

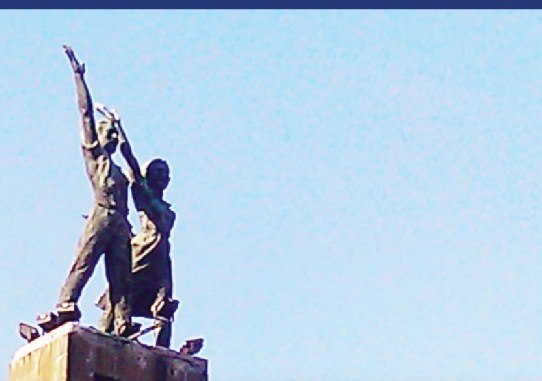


# ARISE+

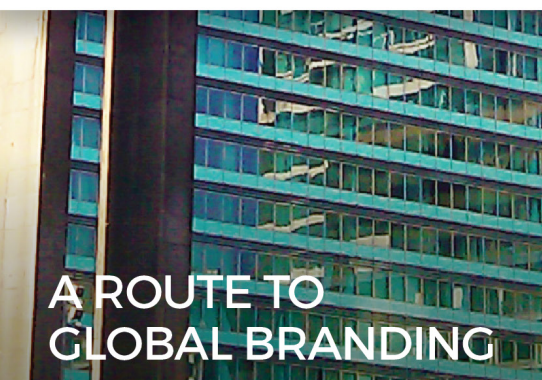
ASEAN Intellectual Property Rights



A practical guide for  
Indonesian entrepreneurs



# THE MADRID PROTOCOL



A ROUTE TO  
GLOBAL BRANDING



Funded by the European Union



DIRECTORATE GENERAL OF  
INTELLECTUAL PROPERTY  
MINISTRY OF LAW AND HUMAN RIGHTS REPUBLIC OF INDONESIA



**EUIPO**

EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE



# THE MADRID PROTOCOL

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## ■ ABOUT ARISE+ IPR

The ARISE Plus Intellectual Property Rights (ARISE+ IPR) programme is one of the components under the Enhanced ASEAN Regional Integration Support from the European Union (EU), or ARISE Plus. The five year, €5.5 million ARISE+ IPR programme supports regional integration through intellectual property (IP) cooperation and aims to upgrade the IP systems for creation, protection, utilisation, administration and enforcement, in line with international best practices and standards and the strategic objectives of the ASEAN IPR Action Plan 2016-2025.

ARISE+ IPR aims to:

- Enhance participation of ASEAN Member States in international IP treaties and global systems
- Contribute to institutional capacity building towards more efficient ASEAN IP offices
- Increase political and public awareness of the importance of IP protection and enforcement
- Reinforce the capacity of ASEAN businesses to commercialise and protect their IP rights
- Provide tailor-made support to Cambodia, Lao PDR and Myanmar

Working closely with the ASEAN Member States and the ASEAN Secretariat, the ARISE+ IPR programme further consolidates the benefits of strong IP protections in the region. Through a series of capacity building initiatives, development of information tools, exchange of best practices, adoption of international standards, and awareness-raising campaigns to promote the use, protection, and enforcement of IP rights, the programme foresees improved outcomes for EU and ASEAN IP administrations, enforcement agencies, local and international businesses, as well as the general public.

ARISE+ IPR works towards establishing a highly developed IP regime across ASEAN Member States that fosters innovation, trade and investment in the region.

## FOREWORD MESSAGE FROM THE DELEGATION OF THE EUROPEAN UNION TO INDONESIA

The European Union (EU) supports strong protection and enforcement of intellectual property (IP) rights, which trademark is a part of. The IP protection system is a cornerstone of modern economic policy and a catalyst for development; it is a key component of the national infrastructure required for socio-economic growth, for developing indigenous technological capacity, and for generating export opportunities through enhancement of competitiveness.

The protection of IP rights, including those for trademarks, are the key to building on the EU-ASEAN bilateral trade in goods, which reached EUR 201.1 billion in 2017. A strong intellectual property protection system encourages innovation, guarantees economic incentives for creators, fosters investor confidence and, therefore, leads to increased economic growth and employment. In a 2017 study commissioned by the International Trademark Association (INTA), it was concluded that trademark-intensive industries directly contributed an estimated 21% to the GDP of Indonesia, with 26% of workers employed in these industries.

Protection and enforcement of IP rights are high on the agenda of bilateral EU-Indonesia trade relations, which have been evolving steadily. The total bilateral trade is forecasted at EUR 26 billion for 2018, with Indonesia enjoying an increasing surplus of EUR 7 billion.

Since 2016, the EU and Indonesia have been negotiating a comprehensive economic partnership agreement, in which the chapter on IP rights features prominently. The agreement will create the conditions for fair and more business-friendly relations between the two economies. To date, both sides have managed to achieve steady progress and continued positive engagements throughout the on-going talks. High standards of IP protection and enforcement will attract inward investment and production facilities, which, in turn, will enable a greater and quicker access to foreign technologies with a strong impact on productivity growth in countries of this region. Simply put, global investors and companies avoid markets where their goods, services and inventions are not guaranteed by a strong trademark system.

One of the key considerations for trademark owners, especially those representing micro, small and medium enterprises (MSMEs), is the most cost-effective way to register and protect their trademarks overseas. The Madrid system for the international registration of trademarks offers a simple, convenient and cost-effective means for central registration and management of trademarks in up to 119 countries, using a single application in one language for multiple countries and paying one set of fees. Strict time limits on processing Madrid applications also means businesses can acquire overseas trademark protections considerably faster.

As such, the Madrid system effectively encourages foreign investment into Indonesia by making it more convenient for businesses to protect their brands here, adding to investor confidence and trade. Similarly, the Madrid system also makes it simpler for Indonesian businesses to extend the protection of their brands overseas, thus smoothing the way for export opportunities.

This booklet, "The Madrid Protocol: A Route to Global Branding", is a comprehensive guide for businesses in Indonesia wishing to protect their trademarks internationally, detailing the advantages of the Madrid system, procedures and fees, domestic requirements, and tips for brand development, among many other useful aspects of trademark registration.

A dedicated chapter on protecting trademarks in the EU highlights the benefits of European Union trademark (EUTM) registration, which provides protection in all EU Member States.

The EU looks forward to continuing this fruitful cooperation with Indonesia to positively influence the business environment, and to promote protection, guarantees and incentives for businesses and creators.

**Raffaele Quarto**  
Head of Economic and Trade Section

## FOREWORD MESSAGE FROM THE DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY

All of our praise and gratitude are offered to the presence of Allah Supreme and Almighty because only thanks to His mercy, help and guidance, that “The Madrid Protocol: Route to Global Branding: Practical Guide for Indonesia Entrepreneurs” can be published.

Since the Madrid Protocol is a new system in Indonesia and the need for understanding in its registration mechanism, it is important to disseminate information regarding the Madrid Protocol to stakeholders in the country. For this reason, I would like to express my highest appreciation to the European Union Intellectual Property Organization (EUIPO) through the ARISE-Plus IPR Project, and all those who have initiated the preparation of this booklet.

International trademark registration can be submitted through the registration system known as the Madrid System. The adoption of the provisions of international trademark registration was preceded by accession of the international agreement set out in the Protocol Relating to Madrid Agreement Concerning the International Registration of Marks or the Madrid Protocol on October 2, 2017, and became effective on January 2, 2018. This accession was ratified through Presidential Regulation No. 92 of 2017 concerning Ratification of The Protocol Relating to Madrid Agreement Concerning the International Registration of Marks, 1989, and Indonesia becoming the 100th member of the Madrid Union.

Provisions regarding international trademark registration are regulated in Article 52 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, and further provisions regarding international trademark registration under the Madrid Protocol are regulated by Government Regulation Number 22 Year 2018 concerning International Trademark Registration based on the Madrid Protocol.

In ASEAN, Indonesia is the 8th country, together with Singapore, Vietnam, the Philippines, Lao PDR, Cambodia, Brunei Darussalam, and Thailand as countries which have acceded to the Madrid Protocol. Malaysia and Myanmar will soon also join in accessing the Madrid Protocol in order to realise economic integration in the ASEAN region.

The Indonesian government accedes to the Madrid Protocol as part of national policy because the Madrid Protocol is considered to be able to provide benefits to the trademark proprietors and the national trademark system. The Madrid Protocol offers competitive advantage in that it eases trademark proprietors to obtain their trademark protection abroad and manage registrations at a relatively cheaper cost compared to conventional methods. The Madrid System reduces barriers in aspects of language, costs, and administration. This system has a strategic role in realising an effective and efficient trademark registration system and providing greater opportunities for national trademarks to compete internationally. Accession of the Madrid Protocol provides an opportunity for Indonesia to take part in benefiting global intellectual property infrastructure that can support the strengthening of the national economy and encourage investment.

The Madrid System offers convenience for trademark proprietors to obtain trademark protection in many countries by submitting one application and one procedure through the originating country of the trademark proprietors to then proceed to destination countries with WIPO intermediaries acting as the International Bureau. The trademark proprietors do not need to apply for a trademark registration to each destination country as in the case of applications using the conventional system.

The main mission of the Madrid System is to facilitate trademark proprietors to easily obtain global trademark protection. In addition, this system aims to simplify the process of registering trademarks in many countries with one application in one language, one currency and one procedure. Ease in procedures also includes post-registration management such as extension, transfer of rights, change of name, change of address, or restrictions on the types of goods and services.

The Madrid System in essence does not replace the national trademark legal substance in each country. This system is only an alternative administrative procedure that is provided to trademark proprietors who wish to register their trademarks abroad. In other words, this international route may be used side by side with the current available overseas trademarks registration route. The Madrid Protocol is

a profitable system for trademark proprietors who have an international vision. This system provides efficient and transparent registration procedures, providing incentives for foreign trademark proprietors to invest in Indonesia. Membership in the Madrid Protocol will also harmonise the trademark registration process in Indonesia with the trademark registration process in other countries.

