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## SOUTH-EAST ASIA IPR SME HELPDESK

# IP Protection in South-East Asia for the Financial Technologies Industry



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### 1. Overview: the Fintech Industry in South-East Asia

'Financial technologies' (Fintech) describes the use of technology to provide financial services. This includes the use of new technologies to provide existing services such as the use of smartphone applications to provide access to banking and mobile payments, and also to new services, for example cryptocurrencies such as Bitcoin.

The South-East Asian region has a diverse range of countries; Indonesia has the fourth-largest population in the world whereas Brunei has a population of less than 500000. Levels of economic and financial development also vary; Singapore is a global financial hub with a sophisticated infrastructure whereas a large proportion of the population in other parts of the region don't have a bank account.

Recent years have seen rapid growth in the internet economy, particular in relation to the mobile internet in South-East Asia. According to the 'e-Economy SEA 2019' report published by Google, Temasek and Bain & Company, the value of South-East Asia's internet economy exceeded USD 100 billion for the first time in 2019. Fintech-related technology such as ride-sharing, digital payments, and e-commerce makes up a large proportion of this internet economy. In recent years a number of South-East Asian startups have become 'unicorns', and have combined value of more than USD 1 billion. The majority of these are fintech companies involved in app-based commerce.

Compared to regions such as the USA, Japan and Western Europe, many South-East Asian countries do not have a highly developed banking infrastructure. This often leads to a proliferation of financial apps and payment systems, and means that there are many opportunities in South-East Asia for technological solutions related to mobile payments, ride-sharing and marketplaces.

## 2. The economic value of your IP

Intellectual property (IP) rights provide the holder with a limited monopoly. For example, an SME that holds a patent for a fintech invention can use the patent to stop other companies from using it. This monopoly is limited to the duration of the patent (which generally lasts for a maximum of 20 years and is also limited to the country or countries in which the SME holds patents).

The SME can benefit from the patent in a number of different ways. The first and simplest way is that the SME can directly implement the invention themselves and derive profit from it. Because no other companies can use the invention, the SME may be able to charge a premium for their products or services, or may be able to attract extra customers because they can provide products or services that are not provided by competitors.

The second way in which the SME can benefit from their IP (such as patents) is through licensing. It may be the case that an SME cannot or does not wish to exploit an invention themselves. They may allow another party to use the invention in exchange for the payment of a license fee. Licenses can be structured in many different ways and can be specific to particular jurisdictions. So, for example, a European SME with IP registered in South-East Asian countries may license another company to use their IP in South-East Asia while they continue operating in Europe.

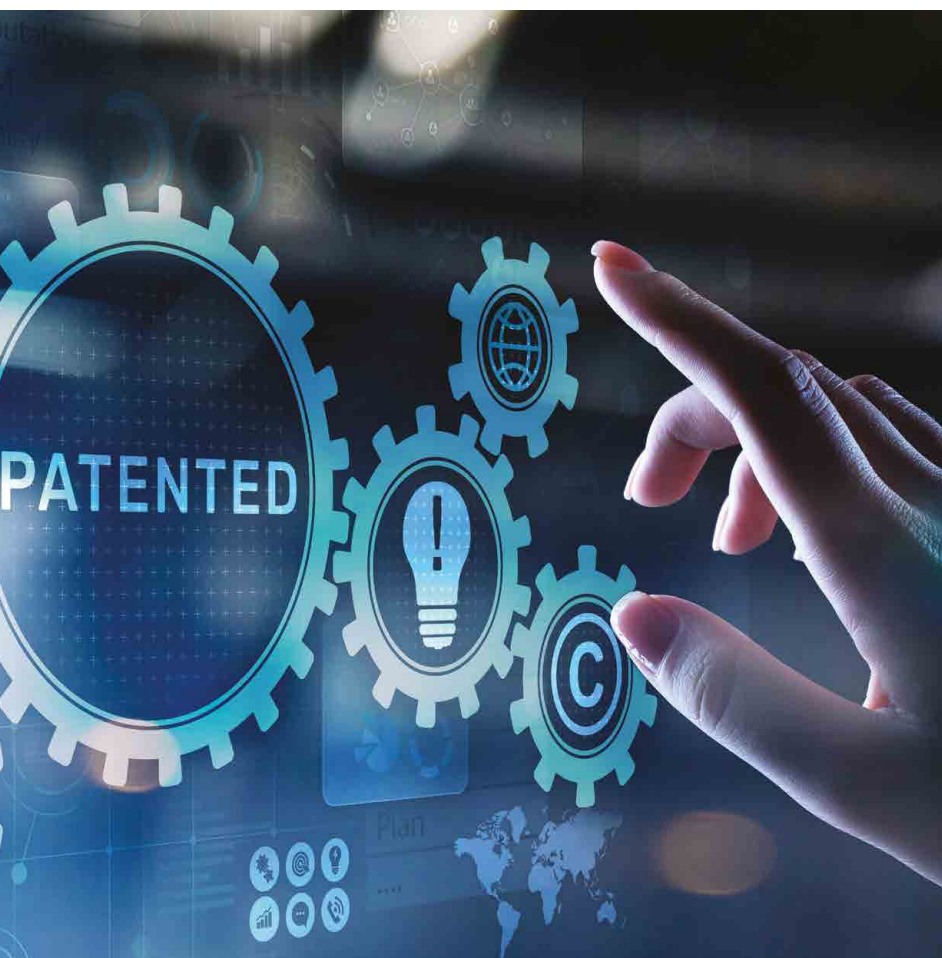
Because of the commercial benefits that IP rights (IPR) provide, IPR ownership can help attract investors. Investors will often see an IPR portfolio as an important part of the value of a company.

