

# 150 FAQs to consider when Internationalising your Intellectual Property

**CHINA IPR**  **LATIN AMERICA**  **SOUTH-EAST ASIA**   
SME HELPDESK IPR SME HELPDESK IPR SME HELPDESK



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# China – Latin America – South-East Asia IPR SME Helpdesks

## Note to the Reader:

The China, Latin America and South-East Asia IPR SME Helpdesks are three projects launched by the European Union's Executive Agency for SME (EASME) in order to assist SMEs in protecting their Intellectual Property (IP) when doing business in or with China, Latin America and South-East Asia. During the past years of their operation, the Helpdesks have received thousands of questions from SMEs about how to protect, manage and enforce their Intellectual Property Rights (IPR) in international markets. This publication gives a snapshot of the most frequently asked questions and provides brief answers to them. The information in this handbook is non-exhaustive, but aims to clarify the basics. For further details, you can always download our guides from the [www.ipr-hub.eu](http://www.ipr-hub.eu) website, contact the enquiry helplines or seek advice from legal professionals.

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## About the IPR SME Helpdesks

### 1. What are the IPR SME Helpdesks and what is their geographical coverage?

The IPR SME Helpdesks (Helpdesks) are regional projects co-funded by the European Commission to support European Small and Medium-sized Enterprises (SMEs) in protecting and enforcing their intellectual property rights (IPRs) in China, South-East Asia and Latin America.

#### *China IPR SME Helpdesk:*

Mainland China, Hong Kong, Macao and Taiwan

#### *Latin America IPR SME Helpdesk:*

Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela

#### *South-East Asia IPR SME Helpdesk:*

Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam

### 2. What kind of services do the IPR SME Helpdesks provide?

The Helpdesks provide the following services for EU SMEs:

- Business Advice on IP: They provide replies to your IP-related

enquiries within three (3) business days. Please send your questions to [question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu), [helpline@latinamerica-ipr-helpdesk.eu](mailto:helpline@latinamerica-ipr-helpdesk.eu), [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu).

- Training: You can participate in on-site trainings organised across the EU and the countries listed in Q1. You can also join our webinars (online training) in front of your computer. For our events calendar, visit the project websites or the joint IPR Hub portal ([www.ipr-hub.eu](http://www.ipr-hub.eu)).
- Background materials: You can also download our business-focused and practical IP guides concerning general and industry specific IP issues as well as self-learning tools from our website.

### 3. Are all the Helpdesks' services free of charge?

Yes, all services are free of charge for SMEs and intermediaries (including institutions and organisations) from the European Union.

### 4. How can I reach the Helpdesks for advice on-site and online?

The Helpdesks can be reached or visited at the following contact points. For a personal visit, please contact us in advance to book an appointment.

*China IPR SME Helpdesk:*

The Helpdesk operates an Enquiry Helpline that can be reached via: [question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu) or the following link: <http://www.china-iprhelpdesk.eu/content/ask-question>. Upon contacting us, you will receive a reply within three (3) working days. You can also call us at +86 (10) 6462 0892, from 9am to 6pm, China Standard time. You can also schedule an appointment for one-on-one consultation at our Beijing office.

**China**

Address: European Union Chamber of Commerce, Beijing Lufthansa Centre Office Buildings, Office C319, 100125 Beijing, China  
Tel: +86 (1) 6462 – 2066  
E-mail: [question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)

**Belgium**

European Business Network (EBN) offices:  
Address: Avenue de Tervueren 168, B-1150 Brussels Belgium  
Tel: +32 (2) 772 89 00  
E-mail: [question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)

*Latin America IPR SME Helpdesk:*

The Helpdesk operates an Enquiry Helpline that can be reached via: [helpline@latinamerica-ipr-helpdesk.eu](mailto:helpline@latinamerica-ipr-helpdesk.eu) or the following link: <http://www.latinamerica-ipr-helpdesk.eu/content/helpline> Upon contacting us, you will receive a reply within three (3) working days. You can also call us at +34 965 90 96 84, from 9am to 6pm, CET. You can also schedule an appointment for one-on-one consultation at our offices Alicante (Spain), Mexico City (Mexico), Santiago de Chile (Chile) or Rio de Janeiro (Brazil).

**Spain**

Address: University of Alicante, Campus San Vicente del Raspeig, Edificio Torre de Control, 03690 Alicante, Spain  
Tel: +34 (96) 590 9684  
E-mail: [head\\_office@latinamerica-ipr-helpdesk.eu](mailto:head_office@latinamerica-ipr-helpdesk.eu)

**Brazil**

Address: Rua Marquês de Olinda, 70 – Botafogo. Rio de Janeiro-RJ, CEP 22251-040  
Tel: +55 (21) 2237-8728  
E-mail: [brazil@latinamerica-ipr-helpdesk.eu](mailto:brazil@latinamerica-ipr-helpdesk.eu)

**Mexico**

Address: c/del Puente 222 Ejidos de Huipulco, Tlalpan 14380, Ciudad de México, Distrito Federal  
Tel: +52 (55) 5483-2252  
E-mail: [mexico@latinamerica-ipr-helpdesk.eu](mailto:mexico@latinamerica-ipr-helpdesk.eu)

**Chile**

Address: Galvarino Gallardo 1690, Providencia, Santiago  
Tel: +56 (22) 787 8422 – 2 787 8400  
E-mail: [chile@latinamerica-ipr-helpdesk.eu](mailto:chile@latinamerica-ipr-helpdesk.eu)

*South-East Asia IPR SME Helpdesk:*

The Helpdesk operates an Enquiry Helpline that can be reached via: [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu) or the following link: <http://www.southeastasia-iprhelpdesk.eu/content/ask-question>. Upon contacting us, you will receive a reply within three (3) working days. You can also call us at +84 (8) 38258116, from 9am to 6pm, Vietnam Standard time. You can also schedule an appointment for one-on-one consultation at our office in Ho Chi

Minh City, Vietnam.

### Vietnam

Address: European Chamber of Commerce in Vietnam, Room 2B, 15th Floor, The Landmark, 5B Ton Duc Thang, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam

Tel: +84 (8) 38258116

Email: [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu)

### Belgium

European Business Network (EBN) offices:

Address: Avenue de Tervueren 168, B-1150 Brussels Belgium

Tel: +32 (2) 772 89 00

E-mail: [question@southeastasia-iprhelpdesk.eu](mailto:question@southeastasia-iprhelpdesk.eu)

5. Do the Helpdesk provide specialized services, such as registering my IP or preparing a contract for me?

The projects provide first-line advice and resources to help you navigate the IP system in the countries listed in Q2, but the

Helpdesks do not substitute the services provided by law firms, thus they do not handle registrations, negotiations and other specialized legal services.

The Helpdesks cannot draft a contract for specific cases, but can help you identify key points that you should watch out for or address with your lawyer.

6. Can the Helpdesks help with non-IP related issues as well?

The IPR SME Helpdesks only provide support and advice related to intellectual property rights. For any other questions, you can contact the organisations enlisted in our Signposting Directory.

7. Which are the organisations providing business support in the mentioned target countries?

For a comprehensive list of IP offices and business support organisation, browse the Signposting Directory on the IPR Hub website.

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## General Questions about IP

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8. What do Intellectual Property Rights (IPR) mean and what kind of IP types exist?

Intellectual Property Rights are legally enforceable rights over the use of inventions or other creative works. As per the definition of

the World Intellectual Property Organisation (WIPO - <http://www.wipo.int/about-ip/en/>), "IP is protected in law by, for example, patents, copyright and trade marks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators

and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish”.

*Types of IP:*

Trade marks, invention patents, utility model patents (UM) (or simple or petty patents), design patents, copyrights, trade secrets, geographical indications (GI), new plant varieties, layout designs of integrated circuits and user graphic interfaces (UGI).

9. Why is IP important for my business and what are the most relevant considerations when planning an IP strategy for entering a new market?

IP, as intangible assets, are key to the competitiveness of your business in the global economy. IP is a primary method for securing a return-on-investment in innovation, creativity and reputation and is particularly relevant to SMEs as they internationalise their businesses to non-EU markets. Apart from helping you protect your innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or IP sales. They are also a significant pull-factor for attracting investors.

A clear vision of IP strategy and how to use IP strategy to support development plans can impact a company's growth and prevent loss of revenue further down the road:

- Identify your IP assets to protect;
- Prioritise protection needs accordingly;
- Assess vulnerability of your business asset according to specific countries of interest;

- Register your core IP as soon as possible;
- Think about online protection;
- Collect information on local IP protection and practice and adapt to them; and
- Set aside a reasonable budget to be prepared to enforce your rights if needed.

The Helpdesks can help you identify and protect your core IP assets, such as trade marks, copyrightable material, patents or design, and in general how to protect and maximize these assets through contract clauses to support relations with local partners.

10. When is the best time to protect my IP?

In most countries listed in Q2 (except for Myanmar, where a filing system is not yet in place), local registration is necessary in most cases, to protect your IP as the country operates a first-to-file system. Hence, an IP protection and management strategy should be put in place a year beforehand at least (in order to finish the necessary IP registrations; without registration, you can't enforce your rights in most cases), if your company has short to medium-term plans to do business in/with these third countries.

For the protection of your rights, it is highly recommended that you register your rights before you attend trade fairs, meet with potential partners or start to sell online.

Once you entered the market you will most likely have limited options to take preventive action or the cost and risk will be higher.

### 11. Are there differences in IP protection in Europe vs. other countries?

It is important to note that IP rights are territorial, meaning that IP is enforceable in a third country only upon valid domestic registration.

Despite a considerable effort at an International level to harmonise IP Laws, registration proceedings and IPRs content, there are still sensible differences in IPRs in third countries compared to Europe, especially when it comes to practice.

Hence, it is very important for you to get familiar with these differences and, moreover, understand how it might affect to your IPRs and business.

### 12. Where can I find a lawyer to help me with managing my IP?

The Helpdesks – as a service with public character – would not be able to provide you with a single recommendation of IP lawyers/firms, but each Helpdesk has developed a list of External IP Experts located in Europe and the target countries whom co-operate in developing the Helpdesks' activities, which can be contacted by you independently. The list of IP External Experts are available on each project website, but it is not a recommendation, nor an endorsement from the project or the European Union. We strongly recommend that you hire a lawyer with competence and experience in handling IP cases in the country of interest. You can also find additional tips in the Helpdesk's "How to find the right lawyer" guides available for download from the project websites.

### 13. What is a trade mark and what are their classifications?

A trade mark is a sign that serves the specific and primary purpose of identifying the origin of goods or services, thus allowing the consumers to distinguish goods or services of one producer from those of another. The sign may be composed of words, devices, letters, numerals, three-dimensional signs (shapes), combination of colours, sounds or any combinations of the above, please take into account that, contrary to Europe, not all countries accept non-conventional trade marks.

A trade mark registration is performed in a specific area – always in connection with certain products and/or services offered by its owner. The International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) is an international classification of goods and services – it groups goods and services into thematic classes for the purposes of the registration of trade marks. The heading of each class indicates the products or services included. The classification can be downloaded from the World Intellectual Property Rights Organisation (WIPO) website here.

### 14. What is a patent?

A patent is an exclusive right granted over an invention, which is a technical solution to a problem. Depending of the country you can apply for a patent over product, a process or even a new use of an already know process/product.

A patent prevents an invention from being commercially made, used, distributed or sold without the patent owner's consent.



### 15. What is copyright?

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. It includes 'moral rights' which are personal and cannot be waived, licensed or transferred and 'economic rights' which give you the exclusive right to exploit the work for economic gain, including the right to reproduce, distribute, perform and use other means to exploit the work. Copyright protects only the tangible expression of an idea (a 'work'), not the idea itself.

### 16. What is a design?

A design refers to the features of a shape, configuration, pattern or ornament applied to a product or an article by any industrial process. It protects the external feature, e.g. appearance of a product or article.

