

International Valuation Standards Council (IVSC)

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Proposals to Exposure Draft IVS 210:

It should be stated that the text of Exposure Draft IVS 210 in the current edition is much more meaningful than that of the 2013 version, which contributes to a more correct understanding and correct evaluation of such valuation objects as intangible assets.

However, there are some proposals aimed to improve certain provisions and norms of the standard.

I. Remarks on the text of the standard:

I.1. Subparagraph 20.3: There is noted presence of five categories of intangible assets (IA). In fact, there are much more categories of intangible assets. The US standards contain 10 categories of intangible assets. At that, our analysis has demonstrated that these 10 categories do not include selecting breeding achievements and other results of the intellectual activity. In this regard, it is proposed to exclude word "five."

I.2. Taking into consideration the fact that in the capacity of any invention there may be patented products (any devices, substances, strains of microorganisms), technologies (any method and use of any product (or a method) according to any new purpose), as a useful model there can be can be patented only those devices that are capable to reasonably more clearly classify similar objects of intellectual property according to the IA categories. An illustrative list of the IA grouped by the categories can have the following form (and this is not an exhaustive list):

1. Intangible assets used in the production marketing:

Trademarks (brands), original product names (L¹)

Servicing marks, collective marks, certification marks (L)

Appearance of the products (any unique combination of colors, shapes or packaging of the products) (L)

Newspaper headlines (L)

Internet addresses (domain names) (registered) (L)

Non-competition agreements (L)

2. Intangible assets related to the company's customers

Lists of customers (O)

List of applications for conclusion of contracts (L)

Contracts with the customers and related customer relationships (L)

Non-contractual customer relationships (O²)

3. Intangible assets possessing literary and artistic value

Literary compositions (L)

Dramaturgic compositions, scenario compositions (L)

Derivative works, i.e. works representing any adaptations of some other compositions (L)

Composite works, i.e. those works that are representing results of any creative work with respect to the selection or arrangement of any materials (L).

¹ Separately identifiable intangible assets (separable from other assets) according to the legal separateness criterion (see Subparagraph 20.7 (a) of IVS 210)

² Separately identifiable intangible assets (separable from other assets) according to the separateness criterion (see Subparagraph 20.7 (b) of IVS 210)

4. Intangible assets possessing artistic-and-creative value

- Musical-dramatic works, stage works (L)
- Choreographic works and pantomimes (L)
- Musical works with or without text (L)
- Audio-visual works;
- Works of pictorial art, sculpture, graphics, design; graphic novels, comics and other works of figurative art (L)
- Works of decorative and applied art; works of stage-set art (L)
- Works of architecture, urban planning and landscaping art, including those being in the form of designs, drawings, images, and mock-up models (L)
- Photographic works and works obtained by ways analogous to photography (L)
- Geographical and other maps, plans, sketches and plastic works relating to geography, topography and other kinds of sciences (L)

5. Intangible assets based on contractual agreements

- Licensing agreements (L)
- Advertising contracts, construction contracts, maintenance service contracts, and supply contracts (L)
- Leasing agreements (L)
- Building permissions (L)
- Franchise agreements (L)
- Television and radio broadcasting rights (L)
- Licenses for mining, well drilling, tree felling, etc. (L)
- Licenses for radio frequencies (L)
- Numbering capacity (rights to direct (without code dialing) telephone numbers of telephone and cellular companies) (L)
- Servicing contracts (L)
- Direct-hiring straight labor contracts (L)
- Agreement on the refusal of unfair competition (L)

6. Intangible assets based on technologies

- Inventions (technologies/methods) (L)
- Non-patented technology (O)
- Commercial secrets (secret formulas, processes, recipes, technical know-how, laboratory logs, technological processes, technical documentation) (L)

7. Intangible assets associated with the engineering activity

- Design inventions (L)
- Inventions (except technology) (L)
- Utility models (L)
- Secrets of production (such as know-how, engineering drawings and diagrams, designs, company-issued documents, etc.) (L)
- Topographies of Integrated Circuits (L)

8. Intangible assets related to the selection achievements

- Plant varieties (L)
- Species of animals (L)

9. Intangible assets related to data processing

- Computer programs (if they are provided with legal protection) (L)

Databases (O)

10. Intangible assets related to the "human capital"

Recruited and trained work-force (O)

Hiring agreements (L)

Agreements with trade unions (L)

11. Intangible assets associated with land parcels

Leasehold rights (L)

Rights to development of deposits of useful minerals (L)

Servitudes (O)

Rights to the airspace (O)

Right to the water space (O)

12. Intangible assets associated with the "goodwill"

Organization Goodwill (O)

Goodwill of professional practice (O)

Personal reputation of any celebrity (O)

I.3. It is advisable to provide in Subparagraph 60.1 an interpretation of term "excess earnings". For example, in the following form: "Excess earnings represent a part of the profit received by any business above the fair return from any material and financial (circulating) assets and related to the subject intangible assets."

I.4. We believe to be appropriate to exclude Subparagraph 60.2 that does not bear any normative or methodological burden, but merely fixes a historical fact.