## 3. Frequent IP Issues in the Fintech Industry

### Patents

Patents protect inventions and, under a patent, an invention can be defined as a product, a process or both. A patent gives its owner the right to prevent others from performing acts such as producing, selling, importing or using a product, or using a process or offering a process for use. For an invention to be patentable, it must be new, inventive and have industrial application. For an invention to be new (a.k.a novel), it must have not been disclosed to the public before the patent application is filed. It is very important to note that, in many jurisdictions, a prior disclosure by the applicant can be cited against a patent application. This also includes a disclosure that might have been part of a previous patent application. Small and medium-sized enterprises (SMEs) must consider whether or not they wish to file a patent application for any new developments before those developments are disclosed. Otherwise, the chance to obtain a patent may be lost.

It's also important to keep in mind that not all subject matter can be patented. The law in most jurisdictions specifically excludes certain subject matter from patentability. These exclusions often include methods of doing business. Inventions in the fintech industry often relate to the implementation of financial or business ideas on computer systems. This is a complex area of patent law and, in most countries, there are some restrictions on the patentability of computer-implemented inventions. The law on exactly what subject matter can be patented varies among South-East Asian countries. Generally, as mentioned above, methods of doing business are not patentable. However, this does not mean that all fintech inventions are excluded from patentability. If there are some technical considerations regarding how an invention related to a method of performing a business task is implemented on a system, then the invention may be patentable. Most South-East Asian countries adopt a similar approach to the European Patent Office when determining if a computer-implemented invention is patentable. This approach is as follows. If the invention provides the solution to a technical problem, then it is considered patentable. For example, the provision of a mobile banking application with increased security would be considered as providing a solution to a technical problem, and would therefore be considered to be patentable. If the invention solves a non-technical problem, such as an issue purely related to business, then it is not patentable in most South-East Asian countries. For example, a mobile application that selected a credit card or bank account with the most beneficial interest rate would generally be considered to be solving a non-technical problem, and would therefore, generally, not be patentable. Singapore, however, has a more lenient approach. In Singapore, an invention is considered patentable if it includes technical considerations, even if they ultimately relate to a non-technical problem.



Patents are national rights: an SME will only be able to prevent others from using an invention in the jurisdiction in which they hold a patent. However, there are processes which allow (within a limited timeframe after the first patent application has been filed) applications to be made in other countries. The first of these is the process of claiming priority (based mainly on the Paris Convention — see more information on the WIPO website <https://www.wipo.int/treaties/en/ip/paris/>). This gives an applicant one year (after filing the initial application) in which to file patent applications in other countries and claim the filing date of the original application. This one-year period can be extended by a further 18 months by filing an international patent application using the Patent Cooperation Treaty (also known as a PCT application).