In the economic perspective, the main advantage that the Madrid System has is that it gives a choice for trademark proprietors to obtain trademark protection in one, part or all of the Madrid Union member countries with one application and one administrative process. The procedure for international application through the Madrid Protocol is the main gate to get global protection effectively and efficiently.

The Madrid Protocol provides convenience for trademark proprietors in Indonesia who wish to register their trademarks abroad. Before accession, if the trademark proprietor wanted to register their trademark abroad, they must submit a separate application in each destination country. After accession, through the Madrid System, trademark proprietors in Indonesia only need to submit one application through the DGIP to be forwarded to the destination country at the request of the trademark proprietor with one payment. Submitting a trademark registration application through the Madrid Protocol may also reduce the transaction costs that may be incurred by the trademark proprietor. Efficiency from a more significant scale can be enjoyed by trademark proprietors in terms of the management after the international trademark is registered.

Hopefully this booklet, *The Madrid Protocol: A Route to Global Branding: A Practical Guide for Indonesian Entrepreneurs*, provides benefits and increases the understanding on the importance of international trademark registration through the Madrid System to facilitate the protection of trademarks in various export destination countries.

**Dr. Freddy Harris, ACCS**  
Director General of Intellectual Property



## 1. YOUR BRAND – YOUR STRONGEST ASSET

Your brand is the image that differentiates you from your competitors. It identifies your product, your service, your company. It may be represented by a sign, a symbol, a design, a word, a colour, or a combination thereof. It conveys a sense of quality, credibility, customer satisfaction. It plays a crucial role in your marketing strategy and is at the core of your business competitiveness. It generates customer loyalty and has a value. It may become your strongest asset.

### 1.1. BRANDING STRATEGIES AND BUSINESS SUCCESS

Branding aims at building a distinctive and attractive presence in the market that helps gain and retain loyal customers. Effective branding involves creating an image in the consumers' minds about the quality of a product or a service, mainly through advertising campaigns centred on the brand. It also requires ensuring the legal protection of the brand against competitors in the relevant markets. Branding strategies are at the core of sustained market competitiveness and business success.

### 1.2. BRAND CREATION, MANAGEMENT AND COMMERCIALISATION

Creating a brand implies choosing the signs that will distinguish your products or services from those of your competitors and getting them legally protected. The legal expression of your brand is a trademark. A trademark confers on you the exclusive right to prevent third parties from using the signs that distinguish your brand in the course of trade for identical or similar goods or services.

You can register your trademark in Indonesia by filing an application at the Directorate General of Intellectual Property (DGIP), Ministry of Law and Human Rights. The registration of your trademark in Indonesia has a duration of 10 years and is renewable indefinitely for similar periods. Managing your brand implies regularly renewing your trademarks and enforcing your rights against infringers and counterfeiters. The assignment and licensing of trademark rights may play a significant role in brand commercialisation through partnership, merger and franchising initiatives.

### 1.3. PROTECTING YOUR BRAND IN EXPORT MARKETS

Protecting your brand outside of Indonesia implies acquiring trademark rights in each of the export markets where you wish to commercialise your products or services. Trademark rights are territorial in nature and are only valid within the territory of a country (national trademark) or a group of countries having established a regional trademark system (e.g. the European Union). In principle, to acquire trademark rights abroad you need to file separate trademark applications at the trademark offices of the countries where you wish to have your brand protected. Once you get your rights in those countries you will need to follow separate procedures at those same offices to manage your rights (renew, license, or assign them). However, being a national of Indonesia, or a person domiciled or having an industrial or commercial establishment in Indonesia, you may take advantage of an alternative, more attractive, cost-effective and user-friendly route to acquire and manage your trademark rights abroad by making use of the Madrid Protocol, an international treaty that became effective in Indonesia on January 2, 2018.

## 2. THE MADRID PROTOCOL – A ONE-STOP SOLUTION TO PROTECT YOUR BRAND ABROAD

If you are an Indonesian company, society, firm, sole proprietor or any other entrepreneur, you can take advantage of the Madrid Protocol to protect your brand in more than a hundred countries around the world, following a simple and cost-effective procedure for filing your trademark applications and managing your trademark registrations abroad.

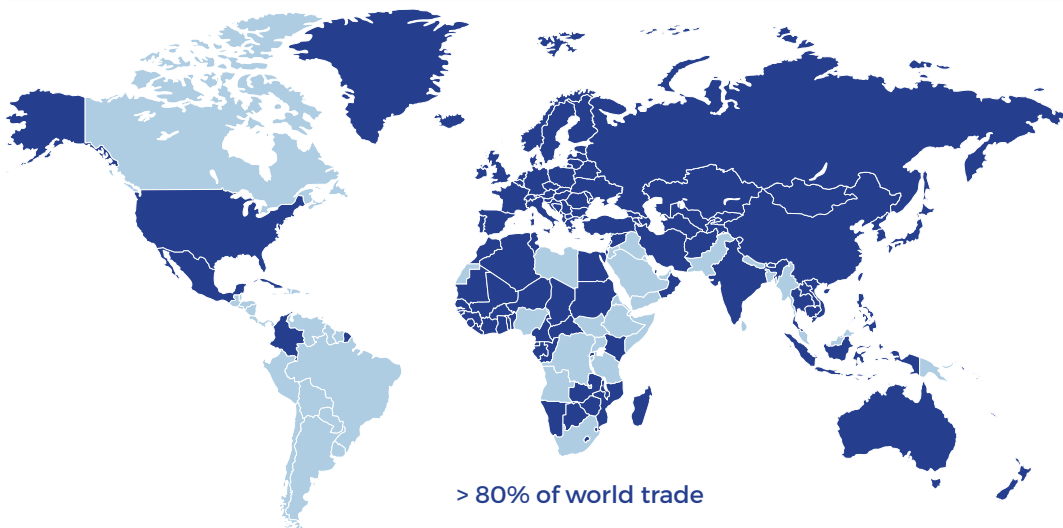
### 2.1. MADRID UNION MEMBERS – ATTRACTIVE MARKETS FOR INDONESIAN EXPORTS

The Madrid Union has 102 members, including 100 States and two intergovernmental organisations (the European Union and the African Intellectual Property Organisation – OAPI) that are Contracting Parties to the Madrid Protocol and cover the territories of 118 countries. They represent more than 80 % of world trade flows and constitute very attractive markets for Indonesian exports.

Most of the top trading partners of Indonesia are Madrid Union members. The 15 top importers of Indonesian products, having accounted for almost four fifths (79.8%) of Indonesian exports in 2017, include 12 Madrid Union members, namely (by order of export values): China, United States of America, Japan, India, Singapore, Republic of Korea, Philippines, Thailand, Netherlands, Vietnam, Germany and Australia. Other Madrid Union members that also account for significant values of Indonesian exports include Switzerland, Russian Federation, Spain, France, United Kingdom and Italy.

### MADRID UNION MEMBERS

102 Members (including the European Union and OAPI)  
covering 118 countries by December 2018



## 2.2. MADRID PROTOCOL – USER-FRIENDLY PROCEDURES

The Madrid Protocol is administered by the World Intellectual Property Organization (WIPO), a specialised agency of the United Nations, based in Geneva, Switzerland. The Protocol allows you to obtain and maintain protection for your brand around the world by providing a user-friendly, expeditious and cost-effective set of procedures for the central filing of trademark applications and the central management of trademark registrations with effects in various countries.

### 2.2.1. CENTRAL FILING TO SEEK PROTECTION IN VARIOUS TERRITORIES

Based on your Indonesian trademark, you can file an international application at DGIP designating all the members of the Madrid Union where you wish your mark to be protected. The application is forwarded to WIPO for examination, registration and publication. Once your mark has been recorded by WIPO in the International Register, it is notified to each of the designated Madrid Union members. Those members must decide whether they grant protection to your mark in their territories within very strict time limits. In case a designated member does not communicate any objection within a given period from the date of notification (which may be of 12 months, 18 months, or slightly longer than 18 months in case of opposition by a third party), the mark under international registration is deemed protected within the territory of that member as if the same had been registered directly with the IP office of that member.

### 2.2.2. CENTRAL MANAGEMENT OF YOUR TRADEMARKS

Once your international registration (IR) has been obtained and your mark is protected by one or more designated Madrid Union members, you will be able to manage your rights very easily by following online procedures at a single point (WIPO) to: (i) renew your trademark rights every 10 years; (ii) extend protection to new markets at any time; and (iii) request the central recording of various types of modifications to your registration (assignment of rights, change of name or address, limitations, renunciations).

## 2.3. ADVANTAGES – REDUCED COSTS, EFFECTIVE BRAND MANAGEMENT AND COMMERCIALISATION

**Central filing** of your trademark under the Madrid Protocol offers many advantages: you do not need to file separate trademark applications in many countries, drafted in different languages, pay fees in different currencies, hire the services of local representatives and follow different procedures in each of those countries. Instead, you can file a single international application at DGIP, in a single language (English), pay fees in a single currency (Swiss francs) and your application will have effects in every Madrid Union member of interest to you. The procedure is very simple, user-friendly, expeditious and cost-effective. You make savings in translation costs and various types of fees (local representatives, currency exchanges). The strict time limits imposed on Madrid Union members to decide on the recognition of local rights, based on your international registration (IR), contribute to speed up protection procedures considerably.

The benefits of **central management** are even more important than those of central filing: once your IR has been obtained, you will need to monitor and manage just one renewal date and procedure in one place (WIPO), instead of many different dates and procedures at separate TM offices; you will always be able to extend protection of your mark to new markets very easily (through subsequent designations); and you will be able to make changes to your trademark registration (such as assignment of rights, change of name or address of holder or representative, limitations, renunciations) recorded in one single place (the International Register maintained by WIPO) at a very low cost.