### 17. What are trade secrets and how can they be protected?

In order for the information to be a trade secret, it must 1) be non-public - it must not be known by the general public or by competitors; 2) have actual or potential commercial value - it must give the owner a competitive advantage or be capable of generating economic benefit; and 3) the owner must take reasonable measures to protect the confidentiality of the information.

Prevention is the key to protection. Once a trade secret is disclosed, the damage is already done and it is often very difficult to recover its value, even if you succeed in litigation. You

are advised to:

- Identify and catalogue your trade secrets;
- Document trade secret protection measures you take, in case of a dispute later on. Implement a trade secret protection policy within your company, making sure your employees understand your expectations. Include confidentiality clauses in the contracts with employees and sign non-competition agreement with key employees having access to the company's trade secrets; and
- Conclude non-disclosure agreements before entering into negotiations with third parties.

## CHINA

The China IPR SME Helpdesk is currently in its 4<sup>th</sup> phase of operations and has been providing IP support to EU SMEs doing business in China since 2008. Following are some of the key IP FAQs for the region.

### TRADE MARKS

18. I registered my trade mark in Europe, is it valid in China?  
Do I need to register my trade mark in China?

Your trade mark registration in Europe does not provide protection in China. However, an international registration system is available under the Madrid Protocol through the World Intellectual Property Organisation (WIPO). Both China and the Member States of the European Union (except Malta) are party to the Madrid Protocol. Under the Madrid Protocol, the application for extension to China is based either on the trade mark application or registration. Maltese companies can apply for such an extension through the Office for Harmonization in the Internal Market (OHIM).

In order to enable you to be owner of the trade mark in China, you need to register it in China. A Europe-registered trade mark is not protected in China. Remember that China operates a first-to-file system, meaning that the person or company first submitting a valid application will own the mark.

19. How much will it cost to register my trade mark?

The cost for domestic registration with the China Trade Mark Office (CTMO) is RMB 600 (EUR90) (excluding lawyer fees) for one class, covering up to 10 items of goods/services. An extra RMB 90 (EUR9) is charged per additional item. The basic filing fee for trade mark registration by a trade mark agent/law firm in Mainland China is about EUR 500 – 700 and upwards, depending on the service provider you use.

20. Can I work on the registration myself or do I need to hire a lawyer? Where can I find a local trade mark agent?

Foreign applicants without residency or place of business in China are required to submit trade mark applications to the CTMO through a local Chinese trade mark agent. Registrations must be made in Chinese (Mandarin).

The CTMO has an online database system which includes all recorded trade mark agents. For additional tips and resource on selecting a trade mark agent, please refer to the Helpdesk's "How to Find an Intellectual Property Agent" guide.

## 21. How to adapt my trade mark to the Chinese market? Should I register my original trade mark or its Chinese translation?

You can register a trade mark in China in different languages and versions. It is highly recommended to register your trade mark in three versions 1) in original language (Latin letters); 2) in Chinese characters; and 3) the symbol or logo. Please note that different versions of the same trade mark are considered as separate trade mark applications.

As the registration of a trade mark in Roman characters does not automatically protect the trade mark against the use or registration of the same or similar trade mark written in Chinese, it is highly advisable to register a Chinese version of a foreign trade mark. Furthermore, if there is no existing Chinese character name for a foreign brand, it is very likely that one will be adopted by local consumers either by way of translation or by transliteration, and not necessarily with the right connotations or image that the foreign company would wish to convey. There are three ways to do this:

- A literal translation works when the trade mark has a distinctive meaning. For example, Apple Computers chose the brand name 'Ping Guo' ( 苹 果 ), which is Chinese for 'apple'. The disadvantage of this method is that the Chinese characters will sound different from the original trade mark. This means that marketing time and money will need to be spent on building the association between the Roman character trade mark and the Chinese character trade mark.
- A phonetic translation involves creating a Chinese character name that sounds like the trade mark. Pinyin is the official Chinese phonetic alphabet that uses Roman characters,

which can be used to create the transliteration. For example, 'Audi' is known as 'Ao Di' ( 奥 迪 ). This method is preferable when the trade mark already has a reputation amongst Chinese speaking consumers. However, care must be taken while choosing a phonetic version of a foreign mark, because the Chinese characters may have an undesirable meaning in one or more of the six major Chinese dialects.

- The best trade marks are those that sound the same and also make reference to a defining characteristic of the brand or have a positive meaning in Chinese culture. For example, after considering hundreds of combinations of the four syllables that make up its name, Coca-Cola finally settled with 'Ke Kou Ke Le' ( 可 口 可 乐 ), which means 'taste and be happy'.

## 22. How long does the trade mark registration process take?

The registration examination done by CTMO takes up to nine months, which is followed by a three-month opposition period, if no opposition is received within that period, the trade mark will be registered.

## 23. I registered my trade mark in Europe, is it valid in China?

Your trade mark registration in Europe does not provide protection in China. However, an international registration system is available under the Madrid Protocol through the World Intellectual Property Organisation (WIPO). Both China and the Member States of the European Union (except Malta) are party to the Madrid Protocol. Under the Madrid Protocol, the application for extension to China is based either on the trade mark

application or registration. Maltese companies can apply for such an extension through the Office for Harmonization in the Internal Market (OHIM).

#### 24. I have found counterfeits of my product in China. What can I do now?

Enforcement through Courts or the Administration of Industry and Commerce (AIC) are both possible

- In general, the administrative channel is relatively fast and cost effective, but only issues confiscation and destruction orders, and fines.
- The judicial channel can lead to compensation in damages and/or even to criminal punishment, but is time consuming and more expensive.

The question of the most appropriate enforcement method depends on the specific case and claims. All types of enforcement actions can be combined to achieve optimal results - an administrative raid can be followed by a civil litigation and a negotiation can be 'stimulated' by the threat of a criminal action. It is recommended to consult a specialised lawyer before taking enforcement actions.

#### 25. My trade mark is already registered in China. What can I do now?

It is possible to acquire the registered trade mark under certain circumstances, depending on the particular case.

- You can always try to buy back the trade mark and negotiate a price with the current owner. It is recommended that

you use an intermediary for the negotiations and have a thorough assessment of the adequate price.

- In case the trade mark was registered in “bad faith”, you can file a request for cancellation of the registration (or file an opposition before registration) in the case that you are able to prove that the registered owner had a previous contractual or business relationship (or any other relationship) with you and thereby knows of the existence of your prior mark and is therefore in bad faith. You should do the following preparations:
  - 1) Conduct the trade mark search as soon as possible to check the actual status of the trade mark registration and when it has been filed;
  - 2) Collect all email exchanges and any other relevant documentation proving the existence of previous business relationship between your company and the Chinese dealer, as well as all recent communications;
  - 3) Entrust a specialised lawyer in China to request the cancellation of the trade mark acquired in bad faith.
  - 4) With a cancellation request already filed, it might be advisable to negotiate the purchase of the trade mark at a low price. If the asked price would be still too high, you may decide to wait until the cancellation procedure will be finished, but in the meanwhile, you shall refrain from importing your goods into China to avoid incurring in problems with customs or in litigations.
- Another basic requirement of trade mark law is the obligation to use the trade mark after a certain period following registration. In China, this period is 3 years. Use

of a trade mark is defined as 'use on goods, packages or containers, or on trading documents, in advertising, an exhibition or any other business activities'. If the owner of the registered trade mark failed to use it as described above, then you can request the cancellation of the trade mark due to non-use.

Note that the procedures above are more costly and time-consuming than registering the trade mark, thus an early registration of your trade mark is strongly recommended.

## PATENTS

### 26. Which kinds of patent are available in China?

The patent system in Mainland China includes the following kinds: invention and utility models (UMs) patents. For detailed information on patents, download the Helpdesk's "Guide to Patent Protection in China".

### 27. What is the difference between invention patent and utility model patent?

An invention patent is granted for new technical solutions or improvements to a product or process, provided that the technical solutions have a practical applicability. To be patentable an invention must be 'novel', which means that, in general, there must be no disclosure of the invention prior to the filing of the application.. Further requirements are "inventiveness"

and "industrial applicability". UMs are very similar to invention patents, but are only subject to a simple formal examination of the application before being registered. This means that UMs are granted more quickly, but the term of protection is shorter and substantive requirements will in general be examined once the owner tries to enforce them.

### 28. How can I file a registration for invention patent and how long will the process take?

There are two ways to file a patent:

- File a patent application in China directly with the State Intellectual Property Office (SIPO). Foreign applicants must use a local patent agency for filing a patent application. Foreign Invested Enterprises (FIE) however, can apply for patents in China without an attorney but this is not generally recommended.
- File a patent application under the Patent Cooperation Treaty (PCT), selecting China as one of the designated states. A PCT application can be filed with the European Patent Office (EPO) or any national patent office within the EU. The applicant then has to initiate the 'national phase', i.e. the procedure with SIPO, no later than 30 months from the priority date.

Invention patents are normally granted within 3 to 5 years and are valid for 20 years starting from the filing date. UMs are normally granted within 1 year and are valid for 10 years starting from the filing date.

### 29. How much does it cost?

The basic government fee for filing an invention patent is RMB900 (approximately EUR130). For UMs, the fee is RMB500 (approximately EUR70) excluding lawyer's fees. Annuity fees are required to keep its validity.

### 30. Can I patent my design?

Yes, the IP system in China provides for the protection of design patents. Please refer to the 'Design Rights' section below for details.

### 31. If I have filed for a patent registration in my home country, can I also file for it in China?

One of the requirements for patent protection in China is that the invention is "novel" meaning that it hasn't been disclosed to the public anywhere in the world.

- Consequently, if your patent has already been published in a Patent Gazette abroad, for example, then you will not be able to patent it in China.
- If you have filed a patent application in any EU Member States, then you can file an application in China within 12 months of the European application date in case of invention patents, and within 6 months in case of UMs.
- If you have filed a patent application via the PCT, then within 30 months you can still initiate the national phase with the State Intellectual Property Office (SIPO) of China.

## DESIGN RIGHTS

### 32. What is a design right in China?

According to China's law, a design is "the shape, pattern, or the combination thereof, or the combination of the colour with shape and pattern, which are rich in aesthetic appeal and are fit for industrial application". An application for a design patent includes any of the following external features of a product: 1) the shape of a product; 2) the pattern of a product; 3) the shape and pattern of a product; 4) the shape and colour of a product; 5) the shape, pattern and colour thereof. While most items with a distinctive exterior appearance can be covered by a design patent, the following cannot: two dimensional trade marks, parts of a design which cannot be used or sold separately and item which contravene local law or have a negative effect on public interest.

### 33. How can a design right be protected in China?

A design can be protected under China's Patent Law, by registering for a design patent at the China State Intellectual Property Office. The application fee is RMB500 (approximately EUR70) and the process usually lasts for 6-9 months. Subject to annuity payments, the design is protected for a non-renewable term of ten years.

For further information on the registration process and additional consideration, refer to the Helpdesk's "Understanding and Using China's Design Patent" guide.

**34. If I have already disclosed my design right, can I still protect it in China?**

The basic requirement of design registration in China is novelty. This means that the design must be new and not have been disclosed to the public through sales, advertising or any other means anywhere in the world before the application is filed in China. If the design was disclosed before the design patent application was filed, the patent could be invalidated later. Therefore if you plan to pursue a design patent in China, make sure your design is not disclosed in your home country or elsewhere in the world before the application has been made.

## **COPYRIGHTS**

**35. What kind of works are protectable by copyright?**

Most types of creative works protected by copyright in Europe are protected as well in China. Traditional types of creative works such as books, music, recordings, plays, films, physical art works etc., enjoy copyright protection in China. Other works such as works of choreography, acrobatics, calligraphy, quyi (a traditional Chinese performance art form), and databases also enjoy copyright protection in China. Industrial and graphic designs, software (computer programs), applied art, architectural designs can be protected by copyright. The basic principle for copyright protection is that the work is original and reproducible. Additional information on Copyrights is available from the Helpdesk's "Guide to Copyrights in China."

