1. THE FACTS: Business in Macao for EU Companies

(Source: European Union Office to Hong Kong and Macao)

Size of Market

- EU exports to Macao: €396 million
- EU imports from Macao: €115 million
- Total trade in goods: EUR 511 billion

Macao is the EU's 130th largest goods trading partner.
The EU is Macao's 2nd largest trading partner, after Mainland China.

Key Industry Sectors:

- EU exports to Macao are dominated by food and beverages, tobacco, raw hides and skins, saddlery, machinery and appliances, textiles, and transport equipment. These categories accounted for 80% of total imports from EU in 2012.

- Macao's key export items to the EU include clothing and textiles, toys, footwear, electronics, machinery and components.
2. IPR in Macao for SMEs: BACKGROUND

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

Intellectual Property (IP), as intangible assets, are a key factor in the competitiveness of your business in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to Small and Medium-sized Enterprises (SMEs), as they internationalise their business to areas such as Macao. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you protect your innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or sale of IP rights, as well as a significant pull-factor when attracting investors.

IPR infringement is one of the most common concerns for businesses when dealing with countries across Asia, and its impact on your company could be substantial. It can lead to loss of business, revenue, reputation and competitive advantage, which affects SMEs both abroad and in their core domestic markets, and the inadequate protection of inventions and creations can jeopardise prospects for maintaining a competitive advantage.

How does Macao’s IP legal framework compare to INTERNATIONAL STANDARDS?

Macao law protects the various forms of Intellectual Property and complies with the standards set in the main international conventions. Macao was a founding member of the World Trade Organisation (WTO) and, besides the Trade-Related aspects of Intellectual Property Rights (TRIPS) Agreement, abides by the following treaties: Berne Convention for Protection of Literary and Artistic Works, Paris Convention for the Protection of Industrial Property, World Intellectual Property Organisation (WIPO) Copyright Treaty, WIPO Performances and Phonograms Treaty, Universal Copyright Convention and Nice Agreement on the International Classification of Products and Services.

As a Special Administrative Region of the People’s Republic of China, Macao has a high degree of autonomy and will retain its own legal system until 2047.
3. IP Rights in Macao THE BASICS

A. Copyrights

WHAT are Copyrights?

Copyrights are rights that guarantee the owner exclusive uses of literary and artistic works, sound and video recordings, radio and TV broadcasts, artistic performances and public spectacles.

Literary and artistic works are understood very broadly and potentially include any creative texts (including software), images (photos, paintings, drawings, etc.), shapes (for example, sculptures), sounds (especially musical works) and compilations (for example, databases).

Use of a literary or artistic work is also a very broad legal concept that includes not only copying but also any form of public exploitation of the work (translating, broadcasting, leasing to the public, exhibiting, etc.).

Copyrights in Macao: What you need to know

Copyrights in Macao are granted automatically by law to the creators of literary and artistic works, performers, broadcasters, producers of sound or video recordings and producers of spectacles, irrespective of any formality.

In principle, fixation of the literary or artistic work in a material form (paper, canvas, stone, film, etc.) is not required, however, for copyright to subsist and be protected by the relevant laws, the original work shall be reduced into a material and tangible form of expression.

How LONG does legal protection last?

As a general rule, copyrights last the lifetime of the creator plus 50 years. A few main exceptions should be taken into account however:

<table>
<thead>
<tr>
<th>Nature of work</th>
<th>Duration of Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audio-visual works (for example, movies) as well as copyrights acquired by legal persons on literary or artistic works</td>
<td>50 years after publication of the work</td>
</tr>
<tr>
<td>Applied arts works (for example, designs)</td>
<td>25 years after the making of the work</td>
</tr>
<tr>
<td>Artistic performances (for example, a piano recital)</td>
<td>25 years after the performance is recorded in audio or video</td>
</tr>
<tr>
<td>Sound and video recordings</td>
<td>50 years after the publication of the recording or, in case there is no publication, 50 years after the recording is made</td>
</tr>
<tr>
<td>Radio and TV broadcasts</td>
<td>20 years after the broadcast</td>
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All the above expiry terms are calculated from the 1st of January of the year that follows the relevant event.

