second reading of the Copyright (A) Bill was passed at the Council meeting of 20 January 2016. The Bill was still in its Committee stage when the Council meeting of 2 March 2016.

Implementation of the Original Grant Patent system

9. Members considered that a robust patent system would facilitate the development of Hong Kong into a regional IP trading hub and generally supported the introduction of the Original Grant Patent ("OGP") system. When the Panel discussed at its meeting on 21 April 2015 the proposed legislative amendments on the Patents Ordinance (Cap. 514), which among others, sought to implement the OGP system, members urged the Administration to tap the possibilities of fostering mutual recognition of patents with the Mainland and other jurisdictions.

10. The Patents (Amendment) Bill 2015 ("Patents (A) Bill") was introduced into LegCo on 11 November 2015. Among other proposals, the Patents (A) Bill sought to amend the Patents Ordinance (Cap. 514) to implement a new OGP system which would enable applicants to file patent applications directly in Hong Kong without first obtaining a patent from a designated patent office outside Hong Kong. The Patents (A) Bill is currently being scrutinized by a Bills Committee.

Positioning Hong Kong in IP trading

11. To underpin Hong Kong's position 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 and to formulate specific policies and measures to promote Hong Kong as an IP trading hub. The Intellectual Property Department ("IPD") conducted a survey in June 2014 to collect information on IP trading activities in Hong Kong. As announced in June 2015, the results of the survey showed that "staff experience/knowledge" was

² Paragraph 42 of the President's Ruling on Committee stage amendments proposed by Hon CHAN Kam-lam and Hon WONG Yuk-man to the Copyright (Amendment) Bill 2014 dated 7 December 2015.

commonly cited as a major challenge by the respondents engaged in IP trading. The Director of Intellectual Property ("DIP") summarized that the majority of the respondents opined that IP trading could enhance economic growth in Hong Kong. The relevant statistical data and other information gathered would be used in formulating policies and identifying suitable measures to support the development of IP trading in Hong Kong.

12. Some members suggested selecting a few industries where Hong Kong enjoyed good potential for focus development as a start. While the Administration replied that it might consider industries where Hong Kong had an edge, such as the textiles and apparel industries, as pilot industries in the development of IP trading, it also welcomed views from relevant stakeholders on fostering the development of IP trading in all industries concerned.

Introducing measures to strengthen Hong Kong's capacity in IP trading

13. Members considered the \$23 million earmarked in the 2015-2016 Budget insufficient to foster underpinnings for IP trading in the next three years. To sustain the long-term development of IP trading in Hong Kong, members called on the Administration to formulate a comprehensive human resource development plan to strengthen the IP management capacity of local enterprises and to ensure an adequate supply of talents for IP trading in Hong Kong.

14. Moreover, the Administration was urged to consider nurturing talents required for the delivery of IP intermediary services and the career development opportunities for Hong Kong professionals, such as those in the Innovation and Technology sector, to be brought about by the development of IP trading. The Administration replied that IPD was liaising with relevant professional bodies in organizing or sponsoring training courses on IP related subjects to build up the requisite manpower capacity to support IP trading activities in Hong Kong.

15. Regarding initiatives to foster IP management of SMEs, the Administration advised that an IP Manager Scheme in partnership with the major trade associations and SME associations, the Hong Kong Science and Technology Parks Corporation and Cyberport would be launched in May 2015. IPD was also working with the Hong Kong Law Society ("Law Society") to compile and publish a checklist containing basic practical guidelines on "IP audit" and "IP due diligence" to boost SMEs' understanding of IP due diligence and the related benefits.

16. Members enquired whether the six-month pilot IP Consultation Service Scheme jointly launched by IPD and Law Society in December 2014 to provide free initial IP consultation services to SMEs would be operated as a regular scheme upon its completion. In response, the Administration advised that it would consider the feasibility of a formal scheme after reviewing the experience gained during the pilot period.

17. Some other members commented on the immature IP intermediary services sectors in Hong Kong and urged the Administration to implement targeted measures to foster the development of IP financing and insurance markets. The Administration responded that the Hong Kong Business Valuation Forum had released a pioneering Statement of Standard on the reporting of IP valuation for its Registered Business Valuers to follow. This arrangement could provide a basis for IP valuation to help promote IP financing and insurance.

