1. THE FACTS: Business in Indonesia for EU Companies

(Source: DG Trade)

**SIZE of Market**
- EU exports in goods to Indonesia in 2015: EUR 9,990 million
- EU imports in goods from Indonesia in 2015: EUR 15,331 million
- Total trade in goods in 2015: EUR 25,321 million
- EU exports in services to Indonesia in 2014: EUR 4,107 million
- EU imports in services to Indonesia in 2014: EUR 1,894 million
- Total trade in services in 2014: EUR 6,001 million

**Indonesia GDP**
- GDP in 2015: EUR 774.2 billion (Source: DG Trade)
- GDP growth in 2015: 4.8% (Source: DG Trade)

**Key INDUSTRY SECTORS - 2015** (Source: DG Trade):

- The EU main exports to Indonesia comprise (i) Machinery and appliances (33.6%), followed by (ii) Transport equipment (21.6) and ii) Products of the chemical or allied industries (12.6%).
- The EU primer imports from Indonesia include (i) Animal or vegetable fats and oils (17.5%), (ii) Machinery and appliances (12.6%); (iii) Textiles and textile articles (11.2%) and iv) Footwear, hats and other headgear (10.7%).
2. IPR in Indonesia for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property Rights (IPR), as intangible assets, is a key factor in the competitiveness of businesses in the global economy. IPR is a primary method for securing a return on investment in innovation, and is particularly relevant to Small and Medium-sized Enterprises (SMEs) when they internationalise their business to areas such as South-East Asia. Not only a way to help SMEs 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.

Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to businesses. IPR infringement is one of the most common concerns for businesses when dealing with countries of the Association of Southeast Asian Nations (“ASEAN”), and could lead to loss of business, revenue, reputation and competitive advantage, both in South-East Asia and in core domestic markets, unless proactive steps are taken to protect IP and deter potential infringers.

In relation to Indonesia, SMEs are usually not fully prompt to set aside budget to register their IP rights in the country at earlier stage of their commercial activities. As consequence, trade marks (or other type of intellectual property) might be hijacked by a local party generating a situation where SMEs would then need to bear additional costs to protect their rights.

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

There are procedures in place with respect to registration and enforcement of IP rights, which are relatively efficient and can be used by anyone who wishes to protect its rights in Indonesia, however, major problems concerning the IP legal framework still lie with poor or inconsistent implementation of the existing laws. SMEs with an international reach should register their core rights in Indonesia even if it has no immediate plan to do business in Indonesia to prevent IP losses.

Indonesia is a member of the World Trade Organization (WTO), and has ratified the Agreement on Trade-related Aspects of Intellectual Property (TRIPs Agreement). Indonesia has also ratified the Paris Convention (see the World Intellectual Property Organization (WIPO) website here for more details on each treaty). What that means for EU SMEs, is that generally speaking, Indonesia’s IP legislation is now comprehensive, covering all aspects of protection of IP in accordance with international standards, however enforcement mechanisms still need to be strengthened.

In 2015, the Indonesian President established an independent government agency called Badan Ekonomi Kreatif (Creative Economy Agency - “BEKRAF”). The agency overviews sixteen creative industry sectors, namely music, crafts, publishing, fashion, culinary, advertising, movies, application software, games, performing arts, video animation, architecture and interior design, fine art, photography, visual communication design, TV and radio and product design.

When the need arises to enforce rights through the authorities, it is best that IP rights owners be aware of recent media coverage of corruption cases in Indonesia.

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3. IP Rights in Indonesia: THE BASICS

A. Copyrights

WHAT are Copyrights?
Copyright means the exclusive right of an author or a Copyright holder to publish or reproduce their work. This right is granted automatically following creation of the work. The kinds of works protected by Copyrights law in Indonesia are in the field of science, arts and literature which principally includes:

a. books, computer programmes, pamphlets, visual aids made for educational and scientific purposes, typographical arrangements, lectures, addresses, and all other written or spoken works
b. songs or music with or without lyrics, dramas, musical dramas, dances, choreographic works, puppet shows, pantomimes
c. all forms of art, such as paintings, drawings, engravings, calligraphy, carvings, sculptures, college, and applied arts, as well as architecture and maps
d. photography and cinematographic works
e. translations, interpretations, adaptations, anthologies, databases and other similar works

Copyrights in Indonesia: What you need to know
Copyright arises automatically after a work is created in a material form such as in writing, video, audio, etc. Copyright is not required to be recorded in order to have it protected, however, many small businesses operating in Indonesia choose to record copyright as proof of ownership. Indonesia is party to the Berne Convention on the Protection of Literary and Artistic Works (see more details and a full list of members here), so the works SMEs already own are automatically protected in Indonesia if the creator of the work is a national of one of the other Berne Convention member countries, or if the work was first published in a member country of the Berne Convention.

The Directorate of Intellectual Property (“DGIP”) has launched Copyright e-filing system in 2015. Copyright recordal process via Copyright e-filing takes fourteen (14) working days from filing, up to certificate issuance, while manual recordal takes one (1) to five (5) months until the certificate is issued.