**36. How can I protect copyrights in China?**

Copyright automatically arises at the creation of a work and the rights are held by the individual or legal entity who created the work. Thus, it is important to clarify in labour contracts the ownership of the copyright for works that has been created during employment. In addition, preserving evidence (e.g. copies of the work) is essential in proving the ownership of the copyright.

In order to let others know that you own a certain copyright, indicate the universal symbol ©, the name of the author and the year of creation on published works. For example, in the case of this publication, you can see © China IPR SME Helpdesk 2016.

**37. Do I have to register, what are the benefits and procedure to do that?**

There is no requirement to register a copyright in order for it to be enforceable in China, but a voluntary registration system is available and recommended to facilitate enforcement actions.

The enforcement process is made much easier with a registered copyright and therefore voluntary registration of valuable copyrights to works in the system, is recommended.

The author of the work can apply for copyright registration with the Copyright Protection Centre of China or online at [www.ccopyright.com.cn](http://www.ccopyright.com.cn). The application must be filed in Chinese and it costs RMB100-2000 (approximately EUR14-280) depending on the type of work.

## DOMAIN NAMES

### 38. How can I protect my domain name in China?

When doing business in China, it is essential to protect company names, and trade marks through domain name registrations under the Chinese top level domain .cn. In addition, from the summer of 2010, China began to offer a new Chinese top level domain name ‘. 中国’ (.china). In May 2014, the China Internet Network Information Centre (CNNIC) introduced two more, i.e. ‘. 公司’ (.company) and ‘. 网络’ (.net). Altogether, these four Chinese Top Level Domains (TLDs) are available in both simplified (. 中国) and traditional (. 中國) characters, and allow Internet users to access websites and E-mail addresses in non-Latin local Chinese script, which is popular with Chinese consumers.

European SMEs can register for .cn or any of the three Chinese TLDs using their European company data and business certificates.

Domain name registration must be completed through an accredited .cn registrar. Lists of accredited international registrars can be found here: <http://www1.cnnic.cn/index.htm>. Lists of Chinese registrars can be found here: <http://www.cnnic.cn/>. The registration can be completed within 1-2weeks and typically costs EUR50-100 per domain name per year.

For additional information on domain protection and dispute resolutions, download the Helpdesk’s “Registering and Protecting Chinese Domain Names” guide.



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## LATIN AMERICA

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The Latin America IPR SME Helpdesk facilitates the expansion of the European SMEs which are interested in or already operating in Latin America, through increased know-how of the usage and enforcement of the IP rights system. Following are some of the key FAQs relating to Latin American countries

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### Argentina

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#### GENERAL

#### 39. Which is the National Office in charge of Intellectual Property Rights in Argentina?

Depending on the IPR concerned, the competent authority may vary:

The office in charge of Patents, Utility Models, Trade marks, Designs and Appellations of Origin is the Instituto Nacional de Propiedad Intelectual (INPI).

With regard to Copyright, and depending on the nature of the work, the competent offices are:

- Copyright protected works, in general: (DNDA)
- Books: Argentina Book Chamber (CAL)

- Software: Chamber of Software and IT Service Companies (CESSI)
- Musical works: Argentine Society of Music Authors and Composers (SADAIC)
- Finally, the competent authority for Plant Varieties is the Instituto Nacional de Semillas (INASE)

#### 40. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Argentina?

It is not compulsory to appoint neither an IP Agent nor a legal representative. Nevertheless, the requirement to have a domicile based on the Federal Capital (which is also required for Argentinean applicants) entails appointing a local legal representative if the company intending to register an IPR in Argentina does not have a domicile there.

## TRADE MARKS

### 41. How can I assess if a trade mark is available in Argentina?

Instituto Nacional de Propiedad Intelectual (INPI) provides free access to its trade mark database where you can find out if the trade mark you are planning to register is already registered.

### 42. Is it possible to register a trade mark for different classes of products or services in Argentina?

Contrary to Europe, Argentinean trade mark system is a single-class application system. Therefore, a separate trade mark application must be filed for each class of products or services of the International Classification (10th edition) for which the trade mark protection is requested.

To check whether products or services are within the same class, please refer to INPI's website (in Spanish) or contact our Helpline service. You can also use the WIPO 's Classification web-tool (in English, French and Spanish) <http://www.wipo.int/classifications/nivilo/nice/index.htm>

### 43. How much does a trade mark application cost in Argentina?

A trade mark application in Argentina costs around EUR50.

Take into account that these amounts do not include other costs that you may incur during the registration procedure. Please contact our helpline if you need further information tailored to your case.

## PATENTS

### 44. How much does a patent application cost in Argentina?

Patent application fees in Argentina vary depending on the number of claims:

	Legal Person	Natural Person
<b>Application fees (less than 10 claims)</b>	EUR136	EUR55
<b>Examination fees (less than 10 claims)</b>	EUR114	EUR45
<b>Additional claim (application+ examination)</b>	EUR13	EUR5

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees etc.) that you may incur during the registration procedure.

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## Bolivia

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### GENERAL

#### 45. Which is the National Office in charge of Intellectual Property Rights in Bolivia?

The institution in charge of IP matters in Bolivia is the National Service of Intellectual Property (SENAPI).

#### 46. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Bolivia?

Appointing a representative is not mandatory; nevertheless, a valid domicile in Bolivia is required for notification purposes.

### TRADE MARKS

#### 47. How can I assess if a trade mark is available in Bolivia?

Unfortunately Bolivia does not offer a freely accessible online database; you can request a Prior Trade mark Search to SENAPI (cost around EUR20).

#### 48. Is it possible to register a trade mark for different classes of products or services in Bolivia?

Bolivia is a single-class trade mark registration system. Therefore, a separate trade mark application must be filed for each class

of products or services of the International Classification of Nice (10th edition) for which the trade mark protection is requested.

To check whether products or services are within the same class, please refer to SENAPI website (in Spanish) or contact our Helpline service. You can also use the WIPO's Classification web-tool (in English, French and Spanish) <http://www.wipo.int/classifications/nivilo/nice/index.htm>.

#### 49. How much does a trade mark application cost in Bolivia?

Application plus Publication Fees amount to EUR191.

Take into account that these amounts do not include other costs that you may incur during the registration procedure.

### PATENTS

#### 50. How much does a patent application cost in Bolivia?

Application + Publication + Examination Fees amount to EUR255.

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees etc.) that you may incur during the registration procedure.

## Brazil

### GENERAL

#### 51. Which is the National Office in charge of Intellectual Property Rights in Brazil?

Depending on the IPR concerned, the competent authority may vary:

- The Instituto Nacional da Propriedad Industrial (INPI) is the office in charge of Patents, Utility Models, Trade marks, Designs, Software, Semiconductors Layout and Appellations of Origin.
- The Fundação Biblioteca Nacional (FBN) is the competent office regarding Copyright, except in the case of software.
- Finally, the Instituto Nacional de Semillas (SNPC) is the competent authority for Plant Varieties.

#### 52. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Brazil?

Natural or legal persons residing abroad must designate a duly authorised representative in Brazil.

Trade marks

#### 53. How can I assess if a trade mark is available in Brazil?

The "Instituto Nacional da Propriedade Industriale" (INPI) provides free access to its trade mark database where you can find if the

trade mark you are planning to register is already registered.

#### 54. Is it possible to register a trade mark for different classes of products or services in Brazil?

Brazil adopted the single class trade mark registration system. Therefore, a separate trade mark application must be filed with respect to each class of products or services of the International Classification of Nice (10th edition) for which the trade mark protection is requested.

To check whether products or services are within the same class, please refer to INPI's website (in Portuguese) or contact our Helpline service. You can also use the WIPO 's Classification web-tool (in English, French and Spanish) <http://www.wipo.int/classifications/nivilo/nice/index.htm>

#### 55. How much does a trade mark application cost in Brazil?

	General	Natural person, Micro and Small Companies
<b>Application fee</b>	EUR84-EUR130	EUR35-EUR50
<b>Registration fee</b>	EUR180	EUR72

Take into account that these amounts do not include other costs that you may incur during the registration procedure.

## PATENTS

### 56. How much does a patent application cost in Brazil?

Take into account that these amounts do not include other costs (such as drafting, translations, representative 's fees etc.) that you may incur during the registration procedure.

	General	Natural person, Micro and Small Companies
<b>Application fee</b>	EUR43-EUR63	EUR17-EUR25
<b>Examination fee</b>	Less than 10 claims: EUR142	Less than 10 claims: EUR57
	Each claim between the 11 <sup>st</sup> and 15 <sup>th</sup> : EUR25	Each claim between the 11 <sup>st</sup> and 15 <sup>th</sup> : EUR10
	Each claim between the 16 <sup>th</sup> and 30 <sup>th</sup> : EUR50	Each claim between the 16 <sup>th</sup> and 30 <sup>th</sup> : EUR20
	Each claim exceeding the 31 <sup>th</sup> : EUR125	Each claim exceeding the 31 <sup>th</sup> : EUR50

## Chile

### GENERAL

### 57. Which is the National Office in charge of Intellectual Property Rights in Chile?

Depending on the IPR concerned the competent authority may vary:

- The Instituto Nacional de Propiedad Industrial (INAPI) is the office in charge of Patents, Utility Models, Trade marks, Designs, Semiconductors Layout and Appellations of Origin.
- The Intellectual Property Department of the Dirección de Bibliotecas, Archivos y Museos (DIBAM) is the competent office regarding Copyright, including software.

Finally, the Servicio Agrícola Ganadero (SAG) is the competent authority for Plant Varieties.

### 58. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Chile?

There is no great restriction to apply for a patent or a trade mark in Chile, since the application can be submitted by either a natural person or a legal entity.

Non-resident that wants to apply for a patent or a trade mark in Chile should have a local domicile or, otherwise, appoint a legal representative or an attorney in Chile.

## TRADE MARKS

### 59. How can I assess if a trade mark is available in Chile?

The "Instituto Nacional de Propiedad Industrial" (INAPI) provides free access to its trade mark database where you can find if the trade mark you are planning to register is already registered.

### 60. Is it possible to register a trade mark for different classes of products or services in Chile?

Multiple-class trade mark applications and registrations are accepted in Chile. However, products and services cannot be requested together, but on separate trade mark applications.

### 61. How much does a trade mark application cost in Chile?

Fees are set depending on a monthly variable rate (UTM). The

fees for trade mark, geographical indications or appellations of origin registrations are EUR113 for each class of product or service plus the publication fees (EUR46).

Take into account that these amounts do not include other costs that you may incur during the registration procedure.

## PATENTS

### 62. How much does a patent application cost in Chile?

Fees are set depending on a monthly variable rate (UTM). The application + publication and examination fees amount to near EUR700.

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees etc) that you may incur during the registration procedure.

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## Colombia

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## GENERAL

### 63. Which is the National Office in charge of Intellectual Property Rights in Colombia?

- The office in charge of Registration of Intellectual Property is the Superintendencia de Industria y Comercio (SIC).

- In case of Copyright, the competent Office is Dirección Nacional de Derechos de Autor (DNDA).

### 64. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Colombia?

Applicants without domicile in Colombia must appoint a legal

representative who could be either a Colombian representative or a foreigner one, subject that they are registered before the Consejo Superior de la Judicatura, the national register for attorneys.

## TRADE MARKS

### 65. How can I assess if a trade mark is available in Colombia?

It is possible to conduct a Trade mark Search in Colombia by using its own free-access Trade mark Database.

### 66. Is it possible to register a trade mark for different classes of products or services in Colombia?

Multiple-class trade mark applications are accepted in Colombia.

### 67. How much does a trade mark application cost in Colombia?

Application fees for a Trade mark in Colombia amount to EUR227 + EUR113 per additional class.

Take into account that this amount does not include other costs that you may incur during the registration procedure.

Patents

### 68. How much does a patent application cost in Colombia?

The initial fee, that includes up to 10 claims and includes the patentability examination, amounts to EUR340. In case of more than 10 claims, the applicant should pay EUR10 for each extra claim.

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees etc) that you may incur during the registration procedure.