An important consideration for SMEs with inventors such as engineers or developers in South-East Asian countries is that many countries have restrictions on filing patent applications abroad. Most South-East Asian countries have some type of restriction on filing patent applications if the invention has not first been filed in the country in which the invention was made or where the inventors are resident. Some countries, such as Indonesia, do not have restrictions. In some countries, such as Malaysia and Singapore, it is possible to obtain security clearance in the form of a foreign filing permission from the patent office to allow a patent application to be first filed abroad. In Vietnam there is no provision for obtaining a foreign filing permission — a patent application in Vietnam for any invention developed in Vietnam must first be filed there; if a patent application is not initially filed in Vietnam any patent granted for the same invention may be revoked.

Patents protect ideas and bestow monopoly rights on them. If another party independently develops an idea that has already been patented, they may be prevented from using it. This means that patents provide strong protection. However, there are disadvantages to patent protection. Patents are territorial in nature and the cost of obtaining them, particularly if protection in multiple countries is required, can be high. In addition, as discussed above, it may be difficult to obtain patent protection for some software related inventions. Because of the strong protection that patents provide it is important to take them into consideration as part of an IP strategy, however it is also important to consider other types of IP protection.

For more information regarding Patent Protection in South-East Asia please consult our guide: [www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN\\_patent.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN_patent.pdf).

### Confidential Information and Trade Secrets

One way in which SMEs can protect their ideas and developments is through keeping them secret. This may provide a means of protecting an idea that is not patentable. It is important to note that a patent application will be published and therefore the information within it will be available to competitors. SMEs need to carefully choose what is worth patenting and what is better kept secret.

Some fintech developments may be protectable as trade secrets. For example, parts of a computer-implemented process that relate to servers and cannot be seen by the public may be protected as a trade secret. It is important to bear in mind that these processes must not be easily reverse-engineered. Otherwise, a competitor could identify how a process is implemented and then implement the same process themselves.

For more information on Protecting Your Trade Secrets in South-East Asia please consult our guide: [www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/en\\_trade\\_secrets\\_201704.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/en_trade_secrets_201704.pdf).

### Trade Marks

Trade marks protect brands. Generally, a brand name, slogan, logo or sign that identifies an SME as the source of products and services can be registered as a trade mark. In addition, some countries allow non-traditional trade marks, such as three-dimensional shapes, gestures and even smells, to be registered. Trade marks are registered using particular classifications (a.k.a. classes) of products or services; when applying for a trade mark it is necessary to decide which classifications of goods and services the trade mark will be registered for.

An important consideration for SMEs entering new markets is to verify that they are free to use the brand or mark they wish to use in that jurisdiction. It is possible to carry out a clearance search in each country to determine whether a particular brand name is free for use or has already been registered as a trade mark.

As with patents, trade marks are national rights — it is necessary to register a trade mark in each country where protection is required. There is a centralised international system for registering trade marks called the Madrid system (more information on the World Intellectual Property Organization (WIPO) website <https://www.wipo.int/madrid/en/>). This allows trade marks to be registered in multiple jurisdictions using a single application. Malaysia joined the Madrid system in January 2020 and, currently, all South-East Asian countries except Myanmar are also members.

For more information on Trade Mark protection in South-East Asia please consult our guide: [www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/sea-trademarks-ea-02-20-035-en.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/sea-trademarks-ea-02-20-035-en.pdf).



TRADEMARK

### Copyright

Copyright gives the owner the right to prevent others from copying their work. As discussed, fintech generally relates to the implantation of finance and business methods on computers. This computer software will generally be protected by copyright. Copyright exists automatically when an original work is first recorded. In addition to this, most South-East Asian countries, including Vietnam, Indonesia, and Thailand, also allow copyright to be registered. There are no provisions for registering copyright in Singapore.

A limitation of copyright is that it does not generally protect the idea underlying a computer program. So while copyright will provide protection for a specific computer program that implements a fintech idea, it does not generally protect the idea itself. A competitor of an SME could write or commission their own program to implement the same underlying idea without infringing copyright related to the computer program.

