## 1. THE FACTS: Business in Brunei Darussalam for EU Companies (Source: DG Trade)

- Brunei Darussalam’s annual GDP in 2015: EUR 10.6 billion (Source: DG Trade)
- Brunei Darussalam’s GDP per capita in 2015: EUR 25,449.9 (Source: DG Trade), which is nearly equivalent to the EU28’s figure in 2015: EUR 28,700 (Source: Eurostat)
- Brunei Darussalam’s annual GDP growth in 2015: -0.2% (Source: DG Trade)
- In 2015 the EU was Brunei Darussalam’s 5th largest trading partner, accounting for 9.1% of Brunei Darussalam’s total trade, following Japan, Singapore, China and South Korea. Conversely, Brunei Darussalam was the EU’s 114th largest trading partner in 2015 (Source: DG Trade)

### SIZE of Market (Source: DG Trade):
- EU export in goods to Brunei Darussalam in 2015: EUR 863 million
- EU import in goods from Brunei Darussalam in 2015: EUR 40 million
- Total trade in goods in 2015: EUR 903 million
- EU exports in services to Brunei Darussalam in 2014: EUR 477 million
- EU imports in services to Brunei Darussalam in 2014: EUR 26 million
- Total trade in services in 2014: EUR 503 million

### Key INDUSTRY SECTORS (2015):

1. The EU’s key exports to Brunei Darussalam are i) Pearls, precious metals and articles thereof (51%), followed by ii) Transport equipment (18.9%) and iii) Machinery and appliances (16.5%).
2. The EU’s key imports from Brunei Darussalam are Machinery and appliances (33.3%), followed by ii) Optical and photographic instruments (5.9%) and (iii) Pearls, precious metals and articles thereof (3%).
I. Background

Intellectual Property Rights (IPR) are intangible assets that are a key factor in the competitiveness of businesses in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to small and medium-sized enterprises (SMEs) as they internationalise their business to areas such as South-East Asia. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to businesses. Not only a way to help protect innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or selling IP, as well as a significant pull-factor when attracting investors.

IPR infringement is one of the most common concerns for businesses when dealing with countries of South-East Asia and its impact on companies could be substantial. Infringement can lead to a loss of business, revenue, reputation and competitive advantage, which in turn affects SMEs both in South-East Asia and in their core domestic markets. Inadequate protection of inventions and creations can also jeopardise future prospects for maintaining a competitive advantage.

Main IP issues for EU SMEs in relation to Brunei Darussalam concern aspects of IP protection and enforcement. Patent and trade mark applications have increased over the past three to five years, resulting in the need of increasing the number of examiners and improve technical expertise. A high level of IP enforcement is recognised to help to attract foreign direct investments, some challenges remain on a case by case basis to enforce IP rights in civil courts and through criminal prosecution.

How does Brunei Darussalam’s IP legal framework compare to INTERNATIONAL STANDARDS?

The Brunei Darussalam Intellectual Property Office (BruIPO) was set up on 1 June 2013 in the effort of restructuring of the Intellectual Property administration in Brunei Darussalam. BruIPO’s key objective is to create an effective and vibrant intellectual property system that would be beneficial to Brunei Darussalam’s economy in order to aid the country’s economic development moving forward. The IP environment is relatively friendly towards right owners. IP is protected in Brunei Darussalam, with international registration systems for patents and designs. Brunei Darussalam’s legal system is based on English Common Law. Since the year 2000, Brunei Darussalam has passed various legislations on trade marks, industrial designs, copyright and patents. A list of Brunei Darussalam’s statutes on intellectual property are available online at http://www.bruipo.com.bn under the ‘Information’ tab. Brunei Darussalam’s IP legal system is in compliance with international standards, complying with international agreements and treaties administered by the World Intellectual Property Organisation (WIPO). It is a member of a number of conventions including the Paris Convention, the Berne Convention, the Patent Cooperation Treaty (PCT) and the Hague Agreement Concerning the International Registration of Industrial Designs. Brunei Darussalam is also a signatory of the TRIPS agreement. Brunei Darussalam is currently in talks to join the Madrid Protocol in the near future presumably expected within year 2016. With the introduction of the various IP legislations, Brunei Darussalam now has the basic legal framework in place that will provide IP owners with protection levels comparable with the EU for the basic IP rights such as patent, copyright, trade mark and industrial designs. However, there are currently no legislations protecting other areas relevant to IP such as Geographical Indications, trade secrets and parallel imports.

