PANORAMIC

LICENSING 2026

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LEXOLOGY

Licensing 2026

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Quick reference guide enabling side-by-side comparison of local insights, including into kinds of licences; law affecting international licensing; intellectual property issues; software licensing; royalties and other payments, currency conversion and taxes; competition law issues; indemnification, disclaimers of liability, damages and limitation of damages; termination of licensing agreements; bankruptcy; governing law and dispute resolution; and recent trends.

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China

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Restrictions

1 Are there any restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor and are there any restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office? Whether or not any such restrictions exist, is there any filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in your jurisdiction?

Whether any restrictions apply depends on the specific industry and business activities involved in establishing the business entity or joint venture. In certain regulated sectors, specifically, the sectors as listed in the Negative List for Foreign Investment Access issued by China's State Council, foreign investment might be prohibited or subject to mandatory licensing or approval requirements.

There are no restrictions preventing a foreign licensor from entering into a licence agreement without establishing a subsidiary or branch office.

For certain business sectors, the corresponding approval procedures are required.

Law stated - 10 December 2025

KINDS OF LICENCES

Forms of licence arrangement

2 Identify the different forms of licence arrangements that exist in your jurisdiction.

In China, licence arrangements may take various forms.

Based on the degree of exclusivity granted, licences are typically categorised as non-exclusive, sole or exclusive licences.

From the perspective of the type of rights licensed, licence arrangements include patent licences, trademark licences, copyright licences and trade secret (for example, technical know-how) licences.

From the perspective of the licensing structure, licences may be categorised as those granted directly by the rights holder and those granted as sub-licences by the licensee.

Where the parties grant rights to each other, the arrangement may be characterised as a cross-licence rather than a one-way licence.

The PRC Patent Law (2020) provides special licensing, including:

- open licensing, which refers to a mechanism whereby a patentee voluntarily files a written declaration with the patent administration department under the State Council stating its willingness to license any organisation or individual to exploit the patent, while specifying the method and standards for royalty payment; and
-

mandatory licensing, which refers to circumstances prescribed under the PRC Patent Law in which the patent administration department under the State Council may authorise another party to exploit the patent without the patentee's consent, provided that the licensee pays a reasonable royalty to the patentee.

Law stated - 10 December 2025

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

China does not have legislation that directly governs the creation of international licensing relationships or specifically regulates the substantive terms of such arrangements.

However, an international licence is very likely to involve the import or export of technology (for example, where a domestic right holder licenses technology to an overseas entity), for which the transaction may be subject to a number of statutory and regulatory requirements applicable to technology import and export, including:

- The Foreign Trade Law (2022);
- The Administrative Regulations on Import and Export of Technologies (2020);
- The Administrative Measures on Registration of Technology Import and Export Contracts (2009);
- The Special Administrative Measures for Foreign Investment Access (Negative List) (2024)
- The Catalogue of Technologies Prohibited and Restricted from Export (2025);
- The Export Control Law (2020);
- The Regulations on the Export Control of Dual-use Items (2024); and
- The Catalogue of Dual-use Items and Technologies Subject to the Administration of Import and Export Licences (2025).

Law stated - 10 December 2025

Pre-contractual disclosure

4 What pre-contractual disclosure must a licensor make to prospective licensees?

In general, a licensor is expected to disclose certain basic information regarding the licensed IP rights during the pre-contractual stage. Such disclosures typically include information on ownership of the rights, the legal status of the rights, and any other information relevant to determining whether the potential licensee should obtain the

licence. These disclosures enable the potential licensee to evaluate the viability and desirability of entering into the licence arrangement.

Law stated - 10 December 2025

Registration

5 Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

If an international license involves the import or export of technology, the parties may be required to undergo the corresponding regulatory approval or filing procedures prescribed under applicable technology import–export laws and regulations.

For licences that do not involve technology import or export, or that do not fall within restricted sectors, the parties may elect to record the licensing agreement with the relevant authorities on a voluntary basis. However, such a record is not a condition for the validity or enforceability of the licensing agreement.

Law stated - 10 December 2025

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

China is party to:

- the Paris Convention for the Protection of Industrial Property (since 19 March 1985);
- the Patent Cooperation Treaty (PCT) (since 1 January 1994); and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (since 11 December 2001, as China's accession to the World Trade Organization (WTO)).

Law stated - 10 December 2025

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor’s intellectual property rights or registrations in your jurisdiction?

Under the Civil Code (2020) and the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Cases of Disputes over

Technology Contracts (2020), contractual clauses that prohibit a licensee from challenging the validity of the licensed intellectual property, or that impose conditions restricting the licensee's ability to raise such challenges, may be deemed to constitute an 'illegal monopolisation of technology' within the meaning of the rules governing technology contracts. Such provisions may therefore be rendered invalid under PRC law.

Law stated - 10 December 2025

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

In practice, licence agreements commonly stipulate that the agreement will be terminated upon the invalidation or expiry of the licensed intellectual property right, in which case, the licensee would no longer be required to pay royalties. Such events may also be stipulated as grounds for termination or rescission conditions. Where the licence agreement contains no such provision, the licensee may still invoke the invalidity or expiry of the right to request modification or termination of the contract.

A licensee may refuse to continue paying royalties on the basis that the licensed right has been declared invalid or has expired. Following invalidity or expiry, the licensee's exploitation and implementation of the formerly licensed subject matter are no longer restricted, unless the licensor holds other valid intellectual property rights that continue to cover the relevant activities.

Law stated - 10 December 2025

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

The law does not prohibit the licensing of unregistered intellectual property rights. For example, unregistered well-known trademarks and unregistered copyrights may validly be licensed to third parties for use, provided the licensee and licensor may reach a consensus.

Law stated - 10 December 2025

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

In China, the proprietary rights associated with intellectual property – such as trademark rights, patent rights, and copyright – may be pledged as collateral.

A security interest over such intellectual property is created upon registration of the pledge with the competent authority.

Law stated - 10 December 2025

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

The law does not restrict the right of a foreign intellectual property owner or licensor to bring an action without joining the domestic licensee as a party to the proceedings. In other words, a foreign intellectual property owner may file a lawsuit independently.

Whether a domestic licensee may bring an action against an infringer of the licensed intellectual property without the consent of the owner or licensor depends on the type of licence and whether the licensee has obtained the licensor's express authorisation. Specifically as follows:

- exclusive licence: Under an exclusive licence (meaning that once the licence is granted to the licensee, the licensor is also prohibited from using the intellectual property), the domestic licensee may bring an action independently against the infringer of the licensed intellectual property without obtaining additional authorisation from the licensor;
- sole licence: Under a sole licence (meaning that only the licensee and the licensor may use the intellectual property), the domestic licensee may bring an action jointly with the licencor, or may bring an action independently if the licensor expressly declines to sue, in which further certificate or statement from the licensor shall be provided when the licensee files the case; and
- non-exclusive licence: In this case, the licensee generally does not have an independent right to sue unless it has obtained the licensor's express authorisation.

Because the licensee's right to bring an action must be based on a specific licence, or on express authorisation in the licence agreement, the absence of such authorisation is understood to mean that the licensee has no right to bring an action. Therefore, in practice, licence agreements generally do not prohibit the licensee from taking such actions through contractual provisions. But it is allowed to include a clause to contractually prohibit a licensee from instituting legal proceedings.

Law stated - 10 December 2025

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

Where the licensing agreement expressly grants the licensee the right to sub-license, the licensee may sub-license the authorised rights to a third party.

Law stated - 10 December 2025

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

For dispositions of jointly owned intellectual property – such as assignments, exclusive licences and sole licences, pledges, or other acts of disposal – the consent of all co-owners is required under PRC law. However, for non-exclusive licences, any individual co-owner may independently grant such a licence, provided that the resulting proceeds are equitably allocated among all co-owners.

The law does not prohibit co-owners from contractually altering these default rules. In practice, courts generally acknowledge the parties' contractual arrangements in accordance with the principle of freedom of contract and party autonomy.

Law stated - 10 December 2025

First to file

14 Is your jurisdiction a ‘first to file’ or ‘first to invent’ jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

China operates under a 'first-to-file' patent system. PRC law does not prohibit the licensing of a pending patent application. The licensor and licensee are free to negotiate and agree upon the terms of such a licence.

Law stated - 10 December 2025

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

Software, business processes, or methods are patentable in China if they contain technical features, achieve a specific technical effect, and are directed to solving a specific technical problem. Provided such a technical solution also satisfies the statutory requirements of novelty, inventiveness, and practical applicability under the PRC Patent Law, it could be granted as a patent.

Living organisms, per se, cannot be protected as patentable subject matter in China. However, new plant varieties may obtain intellectual property protection under the Regulation on Protection of New Varieties of Plants (2025).

Law stated - 10 December 2025

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

The primary legislation governing trade secrets in China is the Anti-Unfair Competition Law (2025), which provides in article 10 that trade secrets are defined as technical information, business information, or other commercial information that is not known to the public, has commercial value, and for which the right holder has adopted corresponding confidentiality measures.

In addition, in certain circumstances, the misappropriation of trade secrets may also constitute a crime under article 219 of the PRC Criminal Law (2023), which prescribes the crime of infringing trade secrets.

Law stated - 10 December 2025

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

The licensor may impose restrictions in the licence agreement on the licensee's disclosure and use of trade secrets and know-how. The specific conditions and duration of such restrictions depend on the parties' free negotiation.

For improvements in which the licensee has participated, the parties may independently agree on the ownership of such improvements and may make corresponding arrangements regarding restrictions based on the agreed ownership.

Law stated - 10 December 2025

Copyright

18 What constitutes copyright in your jurisdiction and how can it be protected?

In China, according to the Copyright Law (2020), works constitute copyright. Works in China refer to original intellectual achievements in the fields of literature, art and science which can be expressed in a certain form, including:

- written works;
- oral works;
- musical, dramatic, opera, dance, acrobatic artistic works;
- fine arts, architectural works;
- photographic works;
- audio-visual works;
- graphic works and model works, such as engineering design plans, product design plans, maps, schematic diagrams, etc;
- computer software; and
- any other intellectual achievements which comply with the characteristics of the works.

In China, copyright protection arises automatically upon the creation of a work, and no formal registration is required for the work to be covered by copyright law. Voluntary copyright registration plays an important role in publicly evidencing rights, particularly when used as proof of ownership in rights-enforcement actions and dispute- resolution proceedings.

Law stated - 10 December 2025

SOFTWARE LICENSING

Perpetual software licences

19 Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

PRC law recognises the validity of software licence agreements in which the parties agree to a perpetual term, and such commercial arrangements are also very common in practice.

Law stated - 10 December 2025

Legal requirements

20 Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

China does not have laws that specifically impose import or export restrictions on software licences. However, if the software involves technologies that are prohibited or restricted from import or export, or if it involves matters regulated by other laws (such as

laws applicable to games or publications), the relevant regulatory requirements must be satisfied.

Law stated - 10 December 2025

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

There are no direct legal restrictions on the limitations that a licensor may impose on users of its software in a licence agreement. However, restrictions that are clearly unreasonable or impair the users' rights and interests may be deemed invalid.

Law stated - 10 December 2025

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

There is no specific legislation that regulates matters such as royalties or other fees in an international licensing relationship.

The payment of the royalties from a domestic company to an international company is subject to the foreign exchange control policy.

Law stated - 10 December 2025

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

China has relatively strict foreign exchange controls, with the primary legal basis being the Regulation on Foreign Exchange Administration (2008).

Law stated - 10 December 2025

Taxation of foreign licensor

24

In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

A foreign licensor is required to pay the corresponding taxes on income derived from within China, primarily including value-added tax and enterprise income tax or individual income tax.

Law stated - 10 December 2025

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

Yes. China prohibits and regulates practices that may restrict competition under the Anti-Monopoly Law, including monopoly agreements, abuse of market dominance, and anti-competitive mergers.

In addition to the Anti-Monopoly Law (2020), China regulates trade-distorting practices under the Anti-Unfair Competition Law (2025), including confusion, commercial bribery, false or misleading promotion, trade secret infringement, improper prize-attached sales, commercial disparagement, and online unfair competition.

Law stated - 10 December 2025

Legal restrictions

26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

In China, there are no explicit legal restrictions on provisions in licence agreements concerning duration, exclusivity, or prohibitions on internet sales. Except where the licensor holds a market-dominant position and may, therefore, face antitrust scrutiny, such licence conditions are generally subject to the parties' free agreement.

With respect to non-competition restrictions and grant-back provisions, such clauses may be deemed to constitute an 'illegal monopolisation of technology', for which these terms might be considered as invalid.

Law stated - 10 December 2025

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

Yes. Chinese courts have held that the exercise of IP rights may constitute an anti-competitive practice where it has the effect of eliminating or restricting competition, especially in cases related to standard essential patents (SEPs).

Representative decisions include *Huawei v InterDigital,* where the courts determined that the SEP holders' refusal to license SEPs under fair, reasonable and non-discriminatory (FRAND) conditions constitutes an abuse of a dominant market position.

Law stated - 10 December 2025

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Indemnification provisions are not rare and generally enforceable. The insurance is also available in support of an indemnification provision.

Law stated - 10 December 2025

Waivers and limitations

29 Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

Yes. PRC law allows parties, based on the principle of autonomy of will, to freely dispose of their contractual rights, including agreeing to waive or limit certain types of damages. Such arrangements constitute a party's disposition of its own rights and are generally valid, and, in practice, are often upheld by judicial authorities.

However, if such a waiver or limitation of damages exceeds a normally reasonable scope and is found by a court to violate the principle of fairness, it may be deemed invalid. A typical example is where a party provides standard-form terms that unreasonably exempt or reduce its own liability, increase the other party's liability, or restrict or exclude the other party's principal rights, such as the right to claim damages; such standard terms will be deemed invalid.

Law stated - 10 December 2025

TERMINATION

Right to terminate

I

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically, have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

PRC law does not contain explicit provisions that impose conditions on, or otherwise limit, the termination or non-renewal of an international licensing relationship, nor is there any legislation that expressly requires the payment of indemnities or other forms of compensation upon termination or non-renewal. The parties may make their own arrangements through contractual terms.

Law stated - 10 December 2025

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

Typically, the parties to a transaction will make detailed arrangements regarding the validity of sub-licences after the termination of the underlying licence when signing the licence agreement.

Where the underlying licence agreement does not address the validity of sub-licences in the cases of the termination or expiration of a licence agreement, Chinese judicial practice tends to protect the legitimate rights and interests of sub-licensees under specific conditions, recognising that sub-licences may remain valid even after the termination of the underlying licence. This approach is grounded in the principles of safeguarding transactional stability and protecting the legitimate reliance interests of third parties.

Law stated - 10 December 2025

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

There are no specific provisions under PRC law that directly regulate the impact of bankruptcy on licence agreements.

Under the general provisions of the Business Bankruptcy Law (2006), for licence agreements that have not yet been fully performed, the bankruptcy administrator has the

right to decide whether to terminate the agreement or continue performing it. When the licensee enters bankruptcy and the administrator elects to continue performing the licence agreement, the licence fees payable by the licensee will constitute common benefit debts and shall be paid in priority over ordinary claims, and may be satisfied at any time out of the debtor's assets. However, if the debtor's assets are insufficient to cover all common benefit debts, any unpaid licence fees will be satisfied proportionally based on the ratio of distributable assets to the total amount of unpaid common benefit debts. If the administrator elects to terminate the agreement, the licensor may only declare its claim as an ordinary creditor and will be repaid fairly according to the distribution rules.

When a basic licence agreement is terminated due to bankruptcy, Chinese judicial practice tends to uphold the validity of previously lawfully granted sub-licences.

The licensor and licensee may agree on a 'bankruptcy termination clause', namely that if the licensee enters bankruptcy, the licensor shall have the right to unilaterally terminate the licence agreement.

Law stated - 10 December 2025

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

In the event of the licensor's bankruptcy, if the bankruptcy administrator decides to terminate the licence agreement, the licensee shall lose the right to use the licensed materials. However, the court tends to opine that the sub-licences lawfully granted prior to such termination shall remain valid, provided that the sub-licensee has acted in good faith.

Because the licensor's bankruptcy may directly affect the continued validity of the licence, it is common in licensing practice for the parties to consider including a 'termination right limitation' clause in the contract, stipulating that if the licensor enters bankruptcy and the bankruptcy administrator chooses to terminate the licence agreement, the licensee may continue to use the licensed technology on a permanent basis.

Law stated - 10 December 2025

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

There are no restrictions. The parties to an international licensing agreement may agree to choose the governing law of another jurisdiction.

Law stated - 10 December 2025

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

Yes. The parties may, of course, agree by contract to submit their disputes to arbitration instead of bringing them before the courts of the jurisdiction, and the parties are free to choose the arbitral tribunal and the place of arbitration.

Law stated - 10 December 2025

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

As for the enforcement of foreign court judgments, pursuant to articles 298 and 299 of the PRC Civil Procedure Law (2023), a judgment rendered by a foreign court that has come into legal effect and requires recognition and enforcement in China may be submitted by a party directly to the competent intermediate court of China for recognition and enforcement. Alternatively, the foreign court may, in accordance with the international treaties concluded or acceded to between the foreign state and the PRC, or on the basis of the principle of reciprocity, request recognition and enforcement by the Chinese court. However, China is currently not a party to any such multilateral convention. However, it has concluded bilateral judicial assistance treaties with a number of countries. After examining the application in accordance with the applicable treaty or the reciprocity principle, a Chinese court may rule to recognise the legal validity of the foreign judgment and, where enforcement is necessary, issue an enforcement order.

As for enforcement of foreign arbitral awards, China is a contracting state to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Therefore, where a foreign arbitral award requires recognition and enforcement in China, the party concerned may, pursuant to article 304 of the PRC Civil Procedure Law (2023), apply directly to the PRC intermediate court with jurisdiction. The Chinese court will handle the matter pursuant to the New York Convention or on the basis of reciprocity.

Law stated - 10 December 2025

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May

the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

When infringement is established, courts in China will, in principle, issue injunctive relief. There are some exceptions for cases related to standard essential patents or cases involving public interest, in which the injunction may not be available.

With respect to the effectiveness of contractually excluding the right to seek injunctive relief, there is currently no explicit statutory provision in China. However, in principle, if the parties have clearly agreed in advance to waive a specific remedy or to waive specific categories of damages, courts tend to respect the parties' autonomy to dispose of their rights.