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## Costa Rica

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## GENERAL

### 69. Which is the National Office in charge of Intellectual Property Rights in Costa Rica?

The office in charge of Registration of Intellectual Property is the Registro Nacional, whose website can be found at [http://www.rnpdigital.com/propiedad\\_industrial/index.htm](http://www.rnpdigital.com/propiedad_industrial/index.htm)

### 70. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Costa Rica?

It is not mandatory to appoint an attorney. For notification purposes, foreigners (either natural or legal person) must indicate a local domicile or fax.

The signature of the applicant must be certified by a lawyer (cost

around EUR25).

Any Costa Rican natural person can act as a representative.

Trade marks

#### 71. How can I assess if a trade mark is available in Costa Rica?

Registro Nacional offer on its web page the possibility for registered users to perform a limited search that does not include the protected products and services.

For a complete report you should perform it in person at the computers that Registro Nacional have at your disposal in its headquarters in San José or request a Certificate on Prior Registered Trade marks, including products and services (fee: EUR20 approx.)

#### 72. Is it possible to register a trade mark for different classes of products or services in Costa Rica?

Multiple-class trade mark applications are accepted in Costa Rica. Nevertheless, the cost of applying for an additional class is the same as applying for an additional trade mark. Hence, in some cases it may be advisable to register more than one trade mark for different classes of goods and services (e.g. if one of the classes is very likely to be opposed by a third party).

#### 73. How much does a trade mark application cost in Costa Rica?

Application fees for a Trade mark in Costa Rica amount to

EUR54 + EUR54 per additional class. Take into account that these amounts do not include other costs (such as drafting, translations, representative´s fees etc.) that you may incur during the registration procedure.

## PATENTS

#### 74. How much does a patent application cost in Costa Rica?

The application fee is EUR162 for individuals, Micro and Small companies and amounts to EUR540 for the rest of applicants. Registration fee (to be paid once the Patent is granted) amount to the same quantities while the mandatory Examination fees range between EUR432 and EUR648. Take into account that these amounts do not include other costs (such as drafting, translations, representative´s fees etc) that you may incur during the registration procedure.



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## Ecuador

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### GENERAL

#### 75. Which is the National Office in charge of Intellectual Property Rights in Ecuador?

The office in charge of Registration of Intellectual Property is IEPI, whose website can be found at <http://www.propiedadintelectual.gob.ec/>

#### 76. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Ecuador?

Foreign-based companies need to appoint a legal representative to perform any acts and legal transactions (including IPR applications).

Trade marks

#### 77. How can I assess if a trade mark is available in Ecuador?

Unfortunately, there is no public trade mark database in Ecuador; you should request it to IEPI at an approximated cost of EUR15.

#### 78. Is it possible to register a trade mark for different classes of products or services in Ecuador?

Ecuadorian trade mark system is a single-class application system. Therefore, a separate trade mark application must be

filed with respect to each class of products or services of the International Classification of Nice for which the trade mark protection is requested. To check whether the products or services are included within the same class, please refer to WIPOs Nice Classification website <http://www.wipo.int/classifications/nivilo/nice/index.htm> or contact our Helpline.

#### 79. How much does a trade mark application cost in Ecuador?

Application fees for a Trade mark in Ecuador amount to EUR191. Once granted, the applicant must pay a grant and registration fee (EUR367). Take into account that these amounts do not include other costs that you may incur during the registration procedure.

### PATENTS

#### 80. How much does a patent application cost in Ecuador?

The application fee is EUR2582 while the mandatory examination fee amounts to EUR1386. Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees etc) that you may incur during the registration procedure. Please contact our helpline if you need further information tailored to your case.

## Mexico

### GENERAL

#### 81. Which is the National Office in charge of Intellectual Property Rights in Mexico?

The office in charge of Registration of Intellectual Property is the Instituto Mexicano de Propiedad Industrial (IMPI), whose website can be found at <http://www.impi.gob.mx/>.

In case of Copyright, the competent Office is INDAUTOR <http://www.indautor.gob.mx/>.

#### 82. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Mexico?

Natural persons can apply for an IPR without the need of an IP attorney, while legal persons are able to apply for IPRs through any regular representative with enough power.

### TRADE MARKS

#### 83. How can I assess if a trade mark is available in Mexico?

IMPI Mexico provides free access to its Online Trade mark Database (MARCANET) <http://marcanet.impi.gob.mx/marcanet/controler>.

Additionally you can browse the EUIPO 's Trade mark Database (TM View) where you can conduct your search in English, Spanish, German, French and Italian. <https://www.tmdn.org/tmview/welcome> (Choose advanced search and filter by country).

#### 84. Is it possible to register a trade mark for different classes of products or services in Mexico?

Mexican trade mark system is a single-class application system. Therefore, a separate trade mark application must be filed with respect to each class of products or services of the International Classification of Nice for which the trade mark protection is requested. To check whether the products or services are included within the same class, please refer to WIPOs Nice Classification website <http://www.wipo.int/classifications/nivilo/nice/index.htm> or contact our Helpline.

#### 85. How much does a trade mark application cost in Mexico?

Application plus Registration fees for a Trade mark in Mexico amount to EUR126 (VAT Excluded).

Take into account that these amounts do not include other costs that you may incur during the registration procedure.

## PATENTS

### 86. How much does a patent application cost in Mexico?

Application plus Registration fees for a Patent in Mexico amount to EUR546 (VAT Excluded).

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees, etc.) that you may incur during the registration procedure.

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## Peru

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### GENERAL

#### 87. Which is the National Office in charge of Intellectual Property Rights in Peru?

The office in charge of Registration of Intellectual Property is INDECOPI, whose website can be found at <http://www.indecopi.gob.pe/>.

#### 88. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Peru?

There is no need to hire an Intellectual Property Agent for representation; however, having a domicile within the Peruvian territory is mandatory.

### TRADE MARKS

#### 89. How can I assess if a trade mark is available in Peru?

There is no public trade mark database; INDECOPI requests a EUR264 euros payment to access to its Trade mark Database.

An individual (phonetic) search cost ranges between EUR8 (1 class) and EUR29 (45 classes).

#### 90. Is it possible to register a trade mark for different classes of products or services in Peru?

Multiple-class trade mark applications are accepted in Peru.

## 91. How much does a trade mark application cost in Peru?

Application fees for a Trade mark in Peru amount to 148 euros + 148 euros per additional class.

Take into account that this amount does not include other costs that you may incur during the registration procedure.

## PATENTS

## 92. How much does a patent application cost in Peru?

Application plus Examination fees amount to EUR335.

Take into account that these amounts do not include other costs (such as drafting, translations, representative's fees, etc.) that you may incur during the registration procedure.

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## Uruguay

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## GENERAL

## 93. Which is the National Office in charge of Intellectual Property Rights in Uruguay?

The office in charge of Registration of Intellectual Property is MIEM, whose website can be found at <http://www.miem.gub.uy/web/marcas-y-patentes> whereas DDA department of National Library is in charge of Copyright registration <http://www.bibna.gub.uy>.

## 94. Is it compulsory to file my IPR application by means of an IP Agent or another legal representative in Uruguay?

It is not compulsory to appoint either an IP Agent or a legal representative to file an application. Nevertheless, if the applicant is not domiciled in the country, it is compulsory to appoint a legal representative in the country.

## TRADE MARKS

## 95. How can I assess if a trade mark is available in Uruguay?

MIEM gives free access to its online trade mark database (IPAS) at the following link <http://old.dnpi.gub.uy:8090/IpasWebQuery/> (User: DNPI; Password: DNPI)

## 96. Is it possible to register a trade mark for different classes of products or services in Uruguay?

Multiple-class trade mark applications are accepted in Uruguay.

## 97. How much does a trade mark application cost in Uruguay?

Application fees for a Trade mark in Uruguay:

	Word Trade mark	Rest of Trade marks
<b>1 class</b>	EUR103	EUR145
<b>Per additional class</b>	EUR63	EUR83

Take into account that these amounts do not include other costs that you may incur during the registration procedure.

## PATENTS

98. How much does a patent application cost in Uruguay?

	Application	Publication	Examination
<b>Up to 10 claims</b>	EUR208	EUR37	EUR37
<b>Each additional claim between 10 and 50</b>	EUR4	EUR37	EUR6
<b>Each additional claim exceeding 50</b>	EUR6	EUR37	EUR6

Additionally applicants should pay a registration fee once the Patent is granted that ranges from EUR124 (10 claims or less) to EUR870 (more than 200 claims).

Take into account that these amounts do not include other costs (such as drafting, translations, representative 's fees etc) that you may incur during the registration procedure.

## SOUTH-EAST ASIA

The South-East Asia IPR SME Helpdesk has been supporting EU SMEs aspiring to internationalise in the ASEAN countries since 2013. Currently in its second phase, the erstwhile ASEAN IPR SME Helpdesk, now known as the South-East Asia IPR SME Helpdesk deems the following questions about IP as important for the region:

### Brunei

#### GENERAL

##### 99. How does Brunei's IP legal framework compare to international standards?

Brunei's legal system is based on English Common Law. Since the year 2000, Brunei has passed various legislations on trade marks, industrial designs, copyright and patents.

Brunei's IP legal system is in compliance with international standards, complying with international agreements and treaties administered by the WIPO. It is a member of a number of conventions including the Paris Convention, the Berne Convention, the PCT and the Hague Agreement Concerning the International Registration of Industrial Designs. Brunei is also a signatory of the TRIPS agreement. Brunei is currently in talks to join the Madrid Protocol in the near future presumably expected within year 2016.

In terms of registered rights, Brunei operates under a 'first-to-file' system, meaning that the first person or entity to file an IP right in the Bruneian jurisdiction will own that right once the application is granted. This applies to patents and trade marks.

##### 100. How can I enforce my IP rights in Brunei?

In the case of your IP assets being infringed in Brunei, there are three main avenues of enforcement which you can consider; civil litigation, criminal prosecution, and customs seizures. Although judicial proceedings in IP are uncommon in Brunei, a private settlement reached via legal professionals is more practically effective and should be considered as a viable option. Legal professionals usually issue cease and desist letters to infringers. Thereafter, negotiations commence between the professionals and infringers. If nothing is achieved then civil action is taken.

Court hearings may take up to 2 years, although court hearings recently became faster and the trial dates may be given within

12 to 15 months. However, if the infringer responds to the initial cease and desist letter, the process of settlement is much faster. Criminal Prosecution is usually considered the most cost effective enforcement route available to IP right holders as the legal expenses of prosecution are borne by the Government as the prosecuting party. It is also the best route to take for actions against infringers on a commercial scale and when infringement involves dangerous goods. Criminal prosecution is brought by the Attorney Generals Chamber and is thus free.

Administrative actions are not available in Brunei. No governmental body or enforcement authority has been set up to apply administrative measures against IP infringement.

## TRADE MARKS

### 101. How trade marks are protected in Brunei?

Trade marks qualify for protection registration as provided in the

Trade Marks Order, 1999. A mark is categorized either as a trade mark, service mark, collective mark or certification mark.

- A 'trade mark' is defined as any visually perceptible sign capable of being represented graphically which is capable of distinguishing goods or services of one producer from another.
- A trade mark may also be regarded as a service mark under this definition in scenarios where there are no goods on which to place the mark. In this case the mark would be placed, for example, on the vehicles used.
- A mark that distinguishes the goods or services of members of an association is called a 'collective mark'.
- A 'certification mark' is defined as a mark indicating that the goods or services in connection with it are certified by the owner of that mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

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## Cambodia

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### GENERAL

### 102. How does Cambodia's IP legal framework compare to international standards?

Cambodia was approved for WTO membership in September

2003. However, due to internal political difficulties, Cambodia did not join the WTO until July 2004. Prior to its WTO accession, Cambodia began to take steps to ensure that its IP laws were in compliance with its WTO member commitments, However, Cambodia's IP laws are not yet in full compliance with the country's WTO commitments. Although Cambodia's IP laws are

in the early stages of development, there are fairly efficient procedures in place for registering and enforcing major IP rights (trade marks, patents and copyright). On 5 June 2015, Cambodia also became party to the Madrid Protocol accessing the 'Madrid system' which makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting parties.