IP TIPS and WATCH-OUTS in Brunei Darussalam

- Brunei Darussalam 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.
- Brunei Darussalam fully complies with all international treaties and conventions and there are few circumstances where derogation from a treaty would take place.

SMEs are businesses which have fewer than 250 employees and a turnover of less than EUR 50 million or a balance sheet total of less than EUR 43 million. SMEs represent 99% of all enterprises in the EU and account for about 70% of all jobs. Their flexibility and growth potential are seen as a major motor of future innovation and job creation, which is pivotal for the prosperity and economic competitiveness of Europe as a whole.
3. IP Rights in Brunei Darussalam: THE BASICS

A. Copyrights

WHAT are Copyrights?
Copyrights in Brunei Darussalam are exclusive rights which principally protect original work that is given to its creator for a limited time. Copyright owners are the legal owners of the work and have exclusive rights over its use, adaptation, re-creation and dissemination. The kinds of works that can be protected principally include literary, dramatic, musical and artistic works. Copyright also protects sound recordings, films, broadcasts receivable by members of the public, cable programmes and the typed arrangement of published editions of any literary, dramatic or musical works.

The ‘author’ in relation to the works protected by copyright is the person who created the work. The author may include, for computer-generated work, the person who makes arrangements necessary for the creation of the work.

The author is the first owner of any copyright. If the author is an employee who created the work in the course of employment, then the employer is, by default, the first owner of the copyright in the work. Copyright may be assigned or licensed by the owner to third parties.

Copyright in Brunei Darussalam: What you need to know
Copyright is a right given automatically by law to the owner without the need for him/her to register the right. There is no registry or any department in Brunei Darussalam that accepts registration of copyright.

The copyright owner in a work has the exclusive right in Brunei Darussalam to copy his/her work, to issue copies of the work to the public, to broadcast the work or include it in a cable programme service, to make an adaptation of the work or to do any of those acts in relation to an adaptation and to communicate the work to the public.

Anyone other than the owner who is caught doing the above without licence or authorisation of the owner is in breach of the law and liable to punishment if action is taken by the copyright owner.

The copyright owner in a work has the exclusive right to do any of the acts that are restricted by the copyright, subject to the regulatory regimes and criminal law of Brunei Darussalam. These restricted acts include copying the work, issuing copies of the work to the public, broadcasting the work or including it in a cable programme service, making an adaptation of the work or doing any acts in relation to adapting and communicating the work to the public.

How LONG does legal protection last?
The duration of legal protection varies according to the nature of the copyrighted material:

<table>
<thead>
<tr>
<th>Nature of work</th>
<th>Duration of Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary, dramatic, musical and artistic works</td>
<td>Fifty (50) years from the end of the year in which the author died</td>
</tr>
<tr>
<td>Computer-generated</td>
<td>Fifty (50) years from the end of the year in which the author died</td>
</tr>
<tr>
<td>Sound recording or film</td>
<td>Fifty (50) years from the end of the year in which it was made or, if it was released earlier, 50 years from the end of the year in which it was released</td>
</tr>
<tr>
<td>Broadcasts and cable programs</td>
<td>Fifty (50) years from the end of the year in which they were first broadcast or transmitted</td>
</tr>
<tr>
<td>Typographical arrangement (i.e. how the words and pictures are arranged on a page) of a published edition</td>
<td>Twenty-five (25) years from the end of the year in which it was first published</td>
</tr>
</tbody>
</table>

An owner of a copyright may not be entitled to damages against a defendant if the defendant can show that he/she did not know or have reason to believe that he/she had infringed a copyright.

For more information on copyright protection in Brunei Darussalam check out our South-East Asia IPR SME Helpdesk Guide to Copyright Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Copyright_english.pdf.
B. Patents

WHAT are Patents?
A patent is a right given to the owner of an invention to prevent others from using, copying or making the same invention without his/her consent. Patent protection is obtained by registration with the Brunei Darussalam Intellectual Property Office (BruIPO).