HOW do I register?

There is no registration. Literary and artistic works are automatically protected by law once they are created and expressed in any form (for example, publication of a text, exhibition of an image, broadcast of a movie, live performance of a song, etc.). Radio and TV broadcasts are protected once they start. Sound and video recordings are protected once the recording is made. Artistic performances are protected once the performance happens or is recorded.

⚠️ Copyrights TIPS and WATCH-OUTS in Macao

Macao follows the continental European legal tradition of Droit d’Auteur (author’s right), which stresses the protection of intellectual creators.

The holders of copyrights on literary and artistic works are, in principle, the respective authors (for example, the intellectual creators). However legal persons (for example, companies) are deemed to be the authors of the works created under their direction and made public under their name.

Literary and artistic works made by employees and commissioners belong to them unless otherwise stipulated by contract. Employers are advised to take this into account when drafting labour contracts.

Besides copyrights intellectual creators also enjoy the so called moral rights, namely the right to be acknowledged as author (authorship right) and the right to oppose distortions to the work (integrity right). Moral rights do not expire – they are continuous.
B. Patents

WHAT are Patents?
Patents are an exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years, therefore patents are temporary monopolies granted to inventors for the economic exploitation (producing, selling, importing, etc.) of technological innovations. Macao grants two different categories of patents: inventions and utility models.

Patents in Macao: What you need to know

Invention patents:
An invention is a technical solution to a problem. As a general principle an invention patent can be granted in Macao for a product or for a process of doing things in any field of technology (chemistry, electronics, mechanics, etc.). Exceptionally, the law excludes some technological innovations from patentability: for example, scientific theories, mathematical formulas, rules of games, surgical and therapeutic methods, human cloning processes, plant varieties and animal breeds cannot be patented. A computer programme cannot itself be patented, though this does not exclude the patentability of other inventions that make use of the software.

For a patent to be granted the innovation at stake must meet three requirements:

1. It must be inventive, for example not a solution easily devisable by an average expert in that technological field;
2. It must be new, for example not something that has already been made public;
3. It must have some industrial applicability, for example the solution would be deemed to be useful by others.

Utility patents:
Utility patents (or utility models) are granted for innovations that are useful but may not meet the higher inventiveness standard required for invention patents (for example, the improved shape of a shaving razor, or other 3-dimensional objects).

How LONG does legal protection last?
Invention patents last a maximum of 20 years from the date the application is filed. However, the protection of pharmaceutical inventions may be extended by up to 27 years to compensate the patent holder for the time he may have to wait for marketing approval for his product.

Utility patents last a maximum of 10 years.

In either case, protection will only continue if the annual fees are paid.

Patents are an exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years.

HOW do I register?
Firstly, an application must be filed in the Economy Services’ Intellectual Property Department (IPD), detailing the invention fully (the application form can be downloaded from the IPD website).

If you have previously filed for a patent in another country member of the WTO or signatory to the Paris Convention you will be given priority in Macao over other applicants, for 6 months, for the registration of the same patent. Following the application, the IPD will publish a notice in the local Official Gazette so that third parties have the chance to raise opposition (for example, on the grounds that it conflicts with a patent they hold). Finally the application will be sent to the State Intellectual Property Office (SIPO), in Beijing, where it will be examined by technical experts in order to assess if the patentability requirements are met. Since the Macao IPD has limited staff due to the small size of the autonomous region, applications rely on SIPO’s technical examiners.

The address and contact details of the IPD are:

IPD
8th floor of the Luso-International Bank Building,
1 - 3 Pedro José Lobo St.
Macao
Tel.: +853 2871 0287 / 8597 2266 / 8597 2220
Fax: +853 2871 5291
E-mail: dpi@economia.gov.mo
Website: www.economia.gov.mo

Although there are no official statistics, according to the IPD, registration of Invention Patents takes approximately two years, but it may also take as long as eight years.
WHO can register?
Macao follows the first to file rule, meaning that a patent is granted to the first applicant to file for it even if they were not the original inventor.

In general, employers are entitled to the inventions made by their employees.

Which LANGUAGES can I use?
You may use either Chinese or Portuguese.