‘Moral rights’ as rights granted to authors to ensure they receive the appropriate recognition as a writer on the results of their work, so that they maintain the integrity of the creation are recognised in Indonesia under the Copyright Law. Several similar rights related to copyright include rights in performances, phonographic works, sound recordings and broadcast. The results of such work may not be reproduced or showcased in public without permission.

The new Copyright Law become effective on 16 October 2014 and provides a range of new provisions to improve copyright protection in the country. Main amendments include: extension of the duration of copyright protection; landlord liability of a trade area engaged in the sale and/or the reproduction of pirated goods on its premises; regulations of the activities of copyright use that shall be considered as infringement; measures to shutting down of electronic systems disseminating contents that infringe copyrights; and sanctions between IDR 100,000,000 to IDR 4,000,000,000 (approximately EUR 6,660 to EUR 267,000) of monetary fines and/or one to ten years of imprisonment.

How LONG does legal protection last?
The term for copyright protection varies depending on the nature of the work. In Indonesia, copyright generally lasts for the duration of the author’s lifetime and seventy (70) years after his death (it was fifty (50) years before the new Copyright Law). In relation to computer programmes, cinematographic and photographic works, databases and adaptations, copyright lasts for fifty (50) years from the date of first publication. Performing rights and recording rights last for fifty (50) years from date of performance or production, and broadcasting rights for twenty (20) years from date of first broadcast.

HOW do I register?
Once the application has been filed and all formalities complied with, the Indonesian Copyright Office records the copyright and issues a certificate of recordal.

The documents required for recordal of Copyrights are as follows:

- A Declaration of Ownership, but no notarisation or legalisation is required;
- A Power of Attorney appointing a local law firm, if the application is filed by an agent;
- Deed of Assignment of Copyright from the author/creator to the applicant if the right has been transferred;
- A sample of the work, i.e.:
  - Books or papers (2 sets), if there are photos included, a signed statement that the person in the photos does not object to the use of his/her photograph;
  - Artistic works – logos, etc. (12 sets);
  - Architecture (1 drawing);
  - Photography (10 sheets); and
  - Computer programme (2 CDs) with the manual booklet.
Registration can be filed with:

The Directorate General of Intellectual Property
Administrative of the Directorate of Copyright
Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan 12940, INDONESIA
Phone: +62 21 57905619
Fax: +62 21 57905619

Copyright e-Filing at: https://e-hakcipta.dgip.go.id/

WHO can record?
The copyright owner can record. This means the author of the work or a person who has received copyright from the author, such as a party undertaking an assignment.

Which LANGUAGES can I use?
The registration must be filed in the Indonesian language (Bahasa Indonesia).

How much does it COST?
The costs of copyright application are as follows:

a. Official fee: from IDR 300,000 to IDR 500,000 (approximately EUR 20 to EUR 33) depending on the nature of the work
b. Average Agent fee: IDR 4,000,000 to IDR 7,000,000 (approximately between EUR 250 to EUR 450)

Copyrights TIPS and WATCH-OUTS in Indonesia

- Although there is no requirement to record copyright in order for the work to be protected, in the case of litigation, the enforcement authorities still need to be satisfied that the IP right holder making the prosecution is in fact the rightful owner, and they usually require the copyright recorded to be produced for this purpose. Foreign copyright recordal may suffice, however it can be problematic when the IP rights holder has not recorded copyright in Indonesia. Therefore it is still advisable that you record your copyrights in Indonesia.

- The copyrights for works created by an employee, even if in the course of employment, do not automatically belong to the employer. As such, the employment contract you choose to use for your employees should expressly address how ownership of new intellectual property created will be assigned.

For more information on copyright protection in Indonesia, check out our South-East Asia IPR SME Helpdesk Guide to Copyright Protection in Southeast 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 granted to the owner of an invention to prevent others from making, using, importing or selling the invention without his permission. A patent may be obtained for a product or a process that gives a new technical solution to a problem or a new method of doing things, the composition of a new product, or a technical improvement on how certain objects work.

**Patents in Indonesia: What you need to know**
Indonesia adopts a ‘first-to-file’ patent system, meaning that the first person to file an IP right in the Indonesian jurisdiction will own that right once the application is granted. Two types of patent are recognised in Indonesia – ‘Standard Patents’ (for products and processes) and ‘Simple Patents’ (for products only). The process for obtaining a Simple Patent is supposed to be shorter, however, there is a reduced term of protection in this case, as indicated below. For all applications, applicants need to specify the scope of the protection sought and to explain how to work the invention by means of technical descriptions and drawings.

A draft of a new Patent Bill has been discussed by the House of Parliament for some time, and on 28 July 2016 the proposed amendments to Indonesia’s Patent Law were passed. The new Patent Law came into effect on 28 August 2016.

The new law introduces various provisions to clarify the major uncertainties in the previous law including changes in the examination of appeals and rejections, clarifications on the patent annuity fees, the introduction of the requirement of the statement of ownership, an online filing, and compulsory licensing for pharmaceutical products, among others.

Under the new Patent Law there is now a requirement to submit a ‘Statement of Ownership’ of an invention, signed by the applicant, when filing a patent application. This requirement was already in place for trade marks and industrial designs, and so this amendment brings patent registration procedures in line with Indonesia standard practice.

