

**For discussion on
20 May 2014**

Legislative Council Panel on Commerce and Industry

**Promotion of Intellectual Property Trading in
Hong Kong**

Purpose

This paper reports the progress of the Working Group on Intellectual Property (IP) Trading (the Working Group) since May last year.

Background

2. At the Panel meeting on 21 May 2013, Members were briefed on the development of IP trading in Hong Kong and the formation of the Working Group in March 2013 as a dedicated Government initiative on this front.

3. In 2013, the Working Group focused on devising a strategic framework (the Framework) for driving the development of Hong Kong as an IP trading hub. Various briefing sessions were held to gauge the views of relevant stakeholders, including a general one hosted by the Secretary for Commerce and Economic Development¹, and specific briefings to the Trade and Industry Advisory Board (TIAB)² and the Small and Medium Enterprises Committee (SMEC)³. Stakeholders were supportive of the Framework we proposed. Taking into account comments received, the Working Group refined and promulgated the Framework in November 2013 as a basis for exploring specific policies and support measures to forge ahead the promotion of the Hong Kong as an IP trading hub (schematic summary at **Annex A**). Details of the Framework are set out in paragraphs 5 to 31 below.

¹ Over 80 representatives from 53 organisations including IP owners/creators; intermediaries and users; relevant professional bodies; trade and industrial organisations (including small and medium-sized enterprises); local and overseas chambers of commerce and government departments attended the briefing session.

² TIAB is to advise the Secretary for Commerce and Economic Development on matters affecting Hong Kong's trade and industry, other than trade in textiles and garments.

³ SMEC is to advise the Chief Executive on issues affecting the small and medium enterprises in Hong Kong and to suggest measure to support and facilitate their development and growth.

4. Recognising the importance of providing highly specialised IP trading intermediary services in Hong Kong, two sub-groups were formed under the Working Group in the latter half of 2013 to start early dedicated discussion on the specialised subjects of IP valuation, and IP arbitration and mediation respectively⁴, which were two important subjects under Strategic Area (III) of the Framework as regards fostering IP intermediary services. The two sub-groups engaged stakeholders by way of roundtable meetings to explore specific issues relevant to their respective fields of study. Details are set out in paragraphs 20 to 23 below.

Strategic Framework

Vision

5. The vision of the Framework is to “*Position and promote Hong Kong as the premier IP trading hub in Asia*”. This sets out the long term view of what we want to become, both to inspire actions within Government and to communicate with stakeholders outside.

Mission

6. The Framework sets out the following three missions as high-level representations of what we want and do now to achieve the vision:

- (i) *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;*
- (ii) *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; and*
- (iii) *explore means to promote Hong Kong’s creative industries,*

⁴ Two Working Group Members, namely Mr Nicholas Brooke and Mr KWONG Chi-keung, serve as the respective convenors of the sub-group on IP valuation, and sub-group on IP arbitration and mediation.

innovative technologies and IP economies through IP creation, protection, exploitation, management and trading.

Strategic areas and focus strategies

7. The Framework covers the following four strategic areas, underpinning the three missions set out above, that would be instrumental to the successful development of Hong Kong as an IP trading nexus in the region:

- (I) Enhancing the IP protection regime*
- (II) Supporting IP creation and exploitation*
- (III) Fostering IP intermediary services and manpower capacity*
- (IV) Pursuing promotion, education and external collaboration efforts*

Focus strategies are devised under each strategic area to set out the key directions for drawing up support measures in different aspects for future implementation purposes.

(I) Enhancing the IP protection regime

8. A robust IP protection regime can encourage innovation, technological development and creativity. Patents, copyright, registered designs and trademarks, among others, are important components of IP rights. There is a specific protection regime for each as set out in the relevant legislation. An IP protection regime which is of high standard, user-friendly and conforms to international norms would help attract users both locally and internationally, as well as facilitating creation, protection, exploitation and transaction of IP rights. The decision to introduce in due course an “original grant” patent (OGP) system after the review of the Hong Kong’s patent system is a vivid example of our ongoing efforts to seek the continuous upgrading of our IP protection regime. It is important to follow through the implementation and remain vigilant of possible improvements in other areas.

9. In the above light, the Framework sets out the following focus strategies under Strategic Area (I) -

- (1) Develop an 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.