Patents in Brunei Darussalam: What you need to know
Note: It is important to note that the law and rules regarding patents are relatively new and, as such, it is possible that the the Brunei Darussalam Intellectual Property Office's (BruIPO) practice and procedures might develop in an unpredictable manner. Additionally, clear guidance on patent protection in Brunei Darussalam has yet to be provided by the BruIPO. However, practice notes on issues such as the renewal of patents can be found at https://www.bruipo.com.bn under the Practice Notes tab.

Prior to 1 January 2012, patent protection in Brunei Darussalam was obtained through the re-registration of a patent granted in the United Kingdom, Malaysia or Singapore. On 1 January 2012, a new Patents Order was enacted in Brunei Darussalam, which discontinued the re-registration process in favour of a regular patent application filing process.

The information that follows is strictly based according to the Patents Order, 2011 and any other information will be based on estimates.

For a patent to qualify for registration:

a) The invention should be new;
b) The invention must involve an inventive step. It must be something that represents an improvement over an existing product or process that already exists; and
c) The invention must be useful and have some form of practical application. Its use should be applicable to all industries.

It usually takes two (2) to four (4) years to register a patent in Brunei Darussalam.

Brunei Darussalam only acceded to the Patent Cooperation Treaty (PCT) on 24 July 2012. Therefore, only applications filed using the PCT route after 24 July 2012 may designate Brunei Darussalam in international applications filed on or after that date. Nationals and residents of Brunei Darussalam will also be entitled to file international applications under the PCT from that date onwards.

It will usually take up to two (2) to four (4) years to register a patent using the PCT process in Brunei Darussalam.

Brunei Darussalam is also a participating Member State in the ASEAN Patent Examination Co-operation (ASPEC). ASPEC is a regional patent work sharing programme involving nine (9) of the ten (10) IP Offices in the Member Countries of the Association of Southeast Asian Nations (ASEAN) (only Myanmar is not yet involved). The objectives of ASPEC are to reduce complexity, achieve time savings and improve the quality of search and examination. Reference made to an earlier examination already performed in one IP office will help an examiner in the other IP office to better understand the invention claim, reduce searches and develop a more comprehensive examination strategy. For example, a Singaporean patent application would, in theory, be able to take advantage of expedited process at the Brunei Darussalam Intellectual Property Office allowing for the eventual speedier grant of patent protection. ASPEC is free-of-charge and operates in English in all ASEAN IP Offices (except Myanmar). For more information on ASPEC visit the ASEAN IP Portal or the websites of the IP Offices in the ASEAN region.

How LONG does legal protection last?
A patent which has been registered is given a term of twenty (20) years from the date of filing, subject to payment of annual renewal fees.

However, a patent owner may apply for an extension of the twenty (20) year term on the following grounds:

a) There was unreasonable delay on part of the Registrar in granting the patent. It is estimated that a patent granting should take four years. Any longer would potentially constitute an unreasonable delay;
b) There was unreasonable delay on part of any prescribed patent office in granting the corresponding patent. This would include any patent office within a country that is part of the Paris Convention or a member of the World Trade Organization (WTO);
c) There was unreasonable curtailment of the opportunity to exploit the patent caused by the process of obtaining marketing approval for a pharmaceutical product. This is in relation to situations where a patent includes an active ingredient of any pharmaceutical product which requires marketing approval.

A patent owner may lose his rights if the patent is not renewed annually and it lapses.

HOW do I register?
There are no restrictions based on nationality or residency in applying for a patent in Brunei Darussalam. However, a foreign applicant is required to file through an authorised representative (agent) with a local address in Brunei Darussalam.