Cost savings that result from using the Madrid System are particularly significant for small- and medium-sized enterprises (SMEs). Eighty per cent of Madrid System users have been categorised as SMEs, having a small portfolio of only one or two IRs.

However, the **advantages** of the Madrid Protocol are not only reduced costs and speedier procedures resulting from central filing and central management of IRs. The Protocol also offers you early brand presence abroad, as it is a means to acquire rapid international reputation and generate goodwill for your trademarks worldwide. From a company's strategic viewpoint, gaining early brand presence at a global scale offers additional economic benefits, including increased franchising opportunities and possibilities of partnering with international entrepreneurs to optimise life-cycle development and integrate global supply chains.

## WHY USE THE MADRID PROTOCOL?

### REDUCED COSTS AND SPEEDIER PROCEDURES TO PROTECT YOUR MARK

- Single application (at DGIP)
- Single language (English)
- Single currency for fee payment (CHF)
- No need for multiple representatives upfront
- Single renewal date and request
- Single procedure for modifications
- Possibility to extend protection to new countries at any time

### YOU GAIN

- Early brand presence abroad
- International brand reputation and goodwill
- Franchising and partnership opportunities

### 3. CHOOSING YOUR TRADEMARK — BEST PRACTICES

Creating a brand implies choosing the sign (trademark) that will distinguish your products or services from those of your competitors.

In principle, any sign capable of distinguishing your goods or services from those of other undertakings in the market can constitute a trademark. Thus, your trademark may be constituted by a symbol, a design, a word, a colour, any other sign, or a combination thereof. However, when choosing your trademark, there are certain requirements or limitations that you need to consider.

- Your mark must be distinctive, meaning that it should consist of a sign that serves to identify your products or services and to distinguish them from those of other undertakings. Common geometrical designs (e.g. a rectangle, a circle, a square), common signs (e.g., simple letters or numerals up to two digits), common surnames and names of well-known places, are ordinarily regarded as non-distinctive signs.
- Your mark should not be laudatory (e.g., “best”, “excellent”) or descriptive of the specific goods or services that you wish to commercialise (e.g., “Apple” for apples; or “Pharma” for the sale of pharmaceutical products), as this may lead to refusal of registration.
- Your mark should be capable of being represented. Most trademark offices require graphical representation of the mark (i.e. it should be capable of being reproduced on paper). Some offices accept other means of representation for special types of marks (e.g. MP3 audio recordings for sound marks). However, the Madrid System still requires that your mark be graphically represented.
- Your mark should not be functional, which means that the sign that constitutes your trademark should not consist exclusively of a characteristic that results from the nature of the goods themselves or that is necessary to obtain a technical result. This is especially relevant in the case of three-dimensional marks.
- Your mark should not be deceptive. A sign conveying a false origin or false characteristics of a product can be refused protection on the grounds of being deceptive.
- Signs that are contrary to public order or morality (e.g. that hurt religious sentiments of a section of the public or contain obscene matters) may be excluded from protection as trademarks.
- State flags, State emblems and names and emblems of intergovernmental organizations are excluded from protection as trademarks in most countries around the world.
- Finally, and most importantly, you must make sure that the sign you wish to use as your trademark is still available in the market and is not the same or similar to a well-known mark or a trademark already registered or applied for registration by someone else for the same goods or services. Therefore, it is very important that you make an exhaustive search for the availability of your trademark in those markets where you would like to get it protected.

#### TIP

- ▶ *Choose your mark carefully*
- ▶ *Make sure it is not prohibited by law*
- ▶ *Check it does not belong to someone else (search at home and abroad)*

### 3.1. SEARCHING FOR A TRADEMARK IN INDONESIA

Before filing a national application at DGIP to obtain protection for your mark in Indonesia, you should make sure that the sign that you are planning to use as a mark in Indonesia is not excluded from protection by trademark law (<http://en.dgip.go.id/peraturan-perundang-undangan-terkait-merek>).

You should also check whether that sign has not already been applied for or registered as a trademark for the same goods or services by someone else. You can do so by consulting the DGIP trademark search facility at <https://pdki-indonesia.dgip.go.id/>

### 3.2. SEARCHING FOR A TRADEMARK ABROAD – ONLINE DATABASES (ASEAN TMVIEW, TMVIEW, GLOBAL BRAND)



Before filing an international application to protect your mark abroad, you should check whether the sign you are planning to use as your trademark in export markets does not belong to someone else there. This implies making a search for identical or similar trademarks already protected in those markets for the same goods or services. Several trademark offices of Madrid Union members offer the possibility to search their trademark databases on line at their own individual websites. However, the best way to start making your searches for similar trademarks is to consult TMview and ASEAN TMview.

TMview (<https://www.tmdn.org/tmview/welcome>) is a trademark information platform built by 62 trademark offices from around the world (national, regional and international), aimed at making trademark data widely available and easily accessible to the public, free of charge. ASEAN TMview (<http://www.asean-tmview.org/tmview/welcome>) is a similar database built by nine ASEAN Member States with the collaboration of TMview. TMview and ASEAN TMview offer the possibility to explore the overall trademark landscape in 82 countries (including some 15 countries in Asia, 36 in Europe, 21 in Africa and 10 in the Americas). These platforms give access to information on more than 51.9 million trademark applications and registrations having effects in those countries, plus international registrations under the Madrid System, including data regarding trademark name, applicant's name, trademark type, graphic representation, legal status, list of goods and services, class codes, etc. TMview and ASEAN TMview allow you to carry out trademark searches 24 hours a day, 7 days a week, in a user-friendly way. The accuracy of the data shown in those databases is the sole responsibility of the participating trademark offices providing it. Since its introduction in April 2010, and up to July 2018, TMview has served more than 49 million searches from 166 different countries.

To explore the trademark landscape abroad you can also consult the Global Brand Database (<http://www.wipo.int/branddb/en/index.jsp>), an online gateway managed by WIPO that contains more than 36 million records from 40 national and international collections, including data on trademarks, appellations of origin and armorial bearings, flags and other State emblems protected in various countries around the world, as well as the names, abbreviations and emblems of intergovernmental organizations.

## 4. PREPARING AND FILING YOUR INTERNATIONAL TRADEMARK APPLICATION – BEST PRACTICES

Once you have selected your trademark for protection abroad, you are ready to prepare and file your international application.



### 4.1. REQUIREMENTS – ENTITLEMENT + BASIC MARK IN INDONESIA



The DGIP processes the Madrid Protocol international applications originating from Indonesia. You are entitled to file an international application at DGIP if: (i) you are a national of Indonesia, or you are a natural person or legal entity domiciled in Indonesia, or you have a real and effective industrial or commercial establishment in Indonesia, and (ii) you have a 'basic mark' in Indonesia, which means that your mark has already been registered or applied for national protection at DGIP.

### 4.2. FILING YOUR INTERNATIONAL APPLICATION AT DGIP

If you wish to file a Madrid Protocol international application at DGIP, you must fill in a special form (MM2), in English, that you can download from the DGIP website (<http://en.dgip.go.id/prosedur-pendaftaran-madrid-protocol>) or from the WIPO website (<http://www.wipo.int/madrid/en/forms/>). Once you have filled in the international application form MM2, you must file it at DGIP and pay to DGIP a handling fee in accordance with applicable regulations.

### 4.3. CONTENT OF YOUR INTERNATIONAL APPLICATION – MANDATORY, OPTIONAL

Your international application (MM2) must contain: (i) your name and address; (ii) the reproduction of your mark, which must be identical to your basic mark in Indonesia; (iii) a list of goods and services for which protection is sought, which must be fully covered by those indicated in your basic mark; and (iv) a list of Madrid Union members in which protection for the mark is sought (designated Contracting Parties or DCPs). These requirements are mandatory and have an impact on the date of the international application.

The international application (MM2) must also contain: (i) an indication of your entitlement to file (establishment or domicile in Indonesia, or Indonesian nationality); (ii) a priority claim, if applicable; (iii) the name and address of a representative, if appointed; (iv) the number and date of your basic mark in Indonesia; (v) indications of the mark (kind of mark, colour claim if applicable); (vi) a description of the mark, if required by DGIP; (vii) a transliteration of the mark, if applicable<sup>1</sup>; (viii) the amount of the fees being paid and the method of payment.

Some additional content (e.g. a declaration of the intention to use the mark) may be required when certain Madrid Union members are designated in the application (see section 4.5, below).

The international application may also contain (optional content): (i) an indication of your nationality or, if you are legal entity, your legal nature and the State under the law of which you have been established as a legal entity; (ii) a translation of the mark; (iii) a voluntary description of the mark; (iv) an indication in words of the principal parts of the mark that are in colour, when colour is claimed; and (v) a disclaimer.

For more information on how to fill in your international application form (MM2), you may consult the PDF document “Making the Most of the Madrid System: Information and Practical Tips on How to Use Specific Forms” that you may download from <http://www.wipo.int/madrid/en/forms/> or the WIPO Guide to the International Registration of Marks, pages B.II.7 to B.II.20, at the following address: <http://www.wipo.int/madrid/en/guide/>

#### TIP

*Before filling in your IA, check “Making the Most of the Madrid System: Information and Practical Tips on How to Use Specific Forms” at <http://www.wipo.int/madrid/en/forms/>*

### 4.4. DRAWING YOUR LIST OF GOODS AND SERVICES – USING CLASSIFICATION TOOLS (TMCLASS, ASEAN TMCLASS, MGS)

TMclass



When filing a trademark application (either national or international), you must correctly indicate the goods and services for which trademark protection is sought (terms that are too vague, linguistically incorrect or incomprehensible are not accepted); and these goods and services must be correctly classified in accordance with the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification).

<sup>1</sup> If the mark consists of, or contains, matter in characters other than Latin characters or numerals other than Arabic numerals, a transliteration into Latin characters or Arabic numerals must be provided.