There is still no regulation in place in the field of trade secrets. However, a new piece of legislation is currently being drafted.

### 103. What is the suspension of customs clearance and how to apply for it?

Any counterfeit goods may be registered. Counterfeit goods may include any goods/packaging that bear, without authorisation, a trade mark which is identical to a registered trade mark, or goods/packaging which cannot be distinguished from a registered trade mark. However, it should be noted that border control measures are only available in clear-cut cases of infringement.

The customs authority will suspend clearance of the goods for a defined period and this period may not be extended for more than 10 working days. Moreover, if the applicant wishes to destroy the counterfeit goods, civil court proceedings must be initiated within 10 working days of suspension of the goods because the customs authorities may only destroy counterfeit goods with a court's approval. The customs authority will release the goods if the applicant does not initiate court proceedings.

An application for suspension of customs clearance should be

submitted to the customs authority and must contain:

- A statement showing prima facie evidence (evidence which supports the claim) of counterfeit;
- A description of the goods;
- Proof of trade mark registration;
- The applicant's information.

Applications and supporting documents may be in Khmer or English (documents in other languages are accepted if translated into Khmer or English).

Official costs are not available as there is no set official cost. The authorities, however, may on a case by case basis require the applicant to pay a security deposit or provide other assurance for the suspension. The customs authorities must notify the applicant within 10 working days from the submission of the request if the application has been granted, rejected or reserved for further consideration.

## PATENTS & OTHER IPRS

### 104. How are patents, utility models and designs protected in Cambodia?

The registration procedure for patents, utility models and industrial designs in Cambodia is very similar. Cambodia employs the first-to-file system for all three, meaning that if two persons have created the same invention independently of each other, the person whose application has the earliest filing date – or, if priority is claimed, the earliest priority date – is granted the patent, utility model certificate or industrial design certificate.



Here the priority date is, the date when an application was first made for the patent, utility model certificate or industrial design certificate in a foreign country. The period of priority starts from the filing date of the first application (the day of filing shall not be included in the period) and is then 12 months for patents and utility models, and 6 months for industrial designs.

Certain inventions and designs however, are excluded from patentability and from protection as utility models or industrial designs. For example, inventions and designs that would be contrary to public order or morality, that would be harmful to human, animal or plant life; that would seriously compromise the environment; or inventions and designs otherwise “prohibited by law”. It should be noted that the Cambodian Ministry of Industry, Mines and Energy has the right to allow a government agency or a third party to exploit an invention, utility model, or industrial design on certain public interest grounds. Such grounds include,

for example, national security, nutrition, health and development. The Cambodian government may revoke patents, utility model certificates and industrial design certificates, and/or shorten the time of protection.

## TRADE SECRETS

### 105. Is there any protection for trade secrets in Cambodia?

Cambodia has not yet adopted a specific law on trade secrets. However, a draft law is currently being negotiated. Until Cambodia has adopted the Law on Trade Secrets and Undisclosed Information, trade secrets may be protected under other laws. For example, to maintain information in employment or other contractual relationships, a non-disclosure agreement may be used and enforced pursuant to the Contract Law of 1998.

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## Indonesia

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### GENERAL

#### 106. How does Indonesia’s IP legal framework compare to international standards?

Indonesia’s IP legislation is now comprehensive, covering all aspects of protection of IP in accordance with international standards, however enforcement mechanisms still need to

be strengthened. Indonesia is a member of the WTO, and has ratified the TRIPs Agreement. Indonesia has also ratified the Paris Convention.

Indonesia has also recently enacted new IP laws and regulations to strengthen IP protection in the country, such as a new Copyright Law which become effective on 16 October 2014 and provides a range of new provisions to improve copyright

protection and new liabilities and penalties for the infringers.

#### 107. What are the possibilities that exist in Indonesia regarding the enforcement of my intellectual property rights there?

In Indonesia there are two main IP enforcement routes: civil and criminal enforcement.

In the case of criminal enforcement, trade mark, patent and design infringements are complaint-based crimes. A formal complaint with the police must be filed before action can be taken. Copyright infringement is currently a non-complaint-based crime, although according to the new proposed amendments to the Copyright Law it will soon fall under the category of a complaint-based crime. Currently, the police may take copyright actions without a formal complaint from the rights holder. Criminal raids may cost between EUR 8,000 to EUR 19,000. Because of the high costs, raids should not be considered as routine for any IP owner, but should be reserved for targets which would generate maximum publicity if raided. Indonesia's IP laws have provisions for substantial maximum fines and prison sentences.

Civil litigation is likely to be more expensive than carrying out a criminal raid. IP rights owners usually rely on criminal raids to stop infringement, and then negotiate for civil statements in return for not proceeding further with the case. Good evidence preparation is essential if you decide to go down the route of civil litigation. This may involve surveys, investigator reports or

testimonies, video or tape recording. Foreign evidence will need to be legalised.

Given the relatively weak nature of the enforcement system, in many cases private mediation via legal professionals could be the most effective solution. Another reasonable option would be to send warning letters to the infringers. These methods should be considered as viable alternatives particularly for SMEs with limited budgets.

#### 108. Do Indonesian Customs possess reliable tools for enforcing my intellectual property rights?

Customs Law in Indonesia gives officials the power to suspend a consignment if they have reason to believe that it contains counterfeit goods. However, in practice they rarely make such seizures. A common reason given for this is the lack of procedure or avenue to contact the rights owners even if they do come across a large amount of suspected counterfeits. Furthermore, the rights owners can apply to a court to suspend the customs clearance of a specific shipment of goods. Nevertheless, in practice, these provisions are usually unworkable since it necessitates that you are informed of a suspected shipment, as well as able to provide supporting documentary evidence, before obtaining an order from the court to issue an official instruction to suspend the shipment. Thus, generally speaking, the courts are still not equipped to respond to time critical cases such as dealing with goods in transit.

## TRADE MARKS

### 109. What is meant by bad-faith trade mark registrations and how frequent is this issue in Indonesia?

Bad-faith registrations exist where a third party which is not the legitimate owner of the trade mark registers the mark first in Indonesia, thereby preventing the legitimate owner from registering it. Trade mark piracy due to bad-faith registration is a serious and common problem in Indonesia. Many bad-faith registrations are filed even by the authorised distributors contracted by the trade mark owner. Thus, you should consider registering your most strategic trade marks in Indonesia even before commencing business there.

## TRADE SECRETS

### 110. Is a patent the only way to protect my invention in Indonesia?

No. Inventions can also be protected by simple patents and by trade secrets if you do not disclose any information on them, i.e. keep them a secret.

Simple patents apply only for products and tools, and not for technologies. These products or tools should be novel and applicable in the industry in question. Also, there are no requirements for an inventive step with a simple patent. The process for obtaining a simple patent is generally shorter than in case of standard patents. There is however a reduced term of protection (10 years from the filing date).

In order to secure trade secret protection the invention must comply with three general standards: the information is not generally known to the public (confidential), it has an economic value (because it is kept secret), and is the subject of reasonable efforts by the rightful holder of the information to maintain its secrecy (through confidentiality agreements where applicable). There is no need to apply a registration in order to get a trade secret protection because the regulation itself already confers the protection if the information fulfills the aforementioned conditions. In a trade secrets case it is necessary to prove that the trade secret has been taken by the suspected party. Proving this might be quite difficult as litigation proceedings in Indonesia are not equipped with a discovery procedure to uncover relevant evidence on the suspected party.

Thinking about market strategy, publishing an invention may also be an option for protection and in cases where you do not need to have exclusivity. It is the cheapest option and it has the advantage of blocking others from getting a patent on the same invention. However, take into account that you will be disclosing your innovation to possible competitors.

## COPYRIGHT

### 111. An employee from the Indonesian branch of our company wrote a user manual for a product we are about to commercialise in Europe. Who owns the copyright to the manual, the author or the employer?

In accordance with Indonesian law and contrary to most European legislations, the copyright for works created by

an employee, even in the course of employment, do not automatically belong to the employer. The ownership regime of the works created in the course of employment shall be, thus,

expressly regulated within the employment contract you conclude with your employees.

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## Laos

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### GENERAL

#### 112. How does Laos' IP legal framework compare to international standards?

The Laos IPR legal framework still in the early stages of development, with guiding decrees on the implementation and interpretation of the IP Law yet to be passed, protection and enforcement of IPR in Laos is still relatively weak. However, the law offers a fairly efficient system for registration of most major IPRs. IPRs in Laos are governed by the Law on Intellectual Property No. 01/NA of 20 December 2011 ("IP Law"), effective from year 2012, protecting copyright and related rights, patents, petty patents, industrial designs, trade marks, trade names, layout designs of integrated circuits, geographical indications, trade secrets, and plant varieties and which is based on the World Intellectual Property Organization (WIPO) model law and the requirements of the Trade Related Aspects of International Property Rights (TRIPs) Agreement. Major IPR treaties signed by Laos include the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Convention Establishing WIPO. Laos also became party to the

Berne Convention for the Protection of Literary and Artistic Works and is party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks from 7 March 2016, enabling businesses to enjoy trade mark international registration from that date.

#### 113. Do Lao Customs possess reliable tools for enforcing my intellectual property rights?

Currently Laos has no formal customs recordal system. However, if the IPR owner knows of a shipment containing counterfeit goods, he or she may inform customs and file a motion by submitting an application form provided by customs and pay a bond or deposit. The IP Law and Instructions on Customs Measures for the Protection on Intellectual Property Rights No. 1970/MOF ("Customs Measures Instructions") regulates such "customs information" measures in Laos. The IP Law allows IPR owners and/or customs to initiate actions for the suspension of customs clearance of suspicious counterfeit goods. The tariff officer and other competent officers at the Lao borders have the right and duty of inspecting the imported goods, and seizing and confiscating infringing goods. So far, most counterfeit goods in Laos have involved food and drugs.

## TRADE MARKS

### 114. How are trade marks protected in Laos?

Laos applies the “first-to-file” system also for trade marks.

Although not a signatory, Laos applies the Nice Agreement for classification of goods and services. One registration application is valid for only one trade mark but may apply to more than one class of goods/services. Trade mark applicants do not have to show prior use of the trade mark. However, once registered, the trade mark must be used in Laos for the registration to be maintained. The minimum period of use to avoid non-use cancellation is 5 years.

## PATENTS & OTHER IPRS

### 115. Patents, petty patents and industrial designs in Laos: What are the difference?

Patents are the set of exclusive rights granted inventors or their assignees to exploit an invention for a limited period of time. The IP Law defines patents as the “official certificate from the state organisation issued to protect inventions that are new, involve an inventive step and are capable of industrial application”. An invention is considered new if it has not existed, and has not been disclosed to the public by publication or by use (or by any other means) in Laos or any other country prior to the filing date of the patent application, or prior to the priority date (if

priority is claimed). An invention has an inventive step when the invention is not obvious to a person having ordinary knowledge in the invention’s field of technology. An invention is considered industrially applicable if it has use in an industry.

Petty patents are the official certificates issued to protect utility innovations. The IP Law defines utility innovations as “new innovative work[s] derived through technical improvements, which involve simpler [inventive] steps than with inventions”. In order to receive a petty patent, the utility innovation must be new in the sense that it has not been previously known or used in Laos within one year prior to the date of the application, or the priority date (if priority is claimed). The requirement as to the inventive step means that the utility innovation must involve a new technical improvement, but the level of the inventive step may be simpler than for patents. Finally, the innovative work must be industrially applicable, having the same definition as for patents set out above.

Industrial design certificates protect products’ special appearance, i.e., the combination of applied art and applied science of products. In order to obtain an industrial design certificate, the design must meet the following requirements: it must be new in the sense that it has not been disclosed to the public by publication, display or some other means in Laos or internationally prior to the filing date, or priority date (if priority is claimed); and must be ornamental. An industrial design is considered ornamental if “it gives a special appearance to the object to which the design is applied or in which it is embodied”.

