



# GUIDE TO GOING GLOBAL

IPT

*Singapore*



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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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## SINGAPORE



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### INTELLECTUAL PROPERTY FRAMEWORK

#### Overview

Intellectual property rights are governed by a body of local legislation in Singapore, such as the Intellectual Property Office of Singapore Act 2001, Patents Act 1994, Copyright Act 2021, Registered Designs Act 2000, Trade Marks Act 1998, among others (as amended and supplemented from time to time). With the aim to create an efficient and business-friendly Intellectual Property registration system in Singapore, the Parliament passed the Intellectual Property (Amendment) Bill 2021 (Bill) on January 12, 2022, and the Bill came into force on May 26, 2022. The Intellectual Property (Amendment) Act 2022 amended a number of existing intellectual property statutes including the Registered Designs Act, the Patents Act and the Trade Marks Act to create more streamlined intellectual property registration processes.

The Intellectual Property Office of Singapore (IPOS) oversees and advises on the application of this legislation.

### COMMERCIAL CONTRACT FRAMEWORK

#### Overview

Singapore contract law is largely based on English common law, though, in some cases, the precedent set by common law has been modified by statute. While there is no Contracts Act, the law has been codified in areas such as rights of third parties under contracts (Contracts (Rights of Third Parties) Act (Cap. 53B)), unfair contract terms (Unfair Contract Terms Act (Cap. 396)) and restitution in frustrated contracts (Frustrated Contracts Act (Cap. 115)).

The Electronic Transactions Act (Cap. 88) applies to contracts concluded online and is the primary legislation governing e-commerce in Singapore. The Electronic Transactions (Amendment) Bill was introduced in Parliament on January 4, 2021. The Amendment Bill, once passed, will include provisions regarding electronic transferable records and is an adoption of the UNCITRAL Model Law on Electronic Transferable Records.

### COPYRIGHTS

## *Nature of right*

Copyright protects literary, dramatic, musical and artistic works and other subject matter, such as sound recordings, films, broadcasts, cable programs and published editions of works. The copyright owner has an exclusive right to engage in certain acts in relation to the copyrighted work, such as reproduction or publishing.

In order for a copyright to be applicable, the work must be original and exist in tangible form such as in writing or as a recording. Ideas or concepts alone are not protected.

Copyright does not need to be registered. The author of a work to which copyright applies automatically enjoys copyright protection as soon as the work is expressed in a tangible form.

## *Legal framework*

The Copyright Act 2021, which came into force on November 21, 2021, replaces the existing Copyright Act (Cap 63). To take into account technological developments and balance the rights of creators and copyright users, the Copyright Act 2021 updates and strengthens the copyright regime in Singapore, including in the following areas:

- granting authors of authorial works and performers of performances the right to be identified when their works are used in public
- introducing civil and criminal liability provisions relating to streaming content from unauthorized sources in devices such as set-top boxes or software applications
- strengthening the general “fair use exception”
- setting an expiry date for copyright protection of unpublished work
- introducing a new exception to allow copyright materials to be used for computational data analysis, e.g. text, data mining and sentiment analysis
- introducing a new educational exception to permit schools and students of nonprofit educational institutions to use internet resources for educational purposes
- refining and introducing new exceptions to permit cultural heritage institutions to carry out activities relating to their work, eg, copying for administrative purposes, among others
- granting creators default ownership of all types of commissioned works, except for employee-created content where the employer is the default owner of content created by employee during the course of employment
- introducing new equitable remunerations rights when commercially published sound recordings are broadcasted or publicly performed
- refining existing exceptions for print-disabled users
- introducing new offenses relating to the sale of devices which facilitate access to copyright infringing works.

Any artistic work which is applied to a product and industrially produced does not fall under the protection of the Copyright Act 2021 and instead fall under the Registered Designs Act 2000.

## *Duration of right*

The duration of copyright varies according to the type of work concerned. Generally, copyright in a literary, dramatic, musical or artistic work shall be effective for 70 years from the end of the year in which the author died. Copyright in published editions of literary, dramatic, musical or artistic works shall be effective for 25 years from when the edition was first published. Copyright for sound recordings and films shall be effective for 70 years from the end of the year in which the sound recording or film was first published. Copyright for broadcastings and cable programs shall be effective for 50 years from the end of the year of making the broadcast or cable program. Copyright in performances shall be effective for 70 years from the end of the year of the performance.

## *Ownership / licenses*

Under the Copyright Act 2021, the creator is the default copyright owner and owns all commissioned work with the exception of employee-created works, ie, if an employee creates a work according to the terms of their employment contract in the course of employment, the employer will own the copyright by default. However, the parties can vary this default ownership position by written agreement. In the case of a journalist working for a newspaper or magazine, the owner of the newspaper or magazine owns the copyright of the publication in any newspaper or magazine but the employee owns the remaining rights that make up the copyright bundle of exclusive rights.