To make sure that your list of goods and services complies with the necessary requirements to be accepted both at the national and international levels, it is highly recommended that you consult TMclass (<http://euipo.europa.eu/ec2/>) and ASEAN TMclass (<http://www.asean-tmclass.org/ec2/>). These are two free-of-charge online search and classification tools that allow you to choose terms for goods and services that are accepted as correctly formulated and classified by 73 trademark offices (national, regional, international) from around the world. The offices participating in TMclass include those of the European Union, China, Japan, United States of America, and many others. All the ASEAN offices participate in ASEAN TMclass.

Already when preparing your national trademark application in Indonesia that will serve as a basis (basic mark) for your international application, it is useful to consult TMclass and ASEAN TMclass. These databases will help you draft your list of goods and services for both applications. You should consider that the goods and services in your international application should be fully covered by those indicated in your basic mark.

When preparing your international application, you may also wish to consult the Madrid Goods & Services Manager (MGS) (<https://webaccess.wipo.int/mgs/>), a free-of-charge online tool offered by WIPO that helps you compile the list of goods and services that you need to submit when filing an international application. MGS gives you access to more than 94 thousand standard terms of goods and services in English correctly classified by WIPO according to the latest edition of the international classification (Nice Classification) and accepted by WIPO under the Madrid System procedures. Moreover, it allows you to check whether the terms you plan to indicate are also accepted by the Offices of some 35 Madrid Union members, including those of China, United States, European Union, etc.

#### 4.5. DESIGNATING THE TERRITORIES WHERE TO GET PROTECTION

In your international application, you must designate all the Madrid Union members (Madrid Protocol Contracting Parties) where you wish your trademark to be protected. By simply checking the box next to each member's name in the application form (MM2) you can designate any Madrid Union member except Indonesia. Your trademark in Indonesia (basic mark) will continue to be protected under Indonesian law as registered by DGIP.

At present (December 2018), you can designate up to 101 Contracting Parties to the Madrid Protocol, including 99 States and two intergovernmental organizations, namely the European Union and the African Intellectual Property Organization (OAPI). By designating the European Union, you may get protection for your trademark in its 28 Member States. By designating OAPI, you may get protection for your trademark in its 17 Member States.

Certain Contracting Parties have special requirements that you need to consider when designating them in your international application. If you designate the European Union (EM code in the MM2 form), you must indicate a second working language for procedures before the EUIPO in the application form (MM2), and you must attach an additional form (MM17) if you further wish to claim European Union seniority (for more details, please see section 6.2, on getting protection in the European Union, below).

If you designate the United States of America (US), you need to attach an additional form (MM18) to your international application (MM2) declaring your intention to use the mark in the US. Moreover, if you are a natural person, you should indicate your nationality in the international application form (MM2) and,

if you are a legal entity, you should indicate your legal nature and the State under the law of which you have been organized as a legal entity.

Finally, if you designate Brunei Darussalam, India, Ireland, Lesotho, Mozambique, New Zealand, Singapore or the United Kingdom, by simply checking the boxes next to their country names in the international application form (MM2), you are declaring your intention to use the mark in those countries.

## MADRID PROTOCOL

### Top destinations of Indonesian filings (as of December 2018) (# designations in international applications + subsequent designations)

| CONTRACTING PARTY | # DESIGNATIONS (IA+SD) | CONTRACTING PARTY  | # DESIGNATIONS (IA+SD) |
|-------------------|------------------------|--------------------|------------------------|
| China             | 17                     | Brunei Darussalam  | 6                      |
| Singapore         | 15                     | Cambodia           | 6                      |
| Australia         | 13                     | India              | 6                      |
| Japan             | 13                     | United Kingdom     | 6                      |
| Philippines       | 13                     | Egypt              | 3                      |
| Republic of Korea | 12                     | Germany            | 3                      |
| United States     | 12                     | Italy              | 3                      |
| Viet Nam          | 11                     | Mexico             | 3                      |
| Thailand          | 10                     | New Zealand        | 3                      |
| European Union    | 9                      | Russian Federation | 3                      |

Source: WIPO statistics database — January 2019

## 4.6. ESTIMATING COSTS AND PAYING FEES — MADRID FEE CALCULATOR, PAYMENT METHODS

Your international application must be accompanied by the payment of a set of fees in Swiss francs (CHF) to WIPO, to include:

- (i) a basic fee of CHF 653, if no reproduction of your mark is in colour, or CHF 903, if any reproduction of your mark is in colour;
- (ii) an individual fee for each DCP having fixed individual fees (see below);
- (iii) a complementary fee of CHF 100 for each DCP not having fixed individual fees; and,
- (iv) a supplementary fee of CHF 100 for each class of goods and services beyond three classes, except if you only designate Contracting Parties having fixed individual fees.

So far, 60 trademark offices of Contracting Parties to the Madrid Protocol charge individual fees. You can check the list of these offices and the amounts to be paid with respect to each of them at the following address: [http://www.wipo.int/madrid/en/fees/ind\\_taxes.html](http://www.wipo.int/madrid/en/fees/ind_taxes.html).

To facilitate your calculation of the fees to be paid for your international application, WIPO offers a very practical online tool known as the Fee Calculator, which you can access at the following address: <http://www.wipo.int/madrid/en/fees/calculator.jsp>.

Regarding payment methods, you may pay your fees to WIPO either by: (i) bank transfer; or (ii) WIPO Current Account. For more details, please see: <http://www.wipo.int/about-wipo/en/finance/madrid.html>.

## TIP

*Check in advance how much you will have to pay by using the Fee Calculator at <http://www.wipo.int/madrid/en/fees/calculator.jsp>.*

## 4.7. CERTIFICATION BY DGIP AND REMEDYING POSSIBLE IRREGULARITIES

Before forwarding your international application to WIPO, DGIP will check that: (i) you are the same person as the applicant or holder of the basic mark in Indonesia; (ii) the mark in your international application is identical to the basic mark; and (iii) the goods and services in your international application are covered by those in the basic mark. If these three conditions are complied with, DGIP will certify your international application and forward it to WIPO with an indication of the date on which the international application was received by DGIP.

If you made a mistake in the classification of goods or services, or if the indication of any of the goods or services in your international application is considered by WIPO to be too vague, linguistically incorrect or incomprehensible, WIPO will issue an irregularity notice and give DGIP a three-month time limit to make the necessary correction(s).

In case, there are some other deficiencies in your international application (e.g., you do not appear to be entitled to file your application through DGIP as office of origin; or your application has not been presented in the MM2 form or is not typed or not signed by DGIP), WIPO will issue an irregularity notice and give DGIP a three-month period to remedy those irregularities, failing which the international application will be considered abandoned.

Similarly, if one or more elements in the international application are missing (your name or address, your entitlement to file at DGIP, the date and number of the basic mark, a reproduction of the mark, the list of goods and services, an indication of DCPs, DGIP's certification), WIPO will give DGIP a three-month period to remedy such irregularities, failing which the international application will be considered abandoned.

If there are other irregularities (e.g. your address is incomplete, the reproduction of the mark is not sufficiently clear, no fees have been paid or their amount is insufficient), these will be notified directly to you and should be remedied by you within three months. Failure to do so may result in your application being considered abandoned.

Finally, if you have designated the US and you have failed to attach the MM18 form containing a declaration of your intention to use the mark in the US, WIPO will invite you, through DGIP, to attach that form within a two-month period from the date of receipt of the international application by DGIP. If this is not done within that period, your US designation will be considered as withdrawn.

## 5. THE INTERNATIONAL TRADEMARK REGISTRATION (IR)

If your international application conforms to the applicable requirements, WIPO will register your mark in the International Register, publish the international registration (IR) in the WIPO Gazette of International Marks, and notify it to the Offices of the DCPs. It will also inform DGIP and send you an international registration certificate.

### 5.1. DATE AND EFFECTS

#### 5.1.1. DATE OF THE INTERNATIONAL REGISTRATION

As a rule, your IR will bear the date on which your international application was received by DGIP, unless your application has reached WIPO more than two months after that date (in which case your IR will bear the date in which it was actually received by WIPO).

The date of your IR may be affected if any of the following elements is missing: your name and address, the designation of the Contracting Parties where protection is sought, a reproduction of the mark, the indication of the goods or services for which protection of the mark is sought. DGIP will be notified of any such irregularity, which should be remedied within a maximum period of three months. The date of your IR will depend on the date on which the last missing element is received by WIPO.

#### 5.1.2. EFFECTS OF THE INTERNATIONAL REGISTRATION

From the date of your IR, your mark will enjoy the same protection in each DCP as if your mark had been filed or applied for directly in that DCP.

A DCP may refuse protection for your mark on the same grounds that would apply under its national law to marks filed directly with the Office of that DCP (e.g. because the mark already belongs to someone else in that DCP). Such a refusal would be subject to review or appeal in accordance with the laws and practice of the DCP concerned. You will find information on practices and procedures in Madrid Union members in the WIPO Member Profiles Database at <http://www.wipo.int/madrid/memberprofiles/#/>.

Where a DCP does not refuse protection for your mark within a prescribed time limit (12 months, 18 months, or slightly longer than 18 months in case of opposition by a third party), or if such a refusal has been subsequently withdrawn, the protection of your mark in that DCP will be the same as if your mark had been registered by the Office of that DCP as from the date of your IR.

In all the DCPs not having refused protection your mark will be valid for a period of 10 years as from the date of its IR, with the possibility of indefinite renewal for further periods of 10 years.