10. Action is underway for the Government to pursue suitable measures pertaining to Focus Strategies (1) and (2). Notably -

- ✧ we are working to build and implement an OGP system which is up to international standards and user-friendly. Subject to the progress of implementation work and legislation in the future, we aim at launching the OGP system in 2016/17 at the earliest. The Intellectual Property Department is forging ahead, including reaching a cooperation arrangement with the State Intellectual Property Office in December 2013 to secure its support in providing technical assistance in carrying out substantive examination for our future OGP system and manpower training and development assistance in building up our indigenous examination capability; and
- ✧ we are reviewing our copyright regime and proposing directions for taking care of parody as appropriate under our regime having regard to present circumstances to strike a balance between copyright protection and freedom of expression. Taking into account the outcome of the recent public consultation, we are formulating appropriate legislative proposals with a view to concluding our efforts since 2006 to update our copyright regime in the digital environment.

(II) Supporting IP creation and exploitation

11. In a knowledge based economy, IP, although intangible, has become an essential form of capital for companies. Support to the industrial and research and development (R&D) sectors, creative industries and IP users can encourage the creation and exploitation of IP and stimulate the development of IP trading. In turn, enhanced trading of IP may lead to more creation and exploitation of IP through, for example, acquisition of background or upstream IP from untapped stock outside for local downstream R&D and product development.

12. In Hong Kong, our industrial sector has long been evolving to meet the challenges and take on new opportunities. Many have moved their production base to the Mainland to take advantage of the lower costs across

the boundary. The strategic needs for upgrading to add value through IP activities are increasing with keener and keener global competition. A cut above the average players, there are notable enterprises that invest more and more in R&D and acquisition of IP and technologies for commercialisation. New opportunities abound following the Mainland's rise in industrial production and local R&D efforts. With our experience and connections with both Mainland and overseas markets gained over the years, Hong Kong is well posed to be an IP middleman in facilitating the importation of overseas IP (especially those remaining dormant) to the Mainland through modification or customisation to suit special needs of the Mainland buyers, as well as assisting in the exploitation of Mainland IPs to suit overseas markets. More sophisticated enterprises with solid R&D and IP exploitation experience can play an important role. Government's continuous support for this sector remains important as ever.

13. In recent years, our creative industries are expanding as a new forerunner in driving economic growth, with dedicated Government support. Licensing and franchising arrangements are important vehicles to facilitate the exploitation of copyright and trademarks as IP inputs/outputs in the process.

14. In the above light, the Framework sets out the following focus strategies under Strategic Area (II) -

- (3) *Support industries in meeting strategic needs through creation, 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.*

15. Regarding Focus Strategy (4), Government support efforts may facilitate acquisition of upstream technologies for product development and help reap the rewards of R&D investments through IP trading activities in various forms, bringing out the financial and strategic value of IP. Arising from an on-going review of the Innovation and Technology Fund (ITF), the Government is pursuing new improvement measures to promote private sector R&D and commercialisation of R&D outcomes and the application of R&D outcomes in the public sector (details at **AnnexB**):

B

- ✧ setting up an Enterprise Support Scheme to replace the Small

Entrepreneur Research Assistance Programme under the ITF;

- ✧ extending the funding scope of the ITF to downstream R&D and commercialisation activities;
- ✧ providing funding support to encourage technopreneurial activities;
- ✧ waiving the industry sponsorship requirement for the Innovation and Support Technology Programme platform projects applications; and
- ✧ raising the funding ceiling for the Public Sector Trial Scheme from 30% to 50% of the actual cost of the original R&D project supported by the ITF.

16. In addition to the above, the Working Group would continue to explore specific measures under various focus strategies in this strategic area. One issue we would examine is how tax incentive may help encourage the wider use of IP. To this end, the Inland Revenue (Amendment) (No. 2) Ordinance 2011 was passed to extend the scope of specified IPRs for profit tax deduction to cover capital expenditure for purchase of three types of IP rights, namely registered trademarks, copyrights and registered designs. We are looking into the case of furthering extending the scope to cover more types of IP rights.

