



In Focus: Modern Intellectual Property Protection under the Regional Comprehensive Economic Partnership (RCEP)



Intellectual Property (IP) is defined by World Intellectual Property Organization (WIPO) as the creation of the minds such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. There are eight types of IP, namely (i) copyright and related rights; (ii) patents; (iii) trademarks; (iv) designs; (v) geographical indications; (vi) plant varieties; (vii) trade secrets and confidential information; and (viii) layout designs of integrated circuits. RCEP countries are a major source of IP. The protection of IPs is incrementally important to incentivise business to invest time, human, and financial resources on creating innovation on their business model and/or products.

In 2019, out of over three million patent applications, over two-thirds came from Regional Comprehensive Economic Partnership (RCEP) participating countries (RPC). As major originators of IP, having effective regional cooperation and shared levels of protection and enforcement between RCEP participating countries is essential. Businesses operating in the ASEAN region and consumers stand to benefit from improved and standardised rules on IP protection. As a modern free trade agreement, RCEP contains 83 articles, divided into 14 chapters on IP and will enhance the IP Protection in the RPC.

About the Bulletin

ASEAN for Business is a bulletin published by the Enterprise and Stakeholder Engagement Division of the ASEAN Secretariat.

This bimonthly bulletin provides quick updates on specific topics related to the ASEAN Economic Community (AEC) for businesses operating in the region.

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Impact of RCEP IP Chapter on the IP Protection in RPC

(i) Streamlining IP protection in RPC based on international best practice and standards

RCEP requires the RPC to ratify Paris Convention, Berne Convention, Patent Cooperation Treaty, Madrid Protocol, WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty, and Marrakesh Treaty to facilitate access to published persons who are blind. Also, noting the diversity of level of development and capacity amongst different RPC, RCEP sets [concrete timelines](#) for which countries to ratify or accede to the treaty on a case-by-case basis. This is an upgrade compared to the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) which does not require signatories to ratify or accede to those treaties.

(ii) Digitalising IP Protection regime in RPC

RCEP stipulates for every RPC to provide digital platforms to apply for patents, trademarks, and industrial designs, as well as to provide accessible online databases containing information on trademark applications and registrations, which is an upgrade compared to AANZFTA. RPC shall also provide relevant parties with the opportunity to oppose a trademark, patent, or geographic indication. Furthermore, RPC must have a procedure for disputes settlement over internet domain names modelled after the internet corporation for assigned names and number systems.

(iii) Enhancing measures to prevent cross border piracy and counterfeiting.

RCEP makes it mandatory for RPC to have procedures to enable IP right holders to request relevant authorities to seize and inspect suspected counterfeit or pirated goods at country's point of entry. Additionally, RCEP stipulates for RPC to provide civil remedies and criminal prosecution for those found to gain profit from violating copyright or trademark counterfeiting. The possible civil remedies under RCEP includes (i) damages, (ii) payment of court fees, and (iii) destruction of infringing materials without compensation. Meanwhile, the possible criminal remedies include the three above with addition of punitive fines and prison sentences. There is no such requirement in AANZFTA, and the policies and procedures vary among the countries.

Benefits of IP regime in RCEP for Business

The changes brought by RCEP to the IP Protection regime in the RPC will bring the following benefits to business:

(i) Enhancing Market Confidence for Business

RCEP sets the minimum standards for IP Rights' enforcement in RPC thus requiring each RPC to establish the necessary legislative framework for civil and criminal litigation where IP rights are infringed. This provide more confidence for business that they will have access to IP enforcement mechanism in RPC. In this case, **a company can be assured that their IP will be protected in the fifteen RPCs** if their IP has been registered in the authority of each RPC.

(ii) A more seamless IP registration

Business may access all related information about IP regulation in RPCs online. While the filing for registration of an IP is still to be done on a country-by-country basis, **businesses will have the convenience of doing the filing online.**

(iii) Wider type of IP Protection

RCEP will benefit Agri-tech company particularly as several AMS are not signatories to the International Convention for the Protection of New Varieties of Plants (UPOV). As RCEP enhances protection of new plant varieties, **Agri-tech companies may have higher confidence and incentive to create innovation in RPC.**

How to Access the Benefits of IP Protection under the RCEP?