• The first step an applicant should take is to request for a patent to be granted by filing the relevant statutory forms together with the specifications of the invention including the description, drawings and claims.
• Once the Registrar gives notification that all formalities are met, the applicant then files a request for a search report and subsequently an examination report. The search report is a search for any relevant prior art carried out by an examiner under the Registrar. The examination report ensures that all relevant provisions have been complied with.
• The applicant firstly, files the Request for the Grant Certificate when the application is published in the Patent Journal to receive the Certificate of Grant of the Patent if the application is all in order and no amendments are required to be made.
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An applicant who has earlier filed a patent in a country of the Paris Convention or a WTO member country may claim priority based on the earlier application in the subsequent application in Brunei Darussalam, if the application was made within twelve (12) months and not published. The application process is the same as outlined above, however the applicant has priority in this case assuming that no other application has been made in Brunei Darussalam before the applicant filed his/her patent within the foreign country in question.

Prior to 1 January 2012 it was possible for granted or pending foreign patents to enjoy protection in Brunei Darussalam via a process called ‘re-registration’ (automatic grant of the patent in Brunei Darussalam) under the transitional provisions of the new ‘Patents Order’ and only applied to patents originating from Malaysia, Singapore or the United Kingdom (including EU granted patents originating from the UK). This method of registering patents are now being phased out. The new Patents Order has transitional provisions which still allow for the re-registration of a United Kingdom, Malaysia or Singapore patent within 1 year of their grant, provided such a patent has a date of filing before 1 January 2012 and was granted after that date. The transitional provision, section 115(4)(a) of the new Patents Order, states that the term for re-registered patents is twenty (20) years from “the date of the patent in the United Kingdom, Malaysia or Singapore”. The Brunei Darussalam Intellectual Property Office now calculates the renewal of all Brunei Darussalam patents, obtained by re-registration, from the date of grant of the re-registered United Kingdom, Malaysia or Singapore patent following a recent Court of Appeal case on this issue.

The responsible authority dealing with patents, along with their contact details are as follows:

**Brunei Darussalam Intellectual Property Office (BruIPO)**
Level 2, East Wing, Design & Technology Building
Simpang 32-37, Kg Anggerek Desa
Jalan Berakas
Bandar Seri Begawan BB3713
Negara Brunei Darussalam
Tel: (673) 2380966
Fax: (673) 2990545
Email: enquiries@bruipo.gov.bn

**WHO can register?**
The owner of an invention is entitled to register it. The owner may be an individual or a corporate entity. Any other party may register an invention if they hold the rights over it. This may be done through contractual agreement where ownership of the invention is assigned to the party in question.

**Which LANGUAGES can I use?**
The application must be submitted in English. Supporting documents may be in a language other than English however it must be submitted with an English translation thereof.

**How much does it COST?**
The cost of registering a patent depends on the type of registration:
- For the ‘re-registration’ of a Malaysian, Singapore or UK granted patent, the total cost (including official fee, disbursements and legal fee) is B$ 1,100 (approximately EUR 685).
- For a national application of a patent, the cost is B$ 5,000 (approximately EUR 3,105).
- The law regarding patents, as mentioned above, is new thus it is not possible to give an estimate regarding the cost for international applications.

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**Patents TIPS and WATCH-OUTS in Brunei Darussalam**

- The BruIPO does not currently have any local patent examiners. Search and Examination is outsourced to three prescribed offices – the Hungarian Patent Office, the Austrian Patent Office and the Danish Patent Office - which can be time consuming and cause delays in the grant of the patent. Therefore, if you are claiming priority of another corresponding patent application, it is recommended to rely on the earlier patent application’s search and examination results (if positive results).
- If you have a patent application filed in Australia, Canada (English language patents only), Japan, New Zealand, Republic of Korea, the UK, the USA and the European Patent Office (English language patents only), you can rely on the search and examination reports from the corresponding application. This may help expedite your patent application process.

For more information on patent protection in Brunei Darussalam, check out our South-East Asia IPR SME Helpdesk Guide to Patent Protection in South-East Asia, which is available to download from our website - [http://www.southeastasia-iphelpdesk.eu/sites/default/files/publications/EN_patent.pdf](http://www.southeastasia-iphelpdesk.eu/sites/default/files/publications/EN_patent.pdf)
C. Industrial Designs

WHAT are Industrial Designs?
An industrial design is the features of shape, configuration, pattern or ornament which when applied to an article gives the article a unique appearance. Design protection is obtained by registration with the Brunei Darussalam Intellectual Property Office (BruIPO).