An important issue to consider regarding copyright is the ownership of copyright in works such as computer programs. Generally, it is important, particularly when work is commissioned (for example with external computer programmers), that the

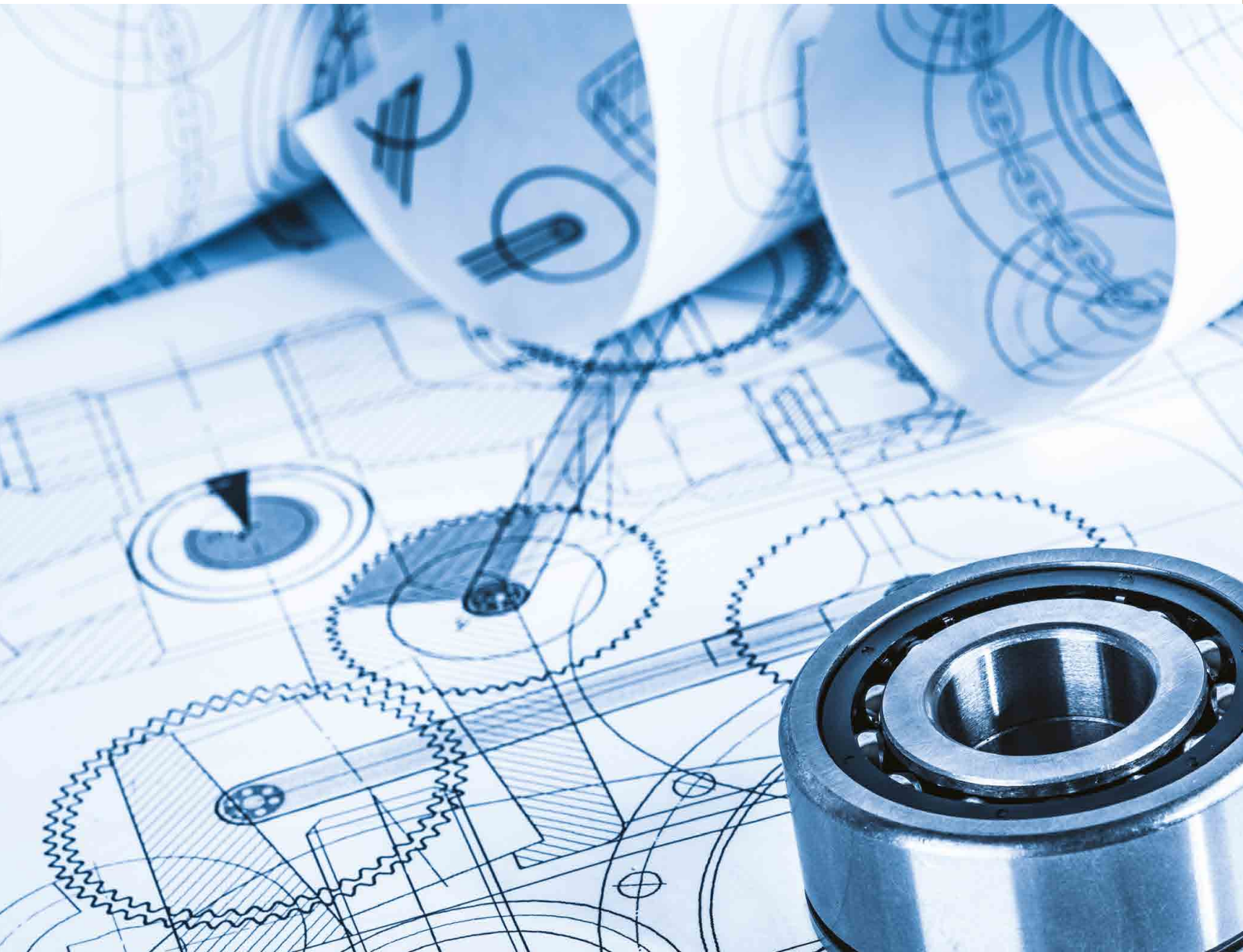
contracts clearly specify the owner of the copyright, as the copyright could belong to the computer developer rather than the company.

For more information on Copyright Protection in South-East Asia please consult our guide: [www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Copyright\\_english.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Copyright_english.pdf).