Law stated - 10 December 2025

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

Following its fourth revision in 2020, PRC Patent Law introduced a new special patent licensing system – the open licensing system. When a patent holder submits an open licence declaration to the Patent Office, it constitutes an offer in the contractual sense. Any entity or individual may obtain a patent implementation licence by notifying the patent holder in writing and paying the licence fee according to the published payment method and standards.

Open licensors are entitled to a 15 per cent reduction in patent annual fees during the open licence period. The open licensing system includes prohibitions and restrictions on the patentee, such as prohibiting open licensors from granting exclusive or sole licences for the same patent during the open licence period.

China’s open patent licensing system helps reduce transaction costs by making licensing information publicly available, standardising transaction procedures, and enhancing compliance and accuracy. This mechanism facilitates the commercialisation and broader use of patented technologies and represents a key innovation in China’s market-oriented licensing framework.

Law stated - 10 December 2025

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A foreign licensor is not restricted in any way if they enter into a licence agreement without establishing a subsidiary or branch office in Germany. There are also no particular restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor. German law does not distinguish between Germans and foreign nationals regarding the establishment of business entities.

Law stated - 20 January 2026

KINDS OF LICENCES

Forms of licence arrangement

2 Identify the different forms of licence arrangements that exist in your jurisdiction.

In general, three types of licence agreements can be distinguished: exclusive, sole and non-exclusive. While an exclusive licence confers all the rights that subsist in the subject matter of the licence agreement to the licensee, a sole licence only gives exclusivity in the sense that the licensor will not grant licences to any other party, but they will retain the right to use the subject matter of the licence agreement for itself. A non-exclusive licence, contrary to an exclusive or sole licence, does not grant all the rights that subsist in the subject matter of the licence agreement to one particular licensee; the licensor may grant rights to several licensees. The rules applicable to exclusive or sole licences may be different from the rules that apply to non-exclusive licences. For example, unlike a non-exclusive licensee, an exclusive or sole licensee of a patent has the standing to sue for infringement and may grant sub-licences.

In the patent field, there are also cases of compulsory licences. A compulsory licence to a patent must be granted (in rare cases) for public interest reasons, or when the licensee owns a dependent patent to an important invention that he or she cannot exploit without a licence to use the licensor's basic patent (section 24(1) and (2) of the German Patent Act). An obligation to conclude a licence agreement also exists in the field of standard essential patents, where any third party who wishes to practise the standard can ask for a licence under the patent for such use. Certain compulsory licences are also known in the copyright field (see section 42a of the German Copyright Act).

Any kind of intellectual property that allows its holder to exclude others from using the same, such as patents, utility models and copyright – including copyright for software, industrial design, trademarks and topographies of semiconductor products – can be the subject

matter of a licence agreement. In addition, personality rights and confidential information (know-how and trade secrets) can also be the subject matter of a licence agreement.

Law stated - 20 January 2026

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

Legislation does not directly govern the creation or otherwise regulate the terms of a licensing relationship. German intellectual property acts, such as the Patent Act or the Trademark Act, only specify that the respective intellectual property rights can be the subject of an exclusive or non-exclusive licence (section 15(2) of the German Patent Act and section 30 of the German Trademark Act), but do not contain any rules about the creation or the further terms of a licence.

In principle, parties are free to choose the content of the licence agreement. However, this freedom is limited by antitrust law and general contract law, in particular the laws on standard terms and conditions, which impose certain requirements on the terms of a licensing relationship. In the case of compulsory licences, royalty rates typically have to be fair, reasonable and non-discriminatory.

Law stated - 20 January 2026

Pre-contractual disclosure

4 What pre-contractual disclosure must a licensor make to prospective licensees?

The licensor has no specific pre-contractual disclosure obligations. However, the general obligation to act in good faith requires a party to a prospective licence agreement to disclose information that is so relevant for the decision of the other party that disclosure can reasonably be expected. For example, courts found a disclosure obligation to exist where the licensor was aware of a prior piece of art that was likely to render the patent to be licensed invalid (RG GRUR 41, 99, 101), or where the licensor was the inventor and owner of the rights to the invention whose use was to be licensed, but a third party, and not the licensor, was registered as the formal applicant of the corresponding patent application (LG München I, Case No. 21 O 4559/08). The licensor has no disclosure obligation if the other party can obtain the relevant information itself with reasonable effort (LG München I, GRUR-RS 2022, 29884, marginal No. 45).

Law stated - 20 January 2026

Registration

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5 Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

There is no requirement to register a grant of licensing rights but a registration may have certain advantages for the licensee.

Law stated - 20 January 2026

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Germany is a party to all these treaties.

Law stated - 20 January 2026

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor's intellectual property rights or registrations in your jurisdiction?

No-challenge clauses in licence agreements concerning patents and utility models are, in general, considered to be a violation of EU antitrust law and therefore void (article 5(1)(b) of the Technology Transfer Block Exemption (TTBER) Regulation (EU) No. 316/2014)). The requirement is, inter alia, that the agreement is liable to affect trade among the member states of the European Union. Exceptions exist where the licence is granted royalty-free or where the licensed technology is outdated (ECJ, Case C-65/86).

After the amendments to the TTBER and the Commission Notice (TTBER Guidelines) in May 2014, a stricter approach has been taken on no-challenge clauses. First, although no-challenge clauses in the context of a settlement or non-assertion agreement are generally considered to be allowed under antitrust law even after the amendments (Commission Notice (TTBER Guidelines) 2014/C 89/03 at 242), the amended TTBER Guidelines stipulate that they may be prohibited under article 101(1) of the Treaty on the Functioning of the European Union under specific circumstances with mentioning, as one of those circumstances, the case where an intellectual property right was granted following the provision of incorrect or misleading information (TTBER Guidelines at 243). No-contest clauses in trademark or design licence agreements are judged according to the same criteria.

Second, although, in the case of an exclusive licence, the licensor may continue to reserve the right to terminate the licence agreement, in the case of a challenge of the licensed intellectual property right by the licensee, regarding the case of a non-exclusive licence, whether the reservation of such right in the case of a challenge is considered to be a

violation of EU antitrust law has to be decided on a case-by-case basis (article 5(1)(b) of the TTBER). The same applies to a clause of automatic termination in the case of a challenge by the licensee.

Law stated - 20 January 2026

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

The expiry or a final decision of invalidity of an intellectual property right usually leads to the expiry of a related licence agreement if there is no provision about the term of the agreement. However, the agreement may be set to run beyond the lifetime of the intellectual property right; for example, for a fixed period of time. Such a clause is common in agreements that grant a licence to know-how in addition to a licence to intellectual property rights. In the case of a plurality of licensed intellectual property rights, parties typically set the term of the agreement to the period of protection of the intellectual property right that expires last.

For patents and utility models, the European Commission considers a clause that extends the licensee's obligation to pay royalties beyond the lifetime of the licensed intellectual property right as not being in conflict with antitrust law (TTBER Guidelines at 187). However, this issue has not yet been decided by a court. Where the licence concerns a plurality of intellectual property rights, the agreement should specify whether royalty payments are reduced accordingly if one of the intellectual property rights expires, or whether the same royalty amount is due until all intellectual property rights have expired. The rules mentioned are also applicable to trademark and design licences, whether community rights or national rights.

In Germany, unless otherwise agreed by the parties, royalties already paid by the licensee do not have to be paid back in the case of an invalidation of the licensed intellectual property right, and outstanding payment obligations for royalties that become due prior to the invalidation have to be fulfilled.

After expiry or invalidation of the licensed intellectual property right, the licensee is free to compete unless the licence agreement comprises a non-compete obligation for a time period after the expiry or invalidation. The validity of such a non-compete obligation under antitrust law depends on the circumstances of the case; in particular, the effect it may have on the competitive situation after the expiry of the intellectual property right.

Law stated - 20 January 2026

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

Unregistered trademarks, as well as all other intellectual property rights that do not require registration (eg, copyrights), can be licensed in Germany.

Law stated - 20 January 2026

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

There are no specific formal requirements in Germany for taking a security interest in intellectual property. In particular, since 1 January 1999, it is not necessary to conclude the security interest in writing. It is also not necessary to register the security interest, but it is possible (and may be advisable) to do so under section 30(2) of the German Patent Act; section 29(2) of the German Trademark Act; and section 30(2) of the German Design Act.

Law stated - 20 January 2026

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

An exclusive or sole licensee of a patent or utility model can institute proceedings before the national courts against an infringer of the licensed intellectual property without the consent of the owner or licensor unless they have been contractually prohibited from doing so. The same is true for proceedings before the Unified Patent Court (UPC), of which Germany is a contracting member state. For UPC proceedings, the patent owner needs to be given notice by the licensee prior to the action. Contrary to that, a non-exclusive licensee of a patent or utility model has no standing to sue, but the right to sue can be granted by the owner of the patent or utility model to the non-exclusive licensee. If the licensee then brings suit, the owner can no longer do so. In the UPC, the non-exclusive licensee can bring an action if this is expressly permitted by the licence agreement. Additionally, the non-exclusive licensee must give notice to the owner prior to the action.

A licensee of a German trademark, be it a non-exclusive licensee, a sole licensee or an exclusive licensee, can institute proceedings against an infringer only with the consent of the owner. However, an exclusive licensee can bring an action for infringement of a trademark if the owner of the trademark has not brought an action for infringement of a trademark within a reasonable period of time after being formally requested to do so (section 30(3) of the German Trademark Act). The same rules apply for EU trademarks (article 25(3) of the EU Trademark Regulation) and German or community designs (section

31(3) of the German Design Act and article 32(3) of the Community Design Regulation). Since the general rule is that a licensee can act only with the consent of the owner, a sole licensee might have to be treated like a non-exclusive licensee. However, there is no case law on the rights of the sole licensee in this regard as yet.

As a rule, the owner of an intellectual property right has the standing to sue. Exceptions to this rule exist where the owner has granted an exclusive licence and is not affected by the infringement, because, for example, he or she receives no running royalty fees from his or her licensee, or where the owner has granted their right to sue to the licensee, at least if the licensee made use of that right. If the owner has the standing to sue, they can institute proceedings without the licensee, even if the licensee has already instituted his or her own proceedings. Licensees may join in the action of the owner to recover their own damages. However, at least for patents, German case law acknowledges damages claims only for exclusive licensees, not for non-exclusive licensees (BGH, Case No. X ZR 48/03). As regards damages caused by trademark or design infringement, German courts have decided that a licensee (be it a non-exclusive or an exclusive licensee) cannot claim their own damages, but only claims of the licensor (BGH, Case No. I ZR 93/04).

Law stated - 20 January 2026

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

It is recognised that an exclusive licensee may sub-license the use of the trademark to third parties, unless the right to sub-license has been excluded in the licence agreement. In the case of a non-exclusive licence, the licensee is not entitled to grant sub-licences, unless such a right was explicitly granted in the licence agreement.

Law stated - 20 January 2026

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

The provisions of sections 741 to 758 of the German Civil Code apply to joint ownership of trademarks and patents, including Unitary Patents governed by German law. In contrast, joint ownership of copyright is governed by the special provision of section 8 of the German Copyright Act.

Each of the joint patent or trademark owners has the right to use the subject protected by the intellectual property (section 743(2) of the German Civil Code). If one of the co-owners

is incapable of exploiting the patent or trademark, they are at least entitled to compensation for the use by the other co-owners. However, compensation is due only for uses that occur after the date on which the non-using co-owner has demanded compensation (German Federal Court of Justice, Case No. X ZR 152/03). Compensation may be calculated as reasonable royalties. Similarly, if one of the co-owners uses the patent or trademark to an extent that exceeds their share, the other co-owners can demand compensation. Co-owners of copyrights (co-authors) need to reach consent on the publication, exploitation or alteration of a copyrighted work (section 8(2) of the German Copyright Act, first sentence). However, a co-author may not refuse their consent to publication, exploitation or alteration contrary to the principles of good faith (section 8(2) of the German Copyright Act, first sentence).

Acts that affect an intellectual property right as a whole, such as a transfer of the intellectual property right, a licence to the intellectual property right, or using the intellectual property right as security, require consent by all co-owners (section 747 of the German Civil Code, second sentence for patents and trademarks; and section 8(2) of the German Copyright Act, for copyrights). On the other hand, each co-owner of a patent or trademark (but not of copyright) is free to transfer their share to a third party (section 747 of the German Civil Code, first sentence), which will then give the third party the right to use the patent or trademark instead of the previous co-owner. A co-owner may also give a licence to a third party to use the patent or trademark in place of the co-owner, or use their share in the patent or trademark as security. A co-owner of a copyright may waive their share of the exploitation rights.

Co-owners of intellectual property rights are able to change this position in a contract. For example, they can decide that the right to use may be governed by a majority decision of the joint owners (section 8(4) of the German Copyright Act), but they cannot transfer it to a third party.

Law stated - 20 January 2026

First to file

14 Is your jurisdiction a ‘first to file’ or ‘first to invent’ jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

Germany is a ‘first to file’ jurisdiction. A licensor can grant a licence for the use of an invention even before filing a patent application, or after the filing of a patent application but before the grant of the patent (section 15(2), (1) of the German Patent Act).

Law stated - 20 January 2026

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

Only technical inventions can be patented in Germany (section 1 of the German Patent Act). Consequently, software and business methods 'as such' are not patentable, but technical aspects of software and technical implementations of business methods can be protected by patents, provided that the technical aspects are novel and inventive.

Living organisms are not precluded from patent protection per se. However, there are a number of exclusions and restrictions. The recent amendment of section 2a of the German Patent Act decided a question that is yet to be answered on behalf of the European Patent Office (see pending cases No. G 2/13 – *Broccoli II* and No. G 2/12 – *Tomatoes II*): besides the exclusion of patentability of plant and animal varieties as well as of essentially biological processes for the production of plants or animals, plants and animals obtained exclusively via such processes are now also excluded from patentability.

Law stated - 20 January 2026

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

Trade secrets or know-how are protected by the German Trade Secrets Act, which entered into force on 26 April 2019. The Act defines a trade secret in its section 2 as information that is not generally known or readily accessible, neither as a whole nor in the precise arrangement and composition of its components, to persons in the circles that ordinarily handle that type of information, and is therefore of economic value; and which is the subject of secrecy measures appropriate under the circumstances by its rightful owner; and for which there is a legitimate interest to keep it secret.

Even though trade secrets are not regarded as intellectual property rights in Germany in the sense of granting its holder exclusive rights, the Act provides for a full set of remedies including injunctions, damages, destruction of infringing products, recall of infringing products or removal from the channels of commerce, disclosure of information about suppliers and customers, sales and costs, the persons from whom the trade secret was obtained and the persons to whom the trade secret was passed on, when information is used that was passed on in breach of trade secret law.

Law stated - 20 January 2026

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

The licensor can restrict the disclosure and the use of trade secrets and know-how by the licensee or third parties during and after the term of the licence agreement. Liability of third parties arises only if they are also contractually related to the licensor. Otherwise, the general law prohibiting the disclosure of trade or commercial secrets applies.

Secrecy obligations and use restrictions after the termination of the licence agreement are exempted from antitrust rules by article 2 of the TTBER. However, if the know-how becomes publicly known after the date of the agreement or it proves not to have been secret at the date of the agreement, any restrictions lose exemption from antitrust rules, since only secret know-how can be the object of an agreement restricting competition. According to the German antitrust authority, the lawfulness of an absolute duration of such restrictions, for example, 20 years, is questionable. Therefore, licence agreements should limit disclosure for such time as the licensed trade secret continues to exist.

After the amendments to the TTBER and the TTBER Guidelines in May 2014, any direct or indirect obligation on the licensee to grant an exclusive licence to the licensor in respect of any improvements to the licensed know-how made by the licensee, or to assign to the licensor the licensee's rights in the improvements is not exempted from antitrust rules (article 5(1) of the TTBER). Before the amendment, the subject not exempted from antitrust rules was limited to 'severable' improvements. Therefore, the permissibility of restrictions regarding improvements made by the licensee may conflict with antitrust law, depending on the circumstances of the case.

Law stated - 20 January 2026

Copyright

18 | What constitutes copyright in your jurisdiction and how can it be protected?

Literary, scientific and artistic works are protected via copyright, which includes, in particular:

- literary works, such as writings, speeches and computer programs;
- musical works;
- works of pantomime, including choreographic works;
- works of fine art, including works of architecture and of applied art and plans for such works;
- photographic works, including works produced by processes similar to cinematography; or
- illustrations of scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional representations.

Translations and other adaptations or modifications of a work may constitute copyrighted creations of the person having created the adaptation or modification. Collections of works, of data or of other independent elements that, by reason of the selection or arrangement of the elements, constitute a personal intellectual creation, are also protected by copyright.

Copyright protection requires that a work is the author's individual creation, which requires a certain level of originality. Recent decisions of both the Court of Justice of the European Union (Case C-5/08) and the German Federal Court of Justice (Case No. I ZR 143/12) show a tendency towards a lowering of this threshold and a more equal threshold for different work categories.

Works that can be subject to copyright are protected without registration; the mere act of creation establishes the copyright.

Law stated - 20 January 2026

SOFTWARE LICENSING

Perpetual software licences

19 Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

Perpetual software licences are recognised as valid and are frequently used in Germany. In general, the law of sales is applied to them. As the German law of sales provides for rather strict liability in the case of defects of the purchased goods, the licence agreement should define what constitutes a defect, and the measures the licensor has to take to remedy the defects. Further, since the law of sales does not provide for a right to terminate the contract in the case of a material breach of contract, the licence agreement should include a provision that allows termination of the licence in this case (eg, if the licensee installs the software on more devices or for more users than contractually allowed, see LG Köln, Case No. 28 O 482/05).

Law stated - 20 January 2026

Legal requirements

20 Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

No particular legal requirements to be complied with prior to granting a software licence are known. Import or export restrictions may apply only in very specific situations, such as licences for military use of the software.

Law stated - 20 January 2026

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

A licensee of a computer program may not be prevented by contract of performing the following acts:

- the making of a backup copy by a person having a right to use the computer program if it is necessary to secure future use (section 69d(2) of the German Copyright Act);
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the observation, studying or testing of the functioning of the program in order to determine the ideas and principles that underlie any element of the program if this occurs while performing any acts of loading, displaying, running, transmitting or storing the program that he or she is entitled to do (sections 69d(3) and 69g(2) of the German Copyright Act); and

- decompilation, as far as it is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs (sections 69e and 69g(2) of the German Copyright Act).