Industrial Designs in Brunei Darussalam: What you need to know
Industrial Designs are considered an independent type of IP in Brunei Darussalam. To be protected, an industrial design must be registered under the Industrial Designs Order. To be registrable, the design must be new, that is, it has not been registered, published, used or sold in Brunei Darussalam or elsewhere before the date on which the application for registration was lodged.

In addition, the design must be applied industrially, that is, it has been applied to more than fifty articles which altogether do not constitute a single article; or to articles manufactured in lengths and pieces except hand-made articles.

There shall be excluded from registration under the Order industrial designs intended to be applied to any of the following articles:
   a. works of sculpture (other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process);
   b. wall plaques, medals and medallions;
   c. printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greeting cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles.

Brunei Darussalam became a Member of the 1999 Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs on 24 December 2013. The Hague Agreement makes it easier for foreign businesses to obtain industrial designs in Brunei Darussalam.

It will usually take up to eight (8) to twelve (12) weeks to register an industrial design in Brunei Darussalam.

How LONG does legal protection last?
An industrial design is protected for an initial period of five (5) years beginning from the filing date. The design can be renewed for a further period of ten (10) years subject to the payment of a renewal fee every five (5) years.

HOW do I register?
The application for registration of an Industrial Design must be filed with the Registrar of Industrial Designs. The following has to be submitted:
   • A completed application form - Designs Form D1;
   • 7 identical sets of representation of the design; and
   • the application fee.

The responsible authority dealing with industrial designs, along with its contact details is as follows:

Brunei Darussalam Intellectual Property Office (BruIPO)
Level 2, East Wing, Design & Tecnology Building
Simpang 32-37, Kg Anggerek Desa
Jalan Berakas
Bandar Seri Begawan BB3713
Negara Brunei Darussalam
Tel: (673) 2380966
Fax: (673) 2990545
Email: enquiries@bruipo.gov.bn

WHO can register?
The owner of a design is entitled to register it.

Which LANGUAGES can I use?
The application and supporting documents must be submitted in English.

How much does it COST?
The cost of registering an industrial design depends on the type of registration:

1. Application for registration under Section 15 and Rule 6:
   - One industrial design for articles not forming a set of articles -B$ 300 (approximately EUR 175);
   - One industrial design for one set of articles -B$ 500 (approximately EUR 290);

2. Application for registration under Section 15 and Rules 6 and 16:
   - Two or more industrial designs not forming a set of articles
     - For first article to which first industrial design is to be applied -B$ 300 (approximately EUR 175)
     - For each other article to which any of the industrial design is to be applied -B$ 200 (approximately EUR 115)
   - Two or more industrial designs for articles forming a set of articles
     - For the first industrial design -B$ 500 (approximately EUR 290)
     - For each other industrial design -B$ 300 (approximately EUR 175)

Because Brunei Darussalam only acceded to the 1999 Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs on December 24, 2013, only applications filed using the Hague system route after 24 December 2013 may designate Brunei Darussalam in international applications filed on or after that date.

Industrial Designs TIPS and WATCH-OUTS in Brunei Darussalam

For more information on patent and industrial designs protection in Brunei Darussalam, check out our South-East Asia IPR SME Helpdesk Guide to Patent Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN_patent.pdf
D. Trade Marks

WHAT are Trade Marks?
Trade marks qualify for protection registration as provided in the Trade Marks Ordinance 1999. This legislation is adopted from the English Trade Mark Act 1994. 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.

Trade Marks in Brunei Darussalam: What you need to know
A trade mark in Brunei Darussalam may be registered if it meets the definition set out above. If a trade mark is represented as characters other than the English alphabet, for instance Chinese or Japanese characters or Arabic letters, the translation and transliteration must be provided.

The Registrar will not accept registration for a trade mark which he/she thinks is descriptive of the goods or services. Any trade mark considered well-known under the Paris Convention and belonging to a resident of a Paris Convention country, a person domiciled or a person having a real and effective industrial or commercial establishment in a convention country, may be protected whether or not that person carries out any business or has any goodwill in Brunei Darussalam.

Brunei Darussalam follows the International Classification of Goods and Services Systems outlined in the Nice Agreement.

