

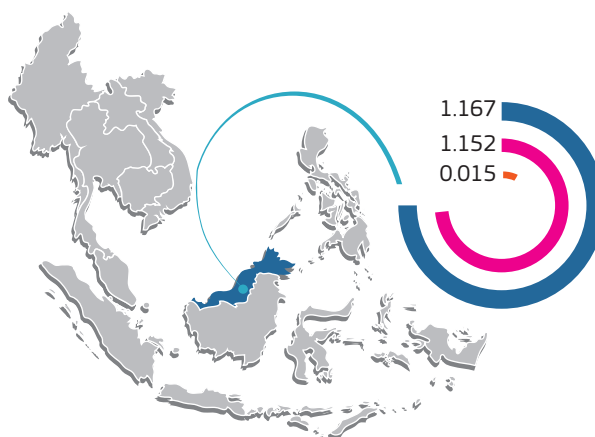


BRUNEI

ASEAN IPR SME Helpdesk IP Country Factsheet



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SIZE of Market (2012) :

- EU export in goods to Brunei: € 1.152 billion
- EU import in goods from Brunei: € 15 million
- Total trade in goods: € **1.167 billion**

Brunei's annual GDP in 2012: € **12.5 billion** (Source: [World Bank](#))
Brunei's annual GDP growth in 2013: **2%** (Source: [World Bank](#))

- > In 2011 the EU was Brunei's 4th largest import partner, providing 13% of Brunei's total imports.

Key INDUSTRY SECTORS:

- > The EU's key exports to Brunei are **commodities and transactions**, comprising 82.6%.
- > In 2012, the EU exported €963 million of natural or cultured pearls and precious or semi-precious stones, an increase from €106 million the year before.
- > Brunei's key export items to the EU include **machinery and other manufactured products**.

2. IPR in Brunei for SMEs: BACKGROUND

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

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the [competitiveness of your business 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 Southeast Asia. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you [protect your 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](#).

SMEs are businesses which have [fewer than 250 employees](#) and a turnover of less than € 50 million or a balance sheet total of less than € 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.

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

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

Brunei's [legal system is based on English Common Law](#). Since the year 2000, Brunei has passed various legislations on trade marks, industrial designs, copyright and patents. A list of Brunei's statutes on intellectual property are available online at <http://brunei-patents.com.bn/> under the "Information" tab. [Brunei'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 and the Patent Cooperation Treaty (PCT). Brunei is also a signatory of the TRIPS agreement. Brunei is currently in talks to join the Madrid Protocol in the near future.



IP TIPS and WATCH-OUTS in Brunei

- Brunei operates under a 'first-to-file' system, meaning that the first person to file an IP right in the Bruneian jurisdiction will own that right once the application is granted. This applies to patents and trademarks.
- Brunei fully complies with all international treaties and conventions and there are few circumstances where derogation from a treaty would take place.

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the competitiveness of your business in the global economy.

3. IP Rights in Brunei: THE BASICS

A. Copyrights

WHAT are Copyrights?

Copyrights in Brunei 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 the first owner of the copyright in the work.

Copyright may be assigned or licensed by the owner to third parties.

Copyright is a right given automatically by law to the owner without the need for him/her to register the right.

Copyrights in Brunei: 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 that accepts registration of copyright.

The copyright owner in a work has the exclusive right in Brunei 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.

How LONG does legal protection last?

The duration of legal protection varies according to the nature of the copyrighted material:

Nature of work	Duration of Copyright
Literary, dramatic, musical and artistic works	50 years from the end of the year in which the author died
Computer-generated	50 years from the end of the year in which the author died
Sound recording or film	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
Broadcasts and cable programs	50 years from the end of the year in which they were first broadcast or transmitted
Typographical arrangement (i.e. how the words and pictures are arranged on a page) of a published edition	25 years from the end of the year in which it was first published



Copyrights TIPS and WATCH-OUTS in Brunei

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 detailed information about the copyright protection system in Brunei, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Copyright Protection in the ASEAN Region, to be made available for download from [our website](#) in the coming months.



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 Intellectual Property Office (BrulPO).