Additionally, the authority of the Patent Appeal Commission has been expanded. While in the past the Commission only examined appeal petitions of rejected patent applications, under the new Patent Law it has now the authority to receive, examine, and decide on the appeal petitions of:

- a refused application;
- a correction of the patent specification, claims, and/or drawings after the application has been granted; and
- notice of a grant decision with respect to a post-grant opposition.

The Commission’s extended authority should be welcomed by SME patent holders, as it provides an alternative route to costly and time-consuming invalidations in court.

The new Patent Law allows patents to be used as fiduciary objects, such as a guarantee between a debtor and a creditor. Under the previous law, patents could not be used for this type of securitization.

**How LONG does legal protection last?**
A Standard Patent is granted for twenty (20) years from the filing date. A Simple Patent lasts for ten (10) years from the filing date. Yearly payments must be made after grant to keep the patent valid. Protection period for both Standard Patent and Simple Patent cannot be extended.

**HOW do I register?**

**Patents**
Patent applications in Indonesia should be registered with the Directorate General of Intellectual Property. Simple Patents can take about two (2) to three (3) years. Standard Patents are more likely to take three (3) to five (5) years from filing in Indonesia.

Standard Patents are substantively examined upon request following a six (6) month publication period which allows other parties the chance to make opposition claims. Once an application for a Standard Patent has been filed with the Patents Office, and formalities met, it will be published in the Official Gazette. Publication takes place eighteen (18) months or more after the filing date, or the ‘priority date’ if the same filing has been made within the last twelve (12) months in any other country also belonging to the Paris Convention (see more details and a full list of members here). Any party may file an opposition within six (6) months of the date of publication. Then the application will proceed to ‘substantive examination’, provided a specific request by the applicant is made to the Patents Office within thirty-six (36) months of the date of filing.

In the case of a Simple Patent, the application will be published three (3) months or more after the date of filing. There will be examination following publication.

Documents required to obtain a filing date are as follows:
- Patent specification (in English) including description, claims and drawings;
- Application Form;
- Power of Attorney in the name of local law firm and patent agency, if the application is filed by the attorney;
- Declaration of Ownership; and
- Assignment of Invention (to be executed by inventor).

No legalisation or notarisation of these documents is necessary.

Registration can be filed with:

**Directorate General of Intellectual Property (DGIP)**
Administrative of the Directorate of Patent
Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan 12940, INDONESIA
Phone: +62 21 57905619
Fax: +62 21 57905619
Under the new Patent Law, an online filing system will be introduced to file patent applications on the internet. At present, SMEs can only file a patent application manually at the DGIP’s office. An online system will simplify the administrative procedures involved in filing a patent application and might increase the number of applications expected.

**WHO can register?**
The inventor of a patent or his/her attorney can file a patent application. If the application is filed by a person other than the inventor, the application must be furnished with a statement with adequate supporting evidence that the applicant is entitled to the invention. If the invention is created by an employee under an employment arrangement, the employer is entitled to file for the invention and not the employee.

**Which LANGUAGES can I use?**
Patent applications must be filed in the Indonesian language (Bahasa Indonesia).

**How much does it COST?**
The costs of patent application is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost (IDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official fee</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Standard Patent</td>
<td>1,250,000</td>
</tr>
<tr>
<td>Simple Patent</td>
<td>1,250,000</td>
</tr>
<tr>
<td>Agent fee</td>
<td>7,000,000</td>
</tr>
<tr>
<td>Translation</td>
<td>275,000</td>
</tr>
<tr>
<td>Translation (per A4 size page)</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Search costs</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Further likely costs to be paid between application and the patent granted</td>
<td>30,500,000</td>
</tr>
<tr>
<td>Additional costs for re-examination</td>
<td>3,267</td>
</tr>
</tbody>
</table>

For more information on patent protection in Indonesia, 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)

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**Patents TIPS and WATCH-OUTS in Indonesia**

1. Most patent applications are granted based on corresponding applications of foreign grants, mainly because local examiners are still not equipped to undertake independent full search and examination yet. Such foreign grants should be from patent offices that are known to conduct independent examination, as this is rare practice in Indonesia. It is therefore useful to have in mind an overseas filing that you would eventually use to support the grant by the Indonesian office.

2. Judges are still often not familiar with patent matters and rely heavily on the Patent Office for opinion on matters of infringement and invalidation. Though not binding, results of overseas litigations on the same patent can still be useful in helping judges make a decision in Indonesia. This could be the reason why foreign patent holders are usually reluctant to litigate in Indonesia first, particularly in cases where the patent owner is facing the same adversary in several countries.

3. Patent specifications need to be translated into the local language and translation error is common, with translations often being too literal. This is compounded by the lack of procedures to correct such errors once a patent is granted. It is recommended that applicants pay special attention to the translation of the independent claims as this is the most important part of the document.

4. Patent searching is necessary for small businesses to understand if their new products would infringe on any valid and existing patents. Full searches are still not possible because patent records are not fully computerised. Searches can only be made into basic bibliographic data and abstracts of inventions, but not the complete specification.

