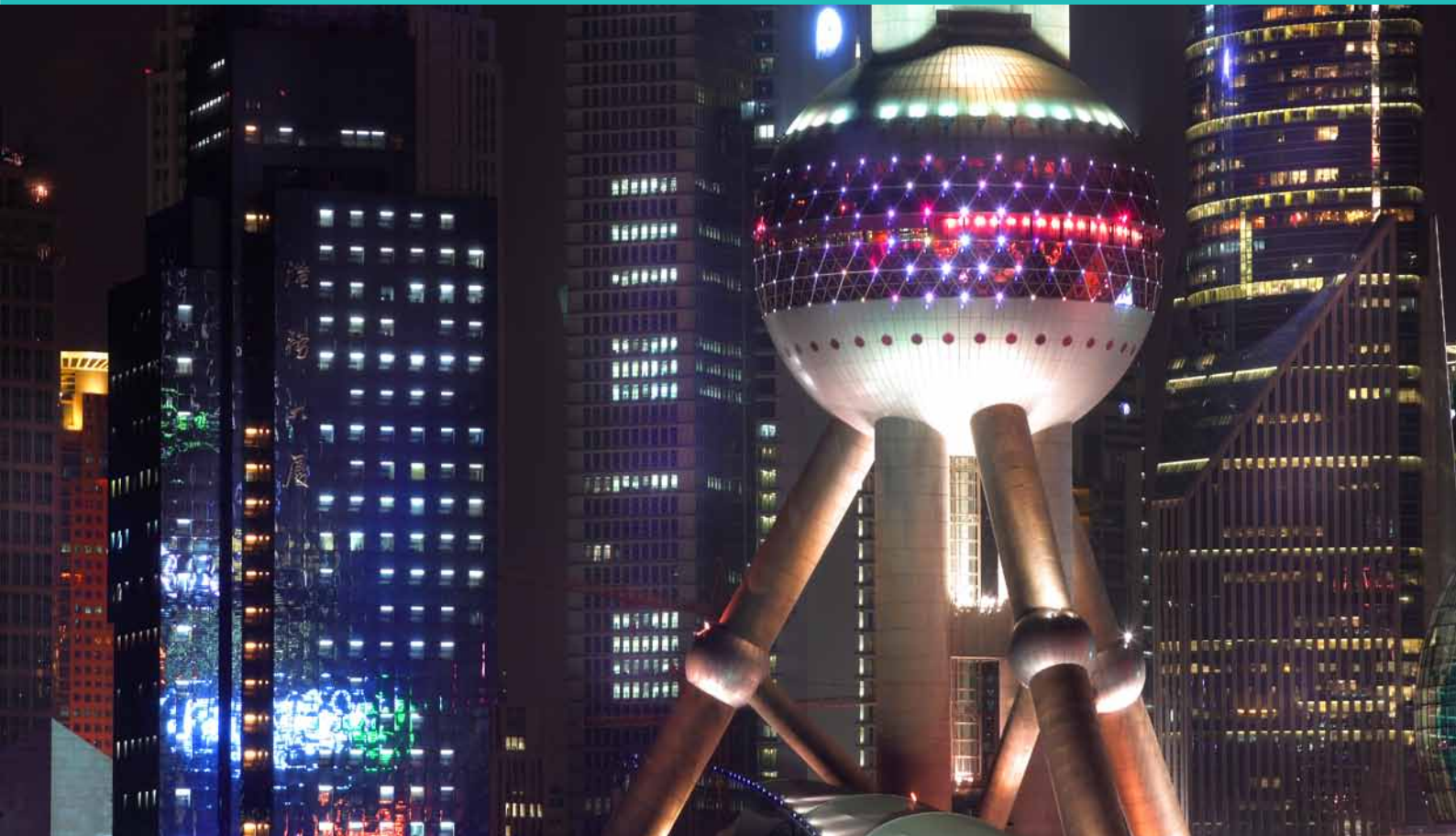


INTERNATIONAL ENTERPRISE SINGAPORE

# Intellectual Property Factsheet China

A guide for Singapore companies venturing into China



# In today's global business arena, intangible assets such as intellectual property (IP) and business know-how will allow your company to move beyond physical products.

Business strategies are now commonly centered on new IP creations and how your company can strategically generate income from them. An internal IP management system can help you effectively own, protect, and capitalise on your IP creations. More importantly, good IP strategies and management give you a competitive advantage in navigating China's dynamic business environment and enables your company to overcome its IP risks and stay one step ahead.

