



# GUIDE TO GOING GLOBAL

IPT

*Saudi Arabia*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Intellectual Property and Technology*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### INTELLECTUAL PROPERTY AND TECHNOLOGY

Inside this guide, we outline crucial aspects of IPT laws in over 40 jurisdictions that are particularly relevant to businesses seeking to expand their operations globally. We also summarize some fundamental commercial terms that customarily appear in IPT-related agreements.

You will find answers to such common questions as:

- Which jurisdictions recognize moral rights?
- What does my business need to do to have an enforceable assignment of intellectual property from an employee, from a consultant?
- What kind of liability can be excluded from a commercial contract?

With this edition, we've also included a section for each country that discusses the enforceability of electronic signatures.

Our goal is to make the guide as readable and informative as possible, providing you just the background you need to get an overview of the IPT laws in the selected jurisdictions. This is not a substitute for professional legal advice. If you have questions regarding specific matters, we encourage you to contact one of our contributors listed in the contributors section of this guide. With nearly 500 dedicated IPT lawyers around the globe, DLA Piper's IPT group is ready to handle your legal needs wherever you do business.

Also, please note that the guide's use of the term "trademarks" also refers to service marks, unless specifically addressed separately. The summary of intellectual property covers only the most commonly used categories worldwide (for example, we have not addressed plant patents). We have also referred to international treaties and conventions with their most commonly used names and not their formal titles (such as the TRIPS Agreement, the Berne Convention, the Paris Convention and the Patent Cooperation Treaty).

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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## SAUDI ARABIA



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### INTELLECTUAL PROPERTY FRAMEWORK

#### Overview

Intellectual property rights are protected by a number of laws that have been passed by Royal Decree and are enforced by the courts. All laws in the Kingdom of Saudi Arabia (KSA) are subject to Shari'a principles.

The KSA generally operates by reference to the Hijri (or Islamic) calendar for official purposes. Careful attention is therefore required when making reference to protection periods and any timeframes associated with the different intellectual property rights, to ensure that relevant deadlines are not inadvertently missed.

### COMMERCIAL CONTRACT FRAMEWORK

#### Overview

The KSA does not have a formal dedicated code or legislation as such setting out the principles of contract law. The key principles of contract law derive from Shari'a (or Islamic) principles, the primary source of law in the KSA, but which are not codified.

In addition, the law in the KSA consists of legislation passed by government (which is secondary if it conflicts with Shari'a principles), which also govern commercial activities in the KSA. For example, additional requirements apply to procurement and contracting with government entities under the Government Tenders and Procurement Law (Council of Ministers Resolution No. 649/1440 and published in the Umm Al-Qura Official Gazette, Issue No. 4790 on 2 August 2019), and its Implementing Regulations. The Saudi Arabian Monetary Authority (SAMA) oversees, amongst other things, banking activities in the KSA.

There is no concept of judicial precedent in the KSA, which means that the decisions of the courts and other judicial authorities do not have binding authority in respect of another case. In addition, court cases are not generally published as a matter of course. This means that it is not always possible to reach a conclusive interpretation of laws and regulations or to understand how the courts/authorities in the KSA would view a particular matter.

## COPYRIGHTS

### *Nature of right*

Under the Copyright Law, copyright protection applies to works "created in the fields of literature, art and sciences, irrespective of their type, means of expression, importance or purpose of authorship."

The Copyright Law covers works of Saudi and non-Saudi authors published, produced, performed or displayed for the first time in the KSA, and works of Saudi authors published, produced, performed or displayed for the first time outside the KSA, works of broadcasting organizations and producers of sound recordings and performers as well as works copyrighted pursuant to international agreements or treaties for protection of copyright to which the KSA is a party.

Copyright owners have the exclusive right to reproduce, distribute, prepare derivative works, publicly perform and publicly display their works of authorship. Copyright Law also affords extensive moral rights to the author of a copyright work, which are considered permanent rights of the author and, significantly, cannot be subject to waiver, lapse or transfer (except to the heir(s) of the author in case of the author's death or, if there are no heirs, to the Ministry of Culture and Information).

Assignment by an author of all his future intellectual production is, under the Copyright Law, also deemed to be null and void.

The application of moral rights and restrictions on future assignment have implications for the drafting of contracts and assignment documents.

### *Legal framework*

The Copyright Law (promulgated by Royal Decree No. M/41 of 2 Rajab, 1424 (corresponding to 30 August 2003)), and its Implementing Regulations (Copyright Law).

