



European
Commission

AFRICA
IP SME HELPDESK



IP Country Fiche
SOUTH AFRICA





EUIPO: AFRICA IP SME HELPDESK – SOUTH AFRICA

SME opportunities in South Africa

- The current population of South Africa is approximately 60 million. It is the second largest economy in sub-Saharan Africa.
- In 1999, the EU and South Africa concluded a Trade Development and Cooperation Agreement (TDCA). Since then, the two parties have enjoyed solid and growing trade relations.
- In June 2016, the EU and South Africa – together with Botswana, Eswatini (formerly Swaziland), Lesotho, Mozambique and Namibia – signed the Southern African Economic Partnership Agreement (SADC EPA) that regulates trade in goods between the two regions, which replaces the trade-related provisions of the TDCA.
See https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf.
- South Africa is the EU's largest trade and investment partner in Africa.
- EU exports to South Africa are dominated by machinery and transport equipment, chemicals and other semi-machinery items. With improved transportation links and the boom in online sales, more and more European FMC (fast moving consumer goods) brands are now available to South African consumers.
- Over the last 20 years, many EU-based companies have successfully invested and commenced business activities in South Africa.

Intellectual Property Laws in South Africa

This country guide explains the different types of intellectual property (IP) rights that are recognised in South Africa and how these rights are created and enforced.

South Africa has a mixed or hybrid common law system, drawing from various other legal systems including: Roman law, Roman-Dutch law, English common law and Germanic law. The main sources of South African domestic law are: the Constitution, legislation, common law, conventions, customary law (including indigenous law, unwritten law and fixed practices) and case-law.

South Africa is a member of the following international agreements:

- Berne Convention for the Protection of Literary and Artistic Works [since 1928] (more information [here](#))
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure [since 1997] (more information [here](#))
- Paris Convention for the Protection of Industrial Property [since 1947] (more information [here](#))





- Patent Cooperation Treaty [since 1999] (more information [here](#))
- UPOV Convention for the Protection of New Varieties of Plants [since 1977] (more information [here](#))
- WIPO Convention [since 1975] (more information [here](#))
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [since 1995] (more information [here](#))

South Africa is a signatory of but has not yet ratified:

- Trademark Law Treaty (more information [here](#))
- WIPO Copyright Treaty (WCT) (more information [here](#))
- WIPO Performances and Phonograms Treaty (WPPT) (more information [here](#))

IP RIGHTS – the basics

In South Africa, IP rights may be either registered or unregistered.

Registered rights are formally applied for through the correct government channels. Unregistered rights exist from the creation of the IP. The main IP rights available in South Africa are: trade marks, patents, designs, copyright, plant breeders' rights and traditional knowledge. Links to the relevant legislation are below. Trade secrets and confidential information are protected by common law only.

IP Rights	Legislation
Trade Marks	<ul style="list-style-type: none"> • Trade Marks Act No 194 of 1993 • Trade Mark Regulations, 1995 • Merchandise Marks Act No 17 of 1941
Patents	<ul style="list-style-type: none"> • Patents Act No 57 of 1978 • Patent Regulations, 1978
Designs	<ul style="list-style-type: none"> • Designs Act No 195 of 1993 • Design Regulations, 1999
Copyright	<ul style="list-style-type: none"> • Copyright Act No 98 of 1978 • Copyright Regulations, 1978 • Registration of Copyright in Cinematograph Films Act No 62 of 1977 • Registration of Copyright in Cinematograph Films Regulations, 1980
Patents Breeders Rights	<ul style="list-style-type: none"> • Plant Breeders Rights' Act No 15 of 1976 • Plant Breeders Rights' Regulations, 1977





IP Rights	Legislation
Traditional Knowledge	<ul style="list-style-type: none"> • Protection, Promotion, Development and Management of Indigenous Knowledge Act No 6 of 2019
Other Relevant Acts	<ul style="list-style-type: none"> • Counterfeit Goods Act No 37 of 1997 • Performers- Protection Act No 11 of 1967 • Consumer Protection Act No 68 of 2008

The main government body responsible for granting the registration of IP rights in South Africa is the Companies and Intellectual Property Commission (CIPC). See www.cipc.co.za. CIPC also handles company name registrations in South Africa.

