

### **Intellectual Property Protection Competitive Positioning –Non-Tax Factors**

As countries seek to compete to attract foreign investment and move up the value chain attracting industries with high value added activities and valuable intangibles is becoming more and more of a focus. This is clearly evident when we look at the growing number of countries offering incentives for research and development activities as well as the exploitation of intangibles often in the form of the so-called IP Box regimes. However clearly taxation considerations and pricing issues are not the only matters of importance with regard to the management of intangibles. Most intellectual property owning corporates and individuals also want to ensure that their valuable intangible assets will be protected and that there are effective enforcement procedures and remedies against those who infringe or exploit owners' rights without license or permission. All of these factors come into play as intellectual property owners seek safe and secure locations to house their assets. While tax is the focus of this research paper the overall competitive positioning of countries in this respect needs careful consideration..

In this Appendix the competitive positioning and relative strengths of a number of IP regimes in Asia and outside Asia are briefly reviewed without regard to tax matters through the lens of the Intellectual Property Rights Index of the World Economic Forum (“WEF”) Global Competitiveness Report, and the Global Intellectual Property Centre (“GIPC “)Index (summaries and extracts only). Both indices assign scores and ranks each country based on the levels of protection, enforcement, and remedies available for intellectual property rights.

## World Economic Forum Global Competitiveness Report 2014-2015

The WEF is an International Institution committed to improving the state of the world through public-private cooperation. It engages political, business, academic and other leaders of society in collaborative efforts to shape global, regional and industry agendas. Together with other stakeholders, it works to define challenges, solutions and actions, always in the spirit of global citizenship.<sup>1</sup>

The WEF Global Competitiveness Report 2014-2015 assessed the competitiveness landscape of 144 economies, providing insight into the drivers of their productivity and prosperity. The report worldwide provides a platform for dialogue between governments, businesses and civil society about the actions required to improve economic prosperity.<sup>2</sup> In the 2014-2015 report Switzerland led the rankings overall closely followed by Singapore and the USA. One section of the report dealt with the Intellectual Property Protection available in the countries surveyed with results analysed in an Intellectual Property Protection Index. Index scores (maximum score was 7) and the ranking of a number of countries are noted below. Singapore performed extremely well, ranking 1<sup>st</sup> equal with Finland in this respect.

<b>Country</b>	<b>Intellectual Property Protection Index</b>	<b>Ranking(all countries)</b>
Singapore	6.2	1 <sup>st</sup> equal
Switzerland	6.0	4
Japan	6.0	7
United Kingdom	5.9	8
Hong Kong SAR	5.8	10
Netherlands	5.7	11
Ireland	5.6	14
United States	5.4	20
Germany	5.4	21
Malaysia	5.2	25
Indonesia	4.1	43
China	4.0	53
India	3.7	65
Thailand	3.1	104

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<sup>1</sup> <http://www.weforum.org/world-economic-forum>

<sup>2</sup> <http://www.weforum.org/reports/global-competitiveness-report-2014-2015>

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### Global Intellectual Property Center Index

The Global Intellectual Property Center (GIPC) was established in 2007 as an affiliate of the U.S. Chamber of Commerce. Today, the GIPC is leading a worldwide effort to champion intellectual property rights as vital to creating jobs, saving lives, advancing global economic growth, and generating breakthrough solutions to global challenges.<sup>3</sup>

The 2015 GIPC Index mapped the IP environment of 30 economies, comprising nearly 80 percent of global gross domestic product (GDP). Economies' GIPC Index scores were evaluated based on 30 indicators indicative of a robust IP system. The result was a rigorous statistical tool that policy makers and industry leaders could use to evaluate the strength of an economy's IP regime.<sup>4</sup>

The GIPC Index consisted of 30 indicators divided into the following 6 major categories<sup>5</sup>:

Category 1: Patents, Related Rights, and Limitations

Category 2: Copyrights, Related Rights, and Limitations

Category 3: Trademarks, Related Rights, and Limitations

Category 4: Trade Secrets and Market Access

Category 5: Enforcement

Category 6: Membership and Ratification of International Treaties

The 2015 GIPC Index<sup>6</sup> also identified a positive relationship between:

- Strong IP rights and R&D expenditure: Companies in economies with advanced IP systems are 40% more likely to invest in R&D.
- Strong IP rights and high-value job growth: Economies with favorable IP regimes employ more than half their workforce in knowledge-intensive sectors.
- Strong IP rights and FDI: Strong IP protections in the life sciences sector account for 40% of life sciences investment. Additionally, economies with beneficial IP protection see 9-10 times more life sciences investment than countries with weak IP protection

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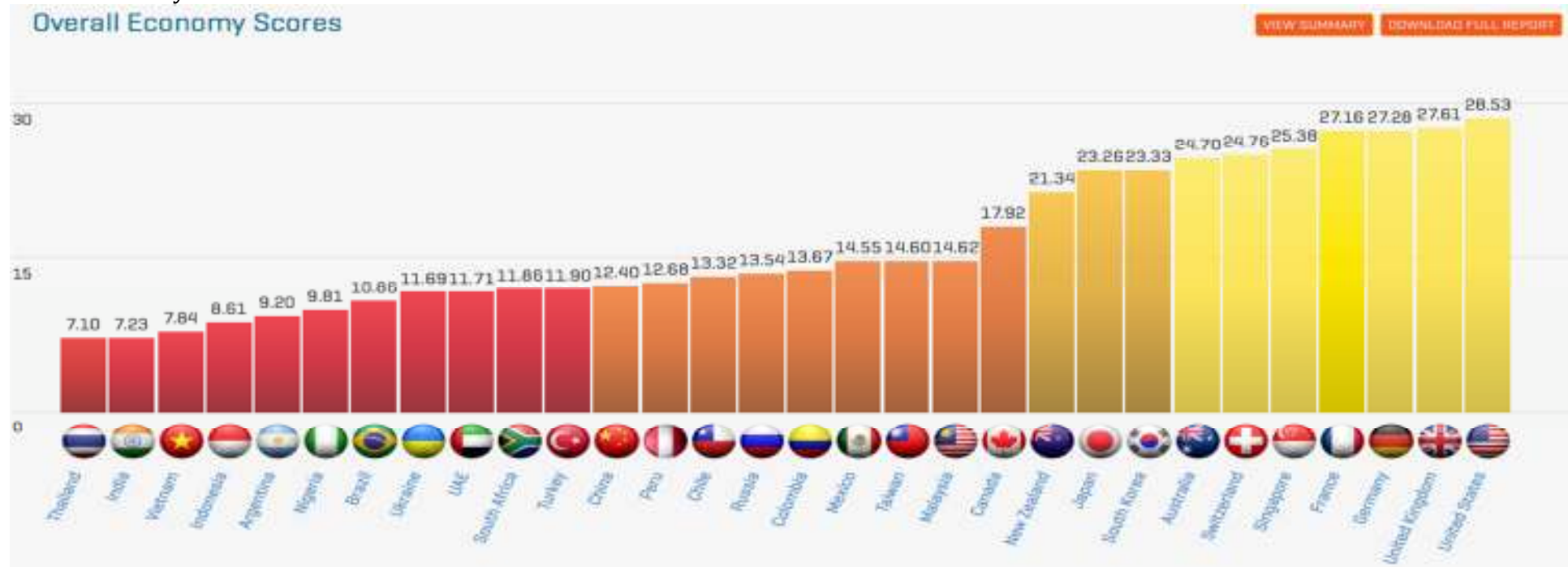
<sup>3</sup> <http://www.theglobalipcenter.com/about/mission-and-goals/>

<sup>4</sup> [http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index\\_Map\\_Index\\_3rdEdition\\_Summary.pdf](http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index_Map_Index_3rdEdition_Summary.pdf)

<sup>5</sup> [http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index\\_Map\\_Index\\_3rdEdition.pdf](http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index_Map_Index_3rdEdition.pdf)