How much does it COST?
The initial filing fee for patent registration in Macao is 800 MOP (around 70 euros). There are other fees applicable for subsequent steps in the application process, namely a 2 500 MOP (around 220 euros) fee for the examination of the invention. Starting in the 4th year after the granting of the patent, you will have to pay an annual fee if you want to keep the protection. Its amount is 500 MOP (around 45 euros) in the 4th and 5th years and 800 MOP (around 70 euros) in each of the subsequent 15 years.

In the IPD website (https://www.economia.gov.mo/web/DSE/public?_npfb=true&_pageLabel=Pq_IP_RF&locale=en_US) you can find the full breakdown of fees for registration and other information about patents.

Patent WATCH-OUTS in Macao
You can file for an invention patent and for a utility patent simultaneously, namely when you are not sure whether your technical innovation meets the inventiveness standard. If the former is granted, the latter will expire by default.

Instead of applying for a patent directly in Macao, you may simply apply for the extension to Macao of a patent already granted in China. You may also apply for the extension of an application previously filed in China.

If you prefer to keep your invention (for example, a new manufacturing method) secret don’t apply for a patent, as patents are only granted after the invention is fully and clearly described, and this description will be published in the Official Gazette. Whenever the invention belongs to the employer, the inventor-employee may claim compensation in harmony with the importance of the invention whenever his inventive work was not adequately remunerated.

Instead of applying for a patent directly in Macao, you may simply apply for the extension to Macao of a patent already granted in China. You may also apply for the extension of an application previously filed in China.
C. Trade Marks

WHAT are trade marks?
A trade mark is a sign that distinguishes the products or services of a business from the products or services of other businesses, to avoid confusion between the products and services of the various competitors. That sign can be a word, a logo, a combination of colours, a shape, a musical sound, etc.

Trade marks in MACAO: What you need to know
In general, you can only register signs that:

1. Have distinctive capacity (excluding signs that are too simple, for example a dot);
2. Are not at risk of being confused with existing trade marks;
3. Can be graphically represented (which excludes scents or flavours, for example, since there is no reliable way of representing them graphically);
4. Are not deceptive to the public (for example about the real qualities or geographical origin of the product).

Registration is the safest and easiest way to protect your trade mark. Famous trade marks, however, enjoy legal protection in Macao even if they are not registered. However, whether a trade mark is famous or not is an issue to be ultimately decided by the courts.

The owner of a trade mark that is not registered (be it famous or not) may also sue, under the unfair competition law, against any acts that purport to create confusion in the mind of the public between their products or services and those of a competitor.

How LONG does legal protection last?
In principle the registration can be kept indefinitely provided renewal is applied for, and the fee is paid, every seven years.

HOW do I register?
You will have to file an application with the IPD, attaching a graphic representation of the trade mark you want to register and detailing the products and/or services in which you want to use it. The application form can be downloaded from the IPD website.

If you have previously filed for a patent in another country member of the WTO or signatory to the Paris Convention you will be given priority in Macao over other applicants, for six months, for the registration of the same trade mark. After the application, the IPD will publish a notice in the Official Gazette so that third parties have the chance to raise opposition to the registration (for example, on the grounds that it is confusingly similar to a famous trade mark). The registration will only be accepted if the IPD concludes that the trade mark meets all the requirements.

The Macao Trade Mark Law provides trade mark owners the right to prevent others from using identical or confusingly similar marks for their own goods and services.

The address and contacts of the IPD are:

IPD
8th floor of the Luso-International Bank Building, 1 - 3 Pedro José Lobo St.
Macao
Tel.: +853 2871 0287 / 8597 2266 / 8597 2220
Fax: +853 2871 5291
E-mail: dpi@economia.gov.mo
Website: www.economia.gov.mo

Registration of trade marks usually takes approximately from six to eight months.

WHO can register?
Any producer of goods (manufacturers, artisans, farmers, etc.) or provider of services may apply for registration of a trade mark.

Geographical indications (for example, Port wine or Feta cheese) are not trade marks. They are protected in Macao by unfair competition law and can be registered too. To register a geographical indication you will have to prove that you are entitled to use it in your products. Registered geographical indications do not expire.
Which LANGUAGES can I use?
In the application to the IPD you will have to use either Chinese or Portuguese.