The KSA acceded to the Berne Convention for the Protection of Literary and Artistic Works on 11 December 2003.

### *Duration of right*

The period of copyright protection for an author is the duration of his/her lifetime and 50 years following his/her death. For joint works, the period of protection is computed from the date of the death of the last surviving author. If the writing is in the form of various parts or volumes then each volume is treated as a separate and independent piece of work.

Where the author is a corporate entity, the period of protection is 50 years from the date of first publication.

The period of protection for audio works, audio-visual works, films, collective works and computer software is 50 years from the date of the first show or publication of the work.

The period of protection for applied arts (handcrafted or manufactured) and photographs is 25 years from the date of first publication.

The period of protection for broadcasting organizations is 20 years from the date of the first transmission of programs or broadcast materials.

The period of protection for the producers of sound recordings and performers is 50 years from the date of performance or its first recording.

## *Ownership / licenses*

Joint ownership of copyright is recognized. Any transfer of copyright must be recorded in writing and must express any limits to the scope of the transferred right with respect to both time and place.

## *Remedies for infringement*

A wronged party can seek damages or compensation for infringement of its rights and damage suffered. In addition, the Copyright Law stipulates certain penalties for infringement, including:

- i. A warning to the offender
- ii. A fine not exceeding SAR250,000
- iii. Naming and shaming of the violator (at the violator's expense) by a method deemed appropriate by the competent committee, which is formed by decision of the Minister of Culture and Information to review violations
- iv. An injunction against the printing, production, publication or distribution of the work infringed upon, in addition to impounding of related copies and materials, and any temporary measure the competent committee finds necessary to protect the copyright works until a final decision is reached regarding the complaint or offense
- v. A temporary shutdown of the offending establishment for a maximum of 2 months
- vi. A suspension from participating in specific commercial events (if the infringement was discovered during any such commercial events) for a period of up to 2 years
- vii. Confiscation of violating goods or copies of the work and the materials used or intended for use in copyright infringement and
- viii. A jail term of up to 6 months.

It is notable that repeat offenses of infringement may result in doubling of maximum penalties.

## **MASK WORKS / TOPOGRAPHIES**

### *Nature of right*

In the KSA, protection is available for layout designs of integrated circuits.

Any layout design of integrated circuits that is to be protected must be "original" in the sense that it must be the result of its creator's own intellectual effort, and is not commonplace among creators of layout designs and manufacturers of integrated circuits at the time of its creation.

Applications for registration of a layout design of an integrated circuit are made to the King Abdulaziz City for Science and Technology (KACST).



## *Legal framework*

The Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (promulgated by Royal Decree No. M/27 of 29/5/1425H (corresponding to 17 July 2004)), and its Implementing Regulations (Patents Law).

## *Duration of right*

Layout-design certificate protection is valid for 10 years from the date of filing the application for registration or 10 years from the date on which it was first commercially exploited anywhere in the world (but, in any case, no longer than 15 years from the date of creation of the layout-design).

## *Ownership / licenses*

A layout design may be assigned or licensed to a third party by the registered owner, in accordance with the requirements of the Patents Law.

There are certain circumstances where compulsory licenses may be granted by KACST to a third party to exploit a layout design covered by a certificate of design.

## *Remedies for infringement*

A wronged party can seek damages or compensation for infringement of its rights and harm suffered. In addition, the Patents Law stipulates certain penalties for infringement, without prejudice to further liability which may arise from other laws, including:

- i. An injunction
- ii. A fine of up to SAR100,000, which may be doubled for a repeat offender
- iii. A possible jail term, including referral to the Board of Grievances
- iv. Naming and shaming in 2 daily newspapers and the Official Gazette, the cost of which is borne by the party in breach, and
- v. Any other prompt measures considered necessary to prevent damages resulting from the infringement.

## **PATENTS**

### *Nature of right*

A patent may be issued on an invention, if it involves an inventive step, and is capable of industrial application. The invention may be a product, process or related to either.

Applications for registration of patents are made to KACST.

### *Legal framework*

The Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (promulgated by Royal Decree No. M/27 of 29/5/1425H (corresponding to 17 July 2004)), and its Implementing Regulations (Patents Law).

## *Duration of right*

Patent protection in the KSA is valid for a period of 20 years from the date of filing the application.