<sup>6</sup> [http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index\\_Map\\_Index\\_3rdEdition\\_Summary.pdf](http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index_Map_Index_3rdEdition_Summary.pdf)

## Overall Country Indexes<sup>7</sup>:



<sup>7</sup> <http://www.theglobalcenter.com/gipcindex/>

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	Key Areas of Strength	Key Areas of Weakness
United States	<ul style="list-style-type: none"> <li>Pharmaceutical-related patent enforcement and resolution mechanism</li> <li>Patentability of Computer Implemented Inventions (“CIIs”)</li> </ul>	<ul style="list-style-type: none"> <li>Increasingly narrow interpretation of patentability of biotech inventions</li> <li>Ambiguity concerning ISPs’ obligation to act against trademark infringement</li> <li>Concerns over border officials ability to share information with rights holders and newer methods of export</li> <li>Inconsistent enforcement against counterfeit and pirated goods, especially goods sold online</li> </ul>
28.53/30	<ul style="list-style-type: none"> <li>Court decisions set appropriate boundaries on copyright exceptions (excluding ongoing e-book debate)</li> <li>Digital Rights Management (“DRM”) legislation</li> </ul>	
1 <sup>st</sup> /30	<ul style="list-style-type: none"> <li>Protection of trade secrets</li> <li>Generally deterrent civil remedies and criminal penalties</li> <li>Commitment to and implementation of international treaties</li> </ul>	
United Kingdom	<ul style="list-style-type: none"> <li>Highly advanced and sophisticated national Intellectual Property (“IP”) environment</li> <li>Protection of trade secrets</li> </ul>	<ul style="list-style-type: none"> <li>Draft plain packaging regulations for tobacco products published and Government moving towards full introduction of standardized packaging</li> <li>New private copy exception does not provide rights-holders with mechanism of compensation</li> <li>Relatively high level of software piracy in comparison to other high income countries</li> </ul>
27.61/30	<ul style="list-style-type: none"> <li>Framework in place to promote cooperative action against online piracy</li> <li>DRM legislation</li> </ul>	
2 <sup>nd</sup> /30	<ul style="list-style-type: none"> <li>Commitment to and implementation of international treaties</li> <li>Consistent, effective and innovative border protection against counterfeited and pirated goods</li> </ul>	
Germany	<ul style="list-style-type: none"> <li>Advanced and sophisticated national IP environment</li> <li>Sector specific IP rights such as regulatory data protection and patent term restoration in place</li> </ul>	<ul style="list-style-type: none"> <li>Uncertainty over Regulatory Data Protection (“RDP”) under European Medicines Agency’s (“EMA”) new disclosure policy</li> <li>Damages awards historically not very high</li> <li>Patent Law Treaty signed but not ratified</li> </ul>
27.28/30	<ul style="list-style-type: none"> <li>Broad online copyright protection</li> <li>Legal measures to address unauthorized use of trademarks</li> </ul>	
3 <sup>rd</sup> /30	<ul style="list-style-type: none"> <li>Efficient and timely application of civil remedies and criminal penalties</li> </ul>	