(III) Fostering IP intermediary services and manpower capacity

17. Unlike the trading of normal commodities, IP trading requires highly specialised services to be provided by IP related intermediaries. Some of these may be under-developed in Hong Kong and even worldwide but remain critical in IP transactions. For example, the value of IP can differ depending on the objective circumstances and subjective perspective. The provision of various IP intermediary services may impact on the valuation of IP rights, use of IP as an asset class for financing, IP trading decision making, etc. The availability of such highly specialised services would encourage IP trading through lowering transaction costs and the risks involved, maximising the benefits and potentials of IP transactions and providing a clustering effect for the development of an IP trading hub.

18. Given the diverse and professional expertise involved, attracting talents and training people for IP intermediary services to create the desired

clusters is also an important part to promote IP trading. In many advanced economies, jobs in IP activities have become specialised subject to different professional disciplines. There may be a case for the Government to support similar developments in Hong Kong.

19. In the light of the above, the Framework sets out the following focus strategies under Strategic Area (III) -

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

- a) IP valuation*
- b) IP financing*
- c) IP insurance*
- d) IP arbitration and mediation*
- e) IP due diligence; and*
- f) IP matching services (e.g. IP trading platforms)*

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

20. As mentioned in paragraph 4, two sub-groups were set up to study the more specialised subjects of IP valuation, and IP arbitration and mediation respectively, as part of our efforts to support the work on Focus Strategy (6). On IP valuation, the concerned sub-group supports a proposal of developing IP valuation reporting standards for Hong Kong, and will look into the possible way to take the issue forward in the Hong Kong context. Given that IP valuation is closely intertwined with other IP intermediary services, the sub-group was also tasked to look into the issues of IP due diligence, IP financing and IP insurance.

21. Preliminary study revealed the value and importance of IP due diligence in the context of commercialisation and trading of IP, as it provides a vehicle to facilitate other IP intermediary services such as IP valuation and financing. To this end, the sub-group is exploring further into the subject matter, such as the possibility of compiling a general checklist for IP due diligence to facilitate businesses, particularly small and medium-sized businesses, in understanding the process and the benefits that it would bring about prior to seeking IP finances and engaging in IP trading activities.

22. Regarding IP arbitration and mediation, they are specific subjects in the provision of arbitration and mediation services, which in turn

are integral parts of the promotion of Hong Kong as an international legal and dispute resolution services centre in the Asia Pacific region. We are working with the Department of Justice (DoJ), champion of this wider initiative, to ensure that IP will be given a proper focus in its endeavours to promote arbitration and mediation. For example, DoJ invited a member of the Working Group (convenor of the concerned sub-group) to give a dedicated presentation on the advantages of using mediation to resolve IP disputes at one of the breakout sessions of the Mediation Conference organised by DoJ in March 2014. In an upcoming study on the development of arbitration in Hong Kong and the challenges and opportunities that Hong Kong faces as a regional centre for international arbitration in the Asia Pacific region, the IP arbitration perspective will be covered. Outside Government, we are working with the Hong Kong International Arbitration Centre, a major industry player in the field of arbitration and mediation, to promote IP as a subject matter of its services.

23. The concerned sub-group would continue to engage stakeholders to explore necessary measures specifically on IP arbitration and mediation. Pertinent issues identified include the arbitrability of IP disputes and enforceability of IP arbitral awards, the need for a dedicated set of arbitration rules for IP disputes, the drawing up of stand-alone lists or panels of IP arbitrators and mediators, promotion and publicity of Hong Kong as an IP arbitration and mediation centre in the region, etc.

24. On IP matching services, the Hong Kong Trade Development Council (HKTDC) launched the Asia IP Exchange, an online IP trading portal cum resource centre in December 2013. In addition to listing the four major types of IP, namely patent, trademark, copyright and registered design for trading, users can also obtain details of the owner/creator of a specific IP, as well as intermediary service providers from the online portal. As at April 2014, the Asia IP Exchange showcased over 25 000 IP listings, and formed strategic alliances with 23 partners from overseas, the Mainland and Hong Kong to facilitate international IP trading and connection to global IP players. HKTDC will continue its endeavours in looking for opportunities to expand partnership to other organisations, and enhance the portal's coverage, capabilities and transaction volume.