Copyright owners may transfer their rights to other parties either partially or wholly. They may also license their copyrights either partially or wholly. Future copyrights for a work that has yet to be produced can also be licensed. The license can be exclusive or non-exclusive.

In Singapore, there are collective management organizations (CMOs) which manage the rights of rightsholders in their copyright works. Such entities negotiate, grant and administer licenses on behalf of the rightsholders and also collect and distribute royalties. The Ministry of Law and the IPOS jointly conducted a public consultation from November 7, 2022 to January 4, 2023 to seek feedback on the draft Copyright (CMOs) Regulations (Draft Regulations) (to be made pursuant to Part 9 of the Copyright Act 2021), which establishes a mandatory class licensing system for CMOs. Once the proposed licensing scheme comes into effect, CMOs will be automatically licensed and must comply with all applicable license conditions set out in the Draft Regulations or face regulatory action or financial penalties.

## *Remedies for infringement*

Copyright infringement occurs when one of the copyright owner's exclusive rights are violated (i.e., when another party copies, distributes, performs, or displays all or part of a copyright work without the permission of the copyright owner). To establish copyright infringement, a copyright owner must establish ownership of copyright and that the person has copied the whole or substantial part of their work.

Infringement also occurs if a person imports infringing copies for sale or distribution, sells (including distributes for trade or any other purpose to an extent that affects prejudicially the copyright owner) or lets for hire infringing copies or offers infringing copies for sale or hire by way of trade.



The owner of a copyright may bring an action for an infringement of the copyright. The types of remedies available include injunction, a monetary award (eg, damages, an account of profits, statutory damages) or an order for delivery of and disposal of the infringing copies.

Manufacture of infringing copies for sale, sale of infringing copies, possession or importation of infringing copies for trade or any other purpose to such an extent as to affect the owner prejudicially and willful infringement of copyright for the purposes of commercial advantage and/or to an extent that is significant are criminal offences, subject to fines and/or imprisonment.

## **MASK WORKS / TOPOGRAPHIES**

### *Nature of right*

An original layout-design is one which is both the result of the creator's own academic effort and which is not commonplace among creators and manufacturers of integrated circuits at the time it is created.

It is not necessary to file an application to protect the layout-design or file the layout-design with the IPOS. A citizen or resident of Singapore, or of a country which is a member of the WTO or a country designated by the Singapore government as a qualifying country, who owns a layout-design, gains automatic protection for the layout-design if it qualifies for protection under Singapore law.

### *Legal framework*

In Singapore, an original layout-design can be protected under the Layout-Designs of Integrated Circuits Act 1999.

### *Duration of right*

Any integrated circuit which is created after February 15, 1999 will be protected for 10 years if it is first used commercially within 5 years of creation. In other cases, it will be protected for 15 years from the date of its creation.

### *Ownership / licenses*

Unless otherwise agreed, the owner of a layout-design would be the creator or, if the design was created in the course of employment or under a commission, the owner would be the employer or person who commissioned the design.

The owner of a layout-design may copy and/or commercially exploit the layout-design, as well as authorize the copying and/or the exploitation of the layout-design. Rights in a protected layout-design may be assigned or licensed and it is possible to sign an agreement assigning future rights in a layout-design that is expected to come into existence.

### *Remedies for infringement*

Under the Layout-Designs of Integrated Circuits Act, the owner has the right to prevent the copying and commercial exploitation of an original layout-design. The owner may take whatever proceedings and seek

whatever remedies are available for any other property rights. The usual remedies are damages, injunctions and an account of profits. In addition, the court may award additional damages depending on the circumstances of the case, including the flagrancy of the infringement and any benefit obtained by the defendant by reason of the infringement.

The court may make an order for delivery up to the owner of any infringing integrated circuit or any article used to make integrated circuits in which a protected layout-design is incorporated. An order for the disposal or destruction of the infringing articles may also be awarded.

## PATENTS

### *Nature of right*

A patent is a right granted to the owner of an invention that prevents others from making, using, importing or selling the invention without their permission. For an invention to be patentable, it must be new, involve an inventive step and be capable of industrial application.

### *Legal framework*

The protection of patents in Singapore is regulated by the Patents Act 1994. Under the Patents Act 1994, an application may be made to the Registry of Patents for the grant of a patent. Singapore acceded to the Patent Cooperation Treaty on February 23, 1995 and the Paris Convention on November 23, 1994, which came into force in Singapore on February 23, 1995.

### *Duration of right*

Once a patent is granted, the term of the patent is 20 years from the date of filing, subject to the payment of annual renewal fees.

### *Ownership / licenses*

Patent owners may prevent others from exploiting their inventions, use the patents to raise funds for their businesses, license the patents to third parties for commercial returns or sell the patented inventions.