### TIP

*Find out about procedures and practices in Madrid Union members in the Madrid Member Profiles Database at <http://www.wipo.int/madrid/memberprofiles/#/>.*

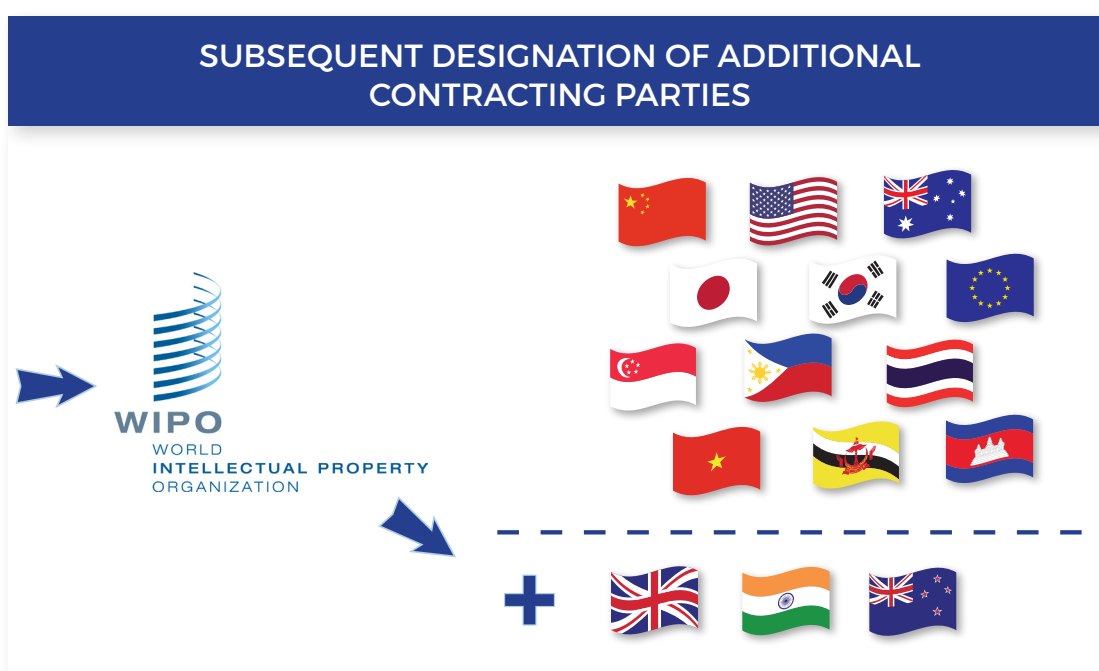
## 5.2. MANAGING YOUR INTERNATIONAL REGISTRATION – BEST PRACTICES

While the Madrid System offers you many advantages to get your trademark protected in various markets, it offers you even more valuable advantages regarding the management of your mark after registration. Extending protection of your mark to new territories, renewing the protection of your mark for additional periods of 10 years, or having changes to your registration recorded in the International Register with effects extending to those Madrid Union members of interest to you, can be done through very simple, user-friendly and cost-effective procedures.

### 5.2.1. EXTENDING PROTECTION TO NEW TERRITORIES (SUBSEQUENT DESIGNATIONS)

If you are the holder of an IR that extends its effects to only some Madrid Union members (Contracting Parties) you may, at any time, seek to extend the protection of your mark to other Madrid Union members that were not designated in your original international application. You can do so by simply presenting a subsequent designation directly to WIPO or through DGIP.

The subsequent designation must be sent to WIPO in the official form MM4 (downloadable from <http://www.wipo.int/madrid/en/forms/>), or submitted electronically through the WIPO e-Subsequent Designation facility (<https://www3.wipo.int/osd/>). For any doubt, you may contact WIPO at the following address: <https://www3.wipo.int/contact/en/madrid/>.



In the MM4 form, you must indicate the number of your IR, your name and address (as recorded in the International Register), the Contracting Party or Parties to which an extension of the protection is sought, and the goods and services for which the subsequent designation is made (which may be all or only some of those covered by the IR). With respect to some Contracting Parties (European Union, United States), you may need to include some additional information (as indicated in section 4.5, above).

The fees payable in respect of a subsequent designation include a basic fee (CHF 300), an individual fee for each DCP having fixed individual fees ([http://www.wipo.int/madrid/en/fees/ind\\_taxes.html](http://www.wipo.int/madrid/en/fees/ind_taxes.html)), and a complementary fee (CHF 100) for each DCP not having fixed individual fees. The Fee Calculator (<http://www.wipo.int/madrid/en/fees/calculator.jsp>) may be used to calculate the fees payable.

If presented directly to WIPO, the subsequent designation will bear the date of receipt at WIPO. If presented through DGIP, it will bear the date of receipt at DGIP provided that it is received by WIPO within two months from that date; otherwise, it will bear the date of receipt at WIPO.

If the DCP does not refuse protection for your mark within the prescribed time limit (12 months, or 18 months, or slightly longer than 18 months in case of opposition by a third party), or if such a refusal has been subsequently withdrawn, the protection of your mark in that DCP will be the same as if your mark had been registered by the Office of that DCP as from the date of its subsequent designation.

In all the DCPs not having refused protection, your mark will be valid for the remaining duration of your IR, with the possibility of indefinite renewal for further periods of 10 years.

## TIP

*To extend protection to new Madrid Union Members, use the E-Subsequent Designation facility at <https://www3.wipo.int/osd/>.*

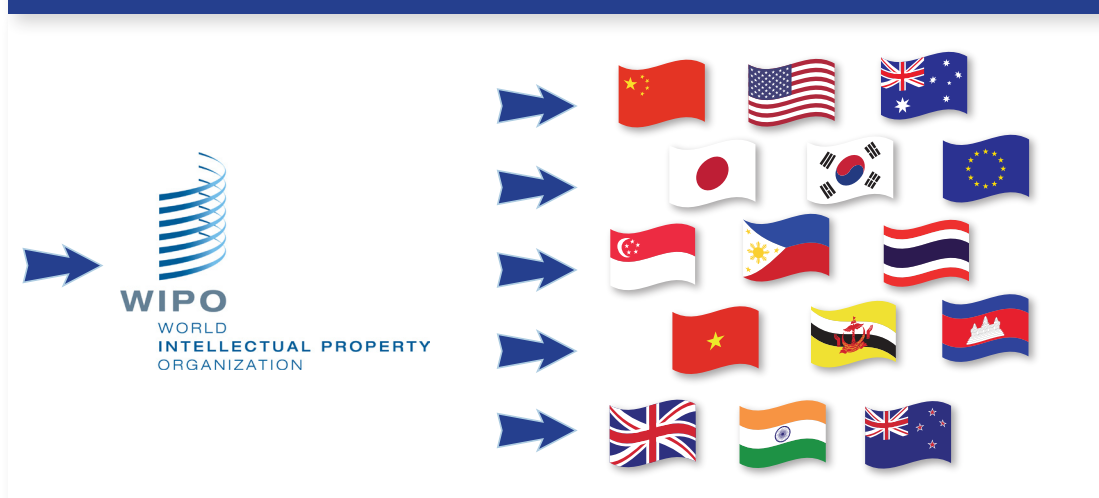
## 5.2.2. CENTRAL RECORDING OF MODIFICATIONS TO YOUR INTERNATIONAL REGISTRATION

During the lifetime of your IR you may, at any time, request WIPO to record in the International Register a change of your name or address or that of your representative, a voluntary restriction in the protection of your IR (limitation, renunciation, cancellation), a change in ownership of your mark or a licence, having effects in all or some of the DCPs. To request the recording of any such modification, you must use an official form that you can download from the WIPO website (<http://www.wipo.int/madrid/en/forms/>). The central recording of such modifications in the International Register relieves you from the need to request such action from the Office of each DCP, thus resulting in very significant savings.

To request the recording of a **change of name or address of the holder** of the international registration (without change in ownership), you must use form MM9. Your request may refer to several IRs. The fee payable to WIPO will amount to only CHF 150. If the only change to be recorded concerns your contact details (address for correspondence, email address, phone number or facsimile number), no fee is payable. A change of name or address recorded in the International Register has immediate effects in all the DCPs concerned by the IR at no additional cost.

If you are the holder of an international registration and happen to transfer your mark to a new owner for all or some of the goods and services for which it is protected, in respect of all or some of the DCPs, you can request that the **change in ownership** be recorded in the International Register. Such recording can only take place if the new owner is a person entitled to use the Madrid System (either through

## RENEWAL / MODIFICATION OF INTERNATIONAL REGISTRATIONS



nationality, or establishment or domicile in a Contracting Party). The request may refer to several IRs provided that the change in ownership applies to all or the same DCPs and concerns all or the same goods and services. The request must be submitted to WIPO in the official form MM5 and is subject to the payment of a fee (CHF 177). The change in ownership recorded in the International Register will have immediate effects in all the DCPs concerned at no additional cost.

To request the recording of a **change of name or address of representative**, you must use form MM10. The recording of such a change is free of charge.

To request a **limitation** of the list of goods and services, which may affect some or all the DCPs, you must use form MM6. This request is subject to the payment of a fee (CHF 177) to WIPO. No additional fee will be charged by the DCPs concerned.

If you wish to record a **renunciation** of the protection for all the goods and services in respect of some (not all) the DCPs, you must use form MM7. If your request concerns the cancellation of the IR for some or all the goods and services in respect of all the DCPs, you must use form MM8. These requests (renunciation and cancellation) are free of charge.

If you license your mark, you may request the **recording of the licence** in the International Register by indicating the name and address of the licensee, the DCPs with respect to where the licence is granted, and the goods and services for which the licence is granted. The request must be submitted in form MM13 and is subject to the payment of a fee amounting to CHF 177. The recording of the licence in the International Register will only have effects in those countries whose domestic laws provide for the recording of licences and have not made a declaration stating that they do not recognize the effects of the recording of licences in the International Register<sup>2</sup>.