25. Regarding Focus Strategy (7), following the recommendations of the Advisory Committee on Review of the Patent System in Hong Kong, the Government intends to introduce a regulatory regime in the long run for patent agency services as a complementary component of the future OGP system. Taking into account the outcome of a stakeholders' consultation last year, we are working with the Advisory Committee to look into the pertinent

issues identified and the possible way forward. We are also working to conduct a survey on IP activities and trading in Hong Kong this year for providing statistical and other relevant data to support the work of the Working Group in forging ahead the development of Hong Kong as an IP trading hub.

(IV) Pursuing promotion, education and external collaboration efforts

26. Branding Hong Kong as a regional IP trading hub is important to educate and focus market players both internally and externally on the benefits and opportunities offered by Hong Kong in this area, as well as to attract overseas/Mainland IP creators and users, and IP intermediaries to use Hong Kong as a marketplace. Hong Kong has long been involved in IP trading activities. However, it would be more efficient and effective to promote it as an IP trading hub through concerted efforts in branding and marketing.

27. Locally, promotion and public education can enhance the awareness of society on the benefits and opportunities brought by IP, and encourage companies, professionals, the younger generation, etc. to be fully equipped to grasp the new opportunities offered. It would never be too early or too remote to start and nurture a culture that appreciate, respect and exploit knowledge as a key driving force in furthering the development of Hong Kong as an externally-oriented economy thriving on trade.

28. The trading of IP rights across national borders and with the Mainland through Hong Kong cannot be dissociated from the IP regimes and policies of the different economies involved and the rules of the game of the international community. It is important to seek collaboration and partnership with the relevant authorities to encourage transactions, overcome hurdles and enhance the rules.

29. In the above light, the Framework sets out the following focus strategies under Strategic Area (IV) -

- (8) Brand and market Hong Kong as a premier IP trading hub to attract overseas/Mainland IP owners and users, as well as intermediaries.*
- (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 internationally and in the region.*

30. In an effort to support the work under Focus Strategy (8), the Government has, for the first time, co-organised the Business of Intellectual Property Asia Forum (BIP Asia) with HKTDC and the Hong Kong Design Centre which was held on 5 and 6 December 2013. This 2-day event sought to bring together IP professionals, business leaders and government officials to explore the huge opportunities brought about by the exploitation and trading of IP rights. Launched in 2011, BIP Asia has now become an annual IP flagship event in the region. In the 2013 edition, over 1 700 participants from 24 countries and jurisdictions attended the Forum, which was more than twice the number of attendants of the inaugural Forum in 2011. This joint venture underlined the Government's commitment to a leadership position in making the most of a still nascent knowledge market. To sustain the momentum, and to take BIP Asia to a higher level, the Government will join hands with the aforesaid parties again to co-organise the 2014 edition which is scheduled for December.

31. Meanwhile, the Working Group will continue its efforts pursuant to Focus Strategies (9) and (10).

Next Step

32. In 2014 the Working Group continues to explore specific policies and support measures for various focus strategies in the four strategic areas that underpin the Framework, with a view to making specific recommendations.

Advice Sought

33. Members are invited to note the above developments and give views.

Commerce and Economic Development Bureau
Commerce, Industry and Tourism Branch
May 2014

Strategic Framework

Vision

Position and promote Hong Kong as the premier 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. –

- a. IP valuation
- b. IP financing
- c. IP insurance
- d. IP arbitration and mediation
- e. IP due diligence
- f. IP matching services (e.g. IP trading platforms)

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

IV. Pursuing promotion, education and external collaboration efforts

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

9. Foster an IP awareness culture in society especially among small and medium-sized enterprises (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 internationally and in the region

**Improvement measures to promote
research and development (R&D),
commercialisation of R&D outcomes, and
application of R&D outcomes in the public sector**

The Government will introduce the following improvement measures to promote R&D, commercialisation of R&D outcomes and application of R&D outcomes in the public sector, including –

- (a) setting up an Enterprise Support Scheme (ESS) to replace the Small Entrepreneur Research Assistance Programme (SERAP) under the Innovation and Technology Fund (ITF);
- (b) extending the funding scope of the ITF to downstream R&D and commercialisation activities;
- (c) providing funding support to encourage technopreneurial activities; and
- (d) relaxing the ITF rules to further promote the application of R&D outcomes in the public sector.