## Malaysia

### GENERAL

#### 116. How does Malaysia's IP legal framework compare to international standards?

Malaysia's legal system is fundamentally based on the English common law. Historically, Malaysia's intellectual property laws are closely linked to the evolution of such laws in the United Kingdom, and are generally in conformity with international standards, particularly with regard to the amendments made due to Malaysia's obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS. Malaysia's IP legal system is in line with international standards, and is a member of many international IP treaties. Malaysia it is expected to join the Madrid system within year 2016.

#### 117. How do I enforce my IP rights in Malaysia?

In the case of your IP assets being infringed upon in Malaysia, there are two main avenues of enforcement which you can consider, namely criminal enforcement, which is a complaint lodged with the Enforcement Division of the Ministry of Domestic Trade, Cooperatives and Consumerism (ED), or civil litigation. In many cases however private mediation via legal professionals is more effective and should be considered as a viable option, particularly for SMEs who may have budget limitations.

#### *Criminal Enforcement by the ED*

In Malaysia complaints can be lodged with the Enforcement Division of the Ministry of Domestic Trade, Cooperatives and Consumerism (ED) for cases in relation to counterfeiting or piracy. The ED has the power to seize products and prosecute offenders/counterfeiters. These actions are somewhat speedy and can be cost-effective. In brief, the IP right owner would have to provide the ED with documents to prove their rights, an investigation report to show the infringing activity, and also a letter of complaint. Enforcement by the ED is also recommended because it would provide for immediate confiscation of infringing goods:

- The actions undertaken by the ED can include raid actions against suspected counterfeiters or pirates where goods that are found at the premises are seized. Subsequent to the seizures, the matter will be investigated by the ED for purposes of imposing a fine on the infringer or for the infringer to be prosecuted in court.
- It should be noted that you, as a brand or right owner, play a supporting role to assist the ED to initiate the action against counterfeiters or pirates. This means that you would rely on the authorities to initiate the action and complete the investigation, but you would support the investigation by providing the authorities with evidential support such as identification of the seized goods and also attendance as a witness in court, if necessary.

### *Civil Litigation*

In cases of trade mark or copyright infringement, rights owners would also have recourse to file a civil suit in the High Court. An action can be filed against the infringers where a typical result could be an injunction (i.e. a court order obliging the infringer to immediately stop their infringing activities) and damages to be paid to the rights owner. Since 2010, the Chief Justice has directed that civil cases should as far as possible proceed to trial within nine months from the date of filing. This has helped to ensure that the backlog of cases in the courts is minimised.

Malaysia also have established IP dedicated courts in six (6) states. The purpose of assigning a special IP court is to give proper attention to IP cases in the criminal and civil courts, and ensure that the judges hearing such cases are equipped to handle IP issues. Judges may rely on reports of technical experts to issue their decisions.

## **TRADE MARKS**

### **118. How do I register a trade mark in Malaysia?**

An application form (Form TM5 from the Registry of Trade Marks) should be filed with the Registry of Trade Marks. All documents submitted must either be in English or the national language of Malaysia (Bahasa Malaysia). The application must include the word mark or a representation of the trade mark which you are applying for. You also need to indicate which class of goods or services the trade mark will be for, and a list of the goods and services that the trade mark would cover. Any individual or a corporate entity can register a trade mark. If the applicant resides

abroad, an address for service in Malaysia must be provided. While foreign applicants are able to register a trade mark, it is common practice for them to engage a trade mark agent for this purpose. You can appoint an agent to file the application on your behalf by completing Form TM1 from the Registry of Trade Marks and making a statutory declaration of the appointment. Once an application has been filed, it will be examined for registration purposes within 1-2 years from the filing date. In the event there is no objection raised by the examiner, a form calling for advertisement of the mark will be issued. Once the mark has been advertised in the Government Gazette and there is no opposition filed, the mark will proceed to registration.

The agency dealing with trade marks is the Intellectual Property Corporation of Malaysia.

The basic filing fee (excluding agent costs) for trade mark registration in Malaysia starts from RM 1,020, which is approximately EUR 252.

### **119. I have reliable information that a shipment of counterfeit goods labelled with my brand is going to be shipped from China to Malaysia next week. What can I do to stop this?**

While you cannot directly apply to the Royal Malaysian Customs to detain or seize goods, if you suspect that counterfeits of your products are going to be imported into Malaysia you can apply to the Registrar of Trade Marks to invoke a seizure. You must provide certificates proving that you are the owner of the trade mark that the expected counterfeits infringe, and provide information relating to the goods and the shipment to enable the

customs officers to identify the imported goods and detain them. Further to this application, you would then have to file a civil suit to obtain an order that the goods are not to be released. It should also be noted that where the goods have been seized and you fail to commence civil action within the retention period, the person that owns the seized goods may apply to the Court for an order of compensation against you. If the Court is satisfied that the person aggrieved had suffered loss or damage as a result of the seizure of the goods, the Court may order you to pay compensation in such amount as the Court thinks fit.

## COPYRIGHT

### 120. How are copyrights protected in Malaysia?

There is no formal requirement for the work to be registered in order for copyright to be claimed or recognised, however a copyright owner may voluntarily register their copyright in Malaysia. Registration is still advisable for foreign SMEs as the registration can be extremely useful in enforcement proceedings as evidence of your ownership.

To claim copyright ownership (i.e. to forewarn infringement), a notice with the symbol © may also be placed in/on the work followed by the name of the owner and the year of first publication.

## TRADE SECRETS

### 121. How do I protect my trade secrets in dealings with a Malaysian subcontractor?

For dealings with external parties, it is always advisable to require them to sign an NDA before any of your confidential information has been divulged. The NDA should expressly impose an obligation of confidence on the receiving party to not misuse your confidential information to the detriment of your company. The duty of confidentiality extends even to third party recipients who know or are reasonably expected to have knowledge of the confidential nature of the information in question.



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## Myanmar

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### GENERAL

#### 122. How does Myanmar's IP legal framework compare to international standards?

Myanmar is currently not a signatory to the Paris Convention for the Protection of Industrial Property or any other multilateral trade mark treaty. However, in accordance with the Agreement on TRIPS, to which it acceded as part of its entry into the Agreement Establishing The World Trade Organisation, Myanmar was required to implement and comply with the Paris Convention and the terms of TRIPS by no later than July 1<sup>st</sup> 2013. To date, Myanmar has not complied with its obligations under TRIPS in respect to intellectual property rights. Myanmar is now drafting IP laws in accordance with the TRIPS Agreement by the Office of the Attorney-General with the co-operation of the ministries concerned and experts from various sectors and thus, the new trade mark, patent, and copyright laws may be enacted shortly. Under the Draft Trade mark Law, a Trade Mark Office and specialized Intellectual Property Court could be set up in Myanmar. None of the current laws referring to intellectual property rights are fully compliant with the TRIPS agreement.

#### 123. How to acquire a right of property in a mark in Myanmar?

There is presently no law or at least no law in operation on IP registrations in Myanmar. Declaration in the prescribed form

must be completed by the person purporting to be the trade mark owner for each trade mark. A description of the goods or services on or in connection with which the trade mark is used and a copy of the mark must be included in the Declaration. A Power of Attorney must be executed (by the same party who signs the Declaration) appointing local counsel to be the attorney of the trade mark owner for the purposes of registering the Declaration(s) at the Registrar of Deeds and Assurances. The registration must be filed in Burmese language.

The non-compulsory Cautionary Notice (which may include details of more than one mark) should be published in the national English language newspaper such as the New Light of Myanmar.

The registration of a Declaration of Ownership of a trade mark by a person, though a relevant factor for the purpose of determining when he had intended to claim the trade mark as his/hers, will not by itself give him/her a right of property in that trade mark. Thus, as with common law trade marks in other jurisdictions, a Myanmar trade mark needs to have established a reputation or "use" in Myanmar in order to be enforceable. Registration of a Declaration of Ownership and publishing a Cautionary Notice do not give the purported owner of a trade mark the necessary "use" in Myanmar or vest rights of that trade mark.

#### 124. How do I enforce my IP rights in Myanmar?

Currently, IPR infringement cases are handled through a rather complicated judicial system with no less than five levels: the Township, District, State or Regional Courts and the Supreme Court. It explains why disputes are usually amicably resolved through negotiations or conciliations.

In Myanmar, since there is no system for registration of trade marks or for a statutory title to a trade mark, the rights of the parties setting up rival claims to ownership of a trade mark must be determined in accordance with the principle of common law based on prior use rather than first to file.

##### *Criminal Enforcement*

An effective strategy for enforcement of trade marks and protection of trade names is through criminal action under the Myanmar Penal Code, 1860. The benefit of criminal action is that the Merchandise Marks Act's forfeiture provisions, which also apply to offences under the Penal Code, give significant powers to the court to order the forfeiture of infringing goods, whether or not a conviction is actually secured. Criminal action under the Penal Code is possible against a person using a false trade mark or a counterfeit trade mark, making or possessing any instrument for counterfeiting a trade mark or selling goods marked with counterfeit trade marks.

The accused person can be exempted if he/she can prove the following:

- The counterfeiting was done in innocence due to a lack of knowledge on how to differentiate between counterfeit and

genuine products.

- Information identifying and disclosing to the authorities the main source of the counterfeit goods.

Punishment ranges from a fine to three years imprisonment. Additionally, the court may order the destruction of the seized goods.

##### *Civil Enforcement*

Even though property in a name or mark is not vested in the "registered owner" through registration in Myanmar, the country's general law does provide that no trader has any right to represent its goods as somebody else's.

##### *Passing Off:*

An enforcement action lies where there is a tangible possibility of damages to some business or trading activity. It is not necessary to prove a fraudulent motive or representation. The "injured party" is entitled to nominal damages if no actual damage is proved.

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## Philippines

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### GENERAL

#### 125. How does Philippines' IP legal framework compare to international standards?

Philippine authorities are aware of the significant challenges that a weak protection for IP assets poses to the national economy. Thus, it is a state policy to streamline administrative procedures of registering patents, trade marks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. The Philippines has tried to develop an IP legal framework which is compliant with international standards and have also acceded to international agreements, conventions and protocols. Whereas many features of the Philippine IP legal framework are comparable with the protection offered by EU countries there are still some weaknesses. For instance, you will not be able to register GIs in the Philippines as there are no existing regulations for its registration.

#### 126. How can the Philippine customs help me in enforcing my intellectual property rights?

The Bureau of Customs (BOC) handles applications for recordal of IPRs and products covered therein. At present, only importations are covered by Customs' regulations.

Upon the registration of intellectual property rights with the Bureau of Customs (BOC), an IP holder who has valid grounds for suspecting that products with counterfeit trade marks or pirated copyright goods will be imported may lodge an application in writing with the Commissioner of the BOC for the issuance of a hold order on the release of such goods.

The IP owner or agent shall file a request in writing to the Commissioner of Customs for the issuance of a hold order on suspected counterfeit goods, providing as much detail as possible regarding the shipment, e.g., date shipment is coming in, on what ship, from what port, etc. Such legal protection lasts two years from the date that the recordal is confirmed.

The BOC has the authority to seize goods and there is a registration system for IPRs. In practice, however, the BOC lacks a systematised enforcement programme which means seizure of goods is often inefficient.

### TRADE MARKS

#### 127. How do I register a trade mark in the Philippines?

The application in English or Filipino must be accompanied by a request for registration, signed by the applicant or his representative. Individuals and corporate entities/registered organisations may apply for the registration of a trade mark.

Foreigners and non-residents can apply but they must be represented by a duly authorized local agent to whom notice or process for judicial or administrative procedure relating to the application or the registration may be served.

A filing date is assigned to an application upon receipt by the Intellectual Property Office (IPO) of the filing fee and the following:

- An express or implicit indication that the registration of a mark is sought;
- The identity of the applicant;
- Indications sufficient to contact the applicant or his representative, if any;
- A reproduction of the mark whose registration is sought; and
- The list of the goods or services for which the registration is sought.