Within the CIPC, the Registry function for trade marks, patents and designs is sophisticated and applications are all handled online. All applications for registration are filed in English. Official administrative fees for registrations and for the maintenance of the registered rights are modest and can be found [here](#).

Quick Tip

The South African Patents and Trade Marks Office (CIPC) requires all foreign applicants to appoint a local agent as a service address for patent, design and trade mark applications filed in South Africa. See the list of members of the South African Institute of intellectual Property Law (SAIPL) [here](#).

Registered Trade Marks

Trade marks in South Africa can be either registered or unregistered.

Registration gives its owner a number of benefits and is recommended in South Africa. The registration process is fairly simple and takes about 18 months from start to finish for a straightforward application. Priority trade mark applications under the Paris Convention are accepted in South Africa if filed within 6 months of the priority application.

Registration lasts for 10 years from the filing date with a renewal term also of 10 years (in perpetuity provided the renewal fees are paid). The Registry produces electronic trade mark certificates and renewal certificates. There is a non-use period of 5 years after which registered trade marks are vulnerable to cancellation. Registered trade marks can be assigned and licensed.





Quick Tip

Although not a legal requirement, it is recommended for trade marks to be marked with ® if registered in South Africa.

Various types of trade marks can be registered in South Africa including: certification trade marks; collective trade marks; word marks; devices; and sounds, tastes and scents (provided they are capable of graphical representation).

Quick Tip

In South Africa, only national trade mark filings are accepted as valid and subsisting. South Africa is not a member of any regional/African trade mark filing scheme such as ARIPO or OAPI. South Africa is also not a member of the Madrid Protocol or the Madrid Agreement. Trade marks registered in South Africa are not enforceable outside South Africa.

Quick Tip

Grey market or parallel imports of genuine and unaltered goods are allowed into South Africa but specific conditions must be met to ensure importation does not amount to a breach of the applicable laws in South Africa.

Unregistered trade marks

Unregistered trade marks are protected under the common law and can be enforced under the delict of unlawful competition which covers the act of passing off, where a trader misrepresents its business or product as that of, or associated with that of, another, resulting in a reasonable likelihood of confusion among the public.

Quick Tips

Prior to adopting a trade mark in South Africa, it is advisable to carry out a search of the Trade Mark Registry to ensure that there is no identical or confusingly similar trade mark already on the Register which could prevent the registration and/or use of your trade mark in South Africa.

Registry records are limited to trade marks that have been registered or are in the process of registration. There are no official records of trade marks that are only in use in the market.





Unregistered trade marks

Unregistered trade marks are protected under the common law and can be enforced under the delict of unlawful competition which covers the act of passing off, where a trader misrepresents its business or product as that of, or associated with that of, another, resulting in a reasonable likelihood of confusion among the public.

Quick Tips Prior to adopting a trade mark in South Africa, it is advisable to carry out a search of the Trade Mark Registry to ensure that there is no identical or confusingly similar trade mark already on the Register which could prevent the registration and/or use of your trade mark in South Africa. Registry records are limited to trade marks that have been registered or are in the process of registration. There are no official records of trade marks that are only in use in the market.

Domain Names

It is important for companies to advertise their businesses and protect their trade marks online. The most popular domain for South Africa is '.co.za'. Domain names can be registered through accredited registrars in South Africa. A list of registrars accredited by the .za central registry (ZACR) is available at www.registry.net.za/accredited/.