ESS

2. We will introduce a new ESS to replace SERAP to address the latter's limitations, with details as follows –

- (a) ***Size of company*** – companies registered in Hong Kong regardless of size will be eligible to apply, in contrast to SERAP which is restricted to small and medium enterprises;
- (b) ***Amount*** – funding up to \$10 million (increased from \$6 million under SERAP) for each approved project will be provided on a generally matching basis;

- (c) ***Fund recoupment requirement*** – in contrast with SERAP, we propose that there will be no requirement for fund recoupment of the approved funds; and
- (d) ***Intellectual property (IP) arrangements and benefit sharing angle*** – the applicant company will own the IP of the project, and there will be flexible arrangement on benefit sharing as agreed among parties concerned.

Extending the ITF Funding Scope

3. In order to render stronger support to downstream R&D and commercialisation activities, allowing full exploitation of the technological edge of local industries, we will expand the existing funding scope of ITF to cover more downstream activities, including –

- (a) development engineering/system integration;
- (b) large scale process optimisation;
- (c) compliance testing and clinical trials;
- (d) licensing of third-party IP; and
- (e) industrial design.

Supporting Technopreneurial Activities

4. To encourage students and professors from the designated universities to start technology businesses and commercialise their R&D results, we will provide an annual funding of up to \$24 million, through ITF, to the six designated universities¹, initially for three years from 2014-15. Details are as follows –

¹ The six local universities designated as local public research institutions are the University of Hong Kong, the Chinese University of Hong Kong, the Hong Kong University of Science and Technology, the Hong Kong Polytechnic University, the City University of Hong Kong and the Baptist University.

- (a) ***Amount and duration*** – an annual funding of up to \$4 million will be provided to each of the six designated universities to support the setting up of technology start-ups by its teams (which can comprise students, professors, alumni, etc.).
- (b) ***Eligibility*** – technology start-ups formed by teams of the universities, as recommended by the respective universities, will be eligible to apply.
- (c) ***Scope*** – the funds can be used for achieving the purposes set out above, including essential items for setting up and operating the start-ups (e.g. furniture and equipment, legal and accounting services, etc.) project expenditure (e.g. manpower, equipment, other direct costs, etc.) and promotion of the start-ups and marketing of their project deliverables.

Other measures to intensify efforts to promote the application of R&D outcomes in the public sector

5. To further promote the adoption of R&D outcomes in the public sector, the Innovation and Technology Commission has launched two improvement measures in April 2014 with details as follows –

Waiving the industry sponsorship requirement for projects initiated by Government bureau/departments and statutory bodies

6. Platform projects submitted under the ITF's Innovation and Technology Support Programme (ITSP)² would require at least 10% of industry sponsorship from at least two private companies (although CIT might waive the industry sponsorship requirement in exceptional circumstances).

² There are broadly two types of R&D projects under ITSP –

- (i) platform projects which require industry contribution of at least 10% of the project cost. The industry sponsors (minimum of two) will not own the project IP; and
- (ii) collaborative projects which require industry contribution of at least 30% (for R&D Centre projects only) or 50% (for non-R&D Centre projects) of the project cost. The industry sponsor(s) will be entitled to utilise the project IP exclusively for a defined period or own the project IP.

7. To encourage more projects in the public sector in future, the industry sponsorship requirement for ITSP platform projects applications would be waived where there are –

- (a) clear support from Government bureaux/departments and/or statutory bodies;
- (b) clear community interests; and
- (c) difficulties in seeking industry sponsorship in the prevailing circumstances.

Raising the Funding Ceiling for PSTS Projects from 30% to 50%

8. The amount of funding support under the PSTS was used to be capped at 30% of the actual cost of the original R&D project supported by the ITF (although CIT could give exceptional approval to raise the funding cap for worthwhile projects on a case-by-case basis). This 30% funding limit has in certain cases limited the full exploitation of the technologies.

9. To improve the situation, the funding ceiling of PSTS projects is increased from 30% to 50% of the actual cost of the original R&D project supported by the ITF, and ITC will review the situation taking into account future experience.

10. More details of the measures mentioned in this Annex can be found in the two papers submitted at the Panel on Commerce and Industry of the Legislative Council in February³ and March⁴ 2014 respectively.

³ www.legco.gov.hk/yr13-14/english/panels/ci/papers/ci0218cb1-885-3-e.pdf

⁴ www.legco.gov.hk/yr13-14/english/panels/ci/papers/ci0318cb1-1072-7-e.pdf