Note that it is also possible to file a GCC patent application which, if granted, affords protection of the patent in the 6 GCC countries. Subject to the continued payment of maintenance fees, the term of a GCC patent application is 20 years from the filing date.

## *Ownership / licenses*

A patent may be assigned or licensed to a third party by the registered owner, in accordance with the requirements of the Patents Law.

There are certain circumstances where compulsory licenses may be granted by KACST to a third party to exploit an invention covered by a patent.

## *Remedies for infringement*

A wronged party can seek damages or compensation for infringement of its rights and harm suffered. In addition, the Patents Law stipulates certain penalties for infringement, without prejudice to further liability which may arise from other laws, including:

- i. An injunction
- ii. A fine of up to SAR100,000, which may be doubled for a repeat offender
- iii. A possible jail term, including referral to the Board of Grievances
- iv. Naming and shaming in 2 daily newspapers and the Official Gazette, the cost of which is borne by the party in breach, and
- v. Any other prompt measures considered necessary to prevent damages resulting from the infringement.

## **TRADEMARKS**

### *Nature of right*

Trademarks must generally take a distinctive form and be capable of distinguishing goods or services.

The GCC Trademark Law (as implemented in KSA) provides an indicative list of registrable trademarks, including names, words, signatures, characters, codes, numbers, titles, seals, drawings, images, inscriptions, packaging, figurative elements, shapes or colour, group of colours or combinations of colours. Unconventional marks such as sounds and smells are now also registrable under the GCC Trademark Law.

The KSA has adopted and applies the Nice Classification for the purposes of registration of marks.

An application for trademark registration is submitted to the Trademarks Office at the Saudi Authority for Intellectual Property. A person who has a registered trademark is its exclusive owner, and the use of a registered trademark by any other person requires the consent of the owner.

### *Legal framework*



With effect from September 29, 2016, the KSA adopted the GCC Trademark Law (Law No. 1/1437 of 13 Dhu'l-Hijjah 1437 H, corresponding to September 29, 2016) and its Implementing Regulations (GCC Trademark Law). The GCC Trademark Law replaces the former KSA Trademark Law that was in place since 2002.

Note that the GCC Trademark Law does not establish a unitary registration system – it contains a single set of provisions which apply across all GCC countries, but it does not envisage a single registration or enforcement system (ie, a GCC mark will still require 6 separate, national applications).

## *Duration of right*

The period of protection for a trademark is 10 years (subject to rights of renewal).

## *Ownership / licenses*

A trademark may be sold or licensed to a third party by the registered owner, in accordance with the requirements of the GCC Trademark Law.

## *Remedies for infringement*

A wronged party can seek damages or compensation for infringement of its rights and harm suffered. In addition, the GCC Trademark Law stipulates certain penalties for trademark infringement depending upon the nature of the offense. For example, it is an offense to, amongst others, counterfeit or imitate a registered trademark so as to mislead or confuse the public, or to use in bad faith a trademark owned by others on goods or services without authorization. These offenses carry a jail sentence of between 1 month to 3 years or a fine between SAR5,000 and SAR1 million, or both. Penalties may be doubled for repeat offenders. Additional penalties may include potential closure of the place of business for between 15 days to 6 months and publication of the decision at the expense of the offender.

## **TRADE SECRETS**

### *Nature of right*

A commercial secret is defined under the Trade Secrets Regulations as information not known in its final form or where information is not usually easily obtainable by those engaged in this type of business, as well as where the information is of commercial value due to its confidentiality, and where the rightful owner takes reasonable measures to maintain its confidentiality. However, the Trade Secrets Regulations do not protect commercial secrets which are inconsistent with Shari'a, public order and/or public morals.

Obtaining, using or disclosing any commercial secret in a manner that is inconsistent with "honest commercial practices" and without the consent of the rightful owner is deemed an abuse of the commercial secret under the Trade Secrets Regulations.

### *Legal framework*

Trade secrets are governed by the Regulations for the Protection of Confidential Commercial Information issued by Ministry of Commerce and Industry Decision No. 3218 (as amended), passed in 2005 (Trade Secrets Regulations).

## *Duration of right*

As long as reasonable efforts are taken by the owner of the information to maintain the information as a trade secret, the Trade Secrets Regulations do not expressly provide for a limit on the duration of the right, although a minimum protection period of 5 years is specified (subject to limited exceptions) in the context of secret information submitted to an official competent authority for the purpose of approval of the marketing of drugs or chemical agricultural products in which new chemical substances are used.

