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To all the Members of the AIPPI UAE Group

Subject: UAE Economic Substance legislation

In 2019 the UAE introduced economic substance legislation under the Cabinet of Ministers Resolution No. 31 of 2019 (30 April 2019) (“ESR”). ESR came into effect on 30 April 2019.

This new legislation may impact IP holding companies and revenue generated from IP commercialization transactions.

A deadline of 30 June 2020 was imposed by most licensing authorities with regard to filing an ESR Notification. This notification, essentially, serves as the self-declaration of whether Relevant Activities are performed by the organisation.

The Regulations require that every UAE entity that carries on a “Relevant Activities” meets a requirement for a level of “Economic Substance” relative to the type and level of activities it undertakes. “Relevant Activities” that are subject to the ESR are holding companies whose purpose is to house/manage the group’s Intellectual Property (“IP”), although such holding companies are subject to a reduced level of economic substance requirements than other entities.

In general, the requirements for economic substance under the Regulations are:

- the entity must conduct its core income generating activities (i.e. its key business activities) in relation to Relevant Activities in the UAE. This may include income generated from IP commercialization;

- the entity must be directed and managed in the UAE, an indicator of which would be the holding of board meetings and/or the passing of board resolutions in the UAE, on a periodic basis, for example; and
- the entity's activities must be carried out with adequate local economic substance with regard to the level of relevant activity in the UAE.

Assessing the level of economic substance, regard is had to factors such as:

- the number of full-time employees;
- the amount of operational expenditure; and
- the level of physical assets.

For IP holding companies operating in the UAE, they will need to examine whether they meet the specific "Economic Substance" requirements set out in the ESR. If they find themselves falling below the requisite level, measures will be necessary to either bolster their UAE economic substance or restructure.

The Regulations also introduce an annual reporting requirement to the relevant authorities. Failure to do so could see the imposition of fines, commercial license suspension, withdrawal or non-renewal. The ESR Return is required to be submitted by the end of 2020 and it will be necessary to confirm that: the Licensee is being managed and directed in the UAE; has an adequate number of employees, expenditure, and physical assets in the UAE and the core income generating activity is being carried out in the UAE.

Missing the deadlines in relation to the both the ESR Notification and the ESR Return can trigger fines unless authorities allow a grace period. To date we have not come aware of any grace periods for the ESR Notifications. If the ESR Notification has been missed steps should be taken to file the Notification as soon as possible to mitigate the possibility of fines.

On behalf of Communications Committee

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