It will usually take up to eighteen (18) to twenty-four (24) months to register a trade mark in Brunei Darussalam.

How LONG does legal protection last?
The term of protection is ten (10) years from the filing date which is the date of registration. The registration can, however, be renewed indefinitely for a period of ten (10) years each time. The renewal application must be filed and a renewal fee must be paid six months before the expiry of the registration. Late renewal can be made within a period not exceeding six (6) months after the expiration of the mark by paying an additional fee.

How do I register?
An application for registration of a trade mark should be submitted to the Registrar of Trade Marks. For foreign applicants, such applications should be made through an authorised representative (agent) with a local address in Brunei Darussalam. A multi-class application is allowed and the mark, if registered is considered as one registration for renewal purposes.

In order to file the application for registration of a trade mark, the following is required:
- Form TM 1, filled in by the applicant.
- Authorisation of agent form.
- Prescribed fee for every class of goods or services in respect of which registration is sought.
- Six specimens of the trademark.
- List of goods/services.
- English translation of the document, if relevant.
- English transliteration of the document, if relevant.

After the application is submitted, the Registrar will officially acknowledge the application and give a filing number. After formal examination, the Registrar will accept the application and it will be published in the government gazette for opposition. If there is no opposition after three (3) months, the mark will proceed to registration. The entire process of registration takes between fifteen (15) to eighteen (18) months.

Responsible Authority:
Brunei Darussalam Intellectual Property (BruIPO)
Level 2, East Wing, Design & Technology Building
Simpang 32-37, Kg Anggerek Desa
Jalan Berakas
Bandar Seri Begawan BB3713
Negara Brunei Darussalam
Tel: (673) 2380966
Fax: (673) 2990545
Email: enquiries@bruipo.gov.bn

WHO can register?
Any person, whether an individual, partnership or company and whether local or foreign.

Which LANGUAGES can I use?
All application materials must be submitted in English.

How much does it COST?
The official fee to register one mark in one class is B$281 (approximately EUR 167) for a non-complicated and straightforward application. The total cost, including the official fee, legal costs and disbursements is B$ 1200 (approximately EUR 710).

The official fee for renewing one mark in one class is B$ 206 (approximately EUR 129).

Search official fee which is mentioned below totals to B$20 (approximately EUR 3) per hour.
E. Geographical Indications

WHAT are Geographical Indications (GIs)?
A Geographical Indication (GI) is a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin. GIs differ from trade marks in the sense that GIs may be used by all producers or traders whose products originate from that place and which share the particular quality, reputation or other characteristics, while trade marks may only be used by the trade mark owner, or with the owner's consent. ‘Champagne’ from France, ‘Parmigiano-Reggiano from Italy, ‘Scotch Whisky’ from Scotland and ‘Feta cheese’ from Greece are all examples of European GIs.

Geographical Indications (GIs) in Brunei Darussalam: What you need to know
Brunei Darussalam currently does not have any legislation governing the use of GIs in the country.

For more information on trade mark protection in Brunei Darussalam, check out our South-East Asia IPR SME Helpdesk Guide to Trade Mark Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Trade-Marks-English.pdf.

E. Trade Secrets

WHAT are Trade Secrets?
Trade secrets are used in relation to confidential information associated with industrial and commercial activity. There have been no cases that deal with trade secrets directly in Brunei Darussalam, thus an exact definition is not available. However, while not binding, U.K. precedent is held to be persuasive in Bruneian courts. This means that if a case concerning trade secrets were to arise, it is likely that reliance would be given to the definition set out in English cases. The criteria as set out in the English cases are as follows:

• The information itself must have the necessary quality of confidence;
• That information must have been imparted in circumstances imparting an obligation of confidence;
• There must be an unauthorized use of that information to the detriment of the party communicating it; and
• That is not known, or readily ascertainable, and gives the holder an economic advantage over competitors and customers.

Trade Secrets in Brunei Darussalam: What you need to know
Trade Secrets are not regulated by any specific legislation in Brunei Darussalam. As mentioned above, there are no specific cases that deal with trade secrets outside mere acknowledgement that the concept exists within the Bruneian legal framework. Trade secrets can be protected by contracting not to disclose such information. What a party should always ensure when entering into a contract is that they have correctly incorporated confidentiality terms to protect their confidential information or trade secrets. This should be defined accurately and be highlighted within the contract.