## The IP landscape in China

Since joining the World Trade Organisation (WTO), China has developed a regulatory framework to protect the IP rights of domestic and foreign right holders as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

The Chinese Government has progressively updated its legal regime to increase its efficiency and effectiveness of IP registration and IP enforcement. China made further progress in 2011 and expressed commitment to:

- Establish a State Council-level leadership structure, to lead and coordinate IP rights (IPR) enforcement across China.
- Increase efforts to improve the effectiveness of its government software legalisation programme, and to promote the use of licensed software in enterprises.
- Establish a Complaint Center for Counterfeit Drugs which includes a consumer hotline, website, and a data analysis unit, in addition to existing hotlines for IPR Legal Aid and Complaints, Cultural Market Complaints, Copyright Complaints, and Product Quality Complaints.
- Comply more fully with WTO principles on openness and transparency in the development of national and industry standards. On this front, China has issued specific instructions to Standardisation Administration Agencies to comply.

## Risks associated with IP management overseas

### • Theft of your company's IP

Counterfeiters and infringers are now more sophisticated, deploying more advanced reverse engineering techniques. As people become more aware of the value of IP assets, IP thefts, often by company insiders, are also on the rise. Companies without proper IP management infrastructure in place for their product research and development processes risk losing their innovative competitive advantages.

### • 3rd party misappropriating your IP rights

IP infringers have learnt to exploit measures such as pre-emptive filing, trade mark and domain name squatting, IP hijacking and other creative new ways to infiltrate legitimate distribution networks.



## How to protect my IP

As the cost of registration is relatively low compared to the cost of enforcement, it is a good pre-emptive step to register your IP in China.

### 1. Types of IP and how they can be protected in China

The IP rights mentioned below are the more commonly used ones.

Types of IP	Protection by	Length of protection	Other information
<b>New technical solution or an improvement relating to a product or a process</b>	Invention patent	20 years from the date of filing, provided it is renewed yearly	<p>Patent applications may be filed with China's State Intellectual Property Office (SIPO) or by way of an International Application under the Patent Cooperation Treaty (PCT).</p> <p>Applications undergo a stringent examination process. The grant of a patent confers protection on the invention. It takes about 4 years to obtain a grant of an invention patent in China.</p>
<b>New technological solution relating to the shape, the structure, or their combination, of a product, which is for practical use</b>	Utility model	10 years from the date of filing the application	<p>Applications are filed directly with SIPO. Applications do not require substantive examination, and can be granted within one year after the filing date.</p>
<b>New design, shape, pattern, colour or any such combination in relation to a product which has aesthetic appeal</b>	Design patent	10 years from the date of filing the application	
<b>Distinctive marks or names</b>	Trade marks	Valid for 10 years and renewable perpetually, upon payment of a fee. A trade mark may be cancelled if it is not used within 3 years from registration and a third party brings an action for removal of the mark.	<p>Registration can be obtained in China either by filing a national trade mark application with the Chinese Trade Mark Office (CTMO) or by filing an international application under the Madrid Protocol designating China.</p> <p>China adopts a "first to file system", and does not offer protection to unregistered trade marks unless they qualify as "well-known trade marks" (知名商标) under the Paris Convention. It takes about two years to register a trade mark.</p>
<b>Literary, artistic and scientific works</b>	Copyright	<p>Generally, the period of copyright protection is:</p> <ul style="list-style-type: none"> <li>the lifetime of the author plus 50 years after his death, or</li> <li>50 years after the date of first publication/creation.</li> </ul>	<p>Registration is not mandatory, but copyright owners can voluntarily register their rights with China's National Copyright Administration (NCA) to establish evidence of ownership. Such registration may be helpful in enforcement actions.</p>

### Support for IP Registrations:

The Productivity and Innovation Credit (PIC) Scheme administered by the Inland Revenue Authority of Singapore (IRAS) provides support for costs incurred to register IP rights, which includes official fees and professional fees.

Please refer to [www.iras.gov.sg/irashome/PIcredit.aspx](http://www.iras.gov.sg/irashome/PIcredit.aspx) for more information.

## 2. Enforcement of IP Rights (IPR) in China

China's IPR enforcement consists of three tracks: administrative enforcement, civil enforcement and criminal enforcement.