Promoting IP arbitration and mediation

18. Members observed that Hong Kong was lagging behind neighbouring economies in the development of dispute resolution services and suggested the Administration consult legal professionals highly familiar with the IP trading market to formulate strategies and policies on IP dispute resolution services. These members also suggested providing additional resources to Hong Kong International Arbitration Centre ("HKIAC") to promote Hong Kong as an international arbitration centre.

19. The Administration assured the Panel that efforts would be made to feature IP arbitration and mediation when promoting Hong Kong as an Alternative Dispute Resolution ("ADR") center in Mainland and overseas. Moreover, IPD would introduce collaborated initiatives, namely an IP Mediation Workshop focusing on the use of evaluative mediation in resolving IP disputes with the Department of Justice ("DoJ"), as well as taking forward the recommendations of the Working Group in relation to IP arbitration with HKIAC.

Collaboration with neighbouring countries and cities

20. Some members 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.

Deliberations of the Establishment Subcommittee

21. 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. These 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.

22. The Administration advised that a number of online platforms on IP trading had been 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.

23. 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.

Discussions at Council meeting

Motion

24. 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 other things, 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.

Written question

25. At the Council Meeting of 18 June 2014, Hon Dennis KWOK asked a written question on branding Hong Kong as centre for international legal and dispute resolution services in Asia-Pacific region. Among other enquires, Hon Dennis KWOK asked the Administration of the latest progress of the establishment of the Advisory Committee on Promotion of Arbitration ("Advisory Committee") which would advise on and co-ordinate on-going and new initiatives for the promotion of Hong Kong's arbitration services in Asia-Pacific. Furthermore, Hon Dennis KWOK enquired whether the Administration had plans to assist HKIAC in gaining recognition as a formal arbitration commission in the Mainland so as to enable HKIAC to enter the Mainland arbitration field.

26. The Secretary for Justice ("S for J") replied that preparation work for the Advisory Committee was underway and advised that it would be chaired by S for J and formed by the members from the legal profession, the arbitration sector and other related institutions. On 18 December 2014, DoJ announced the setting up of the Advisory Committee, the main objective of which was to coordinate ongoing and new initiatives and overall strategies for the promotion of Hong Kong arbitration services in and outside Hong Kong. As regards allowing Hong Kong arbitration institutions to operate in the Mainland, DoJ had suggested to the relevant Mainland authorities to consider allowing Hong Kong arbitration institutions to set up offices in the Mainland to provide arbitration services directly to Mainland enterprises and implement it on a pilot-basis in selected areas.

Recent developments

27. On 24 February 2016, the Financial Secretary announced in the

2016-2017 Budget that the Government would expand the scope of tax deduction for capital expenditure incurred for the purchase of IP rights from the existing five categories to eight. The additions are layout-design of integrated circuits, plant varieties and rights in performance. The expansion sought to encourage enterprises to engage in the development of IP-related business and to promote Hong Kong as an IP trading hub in the region.

Latest position

28. The Administration will update the Panel on the progress of developing Hong Kong as an intellectual property trading hub on 15 March 2016.

Relevant papers

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

Council Business Division 1
Legislative Council Secretariat
10 March 2016

Summary of 28 recommended actions of the Working Group*

Strategic Area (I): Enhancing the IP protection regime	
1	Build an OGP system which is up to international standards and is user-friendly, through cooperation with reputable patent examination office(s)
2	Explore the feasibility of building up substantive examination capability on niche areas where Hong Kong has an edge in R&D in the longer run
3	Explore cooperation with other patent authorities by making reference to international developments such as the setting up of PPH
4	Review and update the copyright law regularly to ensure that it keeps pace with technological and international developments to meet our economic needs
5	Pursue the proposed application of the Madrid Protocol to Hong Kong taking into account the consultation outcome

Strategic Area (II): Supporting IP creation and exploitation	
6	Launch a scheme for IP Advisory Service to provide free preliminary advisory services to SMEs
7	Keep under review Government's support for R&D activities as well as technology transfer, application and commercialisation of R&D outcomes and seek enhancement where appropriate
8	Sustain Government's support for the creative industries through various dedicated agencies and engagement in licensing and franchising arrangements
9	Continue expansion of Hong Kong's network of CDTAs with its major trading and investment partners so as to enhance Hong Kong's position as an international business and financial centre while providing relief for double taxation