<sup>2</sup> 18 Madrid Union members have declared that they do not recognize the effects of the recording of licences in the International Register: OAPI, Cambodia, China, Colombia, Gambia, Georgia, Greece, India, Indonesia, Japan, Kyrgyzstan, Lao PDR, Mexico, Republic of Korea, Republic of Moldova, Russian Federation, Singapore and Thailand. In those Contracting Parties, licences must be recorded directly with their own trademark offices, in accordance with their domestic laws.

### 5.2.3. RENEWING YOUR INTERNATIONAL REGISTRATION

To ensure that after a period of 10 years from registration your mark continues to be protected for an additional period of 10 years in those territories where you so wish, you simply need to renew your IR by paying the necessary fees to WIPO. The fees due for renewal include: a basic fee (CHF 653), an individual fee for each DCP having fixed one ([http://www.wipo.int/madrid/en/fees/ind\\_taxes.html](http://www.wipo.int/madrid/en/fees/ind_taxes.html)), a complementary fee (CHF 100) for each DCP that has not adopted an individual fee system, and a supplementary fee (CHF 100) for each class of goods and services more than three, except if you only renew protection with respect to DCPs having fixed individual fees.

A system for the electronic renewal of IRs is available on the WIPO website and can be accessed under Online Services ([https://webaccess.wipo.int/trademarks\\_ren/?lang=EN](https://webaccess.wipo.int/trademarks_ren/?lang=EN)). You can calculate the exact amount you should pay for the renewal of your IR by using the Fee Calculator made available by WIPO (<http://www.wipo.int/madrid/en/fees/calculator.jsp>). You can pay your renewal fees using a credit card or a WIPO Current Account if you have one.

The renewal fees should be paid to WIPO at the latest on the date of expiry of the IR. The payment can still be made up to six months after that date (grace period) provided that a surcharge is paid at the same time. WIPO records the renewal with the date on which it was due, even if the fees required were paid within the grace period.

The effective date of renewal of your IR is the same for all DCPs. This is a clear advantage of the Madrid route as compared to the national route where you have separate marks at separate TM offices having to be renewed at different dates.

#### TIP

*To renew your IR use the Madrid e-Renewal Service at [https://webaccess.wipo.int/trademarks\\_ren/?lang=EN](https://webaccess.wipo.int/trademarks_ren/?lang=EN).*

### 5.3. FIVE-YEAR DEPENDENCY AND TRANSFORMATION – INDEPENDENCE THEREAFTER

It is important that you consider that, for a period of five years (dependency period) the fate of your IR will remain dependent on the fate of your basic mark (application or registration) in Indonesia. If, for whatever reason, your basic mark in Indonesia ceases to have effect in whole or in part (rejection or withdrawal of your basic application, or cancellation, renunciation, revocation, invalidation, or lapse of your basic registration) within that period (five years from the date of your IR), your IR will be cancelled in whole or in part (only for some goods or services) accordingly.

To soften the consequences of this dependency feature, the Madrid Protocol provides the possibility of 'transformation' of your IR into a national or regional application in each of the DCPs. Within three months of the cancellation of your IR, you may apply for the registration of that same mark in those DCPs and those applications (based on the 'transformation' of your IR) will be treated as if they had been filed on the date of the original IR (therefore maintaining the earlier rights that you enjoyed).

At the end of the five-year dependency period, your IR becomes completely independent of your basic mark and cannot be cancelled any longer if the latter happens to cease to have effect.



## 5.4. ONLINE TOOLS TO MONITOR AND MANAGE INTERNATIONAL REGISTRATIONS

In addition to the abovementioned online services that facilitate the elaboration of goods and services lists (MGS), the filing of subsequent designations (e-Subsequent Designation), the presentation of renewal requests (e-Renewal) and the calculation of fees (Fee Calculator), WIPO offers another two online services that make it easier for you to monitor your IR and those of your competitors and to manage your IR portfolio. Below is a brief description of these two services.

### 5.4.1. MADRID MONITOR

Madrid Monitor (<http://www.wipo.int/madrid/monitor/en/>) is a WIPO e-service that offers access to information on all trademarks registered under the Madrid System. It has an intuitive search interface offering several search options (simple search, advanced search, real-time search, image search).

Using the Madrid Monitor real-time search function you can track the status of your international application as it moves through WIPO's examination process, and you can monitor the progress of your IR in each DCP and find out whether protection for your mark has been granted or refused there.

The simple search and advanced search functions allow you to make searches in the whole Madrid system database by words (mark, good or service, name of holder or representative, office of origin, DCP, etc.), numbers (for registration, basic application, Nice class, Vienna class, etc.) or a combination thereof. The image search function allows you to make searches by picking an image, an image type or an image search strategy.

Madrid Monitor also allows you to consult the WIPO Gazette of International Marks (<http://www.wipo.int/madrid/monitor/en/#gazettnd/>), the official Madrid System weekly publication that contains the latest data regarding IRs, renewals, subsequent designations and modifications affecting existing registrations.

To facilitate the monitoring of your own trademarks and/or those of your competitors, Madrid Monitor offers you the possibility to register to receive email alerts of any change related to the trademarks of your interest. To subscribe to the email alerts service you need a WIPO user account that you can create at <https://www3.wipo.int/wipoaccounts/en/usercenter/public/register.jsf>.

### 5.4.2. MADRID PORTFOLIO MANAGER (MPM)

Madrid Portfolio Manager (MPM) is a WIPO online service that will allow you to manage your portfolio of international trademark registrations with secure access from a single account. To use MPM you need a WIPO user account (<https://www3.wipo.int/wipoaccounts/en/usercenter/public/register.jsf>) linked to an email address. You can establish your own portfolio by collecting all the IRs linked to the same email address. Using MPM you will be able to submit requests for changes, renewals and subsequent designations; track the status of your requests; pay fees; delegate management responsibility for all or part of your portfolio; view and securely download communications from trademark offices and WIPO concerning your registration; and request extracts from the International Register.

## 6. PROTECTING YOUR TRADEMARK IN THE EUROPEAN UNION



In the European Union (EU), there is a four-tier system for registering trademarks. What you choose depends on the needs of your business.

If you just want protection in one EU Member State, you can file a trademark application directly at the relevant national IP office. This is the **national route** available in 25 EU Member States (Austria, Bulgaria, Croatia, Cyprus, Czech Republic,

Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom).

If you want protection in Belgium, Luxembourg and the Netherlands, you can file a trademark application at the Benelux Office of Intellectual Property (BOIP), a regional-level IP office for trademark protection in those three Member States. This is the **Benelux regional route**.

If you want protection in more EU Member States, you can apply for a European Union trademark (EUTM) from the European Union Intellectual Property Office (EUIPO) — this is the European route. The EUTM is valid in the territories of all 28 EU Member States.

A fourth route to trademark protection in the EU is the **international route** or Madrid System route, which can be combined with any of the three mentioned above. A person filing an international application under the Madrid System can designate for protection any of the EU Member States that are Contracting Parties to the Madrid Protocol individually, or can designate the Benelux (for protection in Belgium, Luxembourg and the Netherlands), or can designate the European Union (for protection in the 28 EU Member States through one single designation).

The following sections analyse the benefits of obtaining a trademark right valid in all 28 EU Member States either by following the European route (direct filing at the EUIPO) or the international route (Madrid filing designating the EU).

### 6.1. DIRECT FILING AT THE EUIPO (THE EUROPEAN ROUTE)



Applying for a European Union trademark (EUTM) directly at the EUIPO, instead of filing separate trademark applications and getting separate rights under each of the national + Benelux systems existing in the European Union (EU), is an attractive route if you wish to get a single trademark right that is valid in all 28 EU Member States.

You can file your application online at the EUIPO website (<https://euipo.europa.eu/ohimportal/en/apply-now>). The EUTM gives you an exclusive right valid in all the EU Member States (current and future) at a reasonable cost (EUR 850 basic fee, in 2018, for the online filing of an individual EUTM application covering one class; for up-to-date information on fees, including for additional classes, and EU collective or certification marks, please see <https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo>). An EUTM is valid for 10 years and can be renewed indefinitely every 10 years. You will be able to enforce your EUTM rights in a market of almost 500 million consumers.

At the EUIPO website (<https://euipo.europa.eu/ohimportal/en/trade-marks>), you will find detailed explanations on how to apply for an EUTM, how to follow the registration procedure, and how to manage your EUTM once registered.

## 6.2. DESIGNATING THE EU VIA MADRID (THE INTERNATIONAL ROUTE) – BEST PRACTICES

Similar benefits to those offered by the European route, plus the additional benefits that are unique to the Madrid System, can be enjoyed by following the international route. As from 2004, when the European Union became a Contracting Party of the Madrid Protocol, it became possible for Madrid System users to get a trademark right having the same effects as an EUTM (valid in all the EU Member States) by designating the EU under the international procedure (either in an international application or as a subsequent designation).

An IR designating the EU and accepted by the EUIPO has the same effects as an EUTM registered by the EUIPO. This section describes the best practices to be followed to obtain and manage an IR that is valid in the European Union.

### 6.2.1. DESIGNATING THE EUROPEAN UNION – SPECIFIC REQUIREMENTS

You can designate the European Union for protection either:

- (i) when filing your international application at DGIP, by checking the European Union (EM code) box in the application form (MM2); or
- (ii) once you have obtained an IR, by checking the European Union (EM code) box in the subsequent designation form (MM4) submitted to WIPO either online (<https://www3.wipo.int/osd/>) or by mail.

In addition to the general requirements for international applications and subsequent designations, when you designate the European Union you should consider the following.

- (a) The language of proceedings before the EUIPO will be the language of your international application (English). However, when designating the EU, you must also indicate a second language of the EUIPO (either French, German, Italian or Spanish), the use of which you accept as a possible language for opposition, revocation or invalidity proceedings.
- (b) Moreover, if you wish to claim seniority<sup>3</sup> of an earlier mark registered in, or for, a European Union Member State, you may do so at the time of filing your international application or subsequent designation by attaching the official form MM17 (you may also claim seniority directly before the EUIPO at a later date).