5. One of the most challenging issues related to patent protection in Indonesia over the past few years has been the collection by the Directorate General of Intellectual Property (DGIP) of outstanding patent annuities or “debt” for abandoned patents. In case of patent abandonment in Indonesia, the previous Patent Law presented a discrepancy in the provisions in relation to the payment of outstanding fees for abandonment and obliged patent holders to continue paying the annuities of the grace period through a backdated settlement as the outstanding payment become a debt that must be paid by patent holders to the DGIP. The new Patent Law has improved these issues. A patent holder is no longer obligated to pay the outstanding annuity fees. Additionally, the back annuity fee payment must now be made within 6 months from the issue date, and failure to pay will result in the patent being deemed null and void. However, a dispensation will be given to a patent holder who has requested a grace period for the annuity payment to the DGIP within 12 months from the time limit of the back annuity fee payment. SMEs shall file this request in writing 7 days before the deadline of the payment of the back annuity. There is a 100% penalty fee of the total amount of back annuity fees.
C. Industrial Designs

WHAT are Industrial Designs?
An industrial design means a creation on the shape, configuration, or the composition of lines or colours, or lines and colours, or the combination thereof in a three or two dimensional from which gives aesthetic appearances and can be realized in a three or two dimensional pattern and used to produce a product, good or an industrial commodity and handy craft.

Industrial Designs in Indonesia: What you need to know
In order to be accepted for registration, the design has to be new. Industrial Design applications in Indonesia should be registered with the Directorate General of Intellectual Property Rights. An application takes about twenty-four (24) months to thirty-six (36) months to be granted.

Designs that are contrary to the prevailing laws and regulations, public order, religion, or morality cannot be registered in Indonesia. An industrial design application coming from the any country which is the member of the Paris Convention may claim the priority rights within six (6) months from the first filing date.

The most important requirement for design registration is novelty. Novelty is ascertained through an examination process, in which the design is compared with other prior arts. However, the novelty of a design shall not be lost if in a period of maximum six (6) months before filing date, the design has been exhibited in an official exhibition (national or international) and/or has been used for the purpose of education, research and development.

The examiner may raise objection if they believe that the design is a ‘common-place’ design with no distinctive features, but arguments may be filed to overcome such objections. Once the application passes the examination, it will be published for opposition. Where no opposition is filed during the mandatory three (3) month period, the certificate of registration will be granted.

How LONG does legal protection last?
Industrial Design registrations last for ten (10) years from the filing date.

**During the meeting, ask for an overview of the firm and discuss the details of your particular case.**

HOW do I register?
Documents required to obtain a filing date are as follows:

a. A physical sample or drawing or photograph;
b. A written description of the design for which protection is sought;
c. Special Power of Attorney;
d. Declaration of Ownership; and
e. Application Form.

Registration can be filed with:
**Directorate General of Intellectual Property**
Administrative of the Directorate of Industrial Design
Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan 12940, INDONESIA
Phone: +62 21 57905619
Fax: +62 21 57905619

One application should cover one design or a series of derivative designs from a single design.

The Directorate General will send a notification to the applicant in case an application is incomplete, lacking one or more of the above prerequisites. The application should be completed within three (3) months (extendable for one (1) month on the applicant’s request) from the date of the notification. After the said period, an incomplete application will be deemed as being withdrawn.

A completed application will be published for three months from its filing date. During publication, any party may file an opposition against the application and the applicant has the right to file a counter-statement against the opposition, within three (3) months after the date of notification of incoming opposition from the Directorate General. A substantive examination shall only be conducted if there is an opposition against the application. The decision whether an opposition is registered or not shall be issued within a period of maximum six (6) months after the expiration of the publication period.

In the case of a straightforward application, at the end of the publication date, such application will be deemed registrable and the certificate of registration of Industrial Design shall be issued at the latest thirty (30) days after the end of the publication period.

However, for rejected application based on non-novelty or non-conformity to prevailing laws, public order and morality, the applicant may file an appeal to the Directorate General.
WHO can register?
The designer or his/her attorney can file an Industrial Design application. If these applications are filed by a person other than the designer, the application must be furnished with a statement with adequate supporting evidence that the applicant is entitled to the design. Where the design is created by an employee, it is the employer who is entitled to apply for the industrial design.

Which LANGUAGES can I use?
Industrial Design applications must be filed in the Indonesian language (Bahasa Indonesia).

How much does it COST?
The costs of Industrial Design application is as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Official fee</td>
<td>IDR 800,000 (Approximately EUR 57) for one Industrial Design application, IDR 1,500,000 (Approximately EUR 106) for more than one Industrial Design application in one unit in the same class.</td>
</tr>
<tr>
<td>b. Agent fee</td>
<td>EUR 400 to EUR 535</td>
</tr>
<tr>
<td>c. Translation</td>
<td>EUR 27 to EUR 90 per A4 size page</td>
</tr>
</tbody>
</table>

Industrial Designs WATCH-OUTS in Indonesia

- Industrial Designs need to be new when the application is filed. Where a design has already been disclosed to the market through production and sales, some IP owners try to protect their designs as copyright. It is not clear whether using copyright is entirely defensible in this case, but a copyright recordal could strengthen the legitimacy to the IP owner’s claim to rights in the design and could be considered as a possible strategy.
- You shall identify which of your designs are strategic for your business and consider registering them under industrial design laws at the outset.
- You shall keep good records should it become necessary to prove your ownership during your business dealings in Indonesia.