## *Ownership / licenses*

Trade secrets or know-how licenses are, in principle, enforceable.

## *Remedies for infringement*

Remedies include a claim for compensation for damages for any person harmed as a result of a violation of the provisions of the Trade Secrets Regulations.

## **OTHER KEY IP RIGHTS**

### *Nature of right*

Not applicable.

### *Legal framework*

Not applicable.

### *Duration of right*

Not applicable.

### *Ownership / licenses*

Not applicable.

### *Remedies for infringement*

Not applicable.

## **INTELLECTUAL PROPERTY IN EMPLOYMENT CONTEXT**

## *Employees*

There are no regulatory protections that specifically cover employees in the Trade Secrets Regulations. However, agreed confidentiality provisions in an employment contract may grant certain levels of protections.

The Copyright Law restricts the right to assign copyright in future works (any such purported assignment is deemed "null and void"). Standard language in employment contracts often vests ownership of all works created by the employee in the employer. Employers that usually rely on future copyright assignments need to ensure that suitable intellectual property rights provisions are used, as those rights will not automatically vest in the employer.

The general position under the Patents Law is that the employer shall be the owner of the relevant protection document (a patent, or a certificate of layout design), subject to certain stipulated requirements and exceptions in the Patents Law. There are however provisions in the Patents Law that provide for an employee's right to receive a special award.

## *Consultants / contractors*

Please see our comments in relation to [employees](#), which are also relevant here.

## **KEY COMMERCIAL CONTRACT CONSIDERATIONS**

### *Registration of commercial agreements*

There is generally no legal requirement for commercial contracts to be registered (subject to certain exceptions, for example registration of qualifying agency, distribution and franchise agreements with the Ministry of Commerce and Investment).

### *Recognized language of commercial agreements*

Generally, there is no legal requirement to execute contracts in Arabic, although there are exceptions (for example, when contracting with the KSA government). It is however important to bear in mind that, if brought before the KSA courts/authorities, contracts and related documentation will need to be in the Arabic language or translated into Arabic by a certified translator.

### *Country-specific issues for online content*

Not applicable.

### *Enforceability of online/clickwrap/shrinkwrap terms*

The enforceability of online terms (including whether the user has given appropriate consent to such terms) should be reviewed on a case-by-case basis.

### *Governing law*

Contracting parties generally have the right to choose the governing law of a contract (although the position is different when contracting with government entities in KSA).

Consideration should be given to the most suitable governing law and jurisdiction for resolving disputes to be specified in the contract, depending upon the nature of the contract, the parties and other specific circumstances.

## KEY COMMERCIAL CONTRACT TERMS

### *Enforceability of warranty disclaimers*

Warranty disclaimer language must be considered on a case-by-case basis. Such language is generally subject to review by the KSA courts, which will likely assess whether the wording fairly allocates risk between the parties.

### *Enforceability of exclusions/limitations of liability indemnification*

Exclusions/limitations of liability may not be enforced in the KSA courts even if the parties to a commercial contract agree to such limitation.

### *Indemnification*

The enforceability of an indemnification obligation is ultimately subject to court evaluation and discretion. That said, a party is only likely to be held liable under an indemnity if found to be a direct cause of losses which have been actually incurred by the party benefiting from the indemnity. Indirect and consequential losses are unlikely to be recoverable.

### *Electronic signatures*

The Electronic Transactions Law (ETL), issued by Royal Decree No. M/8 and dated 26 March 2007, provides guidelines for the use of electronic transactions (defined broadly as "any exchange, communication, contracting or other procedure, performed or executed, wholly or partially, by electronic means") and electronic signatures (defined as "electronic data included in, attached to or logically associated with an electronic transaction used to verify the identify and approval of the person signing it and to detect any change to the transaction after signature"). The ETL in principle recognizes the legal effect of "electronic signatures" provided that certain conditions, requirements and specifications are met under the ETL and its Implementing Regulations (No. 1/1429 and issued on 18 March 2008). There are a number of documents and transactions to which the ETL does not apply (for example, transactions relating to personal status law, amongst others).

As there is no system of precedent and cases are not published as a matter of course, the extent to which a KSA court would enforce an electronic signature is uncertain, particularly if the veracity of such signature is challenged. Depending upon the circumstances, it may be prudent to have contracts/documents also physically signed on paper by the relevant parties.

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