Patent owners interested in licensing their patents to a third party may endorse such patents with a license of right (LOR) after they are granted, by way of applying for an LOR entry to be made in the Patents Register. An LOR may help a patent owner attract licensees and reduce the amount of renewal fees that are payable after the LOR entry is made.

### *Remedies for infringement*

The patent owner and their exclusive licensee are entitled to take legal action against an infringing party. Remedies available to the patent owner and their exclusive licensee include applying for an injunction to stop the infringing action, demanding for the profits gained by the infringing party or seeking damages for the loss suffered.

## TRADEMARKS



## *Nature of right*

A trade mark is a sign used by a trader to distinguish its goods or services from those of others. Registration of a trade mark gives the owner the exclusive right to use (and to authorize others to use) the mark for the goods or services for which the mark is registered.

## *Legal framework*

Trade mark registration in Singapore is governed by the Trade Marks Act 1998. It is not compulsory to register a trade mark in Singapore. One may also rely on rights under the common law doctrine of "passing off" to protect a trade mark.

The Singapore Treaty on the Law of Trademarks was adopted on March 27, 2006 and came into force on March 16, 2009. Singapore acceded to the Madrid Protocol on July 31, 2000, and it came into force in Singapore on October 31, 2000. This means that an entity can file one single trademark application in Singapore and extend the trademark protection to multiple jurisdictions. Similarly, trademark owners in other Madrid Protocol member jurisdictions can extend their trademark protection to Singapore.

Applicants may file trademark registration across multiple goods and services. Prior to the passing of the Intellectual Property (Amendment) Act 2022, if the trademark examiner had objections to the application in respect of some of the goods or services, these objections may hold up the whole application. However, the Intellectual Property (Amendment) Act 2022 now allows the IPOS to partially accept an application, ie, to allow registration of trademark in respect of the goods and services that have not received any objections.

## *Duration of right*

A trade mark can last indefinitely, but an owner must renew the registration every 10 years. Protection of a registered trade mark will take effect from the date the trade mark application is filed provided the trade mark application is granted.

## *Ownership / licenses*

The owner of a trade mark may authorize others to use their trade mark by way of license or assignment. The licensing or assignment may be granted for all or only some of the goods or services covered by trade mark registration or application.

## *Remedies for infringement*

Remedies available to the owner of a trade mark include injunction, a monetary award (damages, an account of profits and statutory damages) and an order for erasure of the offending sign or for disposal of the infringing goods.

## **TRADE SECRETS**

### *Nature of right*

A trade secret is information that is important to a business or company and is not known to the public. A trade secret can include a method or technique that would give a business or company an edge over its competitors.

Not all information will be considered a trade secret. The courts will look at various factors to determine if information constitutes a trade secret, such as if the information was confidential to the business, if the information has been revealed in breach of a promise of confidence and if the information has been used in an improper way that has resulted in financial damage to the business/company.

No registration procedures are required to protect a trade secret.

## *Legal framework*

There is no statutory regime for protection of trade secrets in Singapore. Trade secrets and confidential information are generally protected by contractual obligation between the parties and by the law of confidence under common law, which protects ideas and information that are not in the public domain, including trade secrets.

## *Duration of right*

There is no specified time limit within which the secret may be protected.

## *Ownership / licenses*

Information shall be owned by the business and such information will be protected as a secret from everyone except certain key individuals within the business or company and can be divulged within parameters set by these key individuals on behalf of the company.

## *Remedies for infringement*

When a trade secret is leaked, an action may be taken for breach of confidence as a leak of the secret may be unfair to the business and may have harmful consequences. Remedies for breach of contract will be available if appropriate.

## **OTHER KEY IP RIGHTS**

### *Nature of right*

Not applicable for this jurisdiction.

### *Legal framework*

Not applicable for this jurisdiction.

### *Duration of right*

Not applicable for this jurisdiction.

## *Ownership / licenses*

Not applicable for this jurisdiction.

## *Remedies for infringement*

Not applicable for this jurisdiction.

## **INTELLECTUAL PROPERTY IN EMPLOYMENT CONTEXT**

### *Employees*

If a trade mark, work or a design is created by an employee in the course of his or her employment, the trade mark, work or design will, in accordance with the relevant statute, be owned by default by the employer rather than the employee unless there are agreements between the employer and employee to the contrary.

It is commonplace for employers to include confidentiality clauses in employment agreements in Singapore.

### *Consultants / contractors*

If a piece of work is commissioned, the creator will generally be the owner of the copyright (subject to the information in the [copyright section – ownership/licenses](#)), unless otherwise agreed in writing.

It is commonplace for contractors and consultants to be subject to confidentiality clauses in Singapore.