Singapore	<ul style="list-style-type: none"> <li>• Amendments to the Copyright Act strengthen overall framework and mechanisms available against online piracy</li> <li>• Advanced national IP framework in place</li> <li>• Patent linkage in place</li> <li>• Patent enforcement legal framework adequate, generally applied</li> </ul>	<ul style="list-style-type: none"> <li>• While dropping, still high rates of software piracy as surveyed by Business Software Alliance (“BSA”) 2014</li> <li>• High rates of per capita Peer –to –Peer (“P2P”) sharing</li> <li>• Relatively high rates of trademark counterfeiting</li> <li>• Limits on ex officio powers with regards to in-transit seizure</li> </ul>
25.38/30	<ul style="list-style-type: none"> <li>• Adequate regime for legal software in the government</li> <li>• Legal framework provides for protection of unregistered marks</li> </ul>	
5 <sup>th</sup> /30	<ul style="list-style-type: none"> <li>• Exclusive trademark rights in place and generally enforced</li> <li>• Biggest auction site allows notice and takedown</li> <li>• Ex officio authority in place for customs officials</li> </ul>	
Switzerland	<ul style="list-style-type: none"> <li>• Advanced national IP environment</li> <li>• Application of patent requirements</li> <li>• Regulatory data protection; patent term restoration</li> </ul>	<ul style="list-style-type: none"> <li>• Overly broad interpretation of limitations and exceptions for copyright</li> <li>• Crucial gap in enforcement and prosecution of online copyright infringement</li> <li>• Relatively high level of physical counterfeiting and online piracy in comparison with other high-income countries/economies</li> </ul>
24.76/30	<ul style="list-style-type: none"> <li>• Clear implementation of policies requiring the use of licensed software in government agencies</li> <li>• Non-discrimination/non-restriction on the use of brands in packaging</li> </ul>	
6 <sup>th</sup> /30	<ul style="list-style-type: none"> <li>• Protection for well-known marks</li> <li>• Protection of trade secrets</li> </ul>	
Japan	<ul style="list-style-type: none"> <li>• Robust and sophisticated national IP framework in place</li> <li>• Life sciences IP rights in place and enforced</li> <li>• Strong protection for CIIs</li> </ul>	<ul style="list-style-type: none"> <li>• Accession to IP specific treaties and Free Trade Agreements lacking – accession to Trans-Pacific Partnership (“TPP”) would change this</li> <li>• Limited notice and takedown mechanism in place</li> </ul>

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23.26/30	<ul style="list-style-type: none"> <li>• Effective patent enforcement and resolution process through courts</li> <li>• Trademark exclusive rights in place and generally enforced</li> <li>• Industry-based standards and policy on notice and takedown present relating to online counterfeit sales</li> </ul>	<ul style="list-style-type: none"> <li>• Copyright damages awarded relatively low</li> </ul>
9 <sup>th</sup> /30	<ul style="list-style-type: none"> <li>• Trade secret enforcement</li> <li>• Ex officio customs authority and in transit detainment present</li> </ul>	
Malaysia	<ul style="list-style-type: none"> <li>• Intensified enforcement against online piracy in 2014</li> <li>• Strong package of copyright reforms passed in 2012 – broadly in line with international best practices</li> </ul>	<ul style="list-style-type: none"> <li>• Despite intensifying efforts still high levels of counterfeiting, software, and music piracy</li> <li>• De facto RDP full term of protection is not offered to new products</li> <li>• Patent term restoration not allowed</li> <li>• Ex officio powers not used by customs officials</li> <li>• Accession to international IP specific treaties and FTA’s lacking</li> </ul>
14.62/30	<ul style="list-style-type: none"> <li>• Statutory civil damages introduced in the 2012 amendments to the Copyright Act</li> </ul>	
12 <sup>th</sup> /30	<ul style="list-style-type: none"> <li>• Acceded to the WIPO Internet Treaties</li> <li>• 5 year RDP term in place</li> </ul>	
Taiwan	<ul style="list-style-type: none"> <li>• Basic 20 year patent term of protection in place</li> <li>• Basic exclusive rights for copyright in place</li> <li>• Digital copyright reform ongoing</li> <li>• Fairly strong well-known mark protection in legislation</li> </ul>	<ul style="list-style-type: none"> <li>• CIIIs patentability very limited</li> <li>• No patent term restoration or effective regulatory data protection</li> <li>• Major holes in digital copyright regime</li> <li>• DRM lacking in practice</li> <li>• High rates of software piracy</li> <li>• Limited and sporadic enforcement of trademarks; high rates of infringement</li> <li>• Weak enforcement environment</li> </ul>
14.60/30		
13 <sup>th</sup> /30		
China	<ul style="list-style-type: none"> <li>• New trademark law introduces some improvement to registration and enforcement</li> <li>• Proposed amendments to the copyright law (if adopted)</li> </ul>	<ul style="list-style-type: none"> <li>• Drug Registration Rules amendments would remove rudimentary patent linkage mechanism</li> <li>• Actual trade secret theft remains high and legislation has not</li> </ul>