### Industrial Designs

It is possible to register designs in most South-East Asian countries. Registering designs protects the external appearance of a product. In some South-East Asian countries (such as Singapore, Thailand, the Philippines, and Malaysia) it is possible to register designs for graphical user interfaces (GUIs). This allows the appearance of fintech implementations like smartphone apps or display dashboards to be registered as designs. It is important to bear in mind that registering designs protects the appearance rather than the underlying functionality.

For more information on Industrial Designs Protection in South-East Asia please consult our guide: [www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/industrial\\_designs\\_protection\\_in\\_south-east\\_asia.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/industrial_designs_protection_in_south-east_asia.pdf).



## 4. SME case studies

### Case Study 1: Protection for a Mobile Payment Device

#### Background

A German company developed a device that allows commercial operators to accept mobile payments without installing a complex point-of-sale terminal. The main markets for the device were countries without sophisticated infrastructure, including Indonesia and Thailand in South-East Asia.

#### Action taken

The company initially filed an international (PCT) patent application and then filed national phase applications in Indonesia and Thailand based on the PCT application.

#### Outcome

The company was able to protect the invention in Indonesia and Thailand.

#### Lessons Learnt

In this case, the invention related to hardware (i.e. the physical device). This type of subject matter is patentable in most countries; is it generally easier to obtain patent protection for hardware inventions than for software related inventions.

### Case Study 2: Registered Design Protection for an Online Trading Platform

#### Background

A French company developed an online trading platform that included a dashboard displaying the current prices of financial products in an intuitive and user-friendly way.

#### Action taken

The company filed a registered design application in Singapore to protect the appearance of the dashboard when it was displayed as part of a GUI.

#### Outcome

The design was registered and this provided the company with an asset, demonstrating to investors that the trading platform was protected in Singapore.

#### Lessons Learnt

For some fintech products, such as smartphone applications and trading platforms, it can be difficult to obtain patent protection when the core of the product is simply in how financial data is displayed. In such scenarios, registered design protection provides an alternative IPR that may protect the product.





## 5. Take-Away Messages

- IPR are valuable to many enterprises, including those involved in Fintech.
- Patents potentially provide the strongest protection as they protect the underlying idea.
- However, not all fintech implementations may be protected by a patent.
- Often a mix of types of IP can provide robust protection — for example, branding can be protected by trade marks, the appearance of products or GUIs may be protected by registered designs, software code may be protected by copyright, and underlying ideas may be protected by patents.
- If ideas are to be protected by a patent, it is important that a patent application is filed before the idea is disclosed.
- Trade secrets also provide a potential form of protection for ideas. It is important to identify potential trade secrets and ensure that they remain confidential.

## 6. Glossary of Terms

### Copyright:

An IPR that allows the owner to prevent others from copying a work (such as a computer program).

### Inventive Step:

A requirement for an invention to be capable of being patented. An invention often has an inventive step that is not obvious.

### Novelty:

A requirement for the patenting of an invention. An invention is novel if it has not been made available to the public before. A disclosure by the inventor themselves may remove the novelty.

### Patent:

An IPR that protects inventions.

### Patentability (or Patent Eligibility):

For an invention to be capable of being patented it must relate to patentable (or patent eligible) subject matter. Business methods are generally not patentable, however, implementation of business methods on computer systems may be patentable depending on the jurisdiction.

### Registered Design (or Industrial Design):

An IPR that protects the appearance of a product. In some jurisdictions, GUIs can be protected with a registered design.

### Trade Secret:

A way of protecting an idea by keeping it confidential.

### Trade Mark

An IPR that protects brands. A trade mark can be registered under different classifications of goods and services.



## 7. Related Links

- Visit the South-East Asia IPR SME Helpdesk website for further relevant information, such as on how to deal with business partners in the region:  
<http://www.southeastasia-iprhelpdesk.eu>
- Visit the Helpdesk blog for related articles on IP in South-East Asia and China:  
<http://www.yourIPinsider.eu>
- See the ASEAN TMview:  
<http://www.asean-tmview.org/tmview/welcome>
- Information on WIPO can be found at:  
<http://www.wipo.int>
- Visit the ASEAN Intellectual Property Portal:  
<https://www.aseanip.org/>



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