



# **Response of The Law Society of Singapore's Intellectual Property Practice Committee to the proposed Intangibles Disclosure Framework**

**28 February 2023**

**The Law Society of Singapore**  
28 Maxwell Road, #01-03  
Maxwell Chambers Suites, Singapore 069120  
[lawsoc@lawsoc.org.sg](mailto:lawsoc@lawsoc.org.sg)  
[www.lawsociety.org.sg](http://www.lawsociety.org.sg)



The Law Society of Singapore  
28 Maxwell Road #01-03  
Maxwell Chambers Suites S(069120)  
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](mailto:represent@lawsoc.org.sg)

Our Ref: LS/10/RLR/IPPC/CON/2023/AC/jc/yj

28 February 2023

**Intellectual Property Office of Singapore**  
1 Paya Lebar Link,  
#11-03, PLQ 1 Paya Lebar Quarter,  
Singapore 408533

**BY EMAIL**  
[jerrold\\_tan@ipos.gov.sg](mailto:jerrold_tan@ipos.gov.sg)  
& [melissa\\_lee@acra.gov.sg](mailto:melissa_lee@acra.gov.sg)

**Council Members 2023**

Tan Gim Hai Adrian (President)  
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Darryl Chew Zijie  
Eva Teh Jing Hui

Dear Sirs,

**PUBLIC CONSULTATION ON PROPOSED INTANGIBLES DISCLOSURE  
FRAMEWORK**

1. We refer to the Intangibles Disclosure Industry Working Group's public consultation on the proposed Intangibles Disclosure Framework ("**the Consultation**").
2. The Law Society of Singapore's Intellectual Property Practice Committee 2023 has considered the Consultation paper and prepared the enclosed submission in response. The submission is supported by the Council of the Law Society of Singapore.
3. If you have any questions or require further assistance on the matter, please contact the Representation and Law Reform Department by email at [represent@lawsoc.org.sg](mailto:represent@lawsoc.org.sg).
4. Thank you.

Yours sincerely,

**Jonathan Foong**  
Chairperson, Intellectual Property Practice Committee

28 February 2023

**The Law Society of Singapore Intellectual Property Practice Committee's response to the Public Consultation on the proposed Intangibles Disclosure Framework**

1. We refer the public consultation jointly organised by Accounting and Corporate Regulatory Authority ("**ACRA**") and the Intellectual Property Office of Singapore ("**IPOS**") on an Intangibles Disclosure Framework ("**Framework**") to help businesses disclose and communicate their intangibles ("**Public Consultation**").
2. The Law Society of Singapore's Intellectual Property Practice Committee ("**Committee**") would like to thank ACRA and IPOS for including several members of the Committee in the Public Consultation.
3. The Committee would like to emphasise that it greatly welcomes the opportunity to be part of the conversation in the development of key initiatives that are aimed at developing Singapore's role as the regional Intellectual Property ("**IP**") hub and our Committee members will do their best to be available for involvement and/or conversations and assist the relevant public agencies at different stages of the developmental processes of the initiatives under the Singapore IP Strategy 2030 ("**SIPS 2030**").
4. The Committee has reviewed the Framework and its members have engaged in several rounds of robust discussion on the same internally. We understand that the Framework is a starting piece to the bigger aims under SIPS 2030. As such, the Committee is of the view that it is important to take time to develop the Framework and ensure that the fundamentals are as sound as they can be – right at the start.
5. Be that as it may, the Committee is not suggesting to halt the implementation of the Framework. Rather, our collective opinion is that ACRA and IPOS should monitor the Framework closely upon the implementation of the same and take steps to set up check points for review with the stakeholders in the IP ecosystem. This will assist the Framework to evolve with the business environment on ground and respond seamlessly to the actual needs of the business communities.
6. Our other observations and comments are set out as follows:
  - We understand the principle of disclosure under the Framework. However, such disclosure should be voluntary, and any non-disclosure ought not to be penalised under the Framework. There may be actual commercial interest in non-disclosure such as in the case of trade secrets and confidential information ("**Confidential Matters**"). In any event, from our collective experience, it is hard for companies to communicate on these Confidential Matters generally – whether the communication is in relation to a discussion on the value of the company or not.
  - There may be unintended regulatory impact in areas such as tax, finance etc during the implementation of the Framework. Whilst we are unable to clearly

identify the actual issues, the Committee would monitor the implementation process and highlight the necessary to ACRA and IPOS in due course.

