

## BREXIT: Potential impact on Singapore's IP owners

### I. Introduction

1. On 23 June 2016, the majority of the people of the United Kingdom (“UK”) decided in a referendum to leave the European Union (“EU”) - a move termed “Brexit”. This decision has wide-ranging implications for Singapore businesses involved in the intellectual property (“IP”) field in the UK.
2. This write-up offers a brief survey on the implications. It is based on the following assumptions:
  - (a) The UK will proceed to formally notify the European Council of its intention to leave the EU pursuant to Article 50 of the Treaty on European Union; and
  - (b) An exit agreement on the terms of the UK's withdrawal will be concluded by the end of the two-year negotiation period (or such extended period as the member states of the EU may unanimously agree on).

### II. Impact

3. IP laws relate principally to patents, copyright, trade marks and designs. They are essentially territorial. In accordance with the principle of harmonization of laws in the EU, the UK has been obliged to align its IP laws with EU directives and regulations. Its courts are also obliged to be bound by the decisions of the Court of Justice of the European Union regarding the interpretation of the directives and regulations. These obligations are likely to continue until the UK exits the EU.

#### *Patents*

4. European patents are granted by the European Patent Office (“EPO”). This is not an EU institution. Consequently, despite Brexit and the UK's departure from the EU, the UK will remain a contracting state of the European Patent Convention, albeit as a non-EU member state (much like Switzerland and Norway). Therefore, patent protection in the UK will continue to be available for Singapore businesses even though their patents were filed via the EPO prior to Brexit.

#### *Copyright*

5. We do not expect UK copyright law to be affected by Brexit, given that (1) copyright is the least harmonised IP right in the EU, (2) copyright is not a unitary right in the EU, and (3) there is no registration regime for copyright in the UK and the EU.
6. Further, like Singapore, the UK is a member of a number of international copyright agreements (such as the Berne Convention). These require each member country to accord “national treatment” to copyright works of authors

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from other signatory countries – that is, grant the same level of copyright protection for foreign and national authors.

## *Trade Marks and Designs*

7. Unlike copyright, Brexit will have a profound impact on trade marks and designs that were registered by Singapore businesses in the EU through the UK. These marks and designs are regarded as EU trade marks (“**EUTM**”) and registered community designs (“**RCD**”) respectively.
8. Upon the UK’s departure, the EUTMs and RCDs will only be protected in the remaining EU member countries. It is unclear whether the UK will recognise these rights and extend protection to them in the UK. This would depend on a unilateral decision by the UK and/or its agreement with the EU. It is possible that some form of transitional mechanism will be established to allow the protection of these rights to automatically extend to the UK after the departure, without any loss of priority in terms of filing dates.
9. In the light of such an uncertainty, we would advise Singapore businesses which wish to use or continue using their trade marks or designs in the UK to apply to register them there.
10. If you have any question, please do not hesitate to contact our Mr. Tan Tee Jim, S.C. at [tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg) or 65-6557 4615.

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