Law stated - 20 January 2026

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

The nature, amount, manner and frequency of payments of royalties, fees or costs can, in principle, be freely chosen by the parties to the licence agreement. One exception to this principle concerns copyright licence agreements, where the German Copyright Act provides that the author can demand an adjustment of the agreement where the payment to the author is not fair and reasonable (section 32(1) of the German Copyright Act). Another exception concerns the field of standard essential patents, where according to the case law, antitrust law requires that any third party who wishes to practise the standard can ask for a licence under the patent for such use under fair, reasonable and non-discriminatory conditions.

In the absence of regulation of the interest rate on late payments in the licence agreement, general civil law provides for an interest rate of 8 per cent above the basic interest rate, and in the case of consumer contracts, 5 per cent (section 288 of the German Civil Code).

No regulatory approval of the royalty rate or other fees or costs is required in Germany.

Law stated - 20 January 2026

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

In Germany, anyone can make payments to foreign beneficiaries or receive payments from abroad without restrictions or a need for permission. However, companies or persons domiciled in Germany need to report to the central bank (Bundesbank) payments to or from

abroad worth more than €12,500. These reports serve to provide statistical information about the degree and the structure of the trade between Germany and the rest of the world.

Law stated - 20 January 2026

Taxation of foreign licensor

24 In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

A foreign licensor (ie, a licensor whose residence or registered office or place of habitual residence is not in Germany) may have limited tax liability in Germany for royalties from Germany (section 50a of the German Income Tax Act). A German licensee may be required to withhold the tax and deduct it from the royalty payments and pay it directly to the tax office on behalf of the licensor. Double taxation can be avoided where respective treaties are in place (currently with approximately 90 countries). Where they are applicable, exemptions from the licensee's duty to withhold the tax may be available if a corresponding request is filed in due time (at least three months before royalty payments are made to the licensor).

Law stated - 20 January 2026

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

Practices that have the intent to or effect of restricting trade between EU member states are governed by articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and by the corresponding provisions of the German Antitrust Act.

Article 101 of the TFEU covers, inter alia, horizontal and vertical technology transfer agreements. The Technology Transfer Block Exemption Regulation (TTBER) (EU) No. 316/2014 provides certain general exemptions from violation by a licence agreement concerning, for example, patents, know-how and copyright for software. Individual exemptions of restricted practices are possible if they meet certain criteria listed in article 101(3) of the TFEU and do not fall within the hardcore restrictions.

Article 102 of the TFEU forbids abuse of a dominant position. It does not directly govern licence agreements, but exclusive licence agreements between competing undertakings may produce a combined dominance, and where such dominance is abused by a restricted practice, it can be considered a breach of article 102 of the TFEU.

Law stated - 20 January 2026

Legal restrictions

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26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

There are legal restrictions in respect of some of the above provisions in licence agreements. Exclusive licence agreements are generally permissible, but exclusivity in customer allocation is a hardcore restriction and thus such provisions are null and void. The same is true for an internet sales prohibition in a selective distribution agreement, which constitutes a restriction of competition 'by object' under EU law (Court of Justice of the European Union (CJEU), Case C-439/09). Grant-back provisions for assignment of or an exclusive licence on improvements made by the licensee are excluded from the benefits of TTBER and must be assessed on a case-by-case basis to weigh up their pro- and anticompetitive effects. Non-competition clauses are generally not permissible if they hinder the licensee in the production, use or sale of unprotected items or products. The duration of the licence agreement may extend beyond the term of protection of the licensed intellectual property right.

Law stated - 20 January 2026

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

Since 2008, the European Commission has increasingly scrutinised agreements for patent dispute resolution. Inter alia, it has imposed fines in an amount totalling €146 million for infringement of article 101 of the TFEU in the case of an agreement between Danish pharmaceutical firm Lundbeck and several generics companies. Under the agreement, Lundbeck made substantial payments to the generics companies to delay their release of generic versions of a drug for which Lundbeck's product patent had expired, and to which it held only certain process patents, which provided more limited coverage. The decision of the European Commission was upheld by the European General Court in September 2016 in a series of cases (T-472/13, T-460/13, T-467/13, T-469/13, T-470/13 and T-471/13). The Court found that the European Commission had correctly refused to apply the exceptions under article 101(3) of the TFEU in favour of the parties.

In a 2009 decision (KZR 39/06 – *Orange Book*), the German Federal Court of Justice found that denial to grant a licence under a standard-essential patent (SEP) may be an abuse of dominant position under German and EU (article 102 of the TFEU) antitrust law. In this situation, seeking injunctive relief in a patent infringement lawsuit is likewise an abuse of a dominant position. The conditions under which the owner of a SEP may nevertheless ask for an injunction were further limited in a decision of the CJEU in July 2015 (Case C-170/13 – *Huawei v ZTE*). If an alleged infringer expresses their willingness to conclude a licence under fair, reasonable and non-discriminatory (FRAND) terms, the SEP owner may ask for an injunction only after making a written offer for a licence on FRAND terms, if the defendant did not diligently respond to the offer, in particular by submitting a specific counter-offer that also corresponds to FRAND terms. The German Federal Court of Justice held in a decision of 2020 (KZR 35/17 – FRAND defence II) that the willingness to take a

licence on the part of the infringer must not be limited to a one-time expression of interest in licensing, or the submission of a (counter) offer. Rather, the infringer (like the patent owner) is required to facilitate that a licence agreement on FRAND terms can be negotiated.

Law stated - 20 January 2026

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Indemnification provisions are commonly used in Germany and are generally enforceable. For example, claims for product liability may arise against the licensor from the use of the licensor's trademark. The licence agreement may comprise a provision for indemnification of the licensor by the licensee with respect to such claims.

Insurance coverage for the protection of a foreign licensor may be available in support of an indemnification provision.

Law stated - 20 January 2026

Waivers and limitations

29 Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

Parties can, in general, agree to waive or limit damages claims. Such disclaimers and limitations of liability are generally enforceable.

Exceptions exist where a party uses standard terms and conditions: in this case, for example, liability for damages caused with intent or by a grossly negligent act cannot be excluded or limited. The same is true for liability resulting from ordinary negligence in the event of the death or personal injury and for liability for damages that are typical and foreseeable.

Law stated - 20 January 2026

TERMINATION

Right to terminate

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically,

have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

Parties are free to terminate the licence in accordance with the provisions as set out in the agreement. German law does not restrict the content of a termination clause. Therefore, German law does not generally impose conditions on or limit the right to terminate or not to renew a licensing relationship. An exception to this rule exists in the case of compulsory licences, which, owing to their nature, cannot be terminated by the licensor without good cause.

In general, the payment of an indemnity or other form of compensation is not required upon a rightful termination of the licence agreement. However, there is at least one decision of an appeals court (OLG Celle, Case No. 11 U 279/06), which ruled that if a franchisee is integrated into the organisation of the franchisor like a commercial agent and does not have the possibility to keep their customer base after termination or non-renewal of the franchise agreement, commercial agency law (section 89b of the German Commercial Code) is to be applied by way of analogy and the franchisee has a right to compensation. Franchise agreements typically also comprise licence agreements.

Law stated - 20 January 2026

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

For copyright licences, the German Federal Court of Justice, in a series of three judgments between 2009 and 2012, decided that the termination of the licence agreement in general does not lead to the termination of sub-licences granted by the licensee (Case No. I ZR 153/06, I ZR 70/10, and I ZR 24/11). In this case, the licensor has a claim against the licensee for the assignment of the right to collect outstanding royalty payments from the sub-licensees. Although the Federal Court of Justice left the issue open, it can be argued that in the case of the expiration of a licence agreement (eg, if a licence agreement has a limited term), a sub-licence granted by the licensee likewise expires because the sub-licensee cannot acquire a use right from the licensee that goes beyond what the licensee owns.

It is generally expected that the courts will also adopt this case law for other fields of intellectual property, such as patents and trademarks, which will have the consequence that sub-licences normally remain in force even if the licensor rightfully terminated the licence. If a licensor wants to avoid this consequence, it is advisable to include a provision in the licence agreement that requires the licensee to include clauses in the sub-licence providing that the sub-licence ends when the licence ceases to exist. To be certain that this provision is correctly applied, the licensor's explicit consent to any sub-licence may be required in the licence agreement. Alternatively, the right to sub-license could be granted in a way that is limited to sub-licences that end when the licence ceases to exist. Such a

provision, if ignored by the licensee, is arguably enforceable in that the sub-licence granted without the licensor's right to terminate is beyond what the licensee owns and therefore either void or to be treated as if the licensor's right to terminate was included.

Law stated - 20 January 2026

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

In the case of bankruptcy of the licensee, the insolvency administrator can choose whether or not they want to continue to perform the licence agreement (section 103 of the German Insolvency Act). If they choose not to continue the licence agreement, the agreement is terminated. On the other hand, if they choose to continue to use the licensed intellectual property right, royalty payments due after the day the commencement of insolvency was applied for, become debts of the estate, which are treated with priority over the debts to creditors in insolvency (section 55(1) No. 2 and section 53 of the German Insolvency Act).

It is generally assumed – although some doubts have been expressed concerning trademarks – that after the day the commencement of insolvency was applied for, the licensor cannot terminate the licence agreement on the ground that the licensee is in default of royalty payments due prior to that day, or that the financial circumstances of the licensee have deteriorated (analogous application of section 112 of the German Insolvency Act, which refers to lease contracts). Also, a clause providing for termination or the right to terminate upon the commencement of insolvency proceedings is considered to be void.

However, a provision in the licence agreement that allows the licensor to terminate the agreement, before the commencement of insolvency is applied for, on the grounds of payment default, indebtedness or a deterioration of the financial circumstances of the licensee is valid. Further, a provision that allows for the termination of the agreement in the case of late payments or where the licensee cannot meet an obligation for a certain minimum use of the licensed intellectual property right, even after commencement of insolvency proceedings was applied for is generally considered to be valid.

Regarding sub-licences that the licensee may have granted, certain principles are expected to apply in the case of bankruptcy of the licensee, be it that the insolvency administrator chooses not to continue to use the licensed intellectual property right, or that the licensor terminates the agreement prior to or after the application for the commencement of insolvency proceedings: arbitration clauses are common in licence agreements and recognised by section 1029 of the German Civil Procedure Code. A valid arbitration clause has the effect that a complaint brought before a German court has to be dismissed for lack of jurisdiction if the defendant so requests prior to the oral hearing (section 1032(1) of the German Civil Procedure Code).

Law stated - 20 January 2026

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

Also, in the case of bankruptcy of the licensor, the insolvency administrator can choose whether or not he or she wants to continue to perform the licence agreement, provided that the licence contract was not yet completely performed by the licensor or the licensee (section 103(1) of the German Insolvency Act). This is the case at least where running royalties have been agreed upon. In a case of a royalty-free patent cross-licence agreement, a German appeals court found that the contract had already been performed completely and could not be terminated by the insolvency administrator (OLG München, Case No. 6 U 541/12). If the insolvency administrator chooses not to continue the licence agreement, the agreement is terminated. In this case, the licensee has a claim against the licensor for breach of contract (section 103(2) of the German Insolvency Act, first sentence), but this claim is treated like any other debt to creditors.

In several decisions, the sub-licence granted by the licensee to its sub-licensee was found to remain unaffected by the termination of the agreement between the insolvent licensor and the licensee (Federal Court of Justice, Case No. I ZR 153/06, I ZR 24/11, and I ZR 70/10). Consequently, the licensee can mitigate the risk of a bankruptcy of the licensor by sub-licensing the licence (eg, to its affiliates who practise the licence).

In another decision, the Federal Court of Justice (Case No. IX ZR 162/04) confirmed the validity of a clause in a software licence agreement by which the right to use the software was transferred to the licensee subject to the condition precedent that the licence agreement is terminated (including termination by the insolvency administrator). Thus, such a clause can provide another possibility, in particular for the exclusive licensee to protect itself against the bankruptcy of the licensor.

Finally, it is widely recognised in legal literature that charging an intellectual property right with a usufruct survives the bankruptcy of the licensor.

Law stated - 20 January 2026

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

In principle, the parties to an agreement are free to choose the law that governs the agreement (article 3(1) of Regulation (EC) No. 593/2008 (Rome I)). However, a German court would apply overriding mandatory provisions of German and EU law; namely, provisions the respect of which are regarded as crucial for safeguarding Germany's or the EU's public interests (article 9(2) of Rome I). In particular, EU antitrust law can be applied to assess the validity of the provisions of a licence agreement.

Law stated - 20 January 2026

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

Arbitration clauses are common in licence agreements and recognised by section 1029 of the German Civil Procedure Code. A valid arbitration clause has the effect that a complaint brought before a German court has to be dismissed for lack of jurisdiction if the defendant so requests prior to the oral hearing (section 1032(1) of the German Civil Procedure Code).

Law stated - 20 January 2026

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

Foreign judgments are, in general, enforceable in Germany. Enforcement requires that the foreign judgment has been declared enforceable by a German court.

Judgments from the Unified Patent Court (UPC), of which Germany is a member, are enforceable in Germany in the same way as judgments from a German court.

For judgments from EU member states and from a number of other jurisdictions (Iceland, Norway and Switzerland – the contracting parties to the Lugano Convention), the procedure and the prerequisites for the declaration of enforceability is simplified, and merely require that the judgment from the foreign jurisdiction is enforceable in that jurisdiction and that the interested party makes an application with the competent German court (see articles 38 and 39 of Council Regulation (EC) No. 44/2001 (Brussels I)).

For judgments from other jurisdictions, the interested party needs to sue the defendant at the competent German court for a declaration of the enforceability of the foreign judgment in Germany (section 722 of the German Civil Procedure Code). The German court will not review the lawfulness of the foreign judgment, but it will declare the foreign judgment enforceable in Germany only if the judgment from the foreign jurisdiction is final and the recognition of the foreign judgment in Germany is not excluded by law (section 723 of the German Civil Procedure Code). Recognition is excluded by law, for example, if it conflicts with German public policy (section 328 of the German Civil Procedure Code).

Foreign arbitral awards are recognised and enforced by German courts in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (section 1061 of the German Civil Procedure Code), to which Germany is a party.

Collective arbitration is rare in Germany, although it is known in certain types of shareholder suits (see the DIS Supplementary Rules for Corporate Law Disputes). Unless explicitly agreed upon by the parties, collective arbitration is unavailable. Therefore, a contractual waiver is unnecessary.

Law stated - 20 January 2026

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

Permanent and preliminary injunctive relief is available in Germany and also in the UPC, of which Germany is a member. An injunction granted by a first- instance court can regularly be immediately enforced, upon provision of a security bond, even if an appeal is pending. In the UPC, whether or not the enforcement of a decision is subject to the provision of a security is up to the discretion of the court. Pursuant to section 717 (2) of the German Civil Procedure Code, the plaintiff must compensate the defendant for all damages incurred by the defendant as a result of the provisional enforcement of the judgment, should the provisionally enforced judgment later be lifted.

At least for patents, the right to injunctive relief cannot be waived with *in rem* effect (LG Mannheim, Case No. 7 O 94/08), but the assertion of the right to injunctive relief can be waived contractually in an agreement with a third party. In this case, the third party has a defence against the claim for an injunction if the third party is sued for infringement (RGZ 153, 329 and 331). Restrictions to the enforceability of such a waiver exist where standard terms and conditions are used.

Parties may waive their entitlement to claim (specific categories of) damages, such as loss of profits, in an arbitration clause or any other clause of an agreement. However, restrictions exist where standard terms and conditions are used.

Law stated - 20 January 2026

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

No updates at this time.

Law stated - 20 January 2026

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UPDATES & TRENDS

Key developments of the past year

OVERVIEW

Restrictions

1 Are there any restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor and are there any restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office? Whether or not any such restrictions exist, is there any filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in your jurisdiction?

There is no general prohibition under Japanese law on a foreign licensor establishing a business entity in Japan or on a foreign licensor entering into a licence agreement without first forming a Japanese subsidiary or branch.

However, certain regulated industries impose limits on foreign ownership/control (notably some broadcasting businesses, air carriers and radio/telecommunications licences), and these sectoral rules must be checked. Certain industry specific statutes contain limits on foreign shareholding or foreign control or require government approval before a foreign person or foreign corporation may hold interests or operate in the sector.

If the intended Japanese entity or joint venture (JV) will conduct a business that falls under such a regime, you must review the applicable sectoral law for foreign ownership limits or licensing/approval requirements.

Separately, Japan's Foreign Exchange and Foreign Trade Act (FEFTA) contains an 'inbound direct investment' notification/review regime that can require prior filing and review for certain investments in Japanese companies; a planned establishment of a JV or local company may therefore trigger pre notification obligations. The FEFTA now provides an inbound direct investment notification and (in certain cases) review mechanism intended to address national security, public order and public safety concerns. The regime covers specific categories of business activities and certain types of investments (for example, acquisition of shares, capital contributions, and the subscription for newly issued shares in an unlisted company). If the foreign licensor's planned establishment of a company or JV involves an investment falling within the FEFTA notification scope, a prior notification (and possibly a review period) may be required before completing the transaction. Failure to notify where required can carry sanctions.

Law stated - 14 January 2026

KINDS OF LICENCES

Forms of licence arrangement

2 Identify the different forms of licence arrangements that exist in your jurisdiction.

Under Japanese law, there is no statutory requirement prescribing particular forms for licence agreements; parties are generally free to contract as they wish, subject only to general laws that may indirectly affect cross-border licences (eg, competition,

export control and foreign exchange/foreign trade regulations). In practice, the following arrangements are commonly used:

- patent licences and other technology licences (including know how/trade secret licences);
- copyright licences (including publishing and reproduction rights);
- software licences (shrink wrap, click wrap, bespoke development and maintenance agreements);
- trademark/service mark licences and merchandising agreements;
- celebrity, character and other personality right licences for merchandising and endorsements; and
- franchise agreements (covering trademarks, know how and operational systems)

Other commercial variations (eg, design, database or domain name licences, exclusive v non exclusive grants, sub-licensing arrangements, field/territory restrictions and tailored royalty models) are also widespread. Cross border technology transfers are common. Japanese licensors frequently grant patents, know how and related IP rights to overseas counterparties under technology- transfer licence arrangements.

