

Industrial Strategy: Intellectual Property

Response to the Call for Views submitted by Valuology

Our response is in relation to the final paragraph of the Annex to the Call for Views, "IP Valuation Standards". We describe the current position of the IP valuation profession in the UK, our experience and observations on some government led IP initiatives overseas and we reference some other studies that include IP valuation.

Introduction

In recent years, there have been a number of studies devoted to various issues in the areas of intangible assets, including IP. Many of those studies have concluded that the lack of transparency in IP valuations is a barrier to the greater use of IP valuations. There is a need to build trust in the IP valuation profession and to establish a system that will strengthen the confidence of the markets in the quality of the valuation. Sir David Tweedie, Chair, International Valuation Standards Council is quoted in the Final Report prepared for the European Commission by the Expert Group on Intellectual Property Valuation, saying:

"Valuation has developed as a secondary specialisation by experts and there is not always a lot of uniformity about how valuations should be approached, and what skills and expertise the people performing them should have."

Yet despite many studies and reports, little action has been taken (either in the UK or Europe) to increase levels of transparency, comparability and confidence in valuations build greater trust in valuation. We recommend that immediate and serious consideration must be given to the development of the professional infrastructure that underpins intangible asset valuation (including IP assets) that will lead to greater trust in valuation and the valuation profession.

The Valuation Profession in the UK

The Hidden Value Study for the IPO contained a description of the intangible asset valuation profession in the UK. It states, accurately, that there is no specific qualification required to practise IP valuation in the UK and that "Valuers interviewed have entered the IP valuation market from different disciplines and tend to be educated to degree level. Many have further professional qualifications and experience in a range of subjects. Some have a technology bias, some financial, some legal and others focus on marketing/brand..."

It refers to the chartered qualification issued by the RICS – Chartered Valuation Surveyor – that individuals can obtain through proving competence in the valuation of businesses and intangible assets. However, it is believed that numbers who have qualified under this route is thought to be very small – probably less than 100.

The Study did not mention the other groupings/qualifications available to intangible asset valuers in the UK, including:

The ICAEW Valuation Special Interest Group that has in excess of 700 members although they are not permitted a specific ICAEW designation.

The Society of Share and Business Valuers (50+ members)

The ACCA (in collaboration with the French Conseil Supérieur Ordre Des Experts-Comptables) introduced a Certificate in Business Valuation in 2016 for those seeking a top-up to an existing professional accountancy qualification or who have an educational or vocational background in business valuations and wish to gain formal recognition for their knowledge and skills but do not currently hold a professional accountancy qualification. We have no knowledge of the numbers who may have acquired this certification.

Practitioners in the UK who hold qualifications from bodies such as the American Society of Appraisers and the Canadian Institute of Chartered Business Valuators.

This lack of a clearly defined professional identity for the professionals who provide IP/intangible asset valuations leads to confusion as to who has the competency to conduct IP valuations. In turn, this can lead to mistrust between the professions and a negative image for IP valuation in general. The risk is also present that with no recognised common benchmark for becoming a professional valuer, individuals or firms with no formal training or credentials can describe themselves as such.

Among the barriers to the more efficient functioning of the market identified in the Hidden Value Study were a lack of understanding of where and how to find a valuer and lack of information to make an informed choice. Some of the comments made by those interviewed:

'Non-experts are offering valuation services as an interesting diversion from a main professional activity which gives a complex valuation area a bad name. Too few have a recognised IP valuation accreditation and are not regulated.'

'Most IP valuers are not competent.'

'A market served by cowboys who pretend to have a scientific basis for their guesses.'

The lack of a unified identity for the intangible asset valuation profession in the US led the Securities and Exchange Commission to call on the profession to develop a stronger professional framework and a single credential for the purposes of valuation for financial reporting purposes. As the, then, Chief Accountant at the SEC said in 2011, *'Valuation professionals stand apart from other significant contributors in the financial reporting process for their lack of a unified identity.'* The implied threat was that if the profession did not act, the regulators would.

In response, the American Institute of CPAs, the American Society of Appraisers and the RICS joined together to launch a new qualification – Certified in Entity and Intangible Valuation (CEIV).¹

The qualification has been designed for the US market and specially for valuation for financial reporting purposes. As it stands it would be inappropriate to meet UK needs but the model of co-operation by existing professional institutes may be one that could be replicated in the UK.

Valuation Standards

Before we discuss various valuation standards we first must clarify what is generally recognised as the role of such standards by the primary issuers, including the International Valuation Standards

¹ The Hidden Value Study inaccurately referred to involvement by the International Institute of Business Valuers (IIBV) in this qualification.

Council (IVSC). The word “standard” has many uses in English and can be an adjective or a noun. However, in context of valuation, it is generally recognised as set of rules and supporting guidance that apply to the process of conducting a valuation. These typically include professional attributes, such as competence and objectivity, common definitions and disclosures required to ensure that those relying on the valuation understand how it has been derived and any limitations on its applicability. While the various sets of standards used around the world may identify and define valuation methods and techniques that may be appropriate in different scenarios, none prescribes the use of a specific method by which value must be calculated in any given situation.