Applications must be filed with the IPO, addressed to the Director of the Bureau of Trade marks of the Intellectual Property Office of the Philippines.

Online filing is an option but is available only to entities that have accounts with designated local banks.

The basic filing fee for trade mark registration in the Philippines is EUR 34 and upwards but an Agent's fee is typically around EUR 390. For further information, please see [http://ipophil.gov.ph/images/Trade mark/Trade markFees.pdf](http://ipophil.gov.ph/images/Trade%20mark/Trade%20markFees.pdf).

## INDUSTRIAL DESIGNS

### 128. How can I protect the outward appearance of my product in the Philippines?

The outward appearance of your products can be protected in the Philippines as industrial designs. An industrial design is any new or original creation related to the ornamental features of shape, configuration, form, or combination thereof, of an article of manufacture, whether or not associated with lines, patterns or colours, which impart an aesthetic and pleasing appearance to the article.

Original ornamental designs or models for articles of manufacture, whether or not they can be registered as an industrial design, are also copyrightable. Thus, an original ornamental work may be protected both under an industrial design registration and under copyright.

## COPYRIGHT

### 129. Should I register copyright in the Philippines?

In the Philippines, works are protected by copyright from the moment of their creation, irrespective of their mode or form of expression, content, quality and purpose. However, registration of copyright is still required in order to establish the rights of the owner for purposes of seeking remedies against the copyright infringers. The author or creator of the work, his heirs, or assignee may apply in person or through a duly authorized representative. Foreigners are permitted to apply for registration

but non-resident applicants must be represented by a duly authorized resident agent to whom notice or process for judicial or administrative procedure relating to the application or the registration may be served. You may, as the owner, file an application for a certificate of registration (in English or Filipino) and deposit copies of the work or works with the Copyright Division of the National Library or with the Intellectual Property Office, submitting the following documents:

- Duly notarised copyright application form and affidavit;
- Two copies of the document subject of the application;
- Certified copy of the notarised assignment document if the applicant/owner is not the author of the work;
- Copy of the business registration certificate of the applicant;

- Power of attorney (POA) in favour of the agent, if applicable (must be accompanied by a board resolution/secretary's certificate establishing the authority of the signatory to the POA if filing with the Intellectual Property Office of the Philippines).

In addition to the above documentary requirements, the applicant must also provide information regarding the date, place and person/entity that first completed the printing and the date, place and person/establishment where the work was first published or sold in the Philippines. The typical cost of Copyright registration in the Philippines is between EUR 350 to EUR 380 (including official costs of about EUR 11).

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## Singapore

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### GENERAL

#### 130. How does Singapore's IP legal framework compare to international standards?

The Singaporean IP legal framework is very comprehensive and generally considered to be one of the most thorough in Asia. Singapore is a member of the following international conventions regulating IP matters: the Paris Convention for the Protection of Industrial Property, the Madrid Agreement concerning the International Registration of Marks, the Patent Cooperation Treaty, the WIPO Copyright Treaty, the NICE Agreement concerning the International Classification of Goods and Services,

and the Berne Convention for the Protection of Literary and Artistic Works.

#### 131. My employee infringed another company's copyright with my knowledge and permission. Thanks to the infringement, my company obtained a commercial advantage. Who is legally liable in such a case?

If a company is found to have infringed a copyright to obtain commercial advantage, both the company and the employee responsible will be legally liable in Singapore. Penalties for such an offence include a fine and/or a term of imprisonment. Unlike other countries in South-East Asia, Singapore has no system of

registration of copyright. Works that qualify for protection under the Copyright law do not need to be registered, because copyright protection is conferred automatically to the author as soon as it is expressed or fixed in a material form (e.g. paper, tape, CD, etc.) from which it is capable of being reproduced.

### 132. Can I request Customs to monitor and notify me of suspected infringing goods which are being imported into Singapore?

Unfortunately, since there is no official records system through which you can request Customs to monitor and notify you of suspected infringing goods which are being imported into Singapore, you should not rely on Customs to discover or monitor such shipments on your behalf. Instead you will need to be proactive about monitoring this yourself. However, if you already have details about a suspected illegal shipment in advance, you can activate border enforcement by giving written notice to Customs of a suspected import of IPR-infringing goods. This will apply only to registered trade marks and copyrights and you can only activate border enforcement for IP that is registered in Singapore. A written notice in the official form must be filed with Customs to inform them of the suspected import of IPR-infringing goods. The IPR owner, its licensee, or their agents can give a written notice to Customs of a suspected import of IPR-infringing goods. The notice must be accompanied by:

- a statutory declaration that the particulars in the notice are true;
- a fee of around EUR 123 (200 Singaporean dollars);
- where the notice is given by your agent, evidence of the authority of the person giving the notice;

- in the case of suspected trade-mark infringing goods, a copy of the certificate of registration in relation to your Singapore registered trade mark.

## TRADE MARK

### 133. I am interested in registering my trade mark in Singapore. Shall I consider applying for a national registration directly through the national intellectual property office of Singapore or through international registration?

You can apply for a national registration directly through the national intellectual property office in Singapore. However, you also have the possibility to file for registration by way of an international application designating Singapore, since the latter is one of few countries of the ASEAN Economic Community that have implemented the Madrid Protocol. Under this treaty, it is possible to file a single application in one member country in order to seek trade mark protection in multiple member countries. International applications are administered by WIPO's International Bureau. This system can be cost saving as it eliminates the need to hire local agents to file local applications in countries of interest.

### 134. Is there any protection for non registered trade marks in Singapore?

Registered trade marks enjoy additional statutory protection under the Trade Marks Act and the registered proprietor has certain remedies available to him in the event that his trade mark is infringed.

In the absence of a registration under the Trade Marks Act, a mark which is used by a trader in the course of his trade may still be protected under the common law 'tort of passing off'. The 'law of passing off' essentially prevents other traders from unfairly riding on the reputation and success that you have built for your trade mark. Three factors need to be proved before a claim of passing off can succeed: (i) that you have established 'goodwill' or a good reputation for your trade mark within Singapore; (ii) that the defendant has made a misrepresentation to the public that his goods or services are in some way associated or connected with you; (iii) as a result, you have suffered damage to your brand's reputation. However, the legal remedies available to you would be more limited than if you had registered the trade mark.

A trade mark does not generally have to be in use before it can be applied for or registered, although all applications for registration should be on the basis that there is existing use or a clear intention to use the mark in the course of trade. The trade mark registry office may require proof of use whilst examining the trade mark application. It is very important to remember that when the trade mark registration is granted in Singapore, you (or your licensee) shall put that mark to genuine use in the course of trade within the period of five (5) years from the date of completion of the registration procedure. Failure to do so may result in your registration being revoked for non-use

## PATENTS

### 135. What can be protected as patent in Singapore?

A patent is a right granted to the owner of an invention to prevent others from making, using, importing or selling the invention without his permission. A patent may be obtained for a product or a process that gives a new technical solution to a problem or a new method of doing things, the composition of a new product, or a technical improvement on how certain objects work. Unlike most countries, in Singapore there is only one official type of patent, however registered designs, integrated circuit layout designs, and plant varieties can be registered separately and are conferred specific protection under Singaporean law (more details are given below).

## Thailand

### GENERAL

#### 136. Do I need to register my intellectual property rights in Thailand?

Timely application by EU SMEs for grant and registration of their IP rights before the DIP is still crucial in order for EU SMEs to have a chance of defending and enforcing them. Patents, designs and trade marks are territorial in nature, which means that registrations in one country's jurisdiction are not automatically enforceable in others, and therefore registrations in multiple countries may be necessary.

Thailand operates under a 'first-to-file' system, meaning that the first person to file an IP right in the Thai jurisdiction will own that right once the application is granted.

#### 137. What are the main routes of IPR enforcement in Thailand?

There are three main avenues of enforcement you can consider: administrative actions, civil litigation and criminal prosecution. In many cases however private mediation via legal professionals is more effective and should be considered as a viable option, particularly for SMEs facing budget constraints.

Administrative measures in Thailand are generally seen as not effective due to a lack of sufficient resources (both financial and

human) and proper training of the enforcement agencies, as well as non-deterrent punishments imposed on infringers.

Civil litigation is rarely used in Thailand due to the difficulty in proving 'actual damages', the lack of a formal discovery process, and the delays in prosecuting the case. There is also a lack of proper IP training and human resources within the judicial system, meaning that case outcomes can be somewhat unpredictable.

Criminal prosecutions are usually considered as the most cost-effective enforcement route available to IP right holders in Thailand. The judges are reluctant to impose harsh penalties on infringers, especially for first-time and minor offenders. This results in light penalties which often do not act as a deterrent to infringers.

### TRADE MARKS

#### 138. Are bad-faith registrations in Thailand a common issue?

Bad-faith registrations can prevent a right owner to use its trade mark in Thailand and can cause big losses to businesses. In Thailand, there is some additional protection for 'well-known trade marks', provided that the mark is 'well-known' in Thailand to protect from bad-faith registrations.



A way to cancel a bad-faith registration is by proving that the mark was unused for a period of 3 years prior to the petition for cancellation, in which case you can file a petition of cancellation on the grounds of 'non-use'.

## GEOGRAPHICAL INDICATIONS (GIS)

### 139. Are GIs protected in Thailand?

GIs are recognised and can be registered in Thailand since 2004. Thailand is one of the pioneers of GIs protection in Asia with several GIs already registered nationally and abroad. In 2013 'Khao Hom Mali Thung Kula Ronghai' or "jasmine rice" from Thailand became the first Southeast Asian GI to be recognised in the EU.

For a GI of a European country to enjoy protection in Thailand, there must be explicit evidence that such GI is protected under the law of such country and has been used continuously until the date of filing an application for registration in Thailand.

Unlike in the EU, GIs might become generic in Thailand. GIs on wines and spirits and rice get stronger protection than those on agri-food products. In addition, GIs on handy crafts are protectable in Thailand.

## PATENTS

### 140. How to protect inventions in Thailand?

The Thai IP system divides patents into two categories: patents

of invention and utility models (also called 'petty patents'). Both are exclusive rights temporarily granted for an invention. Obtaining a patent is the only way to efficiently secure a product or a method against counterfeiters. Both current types of patents in Thailand (invention and petty patents) are required to be 'new' (this means it has not been published anywhere or disclosed to the public prior to the date of filing).

Patents of invention, in addition to being new, have to be 'inventive' (this means a new technical solution or improvement to a product or process) and 'industrially applicable', as is the case in most international patent systems.

Contrary to patents of invention, petty patents are not required to be 'inventive', and thus the registration process is different. There are also differences in the length of protection.

Patents of invention last 20 years from the filing date in Thailand, with no possibilities for extension/renewal. The registration process currently suffers severe backlogs and takes up to 5 - 6 years or more. Petty patents last 6 years from the filing date in Thailand, and are extendible twice for 2 more years (i.e. maximum term of 10 years). The registration process typically takes between 3 to 5 years.

## INDUSTRIAL DESIGNS

### 141. Protection of design in Thailand, what do I need to know?

A design right is an exclusive right temporarily granted for a form or composition of lines or colours, which gives a special

appearance to a product and can serve as a pattern for a product of industry or handicraft. Design rights, which in Thailand are called Design Patents, cover products with a distinctive shape, pattern, colour or the combination of these, which must be 'novel'. This means essentially not widely known or used by others in Thailand or a foreign country before the filing of the application for a design patent, and also not mentioned in a document or a printed publication in Thailand or a foreign country before the filing of the application for a design patent. Moreover, according

to Thai Patent law, a registered design should not resemble any prior design.

Thailand is a member of the Paris Convention, which means that applicants' Design Patents are entitled to a 'right of priority' (i.e. you can use the same filing date as the original application made in your home country), if the same filing has been made within the last 6 months. The first-to-file system applies for Design Patent protection in Thailand.