Law stated - 14 January 2026

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

There is no Japanese legislation that directly governs the establishment of international licensing relationships or specifies their contractual terms. In particular, Japan does not require licensed products or services to be purchased locally. Parties are free to enter into contracts, subject only to general laws that may indirectly affect cross-border licences (eg, competition, export control and foreign exchange/foreign trade regulations).

Law stated - 14 January 2026

Pre-contractual disclosure

4 What pre-contractual disclosure must a licensor make to prospective licensees?

Under Japanese law, there is no statutory pre-contractual disclosure duty. In practice, however, parties typically sign a confidentiality/non-disclosure agreement and provide prospective licensees with the main commercial and technical terms (eg, scope, territory/field, ownership/encumbrances, known risks, proposed royalty model, exclusivity/sub-licensing rules, regulatory/export limits, etc) to facilitate negotiations and reduce post-contractual disputes. Where the licence relates to standard-essential patents

(SEPs), it is advisable to confirm the SEP status and state that any offer will be made on fair, reasonable, and non-discriminatory (FRAND) terms before proceeding with negotiations.

Law stated - 14 January 2026

Registration

5 Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

Under Japanese law, it is not necessary to register the grant of international licensing rights with any Japanese authority. While parties can conclude cross-border licence agreements without filing or registration, general regulatory regimes (eg, competition, export control and foreign exchange/foreign trade laws) may still be relevant to such transactions.

Law stated - 14 January 2026

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Yes. Japan is a contracting party to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

Law stated - 14 January 2026

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor's intellectual property rights or registrations in your jurisdiction?

Yes, parties may prohibit a licensee by contract from challenging the validity of the licensor's intellectual property rights or registrations, whether domestic or foreign. However, such absolute 'no-challenge' undertakings are subject to scrutiny under Japanese antitrust law, and if they impede fair competition, they may be deemed unlawful. The Japan Fair Trade Commission (JFTC) Guidelines states that obliging a licensee not to contest the validity of licensed rights may constitute an unfair restraint in breach of the Antimonopoly Act in such circumstances. Conversely, provisions that allow the licensor to terminate the licence agreement if the licensee challenges the licensed right are generally considered permissible in practice and are also regarded as acceptable under the JFTC Guidelines above, as they do not constitute an outright waiver.

Law stated - 14 January 2026

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

Under Japanese law, there is no statutory rule prescribing the effect of an intellectual property right's (IPR's) invalidity or expiry on a related licence agreement; the consequences are governed by the parties' contract (freedom of contract). Accordingly, whether a licence survives invalidity or expiry, and whether royalties may continue to be levied, depends on the contractual terms. If the licence is terminated by its terms on invalidity/expiry, ongoing royalty obligations will cease except as otherwise agreed (for example, for past use).

In Japanese practice, licences rarely continue in force where the underlying registration is held invalid or has lapsed. Once the underlying right is no longer valid, the licensee is generally free to compete using the formerly licensed subject matter.

Law stated - 14 January 2026

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

Yes, unregistered IP can be licensed in Japan.

Common examples of unregistered rights that are licensed include copyright and know-how/trade secrets. In practice, the 'right to obtain a patent' (ie, the right to apply for and receive a patent) is also frequently licensed. In contrast, licensing unregistered trademarks is rare.

Law stated - 14 January 2026

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

Yes, it is possible to take a security interest in IP in Japan, but some types of IP require specific steps to perfect the security interest.

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For registered industrial rights (patents, utility models, designs and trademarks), a pledge or security interest in these rights must be registered with the Japan Patent Office (JPO) to be effective against third parties.

- For copyrights, a pledge arises by agreement without statutory registration, but cannot be asserted against third parties unless it is registered with the Agency for Cultural Affairs. Registration is therefore necessary for third-party opposability.
- For unregistered know-how/trade secrets and contractual rights, security can be created by contract. However, no JPO registration exists for trade secrets, so enforceability depends on the form of the security and general property and contract law.

Law stated - 14 January 2026

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

Yes, a foreign owner or licensor may initiate infringement proceedings in Japan without involving a local licensee. Subject to ordinary procedural requirements (eg, service, jurisdictional formalities, etc), there is no statutory rule preventing a foreign right-holder or licensor from suing in Japan.

Whether a licensee can sue an infringer without the owner/licensor's consent depends on the nature of the licence. In practice, an exclusive licensee is generally entitled to sue for infringement in its own name without the owner's consent, whereas a non-exclusive licensee normally lacks standing to sue independently without express authorisation.

Contractual prohibitions on a licensee suing are not expressly prohibited by law and are, therefore, possible in principle. However, a clause that effectively nullifies the licence granted to the licensee (ie, deprives the licensee of the substance of the licence) may be regarded as invalid under general legal principles.

Law stated - 14 January 2026

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

A trademark/service mark licensee may only sub license the mark to a third party if the licence agreement expressly grants that right. Japanese law does not confer a statutory, automatic right to sub license; sub-licensing is a matter of contract.

Because the right to sub license is contractual, it can be granted, limited, conditioned or waived by agreement between the parties. In practice, licences commonly address sub-licensing, consent and quality control obligations.

Law stated - 14 January 2026

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

The rules for co ownership vary by type of IP in Japan. Key points are as follows:

- Patents, designs and trademarks
    - A co owner may, in general, exploit (use) the subject matter without the consent of the other co owners unless the parties have agreed otherwise.
    - By contrast, a co owner may not transfer its share to a third party (other than by inheritance or corporate merger), create a pledge over its share, or grant a licence to a third party without the consent of the other co owners.
    - Transfers of shares or pledges in these registered rights require registration at the Japan Patent Office (JPO) to be effective against third parties.
- Copyright
    - A co owner may not exercise the copyright (including granting licences to third parties) without the consent of the other co owners. The law limits the right to refuse consent to cases where there is a legitimate reason for objection.
    - A co owner may not transfer its share to a third party (other than by inheritance or corporate merger)or create a pledge over its share without the consent of the other co owners.
    - Transfers or pledges of a co owner’s copyright share likewise require registration (Agency for Cultural Affairs) to be opposable to third parties.
- Trade secrets/know how
    - No specific statutory co ownership regime: rights and restrictions are governed by the parties’ agreements.
- Contractual modification
    -

Co owners are free to depart from the default rules by contract. Parties can allocate exploitation, licensing, transfer and enforcement rights among themselves as they see fit.

Law stated - 14 January 2026

First to file

14 Is your jurisdiction a 'first to file' or 'first to invent' jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

Japan follows a first to file system for patents.

A foreign licensor may license an invention that is the subject of a pending Japanese patent application even though a patent has not yet been granted; the parties are free to contract the rights and obligations (including contingencies if the patent is not issued).

Law stated - 14 January 2026

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

Yes, software, business methods and certain living organisms can be patented in Japan if they satisfy the statutory patentability requirements of novelty, an inventive step and industrial applicability, and if they are expressed as inventions that utilise natural laws (ie, if they have a technical character).

- Software: Computer-implemented inventions are patentable when the software produces a concrete technical effect implemented by hardware resources ('technical ideas utilising the laws of nature'). The JPO issues examination guidelines and practice handbooks on software-related inventions.
- Business processes/methods: Business method inventions may be patentable if they produce a technical solution that utilises natural laws when assessed as a whole. While the IP High Court has upheld some business method patents in specific cases (e.g. certain methods of providing customised beef steak services), the validity of business method patents is often contested and depends on the specifics of each case.
- Living organisms/biotechnology: Biotech inventions (including genetically modified organisms and novel breeding methods) can be patented if they meet the standard patentability criteria. For inventions relating to microorganisms, JPO practice requires a deposit at a designated depository institution and submission of the deposit reference. The JPO also publishes practice handbooks on biotech inventions.

Law stated - 14 January 2026

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

Yes, trade secrets are protected in Japan under the Unfair Competition Prevention Act.

The legal standard is that the Act defines 'undisclosed technical or business information' as a trade secret if it satisfies the following three requirements:

- it is kept secret by reasonable management measures (secrecy/secret management);
- it has commercial value from being secret (usefulness); and
- it is not generally known or readily accessible (non-publicness). The Ministry of Economy, Trade and Industry (METI) has published guidance elaborating on the secrecy requirement. Although there is no separate statutory definition of 'know-how', it is treated as a protectable trade secret if it meets the three statutory criteria.

Japanese courts check the three factors above and pay close attention to whether reasonable safeguards were in place. In recent years, courts have shown a trend towards more flexible and protective treatment of trade secrets and know-how.

Remedies under the Act and general civil law include injunctions, damages and orders for destruction or recall. The Act also provides for criminal sanctions for the wrongful acquisition, use or disclosure of trade secrets.

Law stated - 14 January 2026

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

Yes. A licensor may, by contract and under Japanese law, restrict the disclosure and use of trade secrets and know how by the licensee (and third parties) both during the licence term and after termination.

- Trade secrets are protected under the Unfair Competition Prevention Act. Contractual confidentiality and non use obligations are enforceable; remedies include injunctions, damages, orders for return/destruction, and, in serious cases, criminal sanctions for wrongful acquisition/use/disclosure.
- Post termination restrictions are generally permissible, but must be reasonable. A covenant that attempts to restrain use or disclosure after the information has lost its

secrecy (or is otherwise public) will be regarded as unreasonable and may not be enforceable.

- Licensors commonly require return or destruction of confidential materials, certification of deletion, and continued non use obligations for a defined period after termination.
- Parties may contractually allocate ownership or licensing rights in improvements. However, the JFTC's antitrust guidance warns that clauses obliging a licensee to assign its improvements or to grant the licensor an exclusive licence may, in some circumstances, raise competition concerns under the Antimonopoly Act. By contrast, requiring the licensee to grant a non exclusive licence to the licensor (even gratuitously) is treated as permissible under the guidance.

Law stated - 14 January 2026

Copyright

18 | What constitutes copyright in your jurisdiction and how can it be protected?

Under Japanese law, copyright protects 'creative expressions' (rather than ideas or facts) in a variety of forms. The Copyright Act provides non-exhaustive examples of these forms, including:

- literary works (eg, novels, scripts, articles and lectures);
- musical works;
- dramatic works and choreography;
- fine art (eg, paintings, prints and sculptures);
- architecture;
- maps, diagrams and scientific drawings;
- cinematographic works and audiovisual works;
- photographs; and
- computer programs.

In short, works that manifest a sufficiently original and creative expression are protectable. For example, courts have treated certain computer games as cinematographic works.

Law stated - 14 January 2026

SOFTWARE LICENSING

Perpetual software licences

19 | Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

Under Japanese law, there is no rule invalidating a 'perpetual' software licence; freedom of contract allows the parties to agree to such a grant.

However, practical considerations often make perpetual licences unattractive to licensors from a commercial perspective, as a one-off grant can hinder the recovery of development and support costs. In practice, parties commonly address this by using fixed-term licences with automatic renewal, for example, or by combining a perpetual use right for a particular version with ongoing maintenance/support fees.

Another option is to structure payment as a substantial upfront licence fee plus periodic maintenance charges. Source-code escrow is a theoretical means of mitigating concerns about long-term availability, but it is not widely used in Japanese practice.

Law stated - 14 January 2026

Legal requirements

20 Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

There are no licence-specific statutory requirements that must be met before granting software licences in Japan. However, general import or export and related laws may apply. Under the Foreign Exchange and Foreign Trade Act and Customs Law, certain items are subject to export or import controls or prohibitions. In practice, this can be relevant for software — for example, the import and export of pirated or third-party IP-infringing software is prohibited, and the export of controlled technology (including certain encryption or dual-use software) may require prior authorisation.

Law stated - 14 January 2026

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

Under Japanese law, licence terms are generally a matter of party autonomy, but restrictions a licensor may impose on software users are subject to competition law (the Antimonopoly Act and the Japan Fair Trade Commission's (JFTC's) Guidelines on IP licensing).

The JFTC’s IP licensing guidance warns that clauses will risk illegality where they unreasonably restrain competition. Typical examples include excessive restrictions on:

- choice or quality of inputs (materials/parts);
- territory/quantities/customers for sales;
- resale or pricing;
-

the licensee's ability to make competing products or to license competing technology;

- basing royalties on matters unrelated to the licensed technology;
- restricting use after the licensed right expires; or
- unduly forbidding the licensee's R&D.

Contractual prohibitions on disclosure, reverse engineering/decompilation or on making backup copies are commonly used to protect software, trade secrets and know how are generally enforceable as contract terms.

Law stated - 14 January 2026

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

There is no Japanese statute requiring regulatory approval of the nature, amount, manner or frequency of royalties or other licence fees in international licensing relationships. Parties are free to negotiate commercial terms, including rates, payment schedules, and interest rates for late payments.

- Under the Civil Code, a statutory interest rate applies (currently 3 per cent) if the parties have not agreed on an interest rate for late payments. However, the parties may contractually agree on a different rate for delayed payments.
- The Interest Rate Restriction Act governs consumer loan interest limits and generally does not apply to commercial licence fees. Nevertheless, an excessively high contractual interest rate or penalty could be challenged on public policy grounds.
- In terms of consumer protection, if the licensee is a consumer, the Consumer Contract Act and related rules may limit unfair or onerous terms.
- There is no general cap on royalties in competition and special contexts. However, royalty structures may attract regulatory or antitrust attention in certain situations (eg, standard essential patents (SEPs)/fair, reasonable, and non-discriminatory (FRAND) issues or agreements that may unreasonably restrict competition).
- While royalty rates themselves do not require approval, cross-border payments can trigger other legal requirements, such as export control and foreign exchange rules for certain technology transfers, as well as reporting and filing obligations, withholding tax, and other tax compliance requirements on royalty remittances.

Law stated - 14 January 2026

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

There are no licence specific statutory restrictions on currency transfer or remittance for licensing payments, nor any reporting obligations that apply only to licence agreements. In practice, cross border royalty payments are routinely remitted (often in US dollars) subject to ordinary banking processes.

Law stated - 14 January 2026

Taxation of foreign licensor

24 In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

- Taxation scope: a foreign licensor (a non resident individual or foreign corporation) is taxable in Japan only on Japan source income, not on worldwide income.
- Withholding obligation: a Japanese licensee generally must withhold tax on royalty/licence fee payments to a non resident/foreign licensor unless reduced or exempted by an applicable tax treaty. Payments treated as royalties are typically subject to withholding.
- Software: under Japanese tax practice, payments for downloaded software are generally treated as royalty type income subject to withholding, whereas payments for access to software as a service (SaaS) are, in principle, not treated as royalties and therefore are usually not subject to withholding; however, the classification is fact specific and should be confirmed case by case.
- Double taxation: double taxation is avoided by bilateral tax treaties; treaty provisions prevail and commonly reduce or eliminate Japanese withholding, subject to procedural conditions (eg, submission of a tax residence certificate).

Law stated - 14 January 2026

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

Under Japanese law, licence terms are generally a matter of party autonomy, but restrictions a licensor may impose on software users are subject to competition law (the Antimonopoly Act and the Japan Fair Trade Commission's (JFTC's) Guidelines on IP licensing).

The JFTC's IP licensing guidance warns that clauses will risk illegality where they unreasonably restrain competition. Typical examples include excessive restrictions on:

- choice or quality of inputs (materials/parts);
- territory/quantities/customers for sales;
- resale or pricing;
- the licensee's ability to make competing products or to license competing technology;
- basing royalties on matters unrelated to the licensed technology;
- restricting use after the licensed right expires; or
- unduly forbidding the licensee's R&D.

Law stated - 14 January 2026

Legal restrictions

26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

In Japan, party autonomy governs licence terms, but competition law (the Antimonopoly Act) and the JFTC's IP-licensing guidelines restrict provisions that unreasonably hinder competition.

- Duration: generally permissible; parties may freely agree the licence term.
- Exclusivity (including customer restrictions): exclusive grants are lawful, but clauses that unduly restrict territory, sales quantities, or customer groups may violate the Antimonopoly Act if they unreasonably restrict competition. Such restrictions should be narrowly tailored and justified by legitimate, pro-competitive reasons (eg, quality control).
- Internet-sales prohibitions: No specific statutory ban. However, blanket prohibitions on online sales that substantially restrict distribution may attract antitrust scrutiny.
- Non-competition restrictions: Restrictions that prevent a licensee from manufacturing or selling competing products, or from taking licences from the licensor's competitors, may violate the Antimonopoly Act if they unreasonably restrain competition. Such restraints will only be acceptable in limited cases where there is a reasonable justification (for example, protection of confidential know-how).
- Grant-back/improvements. Improvements made by the licensee generally belong to the licensee by default.
- While parties may contractually reallocate ownership or licensing rights in improvements, the JFTC cautions that clauses obliging a licensee to assign improvements or grant the licensor an exclusive licence may raise competition concerns. Whether or not consideration is paid does not eliminate the competition law risks associated with assignment or exclusive grant-backs. By contrast, granting

a non-exclusive licence to the licensor (even free of charge) is generally acceptable under the guidance.

Law stated - 14 January 2026

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

In Japan, licensors may generally impose contractual restrictions on software users, including bans on reverse engineering, decompilation, and creating backup copies. However, such clauses are subject to limits under competition law and any applicable statutory exceptions. They should be narrowly tailored and justified by legitimate needs, such as the protection of trade secrets or copyrightable expression.

- Antimonopoly Act v IP rights: Article 21 of the Antimonopoly Act states that the Act does not apply to actions that constitute the exercise of rights under the Copyright, Patent, Utility Model, Design or Trademark Acts.
- However, the JFTC's IP-licensing guidelines clarify that restraints that do not constitute an 'exercise of rights' may still be subject to the Antimonopoly Act. In other words, claiming IP-right exercise does not automatically exempt restrictions from antitrust review.
- Judicial stance: courts rarely apply the Antimonopoly Act to the routine exercise of IP rights. However, the IP High Court has held that the routine exercise of IP rights may attract antitrust scrutiny if it is clearly abusive and defeats the statutory purpose of the IP system.
- Furthermore, Japan has developed practical guidance beyond the IP-licensing guidelines, including JFTC guidelines on joint R&D and patent pools/standardisation arrangements. Consequently, the competition law considerations in IP licences are well established in practice.

Law stated - 14 January 2026

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Under Japanese civil law, parties are free to agree indemnities, and indemnification provisions are commonly used in licence agreements. Such contractual indemnities are

generally enforceable between commercial parties. Insurance to support indemnities is also available.