For more information on patent and industrial design protection in Indonesia, 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

Industrial Design applications in Indonesia should be registered with the Directorate General of Intellectual Property Rights.

D. Trade Marks

WHAT are Trade Marks?
A trade mark is a sign in the form of a picture, name, word, letters, figures, composition of colours, or a combination of these elements, used in trade to distinguish the goods and services of one trader from those of another i.e. to function as a badge of origin. It is important to note that in Indonesia, three-dimensional signs (shapes) are still not recognised as trade marks under the current applicable law and should be registered under the Industrial Design Law if protection is required. Trade marks based on sound and smell are also currently not recognised. The latest published draft of the new Trade Mark Law (contains provisions on protection of non-traditional trade marks such as three-dimensional signs, hologram, sounds and smell. The draft is scheduled to be finalized in the second half of 2016, however, at the time of the revision of this country factsheet, the new Trade Mark law has not become effective yet and therefore no changes in this respect have taken place.

Trade Marks in Indonesia. What you need to know
The Indonesian trade mark system is generally understood to adopt the ‘first-to–file’ system. It is especially important to register a trade mark in Indonesia because trademark piracy due to “bad-faith” registration is a serious problem. Bad-faith registrations exist where a third party (not the legitimate owner of the mark) registers the mark first in Indonesia, thereby preventing the legitimate owner from registering it. This is very common also in the case of ‘well-known’ trade marks. In such a case however companies may be able to apply to the Indonesia courts to cancel the unauthorised registration.

To prove that their trade mark is well-known, companies may have to provide sufficient evidence, such as their trade mark registrations in other countries. The Indonesia courts usually values more the registrations for the prominent and developed countries such as: Europe (Community Trade Mark), Japan, Canada, USA, etc. They also value the registration in the neighbouring South-East Asia countries like Singapore, Malaysia, Thailand as well as the populous countries such as China and India. It is also recommended to add the representative countries in other continents to show that the mark has been well-known throughout the world. In practice, if the company is able to shows that the mark has been registered in 15 to 20 countries, the judges will likely view that there is substantial evidence to prove that the mark is well-known.

The Indonesian Parliament approved Indonesia’s new Trademark Law on 27 October 2016, which became effective on 26 November 2016. The new law is named ‘Law on Marks and Geographical Indications’ and introduces a number of significant changes to the publication and substantive examination stages, among other things.

Under the new Law, there is now a two-month publication stage before examiners conduct the substantive examination of a trade mark application. All trade marks that pass an initial formality
examination will proceed directly to publication and will be open
to potential oppositions. Under this change, the only opportunity
that trade mark owners have to oppose a third party’s application
is during the two-month publication stage. In order to manage
risk, trade mark owners should pay considerably more attention to
monitoring published trade marks that may be confusingly similar
to their own marks, so that they can file oppositions in time to
protect their own rights.

In addition, the new Trade mark Law introduces provisions on
non-traditional marks including three-dimensional trade marks, sound
marks, and holograms, and also introduces provisions on the
Madrid Protocol, allowing Indonesia to become party of the trade
mark international registration system.

It takes approximately thirty-six (36) to forty-two (42) months
to register a trade mark in Indonesia after the application is
submitted.

The new law also accepts registrations for Geographical
Indications (GIs) where such marks serve to indicate the origin
of goods from a certain location that has become known to be
associated with such goods. The party entitled to register will have
to be an institution representing the community in the area that
produces the goods. In relation to GIs please see section E below).

How LONG does legal protection last?
Once registered, a trade mark is protected in Indonesia for ten (10)
years from the date of filing. The registration can be renewed for
subsequent periods of ten (10) years without limit. Applications for
renewal can be filed up to twelve (12) months before expiry of the
current registration period, but not after this period. If SMEs don’t
renew their trade mark registration within the prescribed period,
the registration will be automatically recorded as lapsed.

HOW do I register?
Trade marks are registered with the Trade Mark Office (TMO). A
mark may be registered by a person, by several people jointly,
or by a company. The International Classification of Goods and
Services sets out the forty-five (45) classes of goods and services
in relation to which marks can be registered, and therefore you
will need to specify the particular goods or services in relation to
which you wish to register. More classes means broader protection,
but higher cost.

It usually takes three (3) years for the registration certificate to be
issued. Once an application is filed, the TMO examines it to check
that all formalities have been complied with, and that there are no
prior conflicting marks. If objections are raised, the TMO will issue
a letter and the applicant then has thirty (30) days in which to
respond.

If the application is accepted by the TMO, it will be published in
the Government Gazette. At any time within three (3) months of
publication, an opposition by third parties can be filed on various
grounds, including similarity of the mark to prior registered
marks. If no opposition is raised, the TMO will issue a registration
certificate.

Documents required for trade mark applications are as follows:
• Declaration of Ownership;
• Power of Attorney, if the application is filed by attorney; and
• Certified copy of priority document, if you are claiming a
  priority date.