The basic fee for an EU designation for one class of goods or services has been fixed by the EUIPO at CHF 897 (status in October 2018). For up-to-date information on the individual fees fixed by the EUIPO for designations and renewals regarding individual marks and collective or certification marks under the Madrid System, please see [http://www.wipo.int/madrid/en/fees/ind\\_taxes.html](http://www.wipo.int/madrid/en/fees/ind_taxes.html).

<sup>3</sup> A seniority claim is a system whereby the owner of an EUTM application/registration, or an EU designation in an international registration (IR), can claim the prior rights of existing national registrations in the European Union (or national designations of International registrations), even if the national registrations are allowed to lapse.

## 6.2.2. PROFESSIONAL REPRESENTATION BEFORE THE EUIPO

In principle, you do not need to appoint a representative before the EUIPO. However, being located outside the European Economic Area, you will need to appoint a representative (a) if the EUIPO issues a provisional refusal of your IR; (b) for filing seniority claims directly before the EUIPO; or (c) further to an EUIPO objection on a seniority claim. In such cases, your representative should be a person who appears in the database of representatives maintained by the EUIPO (<https://euipo.europa.eu/eSearch/#advanced/representatives>).

## 6.2.3. FIRST REPUBLICATION, SEARCHES AND FORMALITIES EXAMINATION

Upon receipt of WIPO's notification of the IR designating the EU, the EUIPO will immediately republish the IR in the EUTM Bulletin (Part M.1) (<https://euipo.europa.eu/eSearch/#advanced/bulletins>). Publication is limited to the bibliographic data, the reproduction of the mark, and the class numbers (not the actual list of goods and services). The IR has, from the date of that first republication, the same effect as a published EUTM application.

If you so wish, within one month of WIPO's notification you may ask the EUIPO to draw up an EU search report that will cite similar EUTMs and IRs designating the EU. You may also request the EUIPO to send the IR to the participating national offices of EU Member States to have national searches carried out for you (you will have to pay the corresponding fees).

The formalities examination carried out by the EUIPO on IRs is limited to (a) whether a second language of proceedings has been indicated; (b) whether the application is for a collective or certification mark; (c) whether there are any seniority claims; (d) whether the list of goods and/or services in the EU designation falls within the scope of the IR's main list; and (e) whether the terms used to indicate those goods/ services meet the requirements of clarity and precision as described in the EUIPO Trademark Guidelines, Part B, Section 3 (<https://euipo.europa.eu/ohimportal/en/trade-mark-guidelines>).

If you have failed to designate a second language of the EUIPO as a possible language for opposition, revocation or invalidity proceedings before the EUIPO, the EUIPO will issue a provisional refusal and give you two months to remedy the deficiency.

If your IR designating the EU is a collective mark or a certification mark based on such type of mark in Indonesia, it will be dealt with as an EU collective mark or an EU certification mark, whichever is applicable. In such cases, you will need to submit the regulations governing the use of the mark to the EUIPO within two months of the date in which WIPO notified the EUIPO of the designation.

If you have claimed seniority of an earlier mark registered in an EU Member State (in form MM17), the EUIPO will check that you have indicated the name of the EU Member State where the earlier right is registered, the registration number and the filing date of the relevant registration.

If you have introduced a limitation to the list of goods and of services of the IR in your designation of the EU, the EUIPO will check whether the goods and services in your limited list for the EU are comprised within the scope of the main list of the IR. If they are not, it will issue a provisional refusal.

If your IR contains terms for goods or services that lack clarity or precision, the EUIPO will issue a provisional refusal and give you two months to remedy the deficiency. To avoid including in your list

terms that will not be accepted by the EUIPO, it is recommended that you search the content of the EU Harmonised Database (HDB) before filing an IR designating the EU. This can be done online, free of charge, at the following address: <http://tmclass.tmdn.org/ec2/>. The HDB contains terms designating goods and services that are accepted by all TM offices in the EU. All HDB terms will be accepted by the EUIPO automatically. This will help make your registration process much smoother.

#### 6.2.4. EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL

IRs designating the EU are subject to examination of absolute grounds for refusal in the same way as direct EUTM applications.

In particular, your mark will not be eligible for protection if it consists of a sign that: (a) does not conform to the EUTM definition (capable of distinguishing the goods or services of one undertaking from those of other undertakings, and being represented in a manner which enables to determine the clear and precise subject matter of the protection afforded); (b) is non-distinctive; (c) is descriptive; (d) consists exclusively of words or indications that have become customary in the current language or in the bona fide and established practices of the trade at the relevant point in time; (e) consists exclusively of the shape or other characteristics resulting from the nature of the goods, with an essentially technical function or substantial value; (f) is contrary to public policy or to accepted principles of morality; (g) is of such a nature as to deceive the public as to the nature, quality or geographical origin of the goods or services; (h) is in conflict with armorial bearings, flags, emblems, and other symbols of States and IGOs protected under Article 6ter of the Paris Convention; (i) is in conflict with other badges, emblems and escutcheons of particular public interest; (j) is in conflict with designations of origin and geographical indications protected under national (EU Member State) or EU legislation or international agreements to which the EU or the Member State concerned is party; (k) is in conflict with traditional terms for wines protected by either EU legislation or international agreements to which the EU is party; (l) is in conflict with traditional specialities guaranteed (TSGs) protected by either EU legislation or international agreements to which the EU is party; (m) is in conflict with earlier plant variety denominations protected within the EU in respect of plant varieties of the same or closely related species.

If the EUIPO finds that your mark is not eligible for protection, it will send a provisional refusal and give you two months to submit observations. Your reply must be addressed directly to the EUIPO, which, after re-examining the case, may decide to confirm the refusal or waive the objection.

If the EUIPO finds that your mark is eligible for protection, and provided that no other provisional refusal is pending, it will send an interim status of the mark to WIPO indicating that the ex officio examination has been completed but the IR is still open to opposition or third-party observations.

#### 6.2.5. OPPOSITION

Any person invoking earlier rights in conflict with your mark may file an opposition against your IR between the first and fourth months following the date of first republication.

If someone opposes your IR within that period, the EUIPO will send a notification to WIPO of provisional refusal (based on relative grounds) and will send you copy of the notice of opposition. It will also notify you of the time limit for commencement of the proceedings. In all communications with WIPO, the EUIPO will use the language of the IR (English in your case). In all communications sent directly to you,

the EUIPO will use the language of the opposition proceedings chosen by the opponent (which will be English or the second language chosen by you when designating the EU).

The provisional refusal may be partial or total. It will contain the earlier rights invoked, the relevant list of goods and services on which the opposition is based and, in the case of a partial refusal, the list of goods and services against which the opposition is directed. The list of goods and services will be in the language of the opposition proceedings.

#### **6.2.6. FINAL DECISION**

Once all the procedures have been completed and all the EUIPO decisions are final, the EUIPO must either confirm the provisional refusal(s) to WIPO or send a statement of grant of protection to WIPO specifying for which goods and services your mark is accepted.

#### **6.2.7. SECOND REPUBLICATION AND PROTECTION IN THE EU**

If the EUIPO decides that your mark is (at least in part) protected in the EU, the EUIPO will republish your IR for a second time in the EUTM Bulletin (this time in Part M.3). The EUIPO will not issue any registration certificate.

From the date of this second republication, the IR has the same effects as a registered EUTM and may be invoked against an infringer. The date of the second republication will also be the starting point for the five-year use period. If your mark is not put to genuine use in the European Union within that period, the effects of your IR in the EU may be declared invalid.

#### **6.2.8. TRANSFORMATION INTO AN EUTM**

If your IR is cancelled in whole or in part because your basic mark in Indonesia has ceased to have effect within the five-year dependency period and your EU designation is still effective, you may file a direct EUTM application at the EUIPO for the same mark and the same goods and services as the cancelled mark. Based on the Madrid Protocol provision on 'transformation', this application will be treated by the EUIPO as if it had been filed on the date of the original designation of the EU and will enjoy the same priority, if any.

To invoke a transformation right your application should be filed within a period of three months from the date on which your IR was cancelled in whole or in part, and the goods and services of the ensuing application should be covered by the list of goods and services of the EU designation. When the application for transformation relates to an IR designating the EU that has already been accepted and published by the EUIPO, the examination and opposition steps are omitted. The EUTM will be published in all EU languages and an EUTM registration certificate will be issued.

#### **6.2.9. CONVERSION**

If, for whatever reason, your Madrid system EU designation is withdrawn, refused or ceases to have effect, you may request its conversion into either a national application filed directly with the Office of

one or more EU Member States, or a subsequent designation of those Member States under the Madrid System. The effect of conversion is that the trademark application, or the subsequent designation, resulting from conversion, is allocated the same filing date as that of the EU designation as recorded in the International Register (and enjoys, if applicable the same priority date and/or seniority claimed).

A subsequent designation resulting from conversion must be forwarded to WIPO through the EUIPO in an official form (MM16), within three months from the date where the EU designation has been refused or withdrawn or has ceased to have effect. For full details on conversion, see the EUIPO Guidelines, Part E, Section 2, at <https://euipo.europa.eu/ohimportal/en/trade-mark-guidelines>.