- (i) **Registration** – Businesses must register their IP with the relevant authorities and the authorities will decide whether to grant or deny the registration of the IP. The registration process and extent of the IP protection depends on individual jurisdiction.
- (ii) **Request** – Businesses may notify and request the relevant authorities to begin enforcement action when their registered IPs are violated by other parties.

More Information

- The full text of Chapter 11: Intellectual Property of the RCEP is available [here](#).
- For more information please send your queries to: RCEPASEC@asean.org

Recent Updates

The 28th ASEAN Economic Ministers' (AEM) Retreat

[The 28th ASEAN Economic Ministers' \(AEM\) Retreat](#) was convened virtually on 16 March 2022. The Ministers launched the negotiation for the ASEAN Trade in Goods Agreement (ATIGA) Upgrade to ensure that the **Agreement remains relevant, modern, forward-looking, and more responsive to regional and global developments**. It was agreed, in principle, to extend the validity of the Memorandum of Understanding (MoU) on the Implementation of the Non-Tariff Measures on Essential Goods under the Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 Pandemic until 13 November 2024, and expand the list of the essential goods under the MoU. The Ministers also endorsed the 19 Priority Economic Deliverables of Cambodia under its Chairmanship of ASEAN for 2022.

ASEAN commenced work on ASEAN Community's Post-2025 Vision

[The High-Level Task Force \(HLTF\) on ASEAN Community's Post-2025 vision held its first meeting](#) at the ASEAN Secretariat on 31 March to 1 April 2022. The meeting adopted the Work Plan for the HLTF in 2022 and Rules of Procedure (RoP) of the HLTF, and discussed the current state of affairs of ASEAN Community building and shared views on the Post-2025 vision. The HLTF is mandated to develop the ASEAN Community's vision beyond 2025. The HLTF consists of Eminent Persons (Eps) and High-Level Representatives (HLRs) from each ASEAN Member States, and the Secretary-General of ASEAN

ASEAN launched Guideline on Online Dispute Resolution for Consumers

[The ASEAN Committee on Consumer Protection \(ACCP\) launched the ASEAN Guidelines on Online Dispute Resolution \(ODR\)](#), a follow-on initiative of the ASEAN ODR Feasibility Study published in December 2020. The guideline aims to Assist ASEAN Member States (AMS) to set up or

improve their national ODR System to help resolve e-Commerce transactions, as well as suggest proper design and management of an ODR System, particularly as currently only Indonesia, the Philippines, Viet Nam, and Thailand have the national ODR system in place amongst AMS. The low-hanging fruit of the guideline will include the **consumers to be able to have the opportunity to settle their complaint for their cross-border e-commerce transaction**. The guideline is available [here](#).

The Launch of ASEAN SME Academy

[ASEAN, the US-ASEAN Business Council \(US-ABC\), and the US Agency for International Development \(USAID\) officially launched ASEAN SME Academy](#) on 8 April 2022, an upgraded version of the online learning platform for MSMEs in ASEAN. The **revamped platform provides new features including courses available in local languages (Bahasa Indonesia, Thai, and Vietnamese), new attractive visual design features, and top-quality resources** including specific modules for Covid-19 recovery. The SME Academy offers MSMEs self-certification opportunities through both desktop and mobile platform. The Academy is accessible in this [link](#).

ASEAN Member States reopen border for business travels and tourism

As of 20 April 2022, more than 65% of ASEAN population are fully vaccinated and most AMS started their booster vaccination. Most AMS reopen for fully-vaccinated travellers, resuming businesses and tourism activities. **Cambodia** has lifted quarantine and COVID-19 test requirement. Quarantine is also no longer imposed in **Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam**, subject to negative COVID-19 test. Brunei Darussalam and Lao PDR have gradually reopened their borders for fully-vaccinated travellers from selected countries, while **Myanmar** has also reopened for travellers for business purposes from selected countries. While the travel outlook looks promising, the vaccination coverage and overall ability to manage and contain the virus remains [prerequisite](#) to the region's recovery.

Upcoming Events

23rd ASEAN Trade Facilitation-Joint Consultative Committee (ATF-JCC) Meeting

Virtual,
2-4
May 2022

AEM Special Meeting

Bali,
18
May 2022

SEOM 2/53 and Related Meetings

Virtual,
23-27
May 2022

31st ASEAN Customs Directors-General Meeting

TBC,
7-9
June 2022

13th ASEAN Coordinating Committee on Micro, Small, and Medium Enterprises (ACCMSME) Meeting and Related Meetings

Virtual,
13-17
June 2022