Law stated - 14 January 2026

Waivers and limitations

29 Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

In Japan, parties may contractually waive or limit types of damages, and disclaimers and liability-limitation clauses are generally enforceable due to contract freedom.

- Common devices in practice include
    - liability caps (eg, capped at the amount of fees/royalties paid or a multiple thereof).
    - limiting liability to direct (actual) damages and excluding indirect/consequential or lost-profit damages.
    - survival/carve-out clauses: excluding liability except for wilful misconduct or gross negligence.
- Exceptions and limits:
    - a clause that is manifestly unreasonable or contrary to public policy may be held invalid by the courts.
    - mandatory/statutory obligations: onerous exclusions in consumer contracts may be invalid under consumer protection law.

Law stated - 14 January 2026

TERMINATION

Right to terminate

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically, have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

Japanese law does not impose any statutory conditions on the right to terminate or not renew an international licence. Nor does it require the payment of compensation upon termination or non-renewal. These matters are governed by the parties' contract.

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Parties are free to agree on notice and cure periods, termination triggers, post-termination obligations, and any compensation or buy-out. Such contractual arrangements are generally enforceable.

- In the absence of contractual protection, wrongful termination may give rise to a claim for damages under general civil law.
- However, mandatory limits may arise in particular cases from public policy, consumer protection or competition law considerations.
- There appear to be no cases in which courts have applied statutes concerning commercial agents to licence agreements.

Law stated - 14 January 2026

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

There is no statutory rule governing this in Japan; it is a matter of contract. In general, in the absence of an express provision, a sub-licence will usually terminate when the underlying licence ends, since a sub-licence is derived from the licence holder's grant. However, contractual clauses addressing the survival or termination of sub-licences are generally enforceable, provided they do not contravene public policy or mandatory consumer or competition law.

Law stated - 14 January 2026

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

There is no specific statutory rule in Japan that governs the effect of a licensee's bankruptcy; the outcome is primarily a matter of contract.

- Freedom of contract: the parties can agree on how bankruptcy, insolvency, rehabilitation proceedings, the appointment of a trustee/receiver, an inability to pay or similar events will affect the licence and any sub-licences (eg, automatic termination, the right to remedy the situation, or the suspension of rights).
- Usual practice: licensors commonly include insolvency-related termination events (eg, bankruptcy petition, commencement of civil rehabilitation or corporate reorganisation, appointment of trustee/administrator, insolvency or inability to pay)

and treat these as grounds for termination and removal of the licensee's rights. In the absence of express wording, sub-licences are generally regarded as derivative and will usually terminate with the principal licence.

- Practical limits and insolvency law risks: while licensors can structure agreements to terminate on insolvency, they should be aware of the consequences of insolvency law – trustees may have the power to assume or reject executory contracts, and certain pre-bankruptcy transfers or actions (preferential dispositions) may be challenged or avoided under insolvency law.

Law stated - 14 January 2026

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

A licensor's bankruptcy does not have a single statutory effect on licences or sub-licences — the outcome depends on insolvency law and the nature and perfection of the licence. Under Japan's Bankruptcy Act, the bankruptcy trustee generally has the power to elect to continue or to reject executory bilateral contracts; rejection effectively terminates the contract. However, where a licensee's rights are perfected against third parties (ie, meet applicable opposability/third party registration requirements under the IP statutes), the trustee's ability to unilaterally terminate or defeat those rights is limited.

- Trustee's power to reject: upon bankruptcy, the trustee may normally reject (terminate) ongoing bilateral contracts, including licences, and claimants may then have claims for damages as unsecured creditors.
- Protection by opposability/registration: certain IP regimes give licensees statutory protection against third parties. For industrial rights (patents, designs, trademarks, etc), the licensee's position was protected and makes it harder for a trustee to extinguish the licence vis à vis third parties. Similar protective mechanisms exist under copyright and related statutes for making interests opposable to third parties.
- Sub-licences: a sub-licence is ordinarily derivative of the principal licence and will commonly terminate if the principal licence is lawfully terminated. If the licence granted to the licensee is protected against third parties, the practical effect is that the trustee cannot readily deprive the licensee (and hence valid sub-licensees) of those enforceable rights.

Additionally, please note that there is no statutory third-party opposability regime for trade secrets and know-how in Japan. Therefore, a licensee whose rights are based solely on unregistered know-how or confidential information has little statutory protection if the licensor becomes insolvent. Although software escrow arrangements are sometimes proposed to mitigate this risk by securing source code or other materials with an independent custodian for release in the event of defined circumstances, escrow is rarely used in Japanese practice.

Law stated - 14 January 2026

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

There is no statutory prohibition on selecting a foreign governing law for an international licence. Parties are free to agree on the applicable law for their contract, and Japanese courts generally respect a valid choice of law. However, this choice cannot override Japanese mandatory rules (public policy/ordre public), such as mandatory consumer protection, export control and criminal rules, which will still apply where relevant. If the parties do not choose a governing law, the Act on General Rules for the Application of Laws (Japan's conflict-of-laws statute) will determine the applicable law.

Law stated - 14 January 2026

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

Yes. Instead of resorting to Japanese courts, parties may agree to arbitrate disputes under an international licence, which is common in cross-border licences.

- The seat and venue of the arbitration are at the parties' discretion; therefore, proceedings may be held inside or outside Japan. If the seat is in Japan, Japanese arbitration law (the Act on Arbitration) will apply to procedural issues. If the seat is abroad, the law of that location will govern procedural matters.
- Commonly used institutions for licensing disputes include the Singapore International Arbitration Centre (SIAC), the International Chamber of Commerce, the London Court of International Arbitration and the Hong Kong International Arbitration Centre. The SIAC is a particularly popular seat, and English is typically used as the arbitration language, although London, Hong Kong and Tokyo are also popular choices.

Law stated - 14 January 2026

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

Yes, arbitral awards from other states that are parties to the New York Convention are enforceable in Japan. Japan is a party to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention'), and its courts enforce foreign arbitral awards in accordance with the New York Convention's limited grounds for refusal (eg, lack of proper notice, incapacity, matters not being arbitrable, or breach of public policy).

By contrast, foreign court judgments are not automatically enforceable in Japan. The recognition and enforcement of a foreign court judgment depends on the existence of an applicable bilateral treaty or Japanese domestic rules applying the principle of reciprocity, as well as the satisfaction of statutory conditions such as proper jurisdiction, finality and public policy limits.

Law stated - 14 January 2026

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

Yes, injunctive relief in the form of preliminary and permanent injunctions is available from Japanese courts .

Can it be waived in a contract?

In principle, parties may agree to limit or waive their right to seek such relief. Such waivers are possible, but uncommon in practice — particularly in IP licence.

When is a contractual waiver enforceable?

Enforceability depends on clear, explicit, mutual agreement: the waiver must be unambiguous and knowingly accepted by all parties. A waiver that effectively removes any adequate remedy or is contrary to public policy (including mandatory consumer protection rules) may be unenforceable. In consumer or strongly regulated contexts, waivers are especially vulnerable. Courts assess validity by reference to contract freedom, fairness, and limits of public policy.

Interaction with a contractual waiver and arbitration

Parties may validly agree in arbitration clauses to waive their entitlement to claim specific categories of damages (for example, consequential or punitive damages) or otherwise limit remedies. Such limitations are generally enforceable if they are clearly drafted and do not conflict with public policy or mandatory law.

Law stated - 14 January 2026

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

As in the rest of the world, the adoption of artificial intelligence (AI) accelerated rapidly in Japan in 2025, with corporate use expanding markedly. At the same time, debate intensified over three core copyright questions:

- whether inputting third-party copyrighted works into AI systems constitutes copyright infringement;
- whether directing an AI system to produce outputs that resemble third-party works is also an infringement; and
- whether AI-generated outputs can be considered as copyrightable works.

These issues have direct implications for licensing. By the end of 2025, Japanese news organisations had filed suit against a major AI platform after publicly urging licensors to require licences for the use of their content in AI training. In February 2025, the Ministry of Economy, Trade and Industry published an 'AI Development and Use Contract Checklist', urging parties to avoid infringing third-party copyrights during development and deployment. However, substantive legal uncertainty remains. These copyright and licensing debates are therefore expected to continue into 2026.

Separately, planned amendments to Japan's Personal Information Protection Act in 2026 — which would permit the statistical processing of certain personal data without consent — are likely to spark further discussion about the licensing and permitted use of datasets containing personal information.

Law stated - 14 January 2026

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OVERVIEW

Restrictions

1 Are there any restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor and are there any restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office? Whether or not any such restrictions exist, is there any filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in your jurisdiction?

In general, there are no restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor. Also, there is no filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in Korea, except in certain industries (eg, the defence industry) where participation of foreign entities is limited or prohibited.

Also, a foreign licensor is not required to establish a subsidiary or branch office in Korea to enter into a licence agreement in Korea. Accordingly, a foreign licensor may enter into a licence agreement without establishing a business entity or a joint venture in Korea.

Law stated - 10 December 2025

KINDS OF LICENCES

Forms of licence arrangement

2 Identify the different forms of licence arrangements that exist in your jurisdiction.

In general, a licence may be classified as either exclusive or non-exclusive. An exclusive licence grants the licensee the exclusive right to exploit the relevant IP, whereas a non-exclusive licence may simultaneously be granted to multiple licensees. Registration requirements for exclusive or non-exclusive licences under Korean law may vary depending on the type of IP being licensed. Particularly, exclusive licences of patent, utility model, or design, unlike non-exclusive licences thereof, are not effective unless registered. In contrast, both non-exclusive and exclusive licences of a trademark are effective even without registration; however, they must be registered for the licensee to be able to claim its licence rights against third parties.

A licence may also be classified as a contractual licence, statutory licence or compulsory licence, depending on how the licence occurs. Contractual licence occurs by an agreement between the parties; statutory licence occurs when certain requirements prescribed by relevant law are satisfied; compulsory licence occurs by the adjudication of the Ministry of Intellectual Property (MOIP).

Set out below are some examples of statutory or compulsory licences of IP rights that are recognised under Korean law.

Under the Patent Act and the Utility Model Act, a statutory non-exclusive licence of patent rights and utility model rights occurs if any of the following requirements are satisfied:

- where a person makes an invention independently prior to the filing of an application for a patent for the same invention (or acquires details of the invention from such a person) and has been engaged in commercial or industrial activities or preparation thereof involving such invention in Korea;
- where a lawful rightsholder files a patent transfer claim against a person who had no right to file the patent application or who is one of the joint applicants of the patented invention, and the person has deployed the invention or was prepared to do so without knowing that they had no right to the patent or to the relevant share, prior to the registration of the patent transfer; and
- where an original patent holder of a patent that will be invalidated on the grounds of an existing (often, unregistered) invention, which is identical to the registered patent, has deployed the invention or was prepared to do so without knowing that his or her patent would be subject to invalidation.

Under the Patent Act, a compulsory non-exclusive licence of patent right occurs when the following requirements are met: if a patented invention falls under any of the following, and a person who intends to practise the patented invention fails or is unable, to reach agreement on the grant of a non-exclusive licence under reasonable terms and conditions, the person may file a petition for adjudication on the grant of the non-exclusive licence (ie, compulsory licence) with the MOIP:

- if the patented invention has not been practised in Korea for at least three consecutive years, except in the cases of a natural disaster, *force majeure* event, or due to other just grounds prescribed by the law;
- if the patented invention has not been practised for business purposes in Korea on a substantial scale for at least three consecutive years without any just grounds or fails to meet the demand in Korea to an appropriate extent under reasonable terms and conditions;
- if it is particularly necessary to practise the patented invention for the public interest;
- if it is necessary to practise the patented invention to rectify unfair trade practices found through judicial and administrative proceedings; or
- if it is necessary to practise the patented invention to export medicines to a country that intends to import such medicines to treat diseases that threaten the health of the majority of its citizens.

Under the Trademark Act, a statutory non-exclusive licence of trademark right occurs if all of the following requirements are satisfied:

- where a person has been using a trademark identical or similar to the registered trademark of another person on goods identical or similar to the designated goods:
- the person has continuously used such trademark in Korea before another person files an application for trademark registration without intending to engage in unfair competition; and
- as a result of continuous use of the trademark, the trademark is recognised among consumers in Korea as a trademark of the goods of a specific person at the time another person files an application for trademark registration for the mark.

Law stated - 10 December 2025

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

The compulsory patent licence applies to a foreign holder of a patent right. Accordingly, if a person who wishes to obtain a licence for a patented invention in Korea has negotiated with a foreign patent holder regarding a non-exclusive licence and failed to reach an agreement and, if such a person satisfies certain requirements as noted above, a non-exclusive licence may be recognised.

Also, the Korean Monopoly Regulation and Fair Trade Act and the Review Guidelines for Unfair Exercise of Intellectual Property Rights (IPR Guidelines) regulate undue anticompetitive effects that may arise in the licensing of intellectual property rights. Especially, according to the IPR Guidelines, if a licensor abuses its status and sets the terms of a licence agreement one-sided, such acts may be considered as unfair trade practices and the relevant contract clauses may be declared invalid. The licensor may also be subject to a fine.

Law stated - 10 December 2025

Pre-contractual disclosure

4 What pre-contractual disclosure must a licensor make to prospective licensees?

There is no law that requires a licensor to disclose certain terms or register a grant of licensing rights before the licensor enters into a licence agreement. That being said, if a licensor enters into a licence agreement where the licensor knew that the relevant patent rights are invalid as there are clear grounds for patent invalidation, the licence agreement may be held invalid pursuant to the Civil Act as such acts would be considered to constitute a fraud against the licensee.

Law stated - 10 December 2025

Registration

5 Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

There is no requirement to register with authorities international licensing rights.

Law stated - 10 December 2025

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Korea became a party to the Paris Convention in 1980. Korea joined the Patent Cooperation Treaty in 1984 and was designated as an International Searching Authority and International Preliminary Examining Authority in 1997. In 2007, the Korean language was selected as one of the languages that can be used in the publication of the international application. Also, Korea is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Law stated - 10 December 2025

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor's intellectual property rights or registrations in your jurisdiction?

Review Guidelines on Unfair Exercise of Intellectual Property Rights provides that a licensor shall not unfairly prohibit a licensee from contesting the validity of a patent to preserve the existence of the patent that is invalid. Accordingly, if a patent holder grants a licence of patent rights to a licensee when it is clear that the patent is invalid, and then contractually prohibits the licensee from filing a patent invalidation action, the agreement may be invalidated.

Law stated - 10 December 2025

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

Under Korean law, once the registration of an intellectual property right (IPR) becomes invalidated, the invalidation is retroactive. Yet, in a case involving a licence agreement signed before the invalidation of the licensed patent, the Supreme Court ruled that the licensor does not have the obligation to return to the licensee the portion of the royalty already paid under the valid licence agreement, as the payment did not amount to an unfair profit. To put it differently, the Supreme Court found it fair for a licensor (under a licence agreement) to receive royalties before its patent registration is invalidated, but would not recognise the right to receive royalties once the patent is invalidated. There are no decisions

covering other types of IPR but the principle set forth in the above Supreme Court decision is likely to apply in those cases.

Law stated - 10 December 2025

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

Regarding trademark rights, the Korean Trademark Act adopts the 'first to file' and 'registration' rule, and accordingly, a person who registers his or her trademark with the Korea Intellectual Property Office will have an exclusive right to such trademark. Accordingly, an unregistered trademark, in principle, does not have an exclusive right and, therefore, may not be licensable to third parties. That being said, even if trademarks are unregistered in accordance with the Trademark Act, if they are widely known in Korea, third parties may be prevented from registering or using identical or similar trademarks under the Unfair Competition Prevention and Trade Secret Protection Act. Thus, in such a case, licensing an unregistered but widely known trademark may be possible.

For patents, licensing would require the completion of a patent application and registration in Korea. Therefore, unregistered patents may not be licensed to third parties.

Copyrights are recognised although not registered. Trade secrets also do not require registration. Accordingly, even if copyrights and trade secrets are not registered, licensing these intellectual properties is possible.

Law stated - 10 December 2025

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

According to the Patent Act, Trademark Act, Design Protection Act of Korea, the consent of a right holder is required for the establishment of a security interest (pledge) in a licence. A security interest (pledge) in an IP right or an exclusive licence becomes effective only when it is registered with the Ministry of Intellectual Property (MOIP) and a security interest (pledge) in a non-exclusive licence does become effective even without registration with the MOIP but would have force and effect against a third party only when registered with the MOIP.

The details concerning the establishment of a security interest (pledge) in utility model rights and design rights and the effectiveness of the registration thereof are the same as those for patent rights. However, in the case of the establishment of a security interest (pledge) in an exclusive licence of trademark rights, unlike patent rights, the registration thereof to the MOIP is not required for it to become effective but is still required to have force and effect against a third party.

In the case of copyrights, it is possible to create a security interest (pledge) in the author's property rights and exclusive rights of publication and, unless it is registered with the copyright register, it cannot have force and effect against a third party.

Law stated - 10 December 2025

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

A licensor may file an injunctive action against a third-party infringer without the consent of the licensee.

Whether a licensee may bring such actions depends on whether the licensee is an exclusive licensee or a non-exclusive licensee. An exclusive licensee, in principle, may decide on his or her own to file an injunctive action against an infringer. That being said, the rights of an exclusive licensee may be restricted by the licence agreement. To restrict the rights of the exclusive licensee, the restrictions must be registered with the MOIP.

Unlike an exclusive licensee, a non-exclusive licensee only has a right to deploy an invention; a non-exclusive licensee does not have the right to seek an injunction against a third party in his or her name. Only the licensor will be allowed to file an infringement action.

Law stated - 10 December 2025

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

A trademark or service mark licensee can sub-license the use of the mark to a third party only if the licensee has obtained the licensor's consent to sub-license. The Korean Trademark Act provides that, unless there is the consent of a licensor, a licensee is not allowed to grant a sub-licence of its right to the relevant trademark or service mark under the licence agreement to a third party. In other words, a licensor's consent would be necessary to sub-license the use of a trademark or service mark.

Law stated - 10 December 2025

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

When a patent right or a trademark right is co-owned by two or more persons, a co-owner must obtain the consent of each of the other co-owners before they assign their ownership interest to any third party or pledges the ownership interest to a third party as collateral. If a co-owner wishes to license their rights, whether exclusively or non-exclusively, they may do so only with the consent of other co-owners. Unless specifically stipulated otherwise by contract, any co-owner of a patent right or trademark right may practise a patent invention or trademark related thereto without obtaining the consent of other co-owners.