Patents in Brunei: What you need to know

Note: It is important to note that the law and rules regarding patents is relatively new and, as such, it is possible that the legislation will develop in an unpredictable manner. The information that follows is based strictly 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.
- c) The invention must be useful and have some form of practical application. Its use should be applicable to all industries.

How LONG does legal protection last?

A patent which has been registered is given a term of 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 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.
- 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. However, a foreign applicant is required to file through an authorised representative (agent) with a local address in Brunei.

- 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 lastly 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.

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 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 before the applicant filed his/her patent within the foreign country in question.

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

It is also possible for granted or pending foreign patents to enjoy protection in Brunei via a process called 're-registration' (automatic grant of the patent in Brunei) under the transitional provisions of the new 'Patents Order' – these are temporary provisions put in place to cover the transition period between the old 'Invention Act' and the new 'Patent Order' in Brunei, which came into force 1 January 2012. This however only applies to patents originating from Malaysia, Singapore or the United Kingdom (including EU granted patents originating from the UK). If the patent was granted 3 years prior to 1 January 2012, it may be 're-registered' in Brunei automatically, but this will only be allowed until 2014. If the patent was still pending grant on 1 January 2012, there is a period of 12 months from the date on which the patent was granted to apply for 're-registration' in Brunei. The fees for 're-registration' are significantly lower than normal patent applications made under the Patent Order. For the re-registration of a Malaysian, Singaporean, or UK granted patent, a certified true copy confirming the grant must be submitted along with the appointment to an agent (Patents Form 1).



INTELLECTUAL PROPERTY

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

Brunei Intellectual Property Office (BrUIPO)
4th Floor, Block 2D
Jalan Kumbang Pasang
Bandar Seri Begawan BA1311
Negara Brunei Darussalam

Tel: (673) 2230111

Email : enquiries@brunei-patents.com.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 and supporting documents must be submitted in English.

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 about € 685 (B\$ 1,100).


- For a national application of a patent, the cost is about € 3,105 (B\$ 5,000).
- The law regarding patents, as mentioned above, is new thus it is not possible to give an estimate regarding the cost for international applications.



Patents TIPS and WATCH-OUTS in Brunei

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

For more detailed information about the patent protection system in Brunei, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Patent Protection in the ASEAN Region, to be made available for download from [our website](#) in the coming months.



pat·ent

[< L. *patere*, be open] 1. open
2. obvious; plain 3. protected
1. a document granting the
produce or sell an invention
the right so gran

C. Trade Marks

WHAT are Trade Marks?

Trade marks qualify for protection registration as provided in the Trade Marks Order, 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.

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.

Trade Marks in Brunei: What you need to know

A trade mark in Brunei 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.

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

How LONG does legal protection last?

The term of protection is ten years from the filing date which is the date of registration. The registration can, however, be renewed indefinitely for a period of ten 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 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. 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 3 months, the mark will proceed to registration. The entire process of registration takes between 15 to 18 months.

Responsible Authority:

Brunei Intellectual Property (BruiPO)
4th Floor, Block 2D
Jalan Kumbang Pasang
Bandar Seri Begawan BA1311
Negara Brunei Darussalam

Tel: (673) 2230111

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 about €167 (B\$ 281) for a non-complicated and straightforward application. The total cost, including the official fee, legal costs and disbursements is approximately € 710 (B\$ 1200).

The official fee for renewing one mark in one class is about €129 (B\$ 206).

Search official fee which is mentioned below totals to about €3 (B\$ 5) per hour.

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.

**Trade Marks TIPS and WATCH-OUTS in Brunei**

- A search is not compulsory but it is recommended to conduct one before applying for registration of a trade mark. It can be conducted upon payment of a search fee.
- Trade mark searches in Brunei are done manually as the computerisation of the register of trade marks is under development. Therefore, it is not advisable to rely on the information available online.
- Brunei is still using the seventh edition of the Nice Classification of Goods and Services which stops at class 42.
- The deadline to oppose a trade mark application is three months and it is non-extendable.

For more detailed information about trade mark protection in Brunei, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Protecting your Trade Mark in the ASEAN Region, to be made available for download from [our website](#) in the coming months.