### Administrative Enforcement 行政执法

This is the most commonly used form of IPR enforcement in China. Enforcement of IPR is managed by a number of government agencies / offices (not limited to the list below) with each typically responsible for the enforcement of one specific area.

- State Administration for Industry and Commerce (SAIC) (国家工商行政管理总局)
- Customs (海关)
- State Intellectual Property Office (SIPO) (国家知识产权局)
- National Copyright Administration of China (NCAC) (国家版权局)

In most cases, administrative agencies/ offices cannot award compensation to an IPR owner. However, they have the power to investigate, fine the infringer, and seize the infringing goods or equipment used while manufacturing.

### Civil Enforcement 民事执行

An IPR owner may initiate civil proceedings before the People's Court (人民法院). Remedies available include an injunction, damages and confiscation of infringing goods.

### Criminal Enforcement 刑事执行

Certain acts of counterfeiting are criminal offences. Criminal proceedings may follow an investigation by the police or an administrative or civil action, and can be brought by either the public prosecutor or the IPR owner. An IPR owner may claim damages caused by the infringing activity either in the same criminal proceedings or in separate civil proceedings. Punishment includes fines, imprisonment and damages.

## Why managing my IP well is important for my business: Case study - Protecting IP through technology

Many successful multinational corporations create and maintain their competitive edge by actively capitalising on their IP. For example, Ednovation, a Singapore company, successfully capitalised on its proprietary online e-learning curriculum platform and developed a fast-growing chain of childcare centres in China.



Ednovation Pte Ltd was founded in 1991 with the aim of invigorating traditional methods of teaching by harnessing new technology. One of its products, EdnoLand, is a comprehensive online programme that nurtures the pre-schooler's multiple intelligences and language skills using IT. The founder Dr. Richard Yen has also founded a chain of premium childcare centres in Chong Qing (重庆) and Cheng Du (成都), known as ChildFirst Kindergarten (才儿坊幼儿园), which primarily uses this e-learning platform to deliver its

proprietary bi-lingual curriculum. This IT-enabled teaching method delivers uniform, high-quality English lessons and reduces the burden on the English teachers. Parents are also able to closely monitor their child's progress using an online portal. Most importantly, it protects the core IP of the business – its curriculum - thus preserving the brand's competitive edge while expanding in China.



## How can my company develop or enhance our IP management capability before venturing into China?

Losing your IP, infringing on another's IP or knowing that another company is using your IP, will translate to significant loss of business competitiveness and subsequent loss of revenue. To mitigate such IP risks and enhance your company's IP management before expanding overseas, you can take the following steps:

### 1 Understand what IP your company owns and how to protect them

	Patent	Trade mark	Design	Copyright
<b>Novel, innovative product</b>	✓			
<b>Novel, innovative process</b>	✓			
<b>Microchip or semiconductor designs</b>	✓			
<b>Distinctive brand name</b>		✓		
<b>Creative product design</b>			✓	✓
<b>Distinctive sign</b>		✓		✓
<b>Artistic or literary work</b>				✓
<b>Business/ trade secret/ confidential information</b>	Not protectable through registration; companies are advised to put in place internal mechanisms to maintain confidentiality			

- 2 Conduct regular IP audits within your company
- 3 Register your IP for appropriate protection
- 4 Secure third party IP rights, if necessary
- 5 Permeate a culture of IP awareness within your organisation
- 6 Work with reputable and reliable business partners who have good appreciation of IP
- 7 Engage a qualified and competent firm to help with the necessary IP registrations
- 8 Recognise the value of your IP through IP valuation, where possible

### Next steps

The Intellectual Property Office of Singapore (IPOS) and International Enterprise Singapore (IE Singapore) can help your company to build and strengthen its IP management capabilities. Designed to better equip your company in overseas IP issues, these capabilities development programmes can help you to:

- Review and understand your company's current IP situation
- Gather specific IP knowledge relevant to your business
- Develop an action plan to audit, protect, and manage your IP
- Build IP strategies for long term growth
- Develop an action plan to prepare for your China venture
- Learn what you can do if your IP has been infringed

Interested companies may contact IPOS or IE Singapore to apply for the programmes or visit our websites for more information at [www.ipos.gov.sg](http://www.ipos.gov.sg) or [www.iesingapore.com](http://www.iesingapore.com)

#### Useful Reference

"Intellectual Property for Business", WIPO, [www.wipo.int/sme/en/ip\\_business/](http://www.wipo.int/sme/en/ip_business/)

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