In the case of a copyright, any work that was jointly created and owned by two or more persons and that cannot be used by separating the part that each creator has contributed, each creator or co-owner may not exercise their rights without obtaining a universal agreement from the other copyright holders. Furthermore, as with patents and trademarks, if a co-creator wishes to assign or pledge as collateral their ownership interest in the copyright, to do so, they must obtain the consent of other co-owners.

Law stated - 10 December 2025

First to file

14 Is your jurisdiction a 'first to file' or 'first to invent' jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

Korea is a 'first to file' jurisdiction. It is not possible to enter into a licence agreement for the use of an invention in Korea, subject to a patent application for which a patent has not yet been issued in Korea.

Law stated - 10 December 2025

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

The Patent Act does not explicitly prescribe whether a business method or software is patentable; thus, a business method or software is patentable as long as the statutory requirements for patentability (the nominal definition of what constitutes an invention, industrial applicability, novelty and inventive step, etc) are met.

A business method or software is deemed to comply with the nominal definition of what constitutes an invention (ie, a highly advanced creation of a technical idea using the laws of nature) if information processing by software is implemented by hardware resources. Such implementation of information processing should be stated in the claim in order to be

patent-eligible. In particular, software inventions can be protected by claims for a computer program (or an application) stored in a medium.

An invention involving living organisms is patentable if it involves microorganisms, plant or animal organisms; however, any invention relating to human beings may be partly restricted. An invention in medical treatments (treatment of or medical diagnosis of human beings) is deemed to lack industrial applicability, and thus, is not eligible for a patent. Methods of processing any substance generated by humans or collected from humans that have industrial use may be patented if they can be distinguished from medical treatment.

Law stated - 10 December 2025

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

In Korea, trade secrets and know-how are protected under a separate body of law known as the Unfair Competition Prevention and Trade Secret Protection Act. According to this Act, the term 'trade secrets' means 'information, including a production method, sale method, useful technical or business information for business activity, that is not known publicly, has been managed as secret information, and has independent economic value'.

The Korean Civil Procedure Act provides that the court may limit the disclosure of information upon the request of a party if the records of the trial include a trade secret. Also, the court may choose to review certain information that a party claims as trade secrets without disclosing it to the other party by proactively exercising its discretionary power over the proceeding.

Law stated - 10 December 2025

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

The licensor may prohibit the disclosure of trade secrets and know-how not only during the licence term but also after the expiry or termination of the term by agreement. However, regarding the confidentiality obligations after the expiry or termination of the term of the agreement, the courts may require reasonableness in the restriction. Accordingly, the disclosure may be prohibited for a shorter period than provided in the agreement.

Concerning certain trade secrets, if a licensee makes improvements, and the improvements are recognised as falling within the purview of the trade secrets of the licensor, the licensee's use of the improvements may also constitute a use of the original trade secrets. Similar to trade secrets and know-how discussed above, the licensor may also prohibit the disclosure of the improvements made by the licensee during the term or after the termination of the agreement.

Law stated - 10 December 2025

Copyright

18 What constitutes copyright in your jurisdiction and how can it be protected?

Copyright may be classified as follows:

- the author's moral rights, including the right of publication, the right of attribution and the right to the integrity that cannot be transferred to a third party or waived; or
- the author's proprietary rights, including the right of reproduction, public performance, public aerial transmission, exhibition, leasing and production of derivative works.

In addition, the Copyright Act recognises neighbouring rights, including the right of a stage performer, record producer and broadcaster.

Law stated - 10 December 2025

SOFTWARE LICENSING

Perpetual software licences

19 Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

Korean law does not specifically regulate the software licence period. However, if a long-term licence agreement is entered into by the licensor abusing its superior bargaining power, such an act would be considered an unfair trade practice and may be limited or restricted in accordance with the Korean Monopoly Regulation and Fair Trade Act.

Law stated - 10 December 2025

Legal requirements

20 Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

There is no separate statutory restriction related to software licences. Also, import and export restrictions by Korean law are generally restrictions on goods, and therefore, generally do not apply to software licences. However, the import and export of software can be restricted or banned, for example, when necessary to maintain international peace and security or to protect and conserve the life, health and safety of people, the life and health of animals and plants, or environmental and domestic resources.

Law stated - 10 December 2025

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

The Copyright Act stipulates that where any person who uses a program with legitimate authority cannot easily obtain the necessary information for compatibility and it is inevitable for them to obtain the information, they may perform decompilation of program codes without obtaining permission from the copyright holder. Also, the Act specifies that any person who possesses and uses a copy of a program with legitimate authority may reproduce the relevant copy to the extent necessary to protect against destruction, damage or deterioration of the copy. There is no court precedent that has ruled on whether a copyright owner may restrict the above-stated decompilation and reproduction of a program by a licensee. However, judicial opinions exist stating that complete restrictions are not allowed. Therefore, this issue requires attention when drafting licence agreements.

Law stated - 10 December 2025

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

The Review Policy on Unfair Exercise of Intellectual Property Rights prohibits a licensor from collecting an 'unfair' amount of royalties, but other than that, there is no legislation that regulates the calculation of royalties or other fees or costs. Generally, the parties may freely determine the amount and payment schedule of royalties through separate agreements.

Meanwhile, if a licensee is late in the payment of royalties, an annual 6 per cent interest rate prescribed by the Korean Commercial Code may be applied, unless separately agreed upon between the licensor and licensee.

Law stated - 10 December 2025

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

The law that applies to foreign exchange transactions and other foreign transactions is the Foreign Exchange Transactions Act (FETA). According to the FETA, any transaction relating to the origination of claims constitutes a capital transaction, and any person who desires to engage in a capital transaction must report the transaction to the Minister of Strategy and Finance before payment or receipt of claims or debts.

Law stated - 10 December 2025

Taxation of foreign licensor

24 In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

The royalty income of a foreign licensor is taxable under the Corporate Tax Act of Korea, and is considered a domestic source income if:

- the licensed intellectual property right is used in Korea; or
- the royalty is paid in Korea. Under the same act, if a foreign licensor has no place of business in Korea, the licensee must withhold 20 per cent of the taxable royalty income as corporate tax.

However, if a foreign licensor is based in a country bound by a tax treaty with Korea, the royalty income that is normally taxable under the Corporate Tax Act of Korea may become non-taxable in accordance with the conditions set forth in the tax treaty. For example, the Korean Supreme Court ruled that if a licensed intellectual property right is registered only in the United States and not in Korea, the royalty income of the US licensor is not taxable in Korea, given the interpretation of the US–Korea tax treaty.

Law stated - 10 December 2025

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

In Korea, the Monopoly Regulation and Fair Trade Act (MRFTA) has been enacted and enforced to prevent the abuse of market dominance and excessive concentration of economic power in enterprises and regulate illegal acts of collusion and unfair trade practices. Also, the Korea Fair Trade Commission, Korea's competition agency, prosecutes the abuse of market dominance, illegal acts of collusion and unfair trade practices, and may order corrective measures or impose penalties.

Law stated - 10 December 2025

Legal restrictions

26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

In Korea, there is no law that directly restricts or limits the terms of a licence agreement. However, if the terms indicate an abuse of market dominance, illegal acts of collusion, or unfair trade practices, they may not be enforceable under MRFTA.

The main consideration in determining enforceability under MRFTA is whether the exercise of intellectual property rights, including the granting of a licence, hinders competition of the related goods, technology, or research and development among current or potential market participants.

In particular, in connection with the payment of licence fees, any of the following constitutes a violation of MRFTA:

- unfairly collaborating with other enterprises to decide, maintain or change the licence fees;
- unfairly imposing discriminatory licence fees depending on the counterparty;
- unfairly demanding licence fees that include fees for the portion of the licensed technology that is not used;
- unfairly imposing licence fees for the period beyond the duration of the patent right; and
- unilaterally deciding or altering the method of calculating licence fees without prescribing the calculation method in the contract.

Also, a licensor's unreasonably refusing to enter into a licence agreement with a particular enterprise, unfairly limiting the scope of the licensee's right, and imposing unreasonable and irrelevant conditions when granting a licence, can be deemed a violation of MRFTA.

Law stated - 10 December 2025

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

Yes. Korean courts have held that if an exercise of intellectual property rights is beyond the justifiable scope and constitutes an abuse of market dominance and unfair trade practices, such an exercise would be construed as a violation of MRFTA.

Law stated - 10 December 2025

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Indemnification provisions are commonly used in Korea and are generally enforceable. Among others, the parties may determine in advance the amount of damages payable in the event of non-performance of an obligation, but if such amount is deemed unduly excessive, the court may reduce it to a more reasonable and appropriate amount.

Insurance coverage for the protection of a foreign licensor in support of an indemnification provision is allowed under Korean law.

Law stated - 10 December 2025

Waivers and limitations

29 Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

In accordance with the principle of freedom of contract, the parties may contractually agree to waive or limit certain types of damages that may occur in connection with the contract. Korean courts generally respect the terms agreed to by the parties, barring an unusual situation.

However, if the waiver or limitation of damages is considered excessive or abusive, thus constituting unfair trade practices, it may be unenforceable under the Monopoly Regulation and Fair Trade Act.

Law stated - 10 December 2025

TERMINATION

Right to terminate

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically, have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

Under the Review Guidelines for Unfair Exercise of Intellectual Property Rights, refusing to grant a licence to a particular individual or entity with no justifiable reason is not allowed as it constitutes an unfair trade practice having anticompetitive effects. In addition, a licensor unilaterally terminating the licence agreement without granting an appropriate grace period, for reasons other than the licensee's inability to pay royalties, may also be considered an unfair trade practice.

Law stated - 10 December 2025

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

If a licence agreement expires or is otherwise terminated, the relevant sub-licence agreement granted by the licensee will also be terminated in the absence of any contractual provision addressing this issue, barring unusual circumstances, such as when the licensor has consented to the validity of the sub-licence despite the termination of the licence agreement. It is possible to include a contractual provision addressing this issue and such a provision would be generally enforceable.

Law stated - 10 December 2025

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

If a licensee continuously fails to pay the licence fees due to bankruptcy, the licensor may seek to terminate the licence agreement. If the licence agreement is terminated, the relevant sub-licence agreement granted by the licensee would be deemed terminated, barring unusual circumstances. However, in the relevant rehabilitation proceeding, the court may restrict the termination of the licence agreement if the licence is considered essential in the preservation and continuation of the licensee's business.

Law stated - 10 December 2025

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

There is no Korean law that specifically addresses this issue. However, it should be noted that even after a licensor's intellectual property right is transferred to a third party over the course of the bankruptcy proceedings, the relevant licence or sub-licence would continue to be effective if it is registered.

Law stated - 10 December 2025

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

No. Under the Act on Private International Law, the parties are allowed to choose the laws of another jurisdiction as the governing law of their international licensing agreement.

Law stated - 10 December 2025

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

The parties may contractually agree to resolve their disputes through arbitration instead of a court trial but need to do so in writing, whether in the form of a separate agreement or in the form of an arbitration clause in a contract. Otherwise, an agreement to arbitrate may not be enforceable.

Arbitration proceedings may be conducted both in and outside of Korea. In Korea, arbitration proceedings may be conducted through the Korean Commercial Arbitration Board, which is an arbitral institution that mostly handles commercial disputes between corporations.

Law stated - 10 December 2025

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

A final and conclusive court judgment or arbitral award from another jurisdiction is generally valid and enforceable in Korea if it satisfies all of the following requirements:

- the international jurisdiction of such a foreign court is recognised under the principle of international jurisdiction pursuant to the statutes or treaties of Korea;
- the defeated defendant is served, by a lawful method, a written complaint or document corresponding thereto, and notification of date or a written order allowing them sufficient time to defend, or that they respond to the lawsuit even without having been served such documents;

- the approval of such final judgment, etc, does not undermine sound morals or other social order of Korea in light of the contents of such final judgment, etc, and judicial procedures; and
- mutual guarantee exists, or the requirements for recognition of final judgement, etc, in Korea and the foreign country to which the foreign county court belongs are not too dissimilar and have no actual difference between each other in important points.

Korea is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention), so arbitral awards rendered in other countries that are party to the Convention would generally be recognised as valid and enforceable in Korea, subject to the conditions and requirements set forth in the Convention.

Law stated - 10 December 2025

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

Injunctive relief is available in Korea and is rendered in the form of a court order. Parties may contractually waive the right to pursue injunctive relief or waive their entitlement to claim specific categories of damages in an arbitration clause. However, such a waiver may not be enforceable if it renders the contract manifestly unfair against one party.

Law stated - 10 December 2025

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

Where a patent right is invalidated, the patent is deemed never to have existed. However, even where the patentee and a counterparty have entered into an agreement prohibiting the counterparty from practising the patented invention without the patentee's authorisation, the subsequent invalidation of the patent does not render such agreement void ab initio on the ground of original impossibility of performance.

In this regard, the Supreme Court has held that, notwithstanding the later invalidation of the patent, if the counterparty practised the patented invention during the term of an agreement prohibiting such practice, the patentee of the extinguished patent may still claim damages for breach of the agreement (Supreme Court Decision 2024 Da270105, rendered on 20

November 2024) . The Court further held that, even if the manner in which the counterparty practised the invention constitutes 'freely practicable technology' – that is, technology that a person of ordinary skill in the art could readily practice based on publicly known prior art – this fact alone does not relieve the counterparty of its contractual obligations under the agreement not to practice the patented invention, which was formed through mutual assent.

Accordingly, where the parties enter into an agreement not to practice a patented invention, and the patent right was valid at the time of contracting, the subsequent invalidation of the patent right does not entitle the counterparty to practice the invention during the contractual term. Any such practice constitutes a breach of the agreement, and damages remain recoverable for acts committed during the period in which the contractual prohibition was in effect.

Law stated - 10 December 2025

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OVERVIEW

Restrictions

1 Are there any restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor and are there any restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office? Whether or not any such restrictions exist, is there any filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in your jurisdiction?

Foreign entities are generally not restricted from establishing US entities nor prohibited from entering into licences without establishing a US entity. However, foreign parties are not authorised to submit export licence applications. Further, the Bureau of Export Administration, Bureau of Industry and Security, Departments of Commerce, State, Energy and Agriculture, Nuclear Regulatory Commission, Drug Enforcement Administration, Office of Foreign Assets Control, Federal Communications Commission and the US Food and Drug Administration, inter alia, regulate exportation and importation of certain articles, and licences involving foreign entities must comply with their requirements as well as US tax provisions and international treaties.

Also, the Committee on Foreign Investments in the United States reviews transactions involving foreign investment to determine the effect of such transactions on national security.

Law stated - 10 December 2025

KINDS OF LICENCES

Forms of licence arrangement

2 Identify the different forms of licence arrangements that exist in your jurisdiction.

In the United States, licence arrangements include technology transfer, know-how and trade secret, patent, trademark, trade dress, industrial design, copyright, software including End User License Agreements, franchise agreements, and right of publicity, to control the commercial use of one's name, image, likeness or other use of identity.

Licensing arrangements may be exclusive or non-exclusive; relate to the entire intellectual property right or can be limited to a specific field of use or for a limited duration; and provide various forms of compensation, such as lump-sum payments, royalties, cross-licensing and/or equity interests.

Law stated - 10 December 2025

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

The terms of an international licensing relationship are not governed by legislation. Agreements that tie a staple good to a patent, or that effectively extend the term of a patent, thereby requiring royalty payments after patent expiration, constitute patent misuse per se, while agreements that are anticompetitive in nature may be found to violate antitrust law. For inventions made in the performance of work under a government contract or funding, the US government has certain rights and may require the manufacture of any commercial good in the United States. While there are no general requirements that products be purchased locally, it is common practice that state-funded public universities license their IP to local businesses within the state to stimulate the local economy.

Law stated - 10 December 2025

Pre-contractual disclosure

4 What pre-contractual disclosure must a licensor make to prospective licensees?

While a licensor has no required pre-contractual disclosures to a prospective licensee, a licensor is obligated to act in good faith, not misrepresent any material facts, and disclose when a patent is part of a standard that is subject to fair, reasonable and non-discriminatory (FRAND) practices. Offers to license standard essential patents must conform to FRAND licensing terms.

Law stated - 10 December 2025

Registration

5 Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

While there is no requirement to register a grant of international licensing rights in the United States, certain agreements may require registration. Parties may submit a notice or short-form declaration – which is mandatory in certain circumstances – notifying the Committee on Foreign Investment in the United States of a covered investment to receive a potential safe-harbour letter.

Law stated - 10 December 2025

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Yes, the United States is a party to all three.

Law stated - 10 December 2025

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor's intellectual property rights or registrations in your jurisdiction?

No. Under US law, a licensee may not be prohibited from contesting the licensor's (whether US or foreign) intellectual property rights (*MedImmune v Genentech*, 549 US 118 (2007)). Licensors may attempt to limit this contractually by including provisions providing for increased upfront compensation or royalty rates as well as a right to:

- terminate the patent licence;
- convert an exclusive licence to a non-exclusive one; or
- require the licensee to bear litigation costs.

However, general no-challenge clauses prohibiting a licensee from challenging validity have not been universally enforced by the courts or the United States Patent and Trademark Office (USPTO).

Law stated - 10 December 2025

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

Because subject matter disclosed in a patent is dedicated to the public upon expiration, any exclusive right, licence or privilege expires therewith. Agreements requiring royalties after expiration of a licensed patent are unlawful per se, as the Supreme Court held in 1964 in *Brulotte v Thys*, and affirmed in 2015 in *Kimble v Marvel Entertainment*. In *Kimble*-, the Supreme Court noted that the doctrine is limited and 'poses no bar to business arrangements other than royalties – all kinds of joint ventures, for example – that enable parties to share the risks and rewards of commercialising an invention'.

At least two circuit courts have created factual exceptions to the *Brulotte* and *Kimble* doctrines .

In *CR Bard, Inc v Atrium Med Corp*, 112 F 4th 1182 (9th Cir 2024), the Ninth Circuit Court of Appeals reviewed a licence agreement to determine if it provided for patent royalties post-expiration. The agreement at issue terminated per-unit royalties when a US patent expired, but maintained a minimum annual royalty until termination of a Canadian patent.