I.5. Accounting terms and terms of the financial statements provide an explicit distinction between such concepts as "Proceeds from sales (volume of sales)", "Revenue", and "Profit". In this connection, these concepts should be used in the Standard text also carefully and correctly. In particular, Subparagraph 70.2 in the sentence "The most common metric projected is revenue, as most royalties are paid as a percentage of revenue" refers to the "Volume of sales". And in practice of trading licenses for any intellectual property assets, "volume of sales" is used much more frequently as a basis for the royalty payment as compared to the revenue from the production and realization of any licensed products.

I.6. The second Subparagraph 80.1: the statement is incorrect. Our analysis of the primary sources (mostly those of the authors originated from the United States) testifies that such confusion takes place in their interpretations. The relief-from-royalty method (and payments or value calculated according to this method respectively) is not a variety of the premium profit method (and payments or value calculated according to this method respectively). The latter case is referred to the licensee's revenues, while the relief-from-royalty method allows determining the licensor's revenues. In this regard, the income from the use of intangible assets, calculated according to the premium profit method, should be distributed between the licensee and the licensor. And the licensor's share in this profit just represents the licensor's revenues, and it should be equivalent to the value calculated according to the relief-from-royalty method. Taking into consideration the fact that in some cases objects of intellectual property can be used by goods producers in the course of production and sale of their products, to determine the value of the rights of use of such objects the royalty calculation technique can be applied. Therefore, it is advisable to provide in the Standard an alternative name of the method as a "method of payments

under royalties." It is also advisable to specify here the basic methodological approaches to determining the royalty rate for carrying out the valuation of intangible assets.

I.7. In the course of presentation of certain provisions of the approaches and methods in the text of the Standard it's advisable to avoid particular examples of their use, such as "...is used in the valuation of non-competition agreements" (Subparagraph.80.4), "...is used to estimate the value of franchise-based intangible assets and broadcast spectrum" (Subparagraph.90.3), "the method ... is appropriate to value customer-related intangible assets "(p.100.3), examples for Subparagraphs 110.6, 130.3, and others.

II. General comments:

II.1. It is also advisable to retain in the current version of the Standard conceptual content of intangible assets contained in Subparagraph 3.14 of the International Guidance of the International Valuation Standards of the year of 2007, namely: "Intangible assets can be divided into categories originated due to the *rights, relationships, and grouped intangibilities (Grouped Intangibles), of intellectual property.*

3.14.1. *Rights* exist in accordance with the terms of any contract concluded in writing or in any other form, which creates economic benefits for the Parties concerned. As examples, among other things, there serve supply contracts, contracts for sale of products, supply contracts and licensing agreements.

3.14.2. *Relationships* between the Parties usually are usually not of contractual nature. They may be of short duration, and they may of great value to the Parties concerned. As examples, among other things, there serve recruited personnel, customer relationships, relationships with suppliers, relationships with distributors and structural relationship between the Parties concerned.

3.14.3. Grouped intangibilities represent the residual value of intangible assets, when value of all the identifiable intangible assets is determined and deducted from the total amount of values of the intangible assets. Alternative concepts include the value of customer loyalty to the certain enterprise, "excess earnings" and residual value. The grouped intangibilities are often called "goodwill". At different times "goodwill" was interpreted as a trend of customers to come back to the business servicing them, as an additional income obtained by any business above the fair return from identifiable assets, and/or an additional value of any enterprise as a whole above the total value of the identifiable assets composing it.

3.14.4. Intellectual property represents a special classification group of intangible assets, because it is usually protected by law from unauthorized use by others. Examples, apart from other things, include trade names, trademarks (brands), copyrights, patents, production secrets or know-how, and so on.

II.2. Taking into consideration the fact that legislation of many countries in the field of intellectual property protection includes a legal rate of reparation of damages in the event of infringement of intellectual property rights of the right-holder, it is advisable to provide the basic principles and provisions of evaluation in money terms of amount of damage required by the right-holder in connection with the violation of his rights to intellectual property.

II.3. In practice, there often arouses a need for determining the market value of the rights of use of intangible assets under license terms and conditions (similar to calculation of the market rental rates when using real estate objects). Determination of methodological techniques

for the valuation of such transactions would significantly expand the scope of application of this Standard.

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June 05, 2016

Information about the specialists:

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Mr. Mamajanov H.A. is a member of Presidium of the Expert Council of the All-Russian public organization "The Russian Society of Appraisers (self-regulating social organization "RSA"); Deputy Chairman of the Qualification Commission of the self-regulating social organization "RSA"; a member of the Editorial board of the professional research and practice magazine "Assessment Problems"; a member of the Committee on Education and Coordination of Research Studies of the National Council on the Evaluation Activities of the Russian Federation; deputy head and member of the examination committee of the Examination Center of Certification of Real Estate Appraisers in accordance with ISO/IEC 17024 starting from the year of 2003; the RSA Certified Appraiser of Intellectual Property and Intangible Assets (1996), Real Estate (2008) and Businesses (2009). He gives a course of lectures in "Valuation of intangible assets and intellectual property" in the International Assessment and Consulting Academy, in the Institute of Professional Education of the Financial University under the Government of the Russian Federation, in the Moscow Academy of Finance and Law, in the advanced training institutes of the Russian Federal Atomic Energy Agency and the Ministry of Education of the Russian Federation.

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