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## Vietnam

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### GENERAL

#### 142. How does Vietnam's IP legal framework compare to international standards?

Generally speaking, Vietnam's IP legislation is now relatively comprehensive, covering most aspects of protection of IP in accordance with international standards required by the TRIPS and relevant implementing regulations. Vietnam is also member to the major international conventions and treaties regulating IP matters. IP Enforcement in Vietnam is still challenging for foreign companies. The Vietnamese authorities are still working towards improving training for court officials, judges, customs authorities, and other IP enforcement agencies, and there is still some variation of court decisions based on the location of the court chosen for the legal action. In many cases judges in rural areas lack the right experience and legal training to bring fair judgements in line with Vietnamese law, which means that

choosing the right court for your legal proceedings could be very important.

#### 143. How to collaborate with the Vietnamese Customs and add company's information on the Vietnamese Custom's database?

Although registering with Vietnamese Customs is not mandatory, it is advisable to add yourself to their database as it will help the Customs authorities to recognise counterfeit versions of your product, and improve the chances of such suspect items being blocked at the border.

If you know of a suspected illegal shipment of your products you can also work together with Vietnamese Customs to detain such shipments. In order to monitor the flow of infringing goods crossing Vietnam's borders, you will need to initiate customs recording by filing a request with the General Department of

Customs. Vietnamese IP right holders may file the request with the General Department of Customs directly. Foreign IP right holders must file the request via an IP Agent. The application must be in Vietnamese. However, the standard forms provided by the General Department of Customs are issued in both English and Vietnamese.

A request for recording must contain the following mandatory documents:

- Certified copies of your IP Certificates of Registration e.g. trade mark registration certificate;
- Documents relevant to the goods you wish to register with customs, including: list of authorised importers/exporters, mode of importation/exportation of genuine goods, description of how to distinguish the genuine goods from infringing ones, documents on the origin of genuine goods, and pictures of genuine goods;
- A notarised and legalised Power of Attorney (if you are filing through a local IP Agent)
- In addition, the applicant should submit the following supporting documents (if available):
  - Information on estimated time and venue of import and export;
  - Expert opinions on infringing goods;
  - Sanctioning decisions made by enforcement agencies in previous cases of infringement of the goods you are registering (if applicable).

The Customs Office should notify you whether your application has accepted or rejected no later than 20 days from the receipt of the request. There is no official cost for filing a request for

registration with Vietnamese Customs.

## TRADE MARKS

### 144. Can I apply for trade mark protection for a fancy package for a product I am going to commercialise in Vietnam?

Yes. In Vietnam three-dimensional signs (shapes) can be registered as trade marks, provided that they comply with the number of circumstances foreseen by the Vietnamese law. Thus, a mark must be distinctive, i.e. consist of one or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination. It cannot be identical with or confusingly similar to national flags, names of political organisations and real names and should not cause misunderstanding or confusion as to the origin, properties, quality, or other characteristics of the goods or services. It also cannot be identical or confusingly similar to another person's mark already registered or used for identical goods or services. Trade mark protection lasts for 10 years from the filing date in Vietnam, with the option to extend for consecutive 10 year periods an unlimited number of times. The registration process typically takes up to 15 months.

## PATENTS

### 145. How do I register a patent in Vietnam?

As Vietnam is a member of the PCT, registration can be made directly in Vietnam, or internationally via the PCT procedure. Application requirements and approval time may be reduced

when applying for an Invention Patent or Utility Solution Patent via the PCT system and the application process can be further accelerated by paying an additional fee.

To obtain a patent, an application must be filed with the National Office of Intellectual Property of Vietnam (NOIP). The application dossier must contain the following:

- A request made in the standard form provided by the NOIP.
- Documents, samples, and information identifying the invention/utility solution.
- Receipt of fees and charges.
- Power of Attorney, if a representative is making the filing on your behalf.
- Documents demonstrating that you own the right to registration, if the invention has been acquired from another person.
- Documents demonstrating the priority right (if you are claiming this).

## COPYRIGHT

### 146. Do I have to register my copyright in Vietnam?

Copyrights that are already granted in countries that are part of the Berne Convention, of which Vietnam is a member, are already granted in all other treaty countries. The convention also means that you as the creator automatically own the copyrights without the formal need to register them. However, it is still advisable to register copyrights in Vietnam with the National Copyright Office of Vietnam (NCO), or the Department of Culture, because this will make court proceedings easier if you ever need to enforce these

rights before a Vietnamese court. Copyright certificates are also required in certain enforcement procedures. The NCO is required by law to notify you in writing whether or not the copyright has been granted within 15 working days from the date of receipt of a valid application.

## TRADE SECRETS

### 147. What is a trade secret according to Vietnamese law?

Trade secrets are defined by Vietnamese law as ‘information obtained from financial or intellectual investment activities, which have not been disclosed and are applicable in business’. A piece of information falls under the definition of a trade secret when the information:

- Has not been made public, and is not common knowledge;
- Gives its owner a business advantage;
- Remains secret because the owner takes necessary measures to protect the confidentiality of the information.

Typically trade secrets could include new products or business models, special techniques, customer and supplier lists, technical know-how, etc.

Please bear in mind that, as trade secrets are a relatively new addition to Vietnamese IP law, the Vietnamese authorities have not dealt with any infringement cases relating to trade secrets to date. Trade secrets are protected upon creation without any registration, provided that reasonable measures have been taken to keep the information secret.

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## General Cross-cutting issues

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148. I'm attending a trade fair and/or matchmaking event, what do I need to do to protect my IP?

- Identify your key IP assets (trade marks, patents, copyright) and register your rights in China at the earliest possible opportunity. Depending on the type of IP, the registration process can vary from several months (e.g. copyright or design patent) to several years (e.g. invention patent), so advanced planning before market entry is needed.
- Make sure that the brochures and other marketing materials that you use at the trade fair have copyright notices on them.
- If you are planning to have business meetings with potential partners, check their IP background and bring a few Non-Disclosure Agreements (NDA) to the fair that you can sign before entering into discussions.
- Catalogue your trade secrets before the trade fair so that you can be conscious about not disclosing them at meetings or discussions.
- Prepare well for the trade fair or matchmaking events by researching the exhibitors, potential business partners and the exhibitors' contracts.
- Trade fairs are also a good opportunity for monitoring the market for any infringement of your products. In case you would like to take action on the ground, prepare all ownership certificates, research the contact of the IP complaint centre operating at the trade fair, and notarize acquired evidence of infringements.

149. How to use contracts to protect my IP? I would like to sign an NDA with my potential business partner, what IP clauses should I include?

When doing business that involves your IP, there are two key points to bear in mind: always use written contracts wherever possible and ensure that, where relevant, your IP is covered in those agreements. Tailor your IP contracts to suit the IPR you are protecting, and make sure you include sufficient specific detail in the contracts' key provisions. IP usually appears in the following types of agreements:

- Non-Disclosure Agreements (NDA) and Confidentiality Agreements;
- Memorandum of Understanding (MOU);
- Employment agreements;
- Agency agreements;
- Trade mark/patent license and technology transfer;
- Franchise agreements;
- Distribution agreements;
- Manufacturing agreements;
- Joint Venture agreements;
- IT-related agreements; and
- Selling/assigning your IP.

It is advisable that you sign an NDA with any third party to whom you plan to reveal confidential information such as sensitive product information, designs and sketches, business strategy, client information, etc. before doing so. NDAs are quick and

inexpensive, and a basic template will require little modification for use with different products and clients. NDAs are widely used in many markets and usually accepted by local courts, so a third party that is unwilling to sign an NDA is likely not a trustworthy potential business partner and should be treated with caution.

Sometimes an NDA on its own is insufficient to encourage the respect of your IPRs and not every product can be covered by registered IPRs, especially for companies in the manufacturing industry or those sourcing their products from third countries. In those cases a 'non-disclosure/non-use/non-circumvention agreement' (an 'NNN' agreement) may be a useful alternative:

- The non-disclosure provisions will cover the unauthorised disclosure of confidential information.
- The non-use provisions will state that the local manufacturer cannot produce your product or any similar products for anyone other than you. These provisions will prevent the local manufacturer from making or selling similar 'copycat' products without your authorisation.
- The non-circumvention provisions will prevent the local manufacturer from by-passing the protection or circumvention means or technologies that you put into your product.

150. I've found counterfeits of my products on e-commerce websites. What can I do now?

The specific regulations related to the internet stipulate that if the IP-protected material is uploaded without the right holder's consent, he/she may request in writing that the internet service provider (ISP) removes the infringing work, or removes the

relevant website from the ISP's network and disables access to the copyrighted material. This kind of written warning is known as a 'take-down notice'. The general rule is that if the ISP removes the infringing content following a 'take-down notice' it will not be held liable for any further compensation. If however, the ISP knew or should have known about the infringement, the ISP might be held liable jointly with the person who uploaded the infringing content, this shall vary in some jurisdictions. In order to avoid liability, local ISPs have developed systems to aid take-down notices. For a successful take down action, you will have to provide the ISP with the registration documents of your trade mark, patents or copyright in the country where the ISPs are located.

## Annex 1: Members of the International Patent and Trade Mark Registration System

	Is.... part of PCT, the International Patent Registration System?	Is.... part of Madrid System, the International Trade mark Registration System?
Argentina	✗	✗
Bolivia	✗	✗
Brazil	✓	✗
Brunei Darassalam	✓	✗
Cambodia	✗	✓
Chile	✓	✗
Colombia	✓	✓
Costa Rica	✓	✗
Cuba	✓	✓
Dominican Republic	✓	✗
Ecuador	✓	✗
El Salvador	✓	✗

Guatemala	✓	✗
Honduras	✓	✗
Indonesia	✓	✗
Lao People's Democratic Republic	✓	✓
Malaysia	✓	✗
Mexico	✓	✓
Nicaragua	✓	✗
Panama	✓	✗
Paraguay	✗	✗
Peru	✓	✗
Philippines	✓	✓
Singapore	✓	✓
Thailand	✓	✗
Uruguay	✗	✗
Vietnam	✓	✓
Venezuela	✗	✗



## Annex 2: List of abbreviations

<b>AEC</b>	ASEAN Economic Community
<b>AIC</b>	Administration of Industry and Commerce
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CNNIC</b>	China Internet Network Information Centre
<b>CTMO</b>	China Trade Mark Office
<b>DIBAM</b>	The Intellectual Property Department of the Dirección de Bibliotecas, Archivos y Museos (Chile)
<b>DNDA</b>	Dirección Nacional de Derechos de Autor (Colombia)
<b>EASME</b>	European Union's Executive Agency for SME
<b>EBN</b>	European Business Network
<b>EPO</b>	European Patent Office
<b>EUIPO</b>	European Union Intellectual Property Office
<b>FBN</b>	Fundação Biblioteca Nacional (Brazil)
<b>FIE</b>	Foreign Invested Enterprises
<b>GI</b>	Geographical Indications
<b>IMPI</b>	Instituto Mexicano de Propiedad Industrial (Mexico)
<b>INAPI</b>	Instituto Nacional de Propiedad Industrial (Chile)
<b>INPI</b>	Instituto Nacional de Propiedad Intelectual (Argentina)

<b>INPI</b>	Instituto Nacional da Propiedade Industrial (Brazil)
<b>IP</b>	Intellectual Property
<b>IPR</b>	Intellectual Property Rights
<b>OHIM</b>	Office for Harmonization in the Internal Market
<b>PCT</b>	Patent Cooperation Treaty
<b>SAG</b>	Servicio Agrícola Ganadero (Chile)
<b>SENAPI</b>	National Service of Intellectual Property (Bolivia)
<b>SIC</b>	Superintendencia de Industria y Comercio (Colombia)
<b>SIPO</b>	State Intellectual Property Office
<b>SMEs</b>	Small and Medium-sized Enterprises
<b>SNPC</b>	Instituto Nacional de Semillas (Brazil)
<b>TLDs</b>	Top Level Domains
<b>TRIPS</b>	Trade Related Aspects of International Property Rights
<b>UGI</b>	User Graphic Interfaces
<b>UMs</b>	Utility Model Patents
<b>UTM</b>	Monthly Variable Rate
<b>WIPO</b>	World Intellectual Property Organisation

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