The following information will be also required:
• Trade mark details
• Full details of the applicant
• Itemised lists of goods/services
• Representation of the trade mark (provide colour if it is in
colour)
• Meaning of the mark (if there is any)

Registrations can be filed with:
The Directorate General of Intellectual Property
Administrative of the Directorate of Marks and Geographical
Indications
Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan 12940, INDONESIA
Phone: +62 21 57905619
Fax: +62 21 57905619

WHO can register?
The user of the trade mark or the licensor of the trade mark have
the right to register. If the applicant is a foreign party, he or she
should engage a local attorney to make the application on their
behalf.

Which LANGUAGES can I use?
The registration must be filed in the Indonesian language (Bahasa
Indonesia).
How much does it COST?

a. Official fee (valid for 10 years): IDR 2,000,000 (approximately EUR 142) without limitation on the number of goods/services.

b. Agent fee: Average between IDR 5,000,000 and IDR 9,000,000 (approximately EUR 355 – EUR 639).

c. During the examination of a trade mark application, the authorities may reject the application if the mark does not satisfy all criteria (i.e. it is too similar to an existing trade mark etc.). Applicants may argue against such objections for a fee of between IDR 1,000,000 and IDR 4,000,000 (approximately EUR 71 to EUR 284).

d. Trade mark renewals (valid for additional 10 years registration): IDR 2,500,000 (approximately EUR 178) per class for the renewal filed six months before the due date; and IDR 4,000,000 (approximately EUR 284) per class for the renewal filed six months after the due date.

Trade Marks WATCH-OUTS in Indonesia

- Because of the bad-faith registration risk, you should consider registering your most important trade marks in Indonesia even before you commence business dealings there. Some bad-faith registrations are filed by the authorised distributors and problems usually arise when the rightful owner wishes to replace the existing distributor. One alternative would be to sign an agreement with the distributor in advance stating that he/she will not register the principal’s trade mark, although registering the trade mark yourself first is still the safest option.

- The TMO effectively applies a first-to-file system, and oppositions against bad-faith registrations do not usually succeed. There is also no avenue for appeal by the opponent/ rightful owner if he/she losses, whereas the applicant can appeal to the appeal commission and then to the courts. In this case, the losing opponent/rightful owner will have to litigate in the commercial court to cancel the bad-faith registrations, and this process is expensive. It is therefore extremely important to register your trade mark as early as possible if doing business in Indonesia.

- In case your trade mark is not used for three (3) consecutive years from the registration date (or if it has been used only with goods or services other than those covered by the registration), the Directorate General of Intellectual Property Rights may delete your mark at its own discretion or any third party may submit a cancellation request through the Court of Commerce. In such circumstances, the burden of proof will be on the plaintiff to show that the mark has not been used.

- Remember to file for renewal of your trade mark timely. After the introduction of the new Trade Mark Law, there will now be a six-month grace period for renewal, however, mind the difference of fees for renewals if the renewal is filed six months before the due date or six months after.

HOW do I register for Geographical Indications (GIs) recognition?

Documents required for trade mark applications are as follows:

- name of the applicant's institution;
- name of the applicant's proxy (which must be a registered intellectual property consultant);
- applicant's diplomatic representative (for foreign applicants);
- type of products to be registered as a Geographical Indication;
- ten Geographical Indication labels;
- a book of requirements;
- a specific power of attorney; and
- an abstract of the qualifications books.

For more information on trade mark protection in Indonesia, 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/?q=en/helpdesk-guides.
One of the main requirements to register a Geographical Indication is a book of requirement, which a document containing information about the quality and characteristics of the goods which can be used to distinguish the goods of the other goods that have the same category.

Registrations can be filed with:

**The Directorate General of Intellectual Property**

Administrative of the Directorate of Marks and Geographical Indications

Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan 12940, INDONESIA

Phone: +62 21 57905619

Fax: +62 21 57905619

**WHO can register?**

The following applicants are eligible to file a Geographical Indication registration:

a. an institution that represents the community in the area where the good is produced, which consist of: parties who undertake business on goods of natural products, or natural resources; producers of agricultural products; persons who make handicrafts, or industrial products; or trades who sale the goods;

b. an institution that is given the authority to do so; or

c. a group of consumers of the goods.

**Which LANGUAGES can I use?**

The registration must be filed in the Indonesian language (Bahasa Indonesia).

**How much does it COST?**

Official fee: IDR 500,000 (approximately EUR 33).

Official fee to request for examination: IDR 750,000 (approximately EUR 48).

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**Geographical Indications (GIs) WATCH-OUTS in Indonesia**

- Shall the features and/or the quality of the Geographical Indication no longer exists, your registration will be vulnerable to invalidation claim by any third party. It is important for you to maintain the feature and/or the quality of the product that you register as a Geographical Indication.

- Be aware of the use in good faith. Prior or on the date of the application for registration of a Geographical Indication, if a sign has been used in good faith by another party who has no right to register, the party who has been acting in good faith may continue to use the sign concerned for a period of two (2) years as from the date of the registration as a Geographical Indication.

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**F. Trade Secrets**

**WHAT are Trade Secrets?**

‘Trade secret’ are information in the field of technology and/or business that is not known by the public and has economic value when used in business activities, and the confidentiality of which is maintained by its owner. The scope of protection on Trade Secrets includes methods of production, methods of processing (preparation), methods of selling, recipes, and clients’ lists.