How much does it COST?
The basic filing fee for trade mark registration in Macao is 1000 MOP (around 90 euros) and the renewal fee, due every seven years, is 2 000 MOP (around 180 euros). The fees breakdown is available at [https://www.economia.gov.mo/web/DSE/public?_nfpb=true&_pageLabel=Pg_IP_RF&locale=en_US].

If you want to keep your trade mark you must renew it every seven years. The registration will expire if there is no serious use of the trade mark during three consecutive years.

You cannot register trade marks that are misleading to consumers or represent unfair competition vis-à-vis other businesses.

The registration will expire if there is no serious use of the trade mark during three consecutive years. There is serious use when the trade mark is actually used in products or services, either by the registration holder or by a licensee.

The registration of a trademark does not prevent other businesses from using the same sign for other products or services if there is no risk of confusion to the public about the origin of the product (for example, both a manufacturer of motorbikes and a manufacturer of lingerie may use the trade mark Triumph).

D. Designs

WHAT are Designs?
A Design is the outward appearance of an industrial or artisanal product (for example, the pattern on a fabric or the shape of a tea bowl).

Designs in Macao: What you need to know
A design will be protected by copyright in Macao if it can be qualified as an artistic work. Taking into account that many industrial designs may not meet such creativity standard, however, the Macao law also provides for the protection of new and singular (unique) industrial designs by a specific IP right, subject to registration.

How LONG does legal protection last?
Protection lasts up to 25 years, provided it is renewed every 5 years.

HOW do I register?
You have to apply to the IPD, attaching a two-dimensional reproduction of the design you want to protect and explaining where its novelty lies. If you have previously filed for registration in a country member of the WTO or signatory to the Paris Convention you will be entitled to priority in Macao over other applicants for the same design for a 6 month period. After the application, the IPD will publish a notice in the Official Gazette so that third parties have the chance to raise opposition to the granting of the patent.

The address and contact details of the IPD are:

IPD
8th floor of the Luso-International Bank Building,
1 - 3 Pedro José Lobo St.
Macao
Tel.: +853 2871 0287 / 8597 2266 / 8597 2220
Fax: +853 2871 5291
E-mail: dpi@economia.gov.mo
Website: www.economia.gov.mo

Registration of Designs takes approximately 15 to 18 months.

WHO can register?
The creator of the design can apply for registration. Designs made by employees, however, belong in principle to the employer.
A trade secret is a commercially valuable piece of information that is not known, or readily ascertainable, and gives the holder an economic advantage over competitors and customers.
4. Using CUSTOMS to block counterfeits

WHAT are Customs?
Customs is the Government department in charge of enforcing criminal law regarding importations and exportations, and related intellectual property matters. They are the entity you must contact if you want non-authorised copies of products that infringe your IP rights to be seized, for example.

Customs in Macao: What you need to know
The Macao Customs Service has the power to enforce criminal law regarding intellectual property both at the border (importations and exportations) and anywhere else in Macao. For example, customs can and will act if a shop in Macao is selling trade marked products without the authorisation of the trade mark owner, or if someone is importing products that infringe a patent registered in Macao. However, given the nature of intellectual property, Customs may not be aware of a criminal infringement without the cooperation of the right owner. You should be proactive, monitoring the use of your intellectual property and alerting Customs in every case of a suspected criminal infringement of your rights.

Note that Customs have no authority to enforce the law when the infringement has no criminal nature (examples of criminal infringement - see below in section 5).

The address and contact details of the Customs are:

Customs Bldg., S. Tiago da Barra St. D. Carlos I Pier, SW, Barra , Macao
Tel.: +853 28559944
Fax: +853 28371136
E-mail: info@customs.gov.mo
Website: http://www.customs.gov.mo

HOW do I register?
It is not possible to register with Customs to protect your Intellectual Property. Instead, you must present a complaint to them whenever you are aware of a criminal infringement of your IP rights (for example, if you know that someone is importing to Macao products that infringe your patent).