Copyright

A copyright is an exclusive right granted by law for a limited period to an author, designer, etc. for their original work. It provides the owner with both economic and moral rights over the material form in South Africa. Many works are eligible for copyright protection in South Africa including, but not limited to, literary works, musical works, artistic works, sound recordings, broadcasts and computer programs. The economic rights grant the creator of the work the power to make available or exploit the work and to authorise the use and/or adaptation of the work. Unlike other forms of IP, copyright does not need to be registered in South Africa, except for cinematograph films.

South Africa is a member of the Berne Convention. The duration of copyright varies depending on the material form and is currently no less than 50 years.

Copyright is transferable; to be effective, an assignment of copyright must be in writing and signed by the assignor. Copyright may also be licensed by the copyright owner.

Quick Tip

Although not a legal requirement, a copyright owner should use the copyright symbol © to alert third parties about the copyright in the work.





Patents

In South Africa, patent protection is obtained by way of a national filing or via a Patent Cooperation Treaty (PCT) filing. A national filing can be in the form of a provisional application or a complete application. The complete application can be a national or a Paris Convention priority application. Convention applications must be filed within 12 months from the international filing date. A PCT application must be filed within 31 months from the earliest priority date. On request to the Registrar, 1-3-month extensions are available.

Patent rights in South Africa are sought to protect an invention which includes a method or process, a device, a new material, a chemical compound or a chemical composition. South African law provides for three types of patents: conventional patents, patents of addition and divisional patents. Absolute novelty

is required for patent applications in South Africa in addition to the invention seeking protection not being obvious to a person skilled in the art of that invention and it being capable of being used or applied in trade or industry or agriculture.

Complete national patent applications and conventional patent applications are typically granted between 12 and 15 months from the date of filing of the application. A PCT national phase patent application is typically granted between 15 and 20 months from the date of filing of the national phase application in South Africa. The acceptance of an application can be delayed and extended at the applicant's request. This is usually done where the applicant is awaiting the outcome of examination of a corresponding application in an examining jurisdiction.

Quick Tip

Patents applications in South Africa are not subject to any substantive examination by the Registry. Once registered, a patent is protected in South Africa for 20 years from the national and international filing date. A patent confers on the patentee for the duration of the patent (i.e. as long as it is maintained in force by the payment of renewal fees), the right to exclude all other persons in South Africa from making, using, exercising, disposing of or offering to dispose of, or importing the patented invention.

Quick Tip

To obtain patent protection in South Africa, you must file an application in South Africa using one of the options outlined above. South Africa is not a member of any regional/African patent filing schemes such as ARIPO or OAPI. Patents registered in South Africa are not enforceable outside South Africa.





An applicant for a patent may assign the patent application or the registered patent. An assignment must be in writing and must be recorded in the Register. If an assignment is not recorded, it will not be valid against third parties. A patent for a main invention and its patents of addition cannot be assigned separately from each other.

Quick Tip

Although not a legal requirement, it is recommended for patented products to be marked with the South African registered patent number.

Designs

The South African Designs Act provides for the registration of designs applied to articles intended to be multiplied by industrial processes. Registered design rights protect the physical form of an article of manufacture. Design registrations in South Africa are divided into two types of designs: functional and aesthetic. Both functional and aesthetic design applications may be lodged for the same article.

In South Africa, an aesthetic design is generally defined as one relating to the appearance of the article. A functional design is generally defined as one relating to the function of the article. Design applications in South Africa are not subject to a substantive examination process. In order to be registered, a design must be new and original (an aesthetic design) or new and not commonplace in the

art in question (functional design). Absolute novelty is required for both kinds of designs, subject to a 6-month grace period from the 'release date', that is, the date of first disclosure.

Once registered, protection for designs is 15 years (aesthetic designs) and 10 years (functional designs) from the filing date. To maintain a valid design registration, it must be registered annually from the third anniversary of the filing date.

Quick Tips

South Africa is not a party to the Hague Agreement so it is not possible to file design applications designating South Africa through WIPO.