For more information on trade secret protection in Brunei Darussalam, check out our South-East Asia IPR SME Helpdesk Guide to Trade Secrets in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Trade-Secrets-English.pdf.
4. Using CUSTOMS to Block Counterfeits

WHAT are Customs?
The customs authority in Brunei Darussalam is a government entity named Royal Customs and Excise and it is in charge of monitoring all goods entering and leaving Brunei Darussalam. It is authorised to levy duties on goods imported into the country.

Customs in Brunei Darussalam: What you need to know
Customs levies duties on specific goods at rates prescribed under the Customs Act. Under the trade mark laws of Brunei Darussalam, a trade mark owner who suspects that goods to be imported into Brunei Darussalam are counterfeits, fakes or infringing the owner’s trade marks may give notice to the Controller of Customs who shall then prevent such identified goods from entering the country by detaining or seizing the goods at the point of entry. There is a similar provision to what is provided under the Copyright law in which the owner of a copyright may give notice to the Controller claiming his ownership of the created work and request the Customs to treat as prohibited goods infringing copies of the work for a period of not exceeding five (5) years. The Customs officers may treat the infringing copies as prohibited goods.

Under the trade mark laws of Brunei Darussalam, a trade mark owner who suspects that goods to be imported into Brunei Darussalam are counterfeits, fakes or infringing the owner’s trade marks may give notice to the Controller of Customs who shall then prevent such identified goods from entering the country by detaining or seizing the goods at the point of entry.

WHAT can be registered?
There is no system of registration with the Brunei Darussalam Customs.

HOW do I notify Customs about infringing shipments?
Written notice has to be given by the owner of trade marks to the Controller of Customs to prevent goods with infringing trade marks or work that infringes copyright from entering Brunei Darussalam. The owner of the trade mark or copyright must firstly establish his ownership and provide the details of the infringing works or goods and the expected shipment of such goods to enable the Customs to identify the infringing works or goods coming into Brunei Darussalam.

WHO can notify Customs about infringing shipments?
Owners of trade marks and copyright or their representatives or solicitors can give notices to Customs. Foreign owners can notify Customs through their authorised representatives.

Which LANGUAGES can I use?
Notice should be given in English.

How much does it COST?
There is no cost involved in giving notice to Customs but the owner who uses solicitors or agents will be charged a service fee.

Customs TIPS and WATCH-OUTS in Brunei Darussalam
- There is no system in Brunei Darussalam to register IP rights with the Customs for them to detain counterfeit goods or infringing works of copyright owners.
- The Customs require full information on the suspected infringing works of copyright owners.
- There have not been many cases of detention of goods by the Customs in Brunei Darussalam to date.
5. ENFORCING your IP

Besides using customs to block counterfeits (Customs are described separately in Part 4 above), in the case of IP assets being infringed in Brunei Darussalam, there are two (2) main avenues of enforcement which SMEs can consider: civil litigation and criminal prosecution. Although judicial proceedings in IP are uncommon in Brunei Darussalam, a private settlement reached via legal professionals is more practically effective and should be considered as a viable option.

Legal professionals usually start the ball rolling by issuing cease and desist letters to infringers. Thereafter, negotiations commence between the professionals and infringers. If nothing is achieved then civil action is taken.

In the case of your IP assets being infringed in Brunei Darussalam, there are three main avenues of enforcement which you can consider; civil litigation, criminal prosecution, and customs seizures.

Civil Litigation
Civil proceedings may be brought in court by an IP owner facing infringement. The IP owner may claim for such remedies as an injunction, order for delivery up to the infringing product seizure, damages or account of profits. Civil proceedings are the easiest avenue for enforcement for most IP owners facing infringement as only the certificate of registration is needed for proof of ownership.

To initiate a lawsuit, SMEs will need to file a writ endorsed with a Statement of Claim alleging the infringing act and claiming for the remedy. Before filing the court action, a letter to the infringer to cease and desist should be deployed.