12.40/30	<p>increase penalties, extend copyright protection to live broadcasts, and strengthen enforcement of IP</p> <ul style="list-style-type: none"> <li>• New dedicated IP Courts in major cities</li> </ul>	<p>been updated</p> <ul style="list-style-type: none"> <li>• Policies requiring sharing of know-how in exchange for market access continue to be present</li> </ul>
19 <sup>th</sup> /30	<ul style="list-style-type: none"> <li>• Demonstrated ability to launch nationwide enforcement campaigns against counterfeiting and piracy activities in specific sectors</li> <li>• Increased government commitment to combatting trade secret theft</li> </ul>	<ul style="list-style-type: none"> <li>• Inconsistent criminal prosecution against counterfeiters in many industry sectors</li> <li>• Non-transparent Anti-Monopoly Law (AML) investigations targeting foreign businesses</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>• New Copyright Act passed in September 2014 – includes introduction of rudimentary notification system, potential blocking of infringing websites and limited protection for Technological Protection Measures (“TPMs”)</li> <li>• Basic IP framework in place including 20 year patent term of protection</li> </ul>	<ul style="list-style-type: none"> <li>• Persistent high levels of piracy</li> <li>• Software piracy rates in BSA 2014 survey at 84% - highest of all countries/economies included in GIPC Index</li> <li>• History of pharmaceutical compulsory licensing</li> <li>• No patent term restoration or regulatory data protection available</li> <li>• Limited protection for unregistered marks</li> <li>• No specific coverage of trademark dilution or cybersquatting</li> <li>• Market access conditional on local manufacturing requirement or licensing IP</li> <li>• Rudimentary judiciary, non-deterrent/ transparent penalties</li> </ul>
8.61/30	<ul style="list-style-type: none"> <li>• FTA obligation for legal government software</li> <li>• Basic trademark exclusive rights available</li> <li>• Major auction sites provide notice and takedown for online counterfeiting</li> </ul>	
27 <sup>th</sup> /30		
India	<ul style="list-style-type: none"> <li>• Potential fundamental change in India’s IP framework announced by new Government</li> <li>• New Preferential Market Access (PMA) exempts private sector from procurement requirements</li> <li>• Basic IP framework introduced in mid 2000s, including 20</li> </ul>	<ul style="list-style-type: none"> <li>• Patentability requirements outside international standards</li> <li>• Regulatory data protection and patent term restoration not available</li> <li>• History of using compulsory licensing for commercial and non-emergency situations</li> </ul>



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7.23/30	<p>year patent protection</p> <ul style="list-style-type: none"> <li>• Ex officio powers introduced in 2007 for the deputy and assistant commissioners of customs</li> </ul>	<ul style="list-style-type: none"> <li>• Limited framework for addressing online piracy and circumvention devices</li> <li>• High levels of software piracy, music piracy, and counterfeit goods</li> <li>• Market access barriers</li> <li>• Poor application and enforcement of civil remedies and criminal penalties</li> <li>• Not a contracting party to any of the major international IP treaties referenced in the IP Index</li> </ul>
29 <sup>th</sup> /30		
Thailand	<ul style="list-style-type: none"> <li>• Basic patentability framework</li> <li>• Basic exclusive rights in place for copyright</li> <li>• Administrative notice and takedown mechanism for sale of counterfeit goods recently introduced</li> <li>• Elemental legal framework for enforcement of IP rights</li> </ul>	<ul style="list-style-type: none"> <li>• Holes in patentability</li> <li>• History of compulsory licenses violating TRIPS</li> <li>• Ineffective regulation of RDP</li> <li>• Digital copyright regime rudimentary</li> <li>• Failure to implement FTA obligations on legal software in government</li> <li>• Plain packaging legislation under consideration</li> <li>• Limited framework for legal rights of trademarks</li> <li>• Very high physical counterfeiting rates</li> <li>• IP rights enforcement lacking, in terms of delays and effective action</li> </ul>
7.10/30		
30 <sup>th</sup> /30		