Among valuation professionals “method” is understood as the technique or model used to arrive at the valuation figure, not to the wider policies and procedures on why and when valuations should be carried out and who should undertake them. This is also now recognised in financial reporting standards.²

Valuation is not a perfect science and the appropriate method, or methods, to be used will vary according to the exact fact pattern of every valuation assignment. Professional valuers have to use appropriate skill and judgement in the select of the most appropriate method. Of the few, mainly historic, examples of which we are aware in which a method has been prescribed, a gap has usually developed between the “regulatory value” and market value. This is usually due to market participants either adapting the way transactions are structured to gain advantage from the required method or because other techniques become favoured in actual transactions. It is for this reason that most regulatory standards now focus on the desired objective rather than attempt to prescribe how that value is calculated.

We therefore feel that the suggestion in the Call for Views that in other countries there are “government regulated standard valuation methods” is somewhat wide of the mark. While some have, or are considering, regulating who may value and what valuation standards should be followed, at most only guidance on generally recognised methods is issued.

IP & intangibles valuation standards used in the UK

The Hidden Value Report refers to a number of valuation standards that govern the manner in which IP valuations are carried out. It concludes that the best known and most widely adopted are those drawn up by the International Valuation Standards Council (IVSC). However, the responses given by those interviewed for the purposes of developing the Report, (and summarised in the Annex to that Report), do not seem to support this conclusion. The responses suggest that there is no one standard that is better known than any of the others. Indeed, in one survey group 78% were not sure which standards were applicable.

The Deloitte study for the European Commission on transfer pricing also examined the standards for intangible asset valuation set by nine different bodies including IVSs, IFRSs, USPAP, OECD, ISO, and German national standards. It concluded that *“The broad agreement between valuers on many key principles and approaches / methods of valuation has translated only partially into the standardisation of these approaches and methods across the world these standards. These different interpretations of concepts and differing valuation approaches continue to represent major challenges”*. The study suggested that a convergence of standards operating at the same level

² IFRS 13 Application Guidance B2 et seq

appears to be in the interest of the profession as well as in the public interest, in order to enhance the applicability, relevance and comparability of valuations.

The Deloitte report drew on the earlier report prepared for the European Commission on the Valuation of Intellectual Property. This report also reviewed various valuation standards and concluded that although the standards have no contradictory content, the problem arose from the limited dissemination of the fact that they exist and the little confidence in their results.

It is interesting to note that the author of the 2013 Report **Banking on IP** expressed a hope that newly issued guidance by the RICS on intangible asset valuation would be widely used within the UK. The findings of the Hidden Value study seem to suggest that this has not happened, no doubt as a consequence of the fact that the majority of intangible asset valuers are not members of the RICS.

There is no one single standard underpinning intangible asset valuations in the UK. Agreement on such a standard is one way to increase confidence in the quality of valuations being performed and to ensure that valuations are in line with generally accepted principles and standards.

An organisation for intangible asset valuers

The EU Expert Group proposed the creation of a professional organisation for the IP valuation profession in order to increase transparency of IP valuations and increase trust towards valuation. It proposed the creation of a register of expert IP valuers, whose ability must first be certified by passing the relevant knowledge tests. The entity that manages this body of valuers would also have the power to review the valuations conducted by the valuers certified by this institution.

In contrast the Hidden Value report recommends only that an open directory of IP valuers be established with no criteria established as to who could be included in that directory. This seems to us a weak response to the need for a higher degree of standardisation and consistency in intangible asset valuation.

The Singapore Experience

In April 2013, the Singapore Government announced a 10-year master plan to guide the country towards becoming a Global IP Hub in Asia. An update to that plan was published in May 2017.

The master plan saw IP valuation as key to the success of any IP financing scheme and called for a Centre of Excellence for IP Valuation be set up to promote excellence in the research and practice of valuation to support IP transactions. In August 2014, Singapore launched IP ValueLab (IPVL), a fully-owned subsidiary of the Intellectual Property Office of Singapore (IPOS). IPVL has initiated a range of activities to grow IP valuation capabilities in Singapore, such as partnering with Singapore Accountancy Commission to develop and promote IP valuation guidelines, methodologies and best practices, developing curriculum for the training of IP valuers and conducting IP financing and valuation seminars.

As update to the Master Plan was issued in May 2017. This recommends that Singapore significantly grow the community of IP and commercialisation experts, including valuers and strategists, to support the commercialisation of innovation and to further grow Singapore's skillsets in IP valuation and evaluation. In parallel with efforts to develop valuation expertise, Singapore will seek to

establish a set of practices, standards and certification on IP valuation and will also explore partnerships with international certification bodies for international adoption of these IP valuation practices and certification programme.