Court hearings may take up to two (2) years, although court hearings recently became faster and the trial dates may be given within twelve (12) to fifteen (15) months. However, if the infringer responds to the initial cease and desist letter, the process of settlement is much faster.

The cost of civil litigation varies depending on the complexity of the case.

Criminal Prosecution
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. To file a prosecution, a police report must be firstly made. The police force will then conduct investigations and depending on their findings, they may conduct raids. Lastly, the police will report to a public prosecutor of the Attorney General Chambers about whether to prosecute the offender. Copyright and IP right infringement includes penalties not exceeding a fine of B$10,000 (approximately EUR 3,210), imprisonment for a term not exceeding 5 years, or both.

Criminal prosecution is brought by the Attorney Generals Chamber and is thus free.

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

Enforcement TIPS and WATCH-OUTS in Brunei Darussalam

- Cease and desist letters are useful tools for you to enforce your IP rights in Brunei Darussalam and may lead to a satisfactory settlement.
- Civil court hearings may take up to two (2) years, plan ahead your enforcement strategy accordingly.
- Criminal Prosecution is usually considered the most cost effective enforcement route available to IP right holders in Brunei Darussalam, consider this avenue especially if your industry concerns a sector of public interest, such as food and beverage or pharmaceutical.
6. RELATED LINKS and Additional Information

> South-East Asia IPR SME Helpdesk website - http://www.southeastasia-iprhelpdesk.eu/

> IPR Helpdesk Blog – for all the latest news and information on IP in South-East Asia and China – http://www.youripinsider.eu

> South-East Asia IPR SME Helpdesk Guides (available to download from http://www.southeastasia-iprhelpdesk.eu/?q=en/helpdesk-guides) including,

  o ‘Technology Transfer to South-East Asia’
  o ‘Protecting your IP at Trade Fairs in South-East Asia’
  o ‘Protecting your Online IPR’
  o ‘Copyright Protection in South-East Asia’
  o ‘Trade Mark Protection in South-East Asia’
  o ‘Trade Secret Protection in South-East Asia’
  o ‘Patent Protection in South-East Asia’
  o ‘Top 20 IP Considerations Entering a New Market’
  o ‘Using Contracts to Protect your IP in South-East Asia’


> World Intellectual Property Organisation (WIPO) - http://www.wipo.int/

> ASEAN IP Portal – http://www.aseanip.org
In the case of IP assets being infringed in Brunei Darussalam, there are two (2) main avenues of enforcement which SMEs can consider; civil litigation and criminal prosecution. Although judicial proceedings in IP are uncommon in Brunei Darussalam, a private settlement reached via legal professionals is more practically effective and should be considered as a viable option.

Civil Litigation
To initiate a lawsuit, SMEs will need to file a writ endorsed with a Statement of Claim alleging the infringing act and claiming for the remedy. Before filing the court action, a letter to the infringer to cease and desist should be deployed.

The mentioned documents would need to be drafted on ‘ad hoc’ basis by lawyers licensed to represent clients in Brunei Darussalam.

Criminal Prosecution
To file a prosecution, a police report must first be created. The police force will then conduct investigations and depending on their findings, they may conduct raids. Lastly, the police will report to a public prosecutor of the Attorney General Chambers about whether or not to prosecute the offender. The police report shall be done at the police station directly.

Customs Enforcement
No official forms are available according to the inputs received by local External Experts and no forms are available on the official website of the Ministry of Finance of Brunei Darussalam – Royal Customs and Excise Department (http://www.mof.gov.bn/index.php/about-royal-customs-a-excise-dept).
The South-East Asia IPR SME Helpdesk provides free, business-focused advice relating to South-East Asia IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: Submit further questions to the Helpdesk via phone or email (question@southeastasia-iprhelpdesk.eu), or visit us in person and receive free and confidential first-line advice within three working days from a South-East Asia IP expert.

Training: The Helpdesk arranges training on South-East Asia IPR protection and enforcement across Europe and South-East Asia, tailored to the needs of SMEs.

Materials: Helpdesk business-focused guides and training materials on South-East Asia IPR issues are all downloadable from the online portal.

Online Services: Our multilingual online portal (www.ipr-hub.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

For more information please contact the Helpdesk:

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