Priority design applications under the Paris Convention are accepted in South Africa if filed within 6 months of the priority application.

Designs registered in South Africa are not enforceable outside South Africa.





Plant Breeders' Rights

In South Africa, new varieties of plants produced by biological processes are protected by plant breeders' rights. To qualify for protection, a variety of plant must be new, distinct, uniform and stable, as defined by legislation. The duration of a plant breeder's right from the date of granting is 25 years for vines and trees and 20 years for all other plants. The rights must be renewed annually. Currently, plants that are eligible for protection include agricultural crops, vegetable crops, fruit crops and ornamental crops.

Seeking protection under the Plant Breeders' Rights Act requires specialised knowledge which is beyond the scope of this guide. It is recommended that advice on this matter is sought from local experts.

Geographical Indications (GIs)

South Africa is not a signatory of the Lisbon Agreement (a treaty under the TRIPS agreement that affords protection to GIs); consequently, a registration under it has no force or effect in South Africa. More information on the Lisbon Agreement can be found [here](#).

However, to give effect to its obligations under the TRIPS Agreement, South Africa has various national laws relating to labelling in some industries that seek to prohibit the misuse of international GIs in South Africa. In particular, in September 2019, Regulations geared towards the protection of GIs in agricultural products came into effect in South Africa. The Regulations establish a GI Register and a registration process for agricultural products seeking GI protection in South Africa. A copy of those Regulations can be found [here](#).

GIs can also be protected under the South African Trade Mark Act as collective or certification marks.

Traditional Knowledge / Indigenous Knowledge

Traditional knowledge is protected as 'indigenous knowledge' in South Africa and is defined as 'knowledge belonging to a specific ethnic group or community developed outside the formal educational system over time'.

Broadly speaking, under South African law, indigenous knowledge encompasses a wide range of forms of knowledge such as technologies, know-how skills, practices and beliefs. Examples include indigenous or traditional dances, music, designs, utensils, terms and expressions, food safety, human and animal health, education and natural resource management. Indigenous knowledge in South Africa is mainly protected under existing IP laws for trade marks, copyright, performances of literary and artistic works (under the Performers' Protection Act 1967) and designs. More details on the amending act that provided for the inclusion of indigenous knowledge in these IP laws can be found [here](#).

Once recorded or protected under the appropriate IP law, the indigenous knowledge may be commercialised by the ethnic group or community that owns it.





Licensing of IP in general

Competition law issues are outside the scope of this report but may be relevant when considering the licensing of IP in South Africa. When licensing a registered South African right, it can (not mandatory) be recorded in the relevant Register. The licensing of rights owned outside South Africa to be used in South Africa is also permitted subject to some regulatory approvals. Entering into a licence agreement with a South African company requires specialised knowledge. It is recommended that advice on this matter is sought from local experts.

Enforcement of IP

Under South African law, an owner of an IP right is entitled to prevent others from using and/or exploiting economically its IP without its consent. Legislation provides for three main types of legal action:

- civil action
- criminal action
- border measures: customs offices have authority ex officio and/or at the request of rights holders to prevent the customs clearance of certain IP-infringing goods.

South Africa has additional relevant legislation in the Counterfeit Goods Act 1997. This Act specifically protects the owners of certain IP rights in respect of counterfeit goods (goods that are imitations to the extent that they are substantially identical copies of the protected goods, or colourable imitations) in South Africa. It enables the owner of an IP right (which includes rights under the terms of the Trade Marks Act, copyright under the Copyright Act, and the right of a party to use a specific mark under the Merchandise Marks Act) to take both civil and criminal action against parties involved in counterfeiting.

A number of separate tribunals have been established to deal with disputes in general, such as copyright disputes relating to licensing bodies and licence schemes. The Alternative Dispute Resolution Regulations (as amended in 2017), govern domain name disputes involving .za domain names in South Africa.





European
Commission

AFRICA IP SME HELPDESK