D. 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, 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.
- that is not known, or readily ascertainable, and gives the holder an economic advantage over competitors and customers.

Trade Secrets in Brunei: What you need to know

Trade Secrets are not regulated by any specific legislation in Brunei. 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.

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.

How LONG does legal protection last?

The extent of protection of trade secrets is usually provided for in a contract, for instance a contract of employment will provide that an employee leaving employment is contractually bound to protect the trade secrets of the employer for a specific number of years.



For more detailed information about trade secrets protection in Brunei, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Protecting your Trade Secrets in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

4. Using CUSTOMS to Block Counterfeits

WHAT are Customs?

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

Customs in Brunei: 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, a trademark owner who suspects that goods to be imported into Brunei 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 years. The Customs officers may treat the infringing copies as prohibited goods.

Under the trade mark laws of Brunei, a trademark owner who suspects that goods to be imported into Brunei 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 Customs.

HOW do I notify Customs about infringing shipments?

Written notice has to be given by the owner of trademarks to the Controller of Customs to prevent goods with infringing trademarks or work that infringes copyright from entering Brunei. 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.

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

- There is no system in Brunei 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 to date.



5. ENFORCING your IP

In the case of your IP assets being infringed in Brunei, there are three main avenues of enforcement which you can consider; **civil litigation, criminal prosecution, and customs seizures** (customs are described separately in Part 4 above). Although judicial proceedings in IP are uncommon in Brunei, 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, 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, you 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 2 years, although court hearings

recently became faster and the trial dates may be given within 12 to 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\$5,000, imprisonment for a term not exceeding twelvemonths, or both.

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

Administrative actions

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

For more detailed information about IP enforcement in Brunei, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to IP Enforcement in the ASEAN Region, to be made available for download from [our website](#) in the coming months.



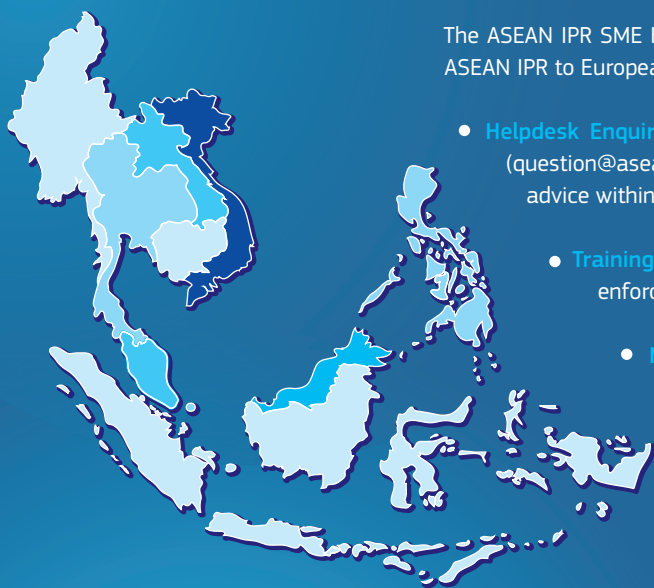
6. RELATED LINKS and Additional Information

- > Visit the [ASEAN IPR SME Helpdesk website](#) for further relevant information, such as how to deal with business partners in the ASEAN region.
- > Visit the Helpdesk blog www.yourIPinsider.eu for related articles on IP in South-East Asia and China.
- > [EU delegation to Brunei](#).
- > [World Intellectual Property Organisation \(WIPO\)](#).
- > [Brunei Darussalam Intellectual Property Office](#).





ASEAN IPR SME HELPDESK



The ASEAN IPR SME Helpdesk provides free, confidential, business-focused advice, relating to ASEAN IPR to European Small and Medium Enterprises (SMEs).

- **Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email (question@asean-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within five working days from an ASEAN IP expert.
- **Training:** The Helpdesk arranges training on ASEAN IPR protection and enforcement across Europe and Southeast Asia, tailored to the needs of SMEs.
- **Materials:** Helpdesk business-focused guides and training materials on ASEAN IPR issues are all downloadable from the online portal.
- **Online Services:** Our multi-lingual online portal (www.asean-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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Guide developed in collaboration with Ahmad Isa & Partners.

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