10	Consider tax incentives for IP trading taking into account international practices and concerns, notably expansion of the present tax deduction for capital expenditure incurred on the purchase of IPRs under the IRO
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Strategic Area (III): Fostering IP intermediary services and manpower capacity	
11	Enhance and promote the use of AsiaIPEX launched by HKTDC, for example to encourage IP exchange, licensing and other trading activities
12	Launch an IP Manager Scheme to support SMEs to build up their manpower capacity
13	Consider sponsoring and promoting training courses in IP-related subjects for facilitating the development of IP related services among professionals and nurturing talents
14	Introduce a regulatory regime in the long run for patent practitioners as a complementary component of the future OGP system, and explore interim regulatory measures to be launched along with the OGP system
15	Complete the first survey on IP trading activities in 2015, and review the results for introducing enhancement in future surveys and exploring the feasibility of launching a dedicated survey on the manpower situation of the IP trading industry
16	Support the development of "IP valuation reporting standards" for first-mover use in Hong Kong
17	Seek collaboration with professional bodies to compile an IP due diligence checklist to facilitate businesses, particularly SMEs, in understanding the process and the benefits that it would bring about prior to seeking IP finances and engaging in IP trading activities
18	Focus on building up and enhancing the understanding of IP as an asset class among the financial services sector and the business community through various recommended measures and other education and promotional efforts in the pipeline, and remain vigilant of relevant overseas development to draw lessons, as prerequisites to further exploring the subject of IP financing and insurance

19	Highlight IP as an exemplary specialized area in developing and promoting Hong Kong as an international ADR centre
20	Promote Hong Kong as an international IP arbitration and mediation centre
21	Study the need for legislative amendments to clarify the arbitrability of IP disputes
22	Promote and develop the use of mediation as a means to resolve IP disputes in Hong Kong and explore the use of evaluative mediation on top of facilitative mediation for the purpose
23	Work with local arbitral and mediation bodies to improve offerings on IP arbitration and mediation

Strategic Area (IV): Pursuing promotion, education and external collaboration efforts	
24	Launch a dedicated website "Hong Kong – The IP Trading Hub" to provide a one-stop shop for information dissemination
25	Launch a promotion and public education campaign locally and internationally to boost the image of Hong Kong as a premier IP trading hub
26	Continue to co-organize BIP Asia with HKTDC and HKDC
27	Study ways to cultivate and enhance IP awareness and promote the importance of IP in economic development in different parts of the education system
28	Seek positive opportunities to cooperate with Mainland China, overseas and international IP authorities and organizations

*From Chapter 10 "Summary of Recommendations" of the Report of the Working Group.

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

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"</p> <p>(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</p> <p>(LC Paper No. CB(1)516/13-14(06))</p> <p>Minutes of meeting</p> <p>(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</p> <p>(EC(2013-14)19)</p> <p>Minutes of meeting</p> <p>(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"</p> <p>(LC Paper No. CB(1)1420/13-14(04))</p> <p>Updated background brief on promotion of intellectual property trading in Hong Kong</p> <p>(LC Paper No. CB(1)1420/13-14(05))</p> <p>Minutes of meeting</p> <p>(LC Paper No. CB(1)1916/13-14)</p>
18/6/2014	Council	<p>Question No. 15 on "Measures to promote Hong Kong's international arbitration services" raised by Hon Dennis KWOK (page 15306-15310)</p> <p>(Hansard)</p>

Date of meeting	Meeting	Minutes/Paper
19/5/2015	Panel on Commerce and Industry	<p>Administration's paper on "Promotion of intellectual property trading in Hong Kong" (LC Paper No. CB(1)831/14-15(03))</p> <p>Report of the Working Group on Intellectual Property Trading (issued on 25 March 2015) (LC Paper No. CB(1)680/14-15(01))</p> <p>Updated background brief on promotion of intellectual property trading in Hong Kong (LC Paper No. CB(1)831/14-15(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)1100/14-15)</p>
7/12/2015 (Paper date)		The President's ruling on Committee stage amendments proposed by Hon CHAN Kam-lam and Hon WONG Yuk-man to the Copyright (Amendment) Bill 2014