## **KEY COMMERCIAL CONTRACT CONSIDERATIONS**

### *Registration of commercial agreements*

There is no registration requirement for contracts in Singapore.

### *Recognized language of commercial agreements*

Generally, English is the language used in commercial agreements.

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

All Internet Content Providers are automatically granted class licenses under the Broadcasting (Class Licence) Notification (Notification) of the Broadcasting Act 1994. They are required to comply with the Class Licence Conditions set out under the Notification and the Internet Code of Practice issued by the Infocomm Media Development Authority (IMDA).

"Internet Content Provider" is defined in the Notification as, among other things, "any corporation or group of individuals (including any association, business, club, company, society, organization or partnership, whether registrable or incorporated under the laws of Singapore or not) who provides any program on the World Wide Web through the Internet."

The Internet Code of Practice requires Internet Service Providers and Internet Content Providers to, among other things, deny access to material considered by the IMDA to be prohibited material if required to do so by IMDA. "Prohibited material" is material that is objectionable on the grounds of public interest, public morality, public order, public security or national harmony, or is otherwise prohibited by applicable Singapore laws, which includes material that glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

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

Online/clickwrap/shrinkwrap contracts are generally enforceable in Singapore. Online transactions are regulated by the Electronic Transactions Act 2010. This sets out the legislation surrounding the formation of contracts through online and electronic means and enforceability of these contracts.

To facilitate electronic transactions for businesses and citizens in Singapore, the Electronic Transactions Act has been amended by the Electronic Transactions (Amendment) Act 2021 which came into force on March 19, 2021 – please refer to the previous section on “Commercial Contract Framework” for more information.

## *Governing law*

The governing law and venue for resolution of disputes specified in a commercial contract will generally be accepted and recognized by the courts. It should be noted that the use of Singapore law as governing law and the Singapore International Arbitration Centre as the forum for any disputes has become increasingly common.

## **KEY COMMERCIAL CONTRACT TERMS**

### *Enforceability of warranty disclaimers*

The Sale of Goods Act 1979 and the Supply of Goods Act 1982 imply a number of conditions and warranties into the agreement, including, for example, implied conditions as to the seller's title to the goods and that the goods supplied under the contract are of satisfactory quality.

While it is not uncommon for a seller to disclaim warranties as to goods, where the contract for sale of goods is entered into with a consumer, disclaimers of warranties are subject to the reasonableness test under the Unfair Contract Terms Act 1977 which restricts the extent to which a seller may limit their liability in respect of their implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose under the Sale of Goods Act 1979.

In addition, the Consumer Protection (Fair Trading) Act 2003 will apply to consumer contracts alongside the Sale of Goods Act 1979. If the goods do not conform to the applicable contract at the time of delivery, consumers have the right to require the seller to:

- repair the goods;
- replace the goods;
- reduce the amount paid for the goods by the consumer; or
- rescind the contract of sale.

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

Exclusions and limitations of liability are common and generally enforceable in Singapore.

However, this is subject to the Unfair Contract Terms Act 1977. For example, section 2(1) of the Unfair Contract Terms Act 1977 provides that a person cannot exclude or restrict their liability for death of personal injury from negligence and section 3(2)(a) further provides that in a contract where one party is a consumer or is subject to the other party's written standard terms of business, the other party cannot exclude or restrict their liability if the other party is in breach of the contract or relies on any term to render a different kind of service from that which was reasonably expected of them (or not render any service at all), except if such an exclusion or restriction satisfies the requirement of reasonableness.

## *Indemnification*

Express indemnity clauses in contracts are common and enforceable in Singapore. However, this is subject to the reasonableness test under section 4(1) of the Singapore Unfair Contract Terms Act 1977, which clarifies that a contract cannot require a consumer to indemnify another person (whether a party to the contract or not) for liability that may be incurred by the other party for negligence or breach of contract, unless the contract term satisfies the requirement of reasonableness.

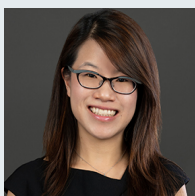
## *Electronic signatures*

Electronic signatures are, in most circumstances, legally recognized and enforceable in Singapore. Save for excluded matters set out in the First Schedule of the Electronic Transactions Act 2010 (such as wills, and contracts relating to land), an electronic record or signature will not be denied its legal effect, validity or enforceability solely by virtue of the signature being electronic. Where a signature is required under law, that requirement is satisfied in relation to an electronic record if a method is used to identify that person and indicate his intention in respect of the information contained therein and the method used is either:

- reliable for the purpose of the electronic record, considering all the circumstances; or
- proven in fact to have identified the person and indicate his intention in respect of the information contained therein.

Under the Amendment Act, the use of electronic records and electronic signatures (subject to certain conditions being met) for negotiable instruments, bills of lading and other transferable documents is now permitted.

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