Because the agreement provided for US-based royalties only until US patent expiration, it was not considered patent misuse.

In August 2024, the Third Circuit decided *Ares Trading SA v Dyax Corp*, 114 F 4th 123 (3d Cir 2024). In this case, Dyax was obligated to pay royalties until the later of patent expiration or 10 years after the first sale, which was ultimately nine years after patent expiration. However, the trial court found that any post-expiration payment constituted 'deferred compensation' for pre-expiration sales, and was not for use of the patent after expiration.

There is no such prohibition on the term of a licence for know-how, technology or trade secrets with no set duration, as the Supreme Court ruled in 1979 in *Aaronson v Quickpoint* that if an agreement provides for royalty payments if a patent never issues, it is enforceable.

Because trademark rights derive from use in US commerce, the rights may be licensed insofar as the mark is used in connection with the relevant goods or services, whether or not registered; it is highly advisable to register and maintain trademark registrations because they provide notice to third parties and a presumption of validity.

Regarding copyrights, there are specified terms following creation or publication to perfect and maintain ownership in a registered US copyright, after which the work will fall into the public domain and cannot thereafter be levied.

Law stated - 10 December 2025

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

Yes. US trademark rights derive from use in commerce and are valid while the mark (whether or not registered) is used in US commerce in connection with the relevant goods or services. However, rights in an unregistered mark are limited to the geographical area within which it has been used or may be reasonably expected to expand. It is best practice to register and maintain trademark registrations since this provides the broadest protection, including nationwide notice to third parties as well as a presumption of validity.

Law stated - 10 December 2025

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

A security interest in a US patent, trademark or copyright must be recorded or ‘perfected’ with the proper federal or state authorities to be enforceable. To protect an ownership or security interest in IP against subsequent purchasers for value, an assignment should be recorded with either the USPTO or Copyright Office (35 USC 261). This alone, however, does not perfect the security interest, which for a patent or trademark requires a filing in the

appropriate state jurisdiction, often under the Uniform Commercial Code (UCC). To perfect a security interest in a registered copyright, it should be recorded in the Copyright Office (*In re Peregrine Entertainment*, 116 BR 194 (CD Cal 1990)).

Law stated - 10 December 2025

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

Whether foreign or domestic, an IP right holder must have standing to enforce such IP rights, which is determined on a case-by-case basis. While owners will almost always have standing (joint owners may have to join), exclusive licensees may have standing alone if the licence coveys sufficient rights.

Further, 'any person [including a licensee] who believes that he or she is or is likely to be damaged' by the false or misleading use of a trademark may bring an action without the consent of the owner (15 USC 1125(a)).

Law stated - 10 December 2025

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

Yes, provided that the licensor supervises and controls the licensee's use of the mark to protect the public's expectation as to the origin and quality of products or services provided thereunder. Absent such controls, the mark may be deemed abandoned owing to the 'naked licensing'. The right to sub-license typically must be granted contractually (see *In re Trump Entm't Resorts*, 526 BR 116, 127 (Bankr D Del 2015)).

Law stated - 10 December 2025

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

Co-owners are generally free to deal with their intellectual property without the consent of other co-owners.

Unless contractually prohibited, a trademark co-owner is free to assign trademark rights provided that:

- the assignee is subject to the obligations of such co-owner;
- all goodwill is transferred; and
- such transfer would not result in consumer confusion as to the origin. In examining such transfers, courts have employed a test balancing the parties' contractual expectations with consumer expectations of origin and quality (see *Ligotti v Garofalo*, 562 FSupp2d 204, 222-23 (DNH 2008)).

The authors of a joint work are co-owners of copyright in the work (17 USC 201(a); *Davis v Blige*, 505 F3d 90, 98 (2d Cir 2007); *Thomson v Larson*, 147 F3d 195, 199 (2d Cir 1998)). As such, co-owners may allocate the rights and duties of the work of authorship among themselves, and may contractually regulate, modify or otherwise limit the exploitation of the work.

Regarding patents, each co-owner may make, use, offer to sell, sell or import the patented invention into the United States without the consent of and without accounting to the other owners, absent any contractual prohibition (35 USC 262). Thus, an agreement is required to alter such a relationship.

Law stated - 10 December 2025

First to file

14 Is your jurisdiction a 'first to file' or 'first to invent' jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

The US patent system has been first-to-file for over a decade, with all patents filed in the US having an earliest effective filing date of 16 March 2013 or later being subject to that system. The remaining 'older' applications and patents are subject to the earlier first- to-invent system. Patent applications may be licensed, and patent law does not pre-empt state contract law such that the term of a patent licence may continue in certain situations if the patent application does not become a patent, for example, where the licence includes know-how or other technical information apart from the patent application (*Aronson*, 440 US 257 (1979)).

Law stated - 10 December 2025

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

In the US, the execution of a physical process is patentable, but mathematical formulae, algorithms and abstract ideas, in and of themselves, are not patentable. The presence of software does not render an otherwise patentable process unpatentable. Business methods can be patentable.

Human-made living organisms are patent-eligible subject matter; however, naturally occurring organisms, and other products, and laws of nature are not patent-eligible. Identifying or recognising a natural phenomenon is also not patent-eligible.

A patent claim is unpatentable under 35 USC §101 where it is directed to a patent-ineligible concept (ie, a law of nature, natural phenomenon or abstract idea); unless there is an additional element or inventive concept that transforms the nature of the claim into a patent-eligible application, for example, the claim limitations involve more than the performance of well-understood, routine and conventional activities previously known to the industry.

Law stated - 10 December 2025

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

Yes. The Uniform Trade Secrets Act, which has been enacted by most states in various forms defines a trade secret as information, including a formula, pattern, compilation, programme, device, method, technique or process, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by others who can obtain economic value from its disclosure or use where reasonable efforts are made to maintain its secrecy. The remaining states generally follow the First Restatement of Torts, which uses a similar definition of trade secret.

Misappropriation remedies include damages, injunctions, and enhanced (up to twice) damages and attorneys' fees. Additionally, the Defend Trade Secrets Act creates a federal civil cause of action for misappropriation, enabling plaintiffs to seek an ex parte seizure order from the court to seize misappropriated trade secrets without providing prior notice to the alleged wrongdoer.

Law stated - 10 December 2025

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

Generally, a licensor can restrict disclosure or use of trade secrets and know-how by the licensee or third parties both during and after the term of the licence. Improvements and

the underlying trade secret or know-how should be addressed separately in licences and typically should have the same protections.

Law stated - 10 December 2025

Copyright

18 | What constitutes copyright in your jurisdiction and how can it be protected?

Copyright protection automatically applies to 'original works of authorship fixed in any tangible medium of expression' (17 USC 102), which include literary, musical, dramatic, pictorial and architectural works. Copyright protection typically does not extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, but computer source code is copyrightable as a literary work, and manifestations, such as the visual display, may be copyrightable as an audiovisual work. Registration also provides the opportunity to recover statutory damages and attorneys' fees in court, and registration is required to sue for infringement in federal court. Additionally, a work registered within five years of the date of first publication will constitute prima facie evidence in court that the copyright is valid.

Law stated - 10 December 2025

SOFTWARE LICENSING

Perpetual software licences

19 | Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

Perpetual software licences are valid. The use of perpetual software licensing, however, appears to be declining and subscription-based licensing, which typically has lower initial costs and can be more flexible, is becoming more prevalent. Differences between a perpetual or subscription-based licence include ownership of the software; scalability in the number of users; costs (upfront payment or periodic); and access to the newest releases, latest technology and updated security.

Law stated - 10 December 2025

Legal requirements

20 | Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

Yes. US export control laws control the conditions under which certain information and technologies can be transmitted overseas to anyone. Export controls arise where:

- the export has actual or potential military applications or there are economic protection issues; or
- the government has concerns about the destination country, organisation or individual or the declared, suspected end use or user thereof.

Generally, technologies subject to the Export Administration Regulations (EARs) are those which are in the United States or of US origin, in whole or in part.

Export control laws also apply to encryption software and technology as well as foreign-origin items that enter the United States before being exported again, and foreign-origin items that contain more than a de minimis amount of controlled US content; foreign parties are not authorised to submit export licence applications. Unless a licence exception under the EARs is applicable, the export of computer software may require a licence. The Protecting Americans' Data from Foreign Adversaries Act of 2024, enforced by the Federal Communications Commission, restricts data brokers from transferring personally identifiable sensitive data to certain foreign adversary countries or to any entity controlled by those foreign adversary countries.

Law stated - 10 December 2025

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

Restrictions are governed by the licence and parties are generally free to agree to licence terms, provided that they are not illegal or contrary to public policy. Generally, features such as updates and upgrades are addressed in a shrink-wrap licence or click-wrap licence, and require prior consent by the user for implementation unless agreed otherwise. Further, certain licences permit the user to opt in for automatic updates or opt out and require manual installation of the same.

A software licence can further include restrictions regarding the field of use, geographic use, the number of concurrent users, the hardware used to run the software and transferability of the software licence. Software companies often include provisions that the licensee will not reverse engineer, decompile, decode, decrypt, disassemble or in any way derive source code from the licensed software. However, the court rulings are not unanimous. A backup copy is usually permitted.

Law stated - 10 December 2025

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty

rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

Other than limits (generally set by each state) against charging interest rates above a statutory limit called 'usury limits', the United States has no legislation governing royalty rates, except for specific rules and regulations relating to the distribution of music copyright. The Federal Circuit, however, has rejected the 25 per cent rule for determining a baseline royalty rate in a hypothetical negotiation as fundamentally flawed (*Uniloc v Microsoft*, 632 F3d 1292 (Fed Cir 2011)). Asserting industry standards patents creates an additional contractual obligation to offer fair, reasonable and non-discriminatory (FRAND/RAND) licensing terms, which should be based on the contribution of the patents to the standard-practising component and the contribution of that component to the entire accused product.

Courts have also held that damages based on the entire market value of the accused product are proper only where the patented feature creates the basis for customer demand or substantially creates the value of the component (*Versata v SAP Am*, 717 F3d 1255, 1268 (Fed Cir 2013)). In the absence of such a showing, principles of apportionment apply. The smallest saleable unit approach is intended to produce a royalty base much more closely tied to the claimed invention than the entire market value (*Mentor Graphics v EVE-USA*, 851 F3d 1275 (Fed Cir 2017); *VirnetX v Cisco*, 767 F3d 1308 (Fed Cir 2014)).

Law stated - 10 December 2025

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

Subject to the tax withholding issue, the United States has no restrictions on currency transfers, except that cash transfers in excess of US$10,000 must be reported to the US Internal Revenue Service under anti-money laundering statutes (26 USC 6050I, 31 USC 5331).

Law stated - 10 December 2025

Taxation of foreign licensor

24 In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

Generally, foreign companies are only subject to taxation on income effectively connected with US business operations, including from the sale of US real property, participation in an entity (eg, partnership) that engages in US business or is received as a beneficiary of an estate or trust. Under various international tax treaties, a foreign company is taxed only on income attributable to a permanent establishment in the United States and withholding tax rates are reduced to prevent double taxation on the same income. All ex-US companies

are taxed on a gross withholding basis of US-source IP portfolio income, for example, dividends, interest, rents and royalties.

Law stated - 10 December 2025

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

Practices that restrict trade are prohibited by both US antitrust and patent laws. Generally, the antitrust laws (ie, the Sherman Act, 15 USC 1, 2) prohibit agreements between parties that unreasonably restrict trade, as well as preventing a business with a monopoly over certain products or services from abusing its dominant position or market power. Examples of the types of prohibited practices include bid rigging, predatory pricing, price fixing, product tying and vendor lock-ins.

Regarding patent licences, there is patent misuse, which could render a patent unenforceable, with the exception of certain activities. While patent misuse is similar to antitrust, it addresses broader activities, and the key inquiry is whether the patentee has impermissibly broadened the scope of the patent grant with anticompetitive effect by imposing conditions that derive their force from the patent.

Law stated - 10 December 2025

Legal restrictions

26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

Not all restrictions on competition are prohibited, to the extent that they do not violate the US antitrust laws or constitute patent misuse. US patent laws also specifically exclude certain activities from the ambit of patent misuse unless the patent owner has market power in the relevant market relating to the patent (35 USC 271(d)). These activities include, for example, refusing to license a patent (35 USC 271(a)(4)) and conditioning the license of one patent to the acquisition of rights in another patent (35 USC 271 (d)(5)). US courts do not appear to have expressly addressed the issue of patents and internet sales prohibitions in licence agreements. However, Supreme Court decisions regarding patent exhaustion seem fairly clear in that it will be difficult for a patentee to control internet resale after the sale of a patented product.

Law stated - 10 December 2025

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

In the United States, reverse-payments or 'pay-for-delay' arrangements where the patentee pays (or provides other value to) the accused infringer to delay market entry typically arise in the pharmaceutical field under the Hatch-Waxman Act (Act) and may be considered anticompetitive under certain circumstances. Under the Act, submitting an abbreviated new drug application (ANDA) seeking US Food and Drug Administration (FDA) market approval is deemed an act of artificial infringement to permit an infringement case to run parallel to FDA approval activities. The generic manufacturer, however, must receive final FDA approval before market launch, which the FDA will only issue on the earlier of resolution of the action or expiration of the 30-month stay (*King Drug v SmithKline*, 791 F3d 388 (3d Cir 2015)).

The Supreme Court has rejected the argument that 'reverse payment settlement agreements are presumptively unlawful', holding that courts 'reviewing such agreements should proceed by applying the 'rule of reason', rather than under a 'quick look' approach' (*FTC v Actavis*, 570 US 136 (2013)), which the Second Circuit Court of Appeals followed in 2024. (*Watson Labs, Inc v Forest Labs Inc*, 101 F4th 223 (2d Cir 2024). Thus, courts must find anticompetitive activities beyond mere compensation to find a pay-for-delay arrangement illegal.

Civil liability can additionally attach to pay-for-delay arrangements. Medicis agreed to pay slightly more than US$76 million to settle a class action lawsuit based upon Medicis' Hatch-Waxman settlements under which Impax, Sandoz and Lupin were paid and agreed not to introduce generic equivalents (*In re Solodyn* (*Minocycline Hydrochloride*) Antitrust Litigation, US District Court, District of Massachusetts, No. 14-md-02503 (2018)).

Law stated - 10 December 2025

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Indemnification provisions are commonly used and are enforceable in the United States. Insurance coverage is also available for the protection of a foreign licensor against the invocation of an indemnification provision.

Law stated - 10 December 2025

Waivers and limitations

29

Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

Parties may contractually agree to waive or limit certain types of damages, and disclaimers or limitations of liability are generally enforceable. Sales of goods under article 2 of the Uniform Commercial Code are subject to a non-infringement warranty, unless explicitly disclaimed by contract. It is common to disclaim indirect damages as well as incidental and consequential damages. Disclaimers and limitations on liability are usually enforceable unless unclear or unconscionable. Some disclaimers of liability are not enforceable, such as disclaimers for fraud or unlawful conduct.

Law stated - 10 December 2025

TERMINATION

Right to terminate

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically, have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

Generally, US and state laws do not impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship, or require the payment of an indemnity or other form of compensation upon termination or non-renewal. Typically, licences include termination provisions negotiated by the parties. In the US, courts have generally not extended commercial agency laws to typical licensing relationships.

Law stated - 10 December 2025

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

In the absence of a contractual provision addressing the termination or expiration of a sub-licence, the sub-licence will no longer be in force when the licence expires or is terminated. A contractual provision addressing this issue would be enforceable in either case. In some instances, a sub-licensee may be permitted to step into the shoes of the licensee if the original agreement with the licensee terminates.

Law stated - 10 December 2025

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

In the United States, a bankrupt licensee may seek to assign the licence without the licensor's consent (11 USC 365(a)), but typically a licence will either terminate automatically or is terminable upon such bankruptcy, which also terminates any sub-licences. Nevertheless, if there is a foreign main bankruptcy proceeding (ie, proceeding pending in the country where the debtor has the centre of its interests), the US courts may apply foreign law in the US bankruptcy proceeding. (11 USC 1502(i)).

Despite the United States' commitment to international cooperation with foreign insolvency proceedings, the Fourth Circuit Court of Appeals has rejected the application of foreign (German) law, where the foreign main bankruptcy proceeding was in Germany, to protect the rights of cross-licensees because the German law conflicted with section 365(n) (*Jaffe v Samsung*, 737 F3d 14 (4th Cir 2013), cert denied, 135 SCt 66 (2014)). The Circuit further noted this decision was within the sole discretion of the US Bankruptcy Court, such that this may not always be the result.

Unlike patents and copyrights, trademarks are not expressly identified as IP where US law permits a licensee the option to continue under a licence. However, the Supreme Court has held that a trademark licensee's continued rights depend upon whether the licence would survive a breach under applicable non-bankruptcy law (*Mission v Tempnology*, 139 SCt 1652 (2019); see *Fraunhofer-Gesellschaft Zur Förderung Der Angewandten Forschung EV v Sirius XM Radio Inc*, 940 F 3d 1372 (Fed Cir 2019)).

Law stated - 10 December 2025

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

A bankruptcy of licensors in patent licences is governed by the Intellectual Property Bankruptcy Protection Act of 1988, and 11 USC 101(35A), 101(39), 365(n) and 1502, under which the debtor can either assume or reject the licence if it is executory, that is, performance is still required.

If the debtor assumes the licence, there is no change. But, if the debtor rejects the licence, it will be terminated, and the licensee may seek money damages or choose to retain the licence rights that existed on the date of the bankruptcy filing. Specifically, section 365(n) permits licensees to treat the contract as terminated and become an unsecured creditor for any monetary damages caused by the termination under sections 365(g) and 502(g)

or retain its rights under the licence, such that the licence essentially continues as if never terminated such that the licensee must continue performance, including paying royalties.

Section 365(n) also provides the licensee with the additional right to enforce any exclusivity portion of the licence, such as, in the case of an exclusive licensee, preventing another party from infringing the licensed rights.

There is also the potential for a US court to apply foreign law in certain circumstances.

Law stated - 10 December 2025

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

While there are no prohibitions on applying a foreign law specified the choice of law, a US court may decline to do so as against public policy or having no connection to the parties (*Riley v Kingsley*, 969 F2d 953 (10th Cir 1992)).