- At the moment, it is not absolutely clear whether any reliance on a report created using the elements in the Framework would change how the market makes investment decisions or impact upon the investor community in the IP ecosystem. Similarly, the Committee would monitor the implementation process and highlight the necessary to ACRA and IPOS in due course.
- One of the members of the Committee heard discussions on creating an ‘Enterprise Readiness Level’, something potentially similar to the intent of ‘Technology Readiness Level’ and found this concept interesting. The Committee encourages further conversation on this aspect and welcomes the opportunity to be involved in such conversation.
- Many companies do not conduct IP audits, and so it may be difficult for them to identify the IPRs/intangibles that they have, especially with regards to technical areas like copyright.
- Companies are likely to be disinclined to incur costs, to conduct the KPI surveys and reports listed – unless the purpose of such disclosure is clear. Even if they are willing to commission a report on some form of disclosure, there is a question as to their reliability if these surveys are conducted in-house as they may be somewhat biased.
- Companies are likely unwilling to publish any unfavourable survey results, thus rendering the studies incomplete and making it very difficult for any proper conclusion to be drawn by the audience.

7. In relation to Annexure 4 of the Framework, the Committee’s views are as follows.

Items	Committee’s Comments
Under “Brand / Trademarks / Tradenames / Service Marks“	<p>Without excluding unregistered brands, there should be something similar to what is under “Patented technology”, such as:</p> <ul style="list-style-type: none"> <li>Active trade marks registered - Number of active registered trade marks</li> <li>- Number of products in the pipeline covered by registered trade marks</li> <li>- Intellectual property owned and its citation index</li> </ul>

	<p>It is suggested that there needs to be “Association of the appropriate KPI to the specific brand” – which is also found under “Artistic-related”.</p>
	<p>It is suggested that there should be “Brand licensing program” with KPI like “Degree of favourable terms in the licencing agreement”, “Degree of enforceability of the licencing agreement”, “Revenue derived from the licencing agreement”, “Useful economic life of the licencing agreement”, “History of renewals” or those similar to that found under “Franchise Agreements”.</p>
<p>Under “Artistic-related”</p>	<p>It is suggested that there should be an “Ownership, assignments and licencing” category with KPI like “Degree of favourable terms in the assignment or licence”, “Degree of enforceability of the assignment or licence”, “Revenue derived from the assignment or licence”</p>
<p>Under “Patented technology” and the “Investment costs in Research &amp; Development”</p>	<p>It is suggested that there should be “Investment costs for patent registration”.</p>
<p>For “Technology-related”</p>	<p>It is suggested that there should be a “Technology licencing program” similar to the one that should be inserted under “Brand / Trademarks / Tradenames / Service Marks”.</p>
<p>Under “Human Capital-related” and the last item, “Covenants not to compete / Non-compete agreements“</p>	<p>It is suggested that this needs to be reconciled with the legal postion that such restraints are <i>prima facie</i> void, so the KPI may need to have “Assessed reasonableness and enforceability of the covenant”.</p>
<p>Under “Human Capital-related”</p>	<p>It is suggested that there should be a “Fair and balanced work agreements” with KPIs like “Terms attractive to talent”, “Complaints to the Ministry of Manpower”, “Positive relations with unions”.</p>

8. The Committee would like to particularly highlight the point that there is no clear discussion on how professionals in Singapore such as lawyers, tax advisors, financial advisors, valuers etc can support, participate meaningfully and engage in the ecosystem in the development of the Framework or other initiatives under SIPS 2030. The Committee would welcome any opportunity to discuss this with the relevant public agencies, including ACRA and IPOS.
9. The Committee (and by that reference, the Law Society of Singapore – the “**Law Society**”) is proud to be a key partner of the Singapore Government, particularly IPOS, in the IP ecosystem, especially in the development of various initiatives under the SIPS 2030. Hence, the information in paragraphs 6 to 8 above are delivered in the spirit of cooperation and premised on the principle of providing honest and constructive feedback – all with the view of supporting Singapore’s ambition and development as the IP Hub for our region.
10. If you have any questions or require further assistance on the Committee’s feedback, please contact the Representation and Law Reform Department by email at [represent@lawsoc.org.sg](mailto:represent@lawsoc.org.sg).
11. Thank you.