**Trade Secrets in Indonesia: What you need to know**

Trade secrets provide protection if the information fulfils these three (3) criteria:

a. It is confidential;

b. It has economic value; and

c. Necessary measures are taken to guard its secrecy.

‘Necessary measures’ usually means that the company has standard procedures in place such as password protection for electronic data, restricted access to certain offices/buildings if necessary, a visitors registration system, etc. Furthermore, such internal regulations should stipulate how the trade secret is kept and who is responsible for its secrecy.

**How LONG does legal protection last?**

There is no time limit to trade secret protection – as long as the information qualifies as a trade secret (see points a-c above), it will be subject to legal protection.

**Trade Secrets WATCH-OUTS in Indonesia**

- In a trade secrets case it is necessary to prove that the trade secret has been taken by the suspected party. Proving this may be difficult because the litigation procedure is not equipped with a discovery procedure to uncover relevant evidence of the suspected party. It may help with the proof if you can prove that the local company used to have a relationship with the victim company OR was previously given access to the trade secret.

- Companies should also proceed with caution when engaging investigators because the law accords certain privacy rights, and the infringers themselves could complain in a criminal case that their own privacy rights were infringed.

For more information on trade secret protection in Indonesia, 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](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Trade-Secrets-English.pdf)
4. Using CUSTOMS to block counterfeits

HOW can Customs help in protecting IP?
Indonesian Custom law does not record or perform registration of IP rights. No recordal system exists, and as such there is no customs surveillance process.

Customs in Indonesia: What you need to know
Customs Law in Indonesia gives Custom officials the power to suspend a consignment if they have reason to believe that it contains counterfeit goods. However, in practice they do not make seizures. A common reason given for this is the lack of procedure or avenue to contact the rights owners even if they do come across a lot of suspected counterfeits.

IP owners have been lobbying customs for a recordal system and to initiate monitoring and suspend movement of suspected counterfeits, but have so far been unsuccessful. Towards this end IP owners have provided training to the customs in product authentication, however, currently there is still no sign that formal border controls measures are being implemented yet.

The Directorate General of Customs has been discussing supporting regulations concerning IP protections since 2007. This includes Customs recordal and implementing procedure of suspected counterfeit seizure.

In theory, if you are an IP rights owner, you can apply to court to suspend the customs clearance of a specific shipment of goods. However in practice these provisions are usually unworkable because it means that you need specific information on a suspected shipment, as well as supporting documentary evidence, in order to get the court to issue a court order to suspend the shipment. Also, generally speaking the courts are still not equipped to respond to time critical cases such as dealing with goods in transit.

Customs TIPS and WATCH-OUTS in Indonesia

Customs Law in Indonesia gives Custom officials the power to suspend a consignment if they have reason to believe that it contains counterfeit goods. However, in practice they do not make seizures.
5. ENFORCING your IP

The Indonesian legal system presents a number of challenges to conducting IP enforcement. The presence of TRIPS compliant IP laws in practice is not yet matched by an efficient criminal enforcement or customs border protection system. Piracy rates remaining high according to surveys by rights owner associations such as the Business Software Alliance. In Indonesia there are two (2) main IP enforcement routes: civil and criminal enforcement, however in many cases private mediation via legal professionals could be more effective and should be considered as a viable option particularly for SMEs with budget constraints.

Criminal Enforcement

In theory there is a useable criminal enforcement system and on occasions the police have taken successful criminal raid actions. Often in practice however, criminal enforcement is difficult due to various factors such as a certain lack of transparency in police procedures.

The DGIP’s Civil Service Investigation Officers (PPNS) has been set up as supplement to the police units in carrying out enforcement in March 2011. Since its existence, is still thought that they are under resourced to be an effective apparatus to address anti-piracy and anti-counterfeit. The total number of raids of the PPNS each year is approximately thirty on average, far from the effective need.

Trade mark, patent, design infringements and copyrights are ‘complaint-based’ crimes. This means the IP owner must file a formal complaint with the Police before any action can be taken.

Raid actions are generally more expensive in Indonesia compared to raids carried out in other countries such as Thailand (or China). This is because the process requires various interviews with witnesses, as well as formal consultation and statement taking from the legal expert at the Trade Mark Office to give official opinion on the infringement. This rather protracted process, plus the fact that lobbying is also needed, makes it time-consuming to get a raid set up. Raids can cost between IDR 50,000,000 and IDR 200,000,000 (approximately EUR 3,252 to EUR 13,011).

After a raid, IP holders have on occasion been able to reach settlements which have included some of the following, although usually some component(s) will be compromised to ensure a deal is reached:

- destruction of the infringing goods
- signed undertakings from the infringer
- a public apology by the infringer (cost borne by infringer, where possible)
- damages

Because of the high costs, raids should not be considered as routine for any IP owner, but should be reserved for targets which would generate maximum publicity if raided. Publicity is important because it can help to generate a deterrent effect, and in any case most of the time the result of a successful raid is simply the confiscation of the infringing goods from the defendant with no further action.
Prosecution
Indonesia’s IP laws make provision for substantial maximum fines and prison sentences. Criminal penalties can be as high as ten (10) years imprisonment and/or a fine of approximately IDR 4,000,000,000 (approximately EUR 266,000). However in practice only minor fines are given for IP crimes, and there is still a lack of consistency in sentencing for IP offences, which is one of the major obstacles to creating an effective deterrent environment.