At the same time as work was underway on the IP master plan, the Institute of Valuers and Appraisers, Singapore (IVAS) was established in 2013, under the umbrella of the Singapore Accountancy Commission, to foster professional excellence in the areas of Business Valuation and develop and grow Singapore into a Centre of Excellence for Business Valuation. The objectives of IVAS include the promotion of professional valuation standards; the setting of ethical and professional standards of practice and the promotion of professional qualification and certification in Business Valuation. In 2016 the Chartered Valuer and Appraiser programme, Asia's first dedicated programme in business valuation was launched.

Hong Kong as a comparison

It is interesting to compare the situation in Singapore with that of Hong Kong. In 2015 the Report of the Working Party on Intellectual Property Trading was issued by the Hong Kong government. Again the aim was to develop Hong Kong as the premier IP trading hub in Asia. One of the focus areas was to facilitate the provision of highly specialised professional services in IP valuation and the development of IP valuation reporting standards for Hong Kong. Little seems to have happened. The report noted the existence of the Hong Kong Business Valuers Forum, (HKBVF) an alliance formed in 2005 by the Hong Kong Institute of Surveyors, Hong Kong Society of Financial Analysts and the RICS by way of a Memorandum of Understanding. But this organisation seems weak. Its Business Valuation Standard has not been updated since 2005. An Intellectual Property Reporting Standard, that forms part of the Business Valuation Standard, was issued in 2015 but already needs updating. Notably, the Forum is not representative of all those who carry out intangible asset valuation in Hong Kong. The Hong Kong Institute of Certified Public Accountants (HKICPA) is not a member and it is interesting to note in its response to the IASB Request for Information: Post-Implementation Review: IFRS Fair Value Measurement, HKICPA considers *that a centralised body that regulates the valuation industry ...is necessary*.

It would seem that to be successful requires both strong persuasion from central government or a regulatory authority (such as in Singapore and the US) and requires the full inclusion of all professional institutes whose members provide valuation services.

Is a UK organisation for intangible valuers achievable?

The creation of a new professional institute for intangible asset valuation in the UK is probably unrealistic. However, if the professional organisations whose members provide intangible asset valuation can unite behind common standards for education, behaviour, service delivery, monitoring and regulation it would mitigate the risks arising to both the public and their image from a lack of a clear identity for the profession as a whole.

It would also be sensible to align any initiative with various efforts by other professional and industry bodies to improve the reporting of intangible assets to avoid a number of multiple confusing initiatives. Such bodies include the Coalition for Inclusive Capitalism which is seeking to establish a framework as a tool to understand, measure and compare the investments made by corporations in their purpose, brand, intellectual property, products, employees, environment and communities. This framework has been developed by EY and is currently being tested by Coalition members.

The UK Big Innovation Centre is calling for company reporting to be overhauled so that intangible assets are properly valued, at both a company and national level supported by better mechanisms to value intangibles objectively. In July it published a report recommending the establishment of an Intangible Asset Charter under which a framework would be developed for company boards consistently to measure, manage and communicate the value they create from intangibles across stakeholder groups over the long term and relate this value to shareholders and other stakeholders in a compelling way.

References

The following reports were considered in the drafting of our response:

Hidden Value: A study of the UK IP Valuation Market³. Published by IPO September 2017

Banking on IP: The role of intellectual property and intangible assets in facilitating business finance⁴. Published by IPO 2013

Study on the Application of Economic Valuation Techniques for Determining Transfer Prices of Cross Border Transactions between Members of Multinational Enterprise Groups in the EU⁵. Prepared by Deloitte and published by the European Commission October 2016

Final Report from the Expert Group on Intellectual Property Valuation⁶. Published by the European Commission 29 November 2013

Unlocking Investment in Intangible Assets⁷. Discussion Paper published by the European Commission May 2017

Creating a Financial Market for IPR⁸ – Final report for EU tender 6 Dec 2011

Update to the Intellectual Property Hub Master Plan⁹. Published by Government of Singapore and Intellectual Property Office of Singapore, May 2017

Report of the Working Group on Intellectual Property Trading¹⁰. Published by Hong Kong Special Administrative Region Government, March 2015

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647086/IP-Valuation-Market.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312008/ipresearch-bankingip.pdf

⁵ <https://publications.europa.eu/en/publication-detail/-/publication/e7dbd290-c682-11e6-a6db-01aa75ed71a1>

⁶ http://ec.europa.eu/research/innovation-union/pdf/Expert_Group_Report_on_Intellectual_Property_Valuation_IP_web_2.pdf

⁷ https://ec.europa.eu/info/sites/info/files/dp047_en.pdf

⁸ <https://publications.europa.eu/en/publication-detail/-/publication/afdc8beb-866f-400e-913b-23f4c018e58b>

⁹ https://www.ipos.gov.sg/docs/default-source/about-ipos-doc/full-report_update-to-ip-hub-master-plan_final.pdf

¹⁰ <http://www.ip.gov.hk/materials/news/20150320162103.19.pdf>