



The Law Society of Singapore
39 South Bridge Road S(058673)
t: +65 6538 2500 f: + 65 6533 5700
www.lawsociety.org.sg

Sender's Fax: 6533 5700

Sender's DID: 6530 0206

Sender's Email: represent@lawsoc.org.sg

Our Ref: LS/10/RLR/CON/2013/INP2(1)/MWC/maj

Your Ref: To be advised

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Intellectual Property Office of Singapore
51 Bras Basah Road
#04-01, Manulife Centre
Singapore 189554

BY EMAIL (ipos_consultation@ipos.gov.sg) **& POST**

Dear Sirs

PUBLIC CONSULTATION TO SEEK FEEDBACK ON PROPOSED CHANGES TO SINGAPORE'S IP LAWS IN RELATION TO RECORDAL OF BENEFICIAL OWNERS IN THE IP REGISTERS

1 We refer to your email dated 30 September 2013 addressed to the Chairperson of the Law Society's Intellectual Property Practice Committee.

2 Please find the Committee's feedback set out in Annex A for your consideration.

3 The Council of the Law Society has considered the feedback provided and shares the views of the Committee.

Yours faithfully

Michelle Woodworth Cordeiro
Director, Representation and Law Reform Department

Encl.

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ANNEX A

VIEWS OF THE INTELLECTUAL PROPERTY PRACTICE COMMITTEE

1. The Committee is of the view that the proposed recordal of beneficial owners on the Registers appears to go against one of the major purposes of creating a trust – that of lending opaqueness to the actual ownership of the IPR. Beneficial owners may not want to be identified or contacted on matters relating to the registration. For these reasons, beneficial owners may not be willing to have this information reflected on the Registers. If the purpose is to protect the interests of the beneficial owners, it would be redundant if the individuals/entities it is intended to protect are unlikely to use it.
2. However, the Committee recognises that trusts and “off-the-register” interests could compromise the accuracy/reliability of register entries and would potentially add an element of complication to any chain of title review conducted in a due diligence exercise e.g. in acquisitions or transfers of IPRs. As such, if driving perceived value of IPR as assets is the key, the Committee is of the view that such recordal would increase transparency so that such assets become more easily and “more reliably” acquired.
3. As the recordal service is optional and not recording beneficial owners of express trusts in the Registers would not void the trust, the Committee is of the view that the recordal option is unlikely to be fully utilised. The Committee feels that this would be a “raised today and forgotten tomorrow” initiative if there are no consequences for non-recordal. To truly get traction, the recordal should confer either a distinct advantage or alternatively, the failure to record should raise the potential for certain risks. There are certain registrable transactions such as an assignment or grant of licence listed in Section 34 of the Registered Designs Act where failure to register such transaction would make it ineffective as against a person acquiring a conflicting interest in the registered design in ignorance of it. However, if the recordal of beneficial ownership of an express trust were to have such a consequence, the Committee must caution that this could wear away one of the advantages of a trust instrument or trust law. This is a branch of law which some of our neighbours with a civil law tradition, like Indonesia, do not have. The Committee is proposes that IPOS would need to analyse the broadening of Section 34 from a holistic perspective i.e. other aspects of Singapore’s economy such as private banking.
4. The Committee is further of the view that:
 - a) The registrable list should be expanded to generate more possibility for revenue.
 - b) The apparent benefit appears to benefit a narrow class of bona fide purchasers for value without notice. There hasn’t been a significant problem of IP ownership disputes surrounding trusts. So there may not be any problem which requires solving.
 - c) One of the reasons why trusts are declared is to avoid disclosing beneficial interests, thus recordal may not going to encourage registration from such quarters.
 - d) A trust recordal system may end up as a white elephant and that IPOS’ resources may be better channelled to other things (eg. registration of trade mark agents).