Which LANGUAGES can I use?
Chinese and Portuguese are the official languages in Macao. Customs have no obligation to accept your complaint if it is presented in another language.

How much does it COST?
You do not have to pay any fee to present a complaint to Customs.

In many cases Customs will not be able to enforce the law without your cooperation. Alert them every time you are aware of a serious infringement of your intellectual property, namely whenever someone is making, exporting, importing, or selling to the public copies of your products without your authorisation. You can do it at any time via the hotline +853 8989 4317 or fax +853 2896 5003.

Macao Customs has wide powers of search and seizure, powers of arrest and discretion on whether to prosecute an infringer.
5. Enforcing your IP

In the case of your IP assets being infringed in Macao, there are two main avenues of enforcement which you can consider: civil litigation and criminal prosecution (as outlined below). Customs seizures are described separately in Part 4 above.

Civil Litigation

The main aim of civil actions is to recover damages. You may sue in the civil court whoever causes you damages by using your IP assets without your authorisation or by breaching a contract (for example a license to use a trade mark or a confidentiality clause in a labour contract). In the case of a breach of contract you can also sue to force the other party to pay any contractual fines that were included in the contract.

When claiming the payment of damages you will be expected to prove in court the amount of the actual damages suffered.

You will have to be represented in court by a lawyer licensed to practice in Macao (see contacts of the Macao Law Society below).

Criminal Prosecution

The most serious forms of IP infringement are crimes (for example, making or selling to the public, without the authorisation of the IP owner, copies of a product protected by an IP right). The main criminal punishments applicable in Macao for IP infringements are fines and jail terms of up to four years. The court may simultaneously apply other sanctions, for example banning the infringer from a certain professional activity or closing down their establishment.

In the case of a suspected crime you should present a complaint to Customs (see Part 4 above), or directly to the Public Prosecutor’s Office. In fact, in some cases your complaint is legally required to start proceedings.

A civil claim may also be inserted in criminal proceedings in order to recover damages resulting from the offense.

You can reach the Public Prosecutor’s office at any time through the hotline +853 2872 7272 or fax +853 2872 7228, namely to present a complaint or to book an appointment with an official.

The address and contact details of the Public Prosecutor’s office are:

7th floor, Dynasty Plaza Bldg., Alameda Carlos Assumpção
Tel.: +853 2878 6666
Fax: +853 2872 7621
E-mail: info@mp.gov.mo

Enforcement WATCH-OUTS in Macao

The initiative and cooperation of rights owners is fundamental for the effective enforcement of intellectual property law. Often your complaint is necessary to start criminal proceedings against an infringer.

In the criminal court you will be represented by the Public Prosecutor. If you so wish, however, you may appoint a lawyer as assistant to the prosecutor. This will allow you to exert more influence on the proceedings, for example allowing you to file an appeal to a higher court if the prosecutor decides to not appeal.
6. RELATED LINKS and Additional Information

> Visit the China IPR SME Helpdesk website for further relevant information, such as how to deal with business partners in China.

> Economy Services’ Intellectual Property Department’s (Macao) website – www.economia.gov.mo

> Customs of Macao – http://www.customs.gov.mo

> MACAU LAW SOCIETY
World Trade Centre Bldg., A – D, 11th floor, 918 Amizade Avenue
Tel: +853 2872 8121
Fax: +853 287 28127
E-mail: aam@macau.ctm.net
Website: www.aam.org.mo

> MACAU AUTHORS AND COMPOSERS ASSOCIATION
B, 7th fl., I Tak Commercial Bldg., 126 Peking St.
Tel: +853 288 2380
Fax: +853 2888 2597
E-mail: info@maca.org.mo
Website: www.maca.org.mo
The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within three working days from a China IP expert.

Training: The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, tailored to the needs of SMEs.

Materials: Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

Online Services: Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

For more information please contact the Helpdesk:

Room 900, Beijing Sunflower Tower No. 37 Maizidian Street
Chaoyang District Beijing 100125, P.R. China
Tel: +86 (10) 8527 6922
Fax: +86 (10) 8527 6923
question@china-iprhelpdesk.eu
www.china-iprhelpdesk.eu

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