Civil Enforcement
Despite the challenges in the criminal raid model, it is still generally more effective in bringing a specific infringement to an end once the raid is carried out than civil procedures. Furthermore, civil litigation is likely to be more expensive than carrying out criminal raids.

Civil litigation is seldom the preferred option when dealing with trade mark or copyright infringement. In these cases, IP rights owners usually rely on criminal raids to stop infringement, and then negotiate for civil statements in return for not proceeding further with the case. This is likely to be the more cost-effective option when compared to the more expensive civil litigation option. However, in the case of patent infringement, civil action may still be preferred because the issues involved are usually more complex.

Good evidence preparation is essential when dealing with the Indonesian civil system in IP cases. Overseas evidence will need to be legalised.

Relief Available
All the IP laws provide for final relief in the form of damages and a permanent injunction against further infringement. In any litigation outcome, each party effectively bears its own legal costs. Principles for calculating damages are still not well established and outcome of damages award is still highly uncertain, with some divergence in different courts’ calculations. In a few cases large damages awards have been made, while the same level of preparation might result in minimal award in another case.

Warning letters and settlements
Given the weaknesses in the enforcement system, ‘warning letters’ should be considered as a viable option, principally when the infringer is a legitimate business. Such infringers are usually opportunistic traders selling counterfeits as part of their product mix rather than running an outright counterfeiting business. Against such traders, warning letters would still be a more cost effective way to create the desired deterrent effect.

Enforcement TIPS and WATCH-OUTS in Indonesia

- Counterfeit pharmaceuticals are still common despite obvious health risks to the public. In some cases, enforcement is not possible at notorious pirate markets because of concerns over personal safety to enforcement officials. It is therefore important to tackle any piracy early before the problem becomes too big to address.
- Before raiding any target, it is advisable to investigate if the infringer is connected to any senior police officer or government official. If raided, the infringer might call on this connection to influence the negotiation.
- Prosecution of infringers is rare because IP owners are not confident that the public prosecutor can secure a conviction with a meaningful punishment that matches the infringement. As such, they usually prefer to settle with the raided infringer out of court, in return for a signed settlement agreement with clauses obliging them not to infringe, to surrender possession of counterfeits, and where possible to issue a published apology.
- Evidence preparation is essential when dealing with the Indonesian civil system in IP cases. Overseas evidence will need to be legalised to be admitted in the court proceeding.
6. RELATED LINKS and Additional Information

- Visit the South-East Asia IPR SME Helpdesk website www.southeastasia-iprhelpdesk.eu for further relevant information, or contact our confidential enquiry helpline to find out how to deal with business partners in the South-East Asia region – question@southeastasia-iprhelpdesk.eu

- Visit the Helpdesk blog www.yourIPinsider.eu for related articles on IP in Southeast Asia and China

- European Union Delegation to Indonesia, Brunei Darussalam and South-East Asia – http://eeas.europa.eu/delegations/indonesia/index_en.htm

- The European Business Chambers of Commerce in Indonesia - http://www.eurocham.id/


- IP Komodo blog on intellectual property developments in Southeast Asia - http://ipkomododragon.blogspot.com/

- Hukum online - legal news on Indonesia cases - http://www.hukumonline.com/

- Supreme Court cases (in Indonesian language Bahasa Indonesia) - http://www.mahkamahagung.go.id/ and http://putusan.mahkamahagung.go.id/
7. TEAR-OUT Supplement

In Indonesia there are two (2) main IP enforcement routes: civil and criminal enforcement. However, in many cases private mediation via legal professionals could be more effective and should be considered as a viable option, particularly for SMEs with budget constraints.

**Civil Litigation**
The relevant documents to initiate a lawsuit in Indonesia would need to be drafted on an ‘ad hoc’ basis by lawyers licensed to represent clients in the country.

**Criminal Prosecution**
The Thai Police is the main competent authority for criminal prosecution enforcement.

Within the Directorate General of Intellectual Property, Civil Service Investigation Officers (PPNS) has been set up as supplement to the police units in carrying out enforcement since March 2011. No official forms are available according to the inputs received by local External Experts and no forms are available in English from the website of the Directorate General of Intellectual Property for such a procedure.

**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 Indonesia – Directorate General of Customs and Excise (http://www.beacukai.go.id/websitenew/index.html).

Effective from 2 August 2017, the Indonesian Government has issued Regulation No. 20 of 2017 on Controls of Import and Export Goods Constituting or Deriving from Intellectual Property Rights Infringement (“Regulation”). The Regulations state the provisions to introduce an IP recordal system with Customs in Indonesia for the first time.

With the new Regulation, the following actions would be possible:
- Preliminary Restraint of Goods
- Suspension Request to Court
- Execution of Suspension Order

At the time of drafting of the present document, specific additional procedures shall be set out in a government regulation from the Ministry of Finance including possible creation of official forms for the actions listed above.
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.

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