#### 6.2.10. REPLACEMENT IN THE EU

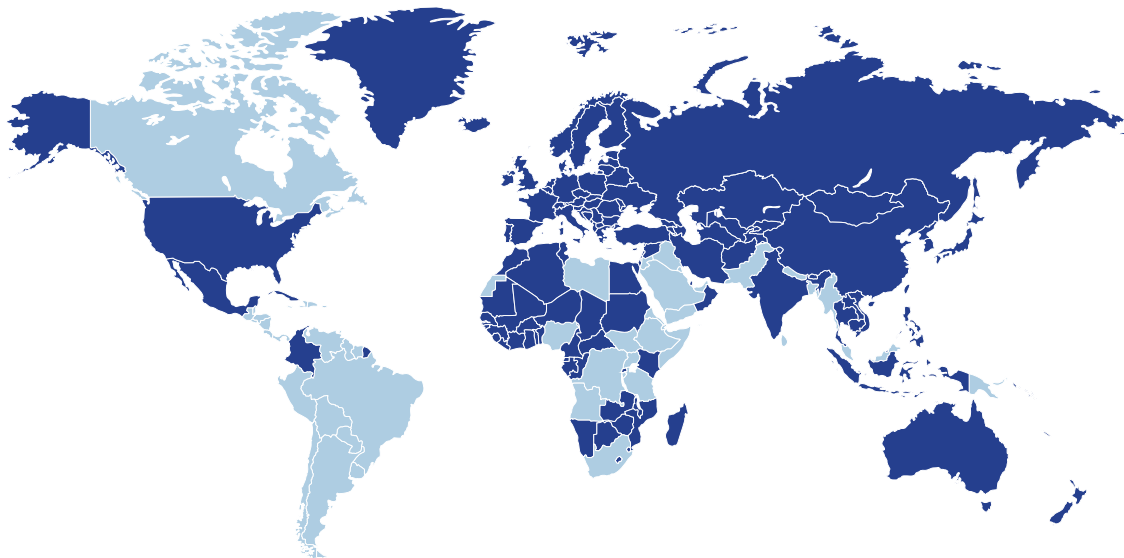
If you had your mark already registered at the EUIPO as an EUTM and you designate the EU under the Madrid System for the same mark, you will enjoy the Madrid Protocol benefit of replacement (your IR rights in the EU will be deemed to start from the date of the earlier EUTM registration). Replacement takes place automatically; there is no need to request any record. Nevertheless, you can ask the EUIPO to take note of the replacement in its Register. After replacement has taken place, the EUTM is maintained normally in its Register as long as you renew it. If you renew it, there will be coexistence between the 'replaced' EUTM and the IR designating the EU.

## 7. CONCLUSION

The Madrid Protocol offers you an attractive route to protect your brand in up to 117 countries around the world by making available cost-effective and user-friendly procedures to acquire and manage your trademark rights abroad. As a national of Indonesia, or a person domiciled or having an enterprise in Indonesia, you are entitled to use this treaty that Indonesia joined in 2018. Today, using the Madrid Protocol is an essential component of any successful branding strategy. The Protocol offers you early brand presence at a global level and helps you rapidly acquire international reputation and generate goodwill for your trademarks abroad. The Protocol ensures the legal protection of your brand against competitors in export markets, increases franchising opportunities, opens partnership possibilities and facilitates integration to global supply chains. In general, it provides a most effective support to your branding strategies and business success.

## MADRID UNION MEMBERS

102 members (including the European Union and OAPI) covering 118 countries as of December 25, 2018



Afghanistan, African Intellectual Property Organization (OAPI)<sup>4</sup>, Albania, Algeria, Antigua and Barbuda, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bhutan, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Estonia, Eswatini, European Union<sup>5</sup>, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uzbekistan, Viet Nam, Zambia, Zimbabwe (102)

<sup>4</sup> A Madrid designation of OAPI covers all its Member States, namely: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea-Bissau, Guinea, Mali, Mauritania, Niger, Senegal, Togo (17)

<sup>5</sup> A Madrid designation of the European Union covers all its Member States, namely: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (28)



## ACRONYMS

|              |  |
|--------------|--|
| <b>ASEAN</b> | Association of Southeast Asian Nations                                       |
| <b>BOIP</b>  | Benelux Office for Intellectual Property                                     |
| <b>CHF</b>   | Swiss Franc  |
| <b>DCP</b>   | Designated Contracting Party   |
| <b>DGIP</b>  | Directorate General of Intellectual Property, Indonesia                      |
| <b>EM</b>    | Two-letter code used to identify the European Union in Madrid Protocol forms |
| <b>EU</b>    | European Union   |
| <b>EUIPO</b> | European Union Intellectual Property Office                                  |
| <b>EUTM</b>  | European Union Trade Mark  |
| <b>IA</b>    | International Application under the Madrid Protocol procedures               |
| <b>IR</b>    | International Registration under the Madrid Protocol procedures              |
| <b>MGS</b>   | Madrid Goods & Services Manager  |
| <b>OAPI</b>  | African Intellectual Property Organization                                   |
| <b>WIPO</b>  | World Intellectual Property Organization                                     |

## GLOSSARY

|                                   |   |
|-----------------------------------|---|
| <b>Basic mark</b>                 | Trademark application or registration in one of the Madrid Union Members that provides the basis for an international application                           |
| <b>Contracting Parties</b>        | States and intergovernmental organizations that are Parties to the Madrid Protocol  |
| <b>International application</b>  | Application for the registration of a trademark under the Madrid Protocol procedures  |
| <b>International registration</b> | International trademark registration under the Madrid Protocol procedures   |
| <b>Madrid Union</b>               | Union of States and intergovernmental organizations that are Parties to the Madrid Protocol   |
| <b>Madrid Protocol</b>            | Protocol of 1989 relating to the Madrid Agreement concerning the International Registration of Marks  |
| <b>Madrid System</b>              | System for the international registration of trademarks governed by the Madrid Protocol and managed by WIPO   |
| <b>Madrid Union Members</b>       | Contracting Parties to the Madrid Protocol  |
| <b>Nice Classification</b>        | International Classification of Goods and Services for the Purposes of the Registration of Marks, established by the Nice Agreement of 1957 amended in 1979 |
| <b>Subsequent designation</b>     | Request for extending the protection of an international registration to one or more additional Contracting Parties   |

## ONLINE TOOLS AND SERVICES FREELY AVAILABLE TO MADRID SYSTEM USERS

**ASEAN TMclass** – <http://www.asean-tmclass.org/ec2/>

Online tool that facilitates the identification and classification of goods and services for the registration of marks in all the ASEAN IP Offices

**ASEAN TMview** – <http://www.asean-tmview.org/tmview/welcome>

Information platform enabling searches in the trademark databases of nine ASEAN IP Offices

**DGIP Trademark Search** – <https://pdki-indonesia.dgip.go.id/>

Information platform enabling searches in the trademark database of DGIP Indonesia

**E-Subsequent Designation** – <https://www3.wipo.int/osd/>

Online electronic facility for filing subsequent designations under the Madrid Protocol

**EUIPO Representatives Database** – <https://euipo.europa.eu/eSearch/#advanced/representatives>

Database of representatives maintained by the European Union Intellectual Property Office

**EUIPO Trade Mark Guidelines** – <https://euipo.europa.eu/ohimportal/en/trade-mark-guidelines>

Compendium of EUIPO practice regarding EUTM procedures

**EUIPO Trade Mark website** – <https://euipo.europa.eu/ohimportal/en/trade-marks>

Trademark website of the European Union Intellectual Property Office

**EUTM Bulletin** – <https://euipo.europa.eu/eSearch/#advanced/bulletins>

The official EUIPO publication containing latest data regarding EUTM registrations

**EUTM Fees** – <https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo>

Fees payable for the filing of EUTM applications and other EUTM-related procedures

**EUTM online filing** – <https://euipo.europa.eu/ohimportal/en/apply-now>

Electronic facility for online filing of EUTM applications at the EUIPO website

**Fee Calculator** – <http://www.wipo.int/madrid/en/fees/calculator.jsp>

WIPO-managed online tool that facilitates the calculation of the fees to be paid for international applications, subsequent designations and renewals under the Madrid System

**Global Brand Database** – <http://www.wipo.int/branddb/en/index.jsp>

WIPO online gateway containing more than 36 million records from 40 national and international collections (trademarks, geographical indications, state emblems, etc.)

**Madrid E-Renewal** – [https://webaccess.wipo.int/trademarks\\_ren/?lang=EN](https://webaccess.wipo.int/trademarks_ren/?lang=EN)

Online electronic facility to request the renewal of international registrations under the Madrid Protocol

**Madrid Forms** – <http://www.wipo.int/madrid/en/forms/>

WIPO web address from where Madrid forms can be downloaded

**Madrid Goods and Services Manager (MGS)** – <https://webaccess.wipo.int/mgs/>

WIPO-managed online tool that helps compile the list of goods and services to be submitted when filing an international application

**Madrid Guide** – <http://www.wipo.int/madrid/en/guide/>

WIPO Guide to the International Registration of Marks

**Madrid Member Profiles Database** – <http://www.wipo.int/madrid/memberprofiles/#/>

WIPO-managed database that offers information on procedures and practices regarding the effects of international registrations in Madrid Union Members

**Madrid Monitor** – <http://www.wipo.int/madrid/monitor/en/>

A WIPO e-service that offers access to information on all trademarks registered under the Madrid System

**TMclass** – <http://euipo.europa.eu/ec2/>

Online tool facilitating the identification and classification of goods and services for the registration of marks in 73 trademark offices

**TMview** – <https://www.tmdn.org/tmview/welcome>

Information platform offering access to data of more than 51.9 million trademarks from 62 trademark offices

**WIPO Gazette of International Marks** – <http://www.wipo.int/madrid/monitor/en/#gazettnd/>

The official Madrid System weekly publication that contains the latest data regarding International registrations, renewals, subsequent designations and modifications affecting existing registrations.

**WIPO Lex** – <http://www.wipo.int/wipolex/en/index.jsp>

Global database providing access to Intellectual Property legal information (treaties, laws, regulations)

**WIPO User Account** – <https://www3.wipo.int/wipoaccounts/en/usercenter/public/register.js>

User account offering secured access to certain WIPO services such as the Madrid Portfolio Manager (MPM) that allows you to manage your portfolio of international trademark registrations

For general, up to date information on the Madrid System,  
please refer to the following address:

<https://www.wipo.int/madrid/en/>