Law stated - 10 December 2025

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

Parties may contractually agree to arbitration to be held before a tribunal in any agreed-upon (US or foreign) jurisdiction, which provision US courts generally enforce. Regarding patents, 'any such [arbitration] provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract' (35 USC 294).

Law stated - 10 December 2025

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

US courts located in a jurisdiction that has adopted the Uniform Foreign-Money Judgments Recognition Act will enforce a foreign judgment.

The United States is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, and foreign arbitration awards are enforceable in the United States.

Law stated - 10 December 2025

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

There are two types of injunctions available in the United States: preliminary and permanent injunctions.

A preliminary injunction is an 'extraordinary and drastic remedy, that should never be granted as of right' (*Munaf v Geren*, 553 US 674, 676 (2008)), and is awarded only upon a clear showing that the plaintiff is entitled to such relief (*Winter v NRDC*, 555 US 7 (2008)). A patentee is typically required to post a bond to reimburse the alleged infringer's costs or damages if the preliminary injunction is later found to have been improperly granted.

Upon a finding of infringement, a permanent injunction may be granted where the patentee shows irreparable harm (eg, insufficiency of money damages) coupled with the balance of hardships favouring the patentee and the injunction being in the public interest (*Apple v Samsung*, 809 F.3d 633 (Fed Cir 2015)). While courts are not required to enforce such a provision, parties may contractually agree to an injunction under predefined circumstances or may waive the right to:

- seek an injunction; or
- entitlement to specific categories of damages in an arbitration clause.

The Trademark Modernization Act, 2020, further provides a rebuttable presumption of irreparable harm when either:

- a Lanham Act violation is found; or
- a showing of likelihood of success of merits is found.

Law stated - 10 December 2025

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

The most significant changes in the US affecting licensing in 2025 have come from changes in policies and procedures at the United States Patent and Trademark Office (USPTO). Those changes relate to three main issues.

The first issue relates to the treatment of patents in Inter Partes Reviews (IPRs) and post-grant reviews. Under the directives of the Trump administration, USPTO reviews of IPR requests have reduced the initial grant rate from over 60 per cent to less than 10 per cent. This means that fewer patents will be found unpatentable and subject to such proceedings, which will strengthen patent licensing in the short term. The administration has applied new concepts to deny IPR requests, and has severely restricted the institution of IPRs, by using concepts like 'settled expectations' for older patents to minimise the effectiveness of such challenges.

The second issue relates to the renewed focus on examination and reduction of the backlog in unexamined applications, which considerably increased during the four years of the Biden administration. Other time and non-examination details for examiners have been reduced, and there is a concerted effort to reduce the backlog, which will likely result in more patents being issued over the next several years, increasing the number available to be licensed.

Finally, in the first month or so under new USPTO director John A Squires, there have been both symbolic and regulatory indications that software-related inventions (particularly in the AI field) will be treated more kindly in terms of patent eligibility under section 101, again increasing the stock of important available patents for license.

Law stated - 10 December 2025

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OVERVIEW

Restrictions

1 Are there any restrictions on the establishment of a business entity by a foreign licensor or a joint venture involving a foreign licensor and are there any restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office? Whether or not any such restrictions exist, is there any filing or regulatory review process required before a foreign licensor can establish a business entity or joint venture in your jurisdiction?

In most cases, to enter into a licence agreement, the foreign licensor does not need to establish a business entity in Vietnam or a joint venture with a Vietnamese party. Establishing a subsidiary or branch office in Vietnam is optional. There are no restrictions against a foreign licensor entering into a licence agreement without establishing a subsidiary or branch office in Vietnam.

However, under the laws on cybersecurity, certain businesses are required to establish a subsidiary or branch office in Vietnam. In particular, a foreign enterprise must establish a subsidiary (eg, company, branch, or representative offices) in Vietnam when all the following conditions are satisfied:

- the enterprise is conducting business in Vietnam in any of the following fields:
    - telecommunication services;
    - data storage and sharing in cyberspace;
    - provision of national or international domain names for service users in Vietnam;
    - e-commerce;
    - online payment;
    - payment intermediaries;
    - connection and transportation services in cyberspace;
    - social media and social communications;
    - online games; or
    - information provision, management, or operation services in cyberspace in the form of messages, calls, video calls, email, or online chatting;
- the services provided by the enterprise are used for violations of laws on cybersecurity;
- the Department of Cybersecurity and Hi-Tech Crime Prevention of the Ministry of Public Security has notified the enterprise and requested cooperation, prevention, investigation, and handling in writing; and
- the enterprise fails to comply with or incompletely complies with such documents or prevents, obstructs, disables, or nullifies the effect of cybersecurity protection measures performed by cybersecurity protection forces.

In general, foreign licensors who wish to establish a business entity in Vietnam have to satisfy certain conditions or restrictions imposed on foreign investors. Typical examples of these conditions and restrictions include, among other things:

- limitations on foreign ownership in certain sectors;
- business sector restrictions;
- requirements for forms of investment;
- geographic restrictions;
- conditions on the qualifications of Vietnamese partners; and
- other conditions or requirements relating to specific business sectors.

As for regulatory review requirements, to establish a company in Vietnam, foreign licensors must obtain at least:

- an Investment Registration Certificate (IRC), which will set out content relating to the investment project, such as:
    - investors;
    - project location;
    - objectives and scale of the project;
    - investment capital; or
    - investment incentives and restrictions; and
- an Enterprise Registration Certificate (ERC), which will provide the corporate details, such as the company name, registered office address, charter capital, owner's details and legal representatives of the company.

The provincial Department of Planning and Investment or the board of management of the relevant industrial zone or park with jurisdiction over the location of the investment project has the power to approve the IRCs and ERCs. However, larger-scale projects and certain types of projects require a 'decision on investment planning' approval from higher-level government bodies prior to submission of the IRC and ERC to the local investment authorities. In addition, approval of the foreign investment from a number of other government bodies may be required, depending on the nature and scale of the foreign investment.

Law stated - 1 December 2025

KINDS OF LICENCES

Forms of licence arrangement

2 | Identify the different forms of licence arrangements that exist in your jurisdiction.

Vietnamese law does not explicitly differentiate between types of licence arrangements. Some licence arrangements are expressly regulated by specific laws, while others are

not and, therefore, will be treated as civil arrangements under civil laws. The two general licence arrangements are as follows:

- licence arrangements that are regulated by specific laws, including:
    - copyright licence arrangements (which include software licences, performance or TV show licences and music licences);
    - industrial property rights licences (such as patent licences, trademark or service mark licences and industrial design licences);
    - plant variety licences;
    - technology transfer licences; or
    - franchise agreements; and
- licence arrangements that are regulated by civil laws, which cover other types of licences, for example:
    - celebrity and character licences;
    - right of publicity licences; or
    - licence agreements for non-registered industrial property subject matters.

Law stated - 1 December 2025

LAW AFFECTING INTERNATIONAL LICENSING

Creation of international licensing relationship

3 Does legislation directly govern the creation, or otherwise regulate the terms, of an international licensing relationship? Describe any such requirements.

Yes. Legislation directly governs the terms of a licensing relationship. Vietnamese law does not differentiate between national and international licensing relationships. The law requires that a licence agreement must be established in the form of a written contract and must consist of the following terms:

- full names and addresses of the licensor and the licensee;
- grounds for licensing;
- contract type;
- licensing scope, including limitations on use rights and territorial limitations;
- contract term (duration);
- licensing price; and
- rights and obligations of the licensor and the licensee.

The law also provides limitations on industrial property licences. In particular, the licence contract:

-

must not have provisions that unreasonably restrict the rights of the licensee, such as terms that prohibit the licensee from improving the industrial property object (other than marks) or compel the licensee to transfer to the licensor, free of charge, improvements to the industrial property object made by the licensee; and

- must not directly or indirectly restrict the licensee from exporting goods produced or services provided under the licence contract to territories where the licensor neither holds the respective industrial property right nor has the exclusive right to import such goods.

Law stated - 1 December 2025

Pre-contractual disclosure

4 | What pre-contractual disclosure must a licensor make to prospective licensees?

There are no specific pre-contractual disclosure obligations for the licensor to make to prospective licensees under Vietnamese law, except for franchise activities. However, the general obligations for civil transactions, which cover licence agreements, require each party to freely and voluntarily enter into the agreement and establish, fulfil or terminate rights and obligations in good faith and honestly. To exercise good faith and honesty, the licensor is required to disclose information that might influence the decision of the prospective licensee to enter into the licence agreement, for example, the ownership of the licensor with the licensed intellectual property right (IPR) and the validity thereof.

Under the franchise regulations, unless the franchisor and franchisee agree otherwise, the franchisor must provide the proposed franchisee with a copy of the franchise agreement form and a franchise disclosure document at least 15 business days before the date that the franchise agreement is to be signed. In addition, foreign franchisors in any business sector must register their franchising activities with the Ministry of Industry and Trade before conducting franchising activities in Vietnam.

The 2022 revision of the Law on Intellectual Property (IP Law) eliminated the requirement for registering a trademark licence to establish the validity of such a licence against a third party. The law also sets out that the use of the trademark by the licensee would inure to the benefit of the trademark owner. However, licences for other registered IP, such as patents, still need to be registered to be enforceable against a third party. This presents hurdles to business transactions owing to the vague definition of the term 'third party'. Any entity other than the signatories, including banks and tax authorities, can claim to be the third party to such a licence agreement, which may complicate the performance of obligations under unregistered licences.

Law stated - 1 December 2025

Registration

5 | Are there any requirements to register a grant of international licensing rights with authorities in your jurisdiction?

The revised IP Law eliminated the requirement for registering a trademark licence to establish the validity of such a licence against a third party. The law also sets out that the use of the trademark by the licensee would inure to the benefit of the trademark owner. In other words, a grant of international licensing rights is not required to be registered with the authorities.

However, licences for other registered IP, such as patents, still need to be registered to be enforceable against a third party. This presents hurdles to business transactions owing to the vague definition of the term 'third party'. Any entity other than the signatories, including banks and tax authorities, can claim to be the third party to such a licence agreement, which may complicate the performance of obligations under unregistered licences.

Law stated - 1 December 2025

INTELLECTUAL PROPERTY ISSUES

Paris Convention

6 Is your jurisdiction party to the Paris Convention for the Protection of Industrial Property? The Patent Cooperation Treaty (PCT)? The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Yes. Vietnam has been a member of the Paris Convention for the Protection of Industrial Property 1883 since 1949, the Patent Cooperation Treaty 1970 since 1993 and the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 since 2007.

Law stated - 1 December 2025

Contesting validity

7 Can the licensee be contractually prohibited from contesting the validity of a foreign licensor's intellectual property rights or registrations in your jurisdiction?

No. Article 144.2(d) of the IP Law provides that a licence contract must not have provisions that unreasonably restrict the right of the licensee, including prohibiting the licensee from complaining about or initiating lawsuits regarding the validity of the industrial property rights or the licensor's right to license. The law further indicates that such a provision in a licence agreement (if any) shall be invalid.

Law stated - 1 December 2025

Invalidity or expiry

8 What is the effect of the invalidity or expiry of registration of an intellectual property right on a related licence agreement in your jurisdiction? If the licence remains in effect, can royalties continue to be levied? If the licence does not remain in effect, can the licensee freely compete?

Article 148.4 of the IP Law sets out that the licence agreement shall be terminated upon the end of the validity of the licensed intellectual property right (IPR). As such, once the validity of an IPR expires or is terminated, the related licence agreement will no longer be in effect. In such a case, the royalties may not continue to be levied, and the licensee can freely compete, unless otherwise explicitly agreed by the two parties in the licence agreement.

Law stated - 1 December 2025

Unregistered rights

9 Can unregistered trademarks, or other intellectual property rights that are not registered, be licensed in your jurisdiction?

In principle, in Vietnam, trademark rights are only derived from registration, except for well-known marks. Therefore, the transfer of the right to use unregistered trademarks, as well as other IPRs to which rights are established upon registration, cannot be recorded at the Intellectual Property Office of Vietnam (IP Office). However, as the recordal of a licence agreement with the IP Office does not affect its validity, the rights holder can still grant the right to use of unregistered intellectual property to another party in the form of a civil contract.

From the perspective of civil law, article 117 of Vietnam's Civil Code stipulates that a civil transaction will be valid if the purpose and contents of the transaction are not contrary to the law or social ethics, among other conditions. In addition, like the IP Law, the Civil Code neither prohibits two parties from entering into a licence agreement without a trademark registration nor specifies that a licence agreement without a trademark registration is invalid. Therefore, assuming that the parties to the licence agreement have full legal capacity and are entering into the agreement voluntarily, and the agreement is not contrary to the law or social ethics of Vietnam, it is valid from the perspective of Vietnam's civil law.

For intellectual property matters for which the rights are not derived from registration (such as copyright), the licence can be made without registration.

Law stated - 1 December 2025

Security interests

10 Are there particular requirements in your jurisdiction to take a security interest in intellectual property?

In principle, IPRs can be registered for security interest. However, the laws do not set particular requirements to take a security interest in intellectual property.

Law stated - 1 December 2025

Proceedings against third parties

11 Can a foreign owner or licensor of intellectual property institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings? Can an intellectual property licensee in your jurisdiction institute proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor? Can the licensee be contractually prohibited from doing so?

Yes. A foreign owner or licensor of intellectual property can institute proceedings against a third party for infringement without joining the licensee as a party to the proceedings in Vietnam.

The law also allows a licensee to request handling of infringement by administrative measures, provided that the trademark owner does not explicitly restrict the licensee's right to do so. Although the laws do not expressly state the same for civil and criminal measures, it may be interpreted that the same requirements will apply.

The licensee can be contractually prohibited from instituting proceedings against an infringer of the licensed intellectual property without the consent of the owner or licensor.

Law stated - 1 December 2025

Sub-licensing

12 Can a trademark or service mark licensee in your jurisdiction sub-license use of the mark to a third party? If so, does the right to sub-license exist statutorily or must it be granted contractually? If it exists statutorily, can the licensee validly waive its right to sub-license?

Yes. A trademark or service mark licensee can sub-license the use of the mark to a third party with the consent of the master-licensor. The right to sub-license does not exist statutorily but must be granted contractually.

Law stated - 1 December 2025

Jointly owned intellectual property

13 If intellectual property in your jurisdiction is jointly owned, is each co-owner free to deal with that intellectual property as it wishes without the consent of the other co-owners? Are co-owners of intellectual property rights able to change this position in a contract?

Co-owners of intellectual property (except copyright) must jointly act when they want to deal with that intellectual property (including licensing or assigning it to a third party or using it as security). The IP Office requires the mutually signed written consent of all co-owners to the licensing of the industrial property objects to record the licence agreement if the licence agreement has not been signed by all of the co-owners. In other words, if one of the

co-owners is to act on its own, the other co-owners must give written consent for the former to act on their behalf. The co-owners are not able to change this position in a contract.

In the case of copyright, the exercise of moral rights and property rights over a work created by co-authors must also be consented to by the co-authors. However, the laws provide an exception that in a case of joint ownership of a work, performance, audio or visual fixation or broadcast that is composed of separate parts detachable for independent use, without prejudicing other co-authors' parts and unless the law requires otherwise, copyright holders or related rights holders may license their copyright or related rights in their separate parts to other organisations or individuals. This means each co-owner is free to deal with its separate part as it wishes, without the consent of the other co-owners.

Law stated - 1 December 2025

First to file

14 Is your jurisdiction a 'first to file' or 'first to invent' jurisdiction? Can a foreign licensor license the use of an invention subject to a patent application but in respect of which the patent has not been issued in your jurisdiction?

Vietnam adopts the 'first to file' principle. Licences can only be recorded for patented inventions. A foreign licensor can license the use of an invention, but it would not be considered a licence of a patent application and cannot be recorded. Such a licence agreement will be treated as a contract governed by civil laws.

Law stated - 1 December 2025

Scope of patent protection

15 Can the following be protected by patents in your jurisdiction: software; business processes or methods; living organisms?

Software and business processes/methods

Vietnam currently excludes software (comprising computer programs, libraries and data) and business processes or methods from the scope of patentable subject matter. Under article 59 of the IP Law, computer programs, business methods and presentations of information are listed as types of subject matter that are expressly not eligible for patent protection; however, there are exceptions as follows.

Regarding computer programs, while a computer program itself, in the form of code, cannot be patented, the Vietnamese Guidelines for Patent Examination provide for the concept of 'computer-implemented inventions', which are inventions involving the use of computers, computer networks or other programmable apparatus whereby, *prima facie*, one or more of the features of the claimed invention are realised wholly or partly by means of a program or programs. This invention could be patentable if it has 'a technical character, and is a technical solution for solving a technical problem by technical means to attain a technical

effect', provided that the 'technical effect' goes beyond the normal physical interactions between the program and the computer.

The IP Law defines an invention as a 'technical solution in the form of a product or a process'. In practice, patent examiners usually interpret a product to be a tangible product. Accordingly, for a computer-implemented invention to take the form of a product, the designation of subject matter of a claim must be (converted into) a tangible designation such as 'a storage medium containing a computer program'.

Regarding business processes or methods, according to the Vietnamese Guidelines for Patent Examination, the claimed subject matter will be excluded from patent protection if it:

- is merely directed to a method of doing business;
- does not use technical means;
- does not solve any technical problems; and
- does not create any technical effects.

However, this means that if the claimed subject matter involves methods of doing business and specifies an apparatus or a technical process for carrying out at least some part of these methods, the subject matter will not be excluded from patent protection as such.

Living organisms

Article 59 of the IP Law includes plant varieties and animal breeds in its list of subject matters that are not protectable as inventions. However, point 5.8.2.8 of the Guidelines for Patent Examination states that inventions related to plants and animals are protected as long as their technical features are not limited to a specific plant variety or animal breed. For example, transgenic plants are normally protectable as inventions. In addition, plant varieties are protectable by the rights to plant varieties if they are novel, distinct, uniform, stable, designated by proper denominations and belong to the list of state-protected plant species promulgated by the Ministry of Agriculture and Rural Development of Vietnam. The requirements for plant variety protection are stipulated in detail in articles 158 to 163 of the IP Law.

Processes of plant or animal production that are not microbiological processes and are principally of biological nature are not protected either, according to article 59 of the IP Law. However, according to point 5.8.2.8 of the Guidelines for Patent Examination, it is possible to grant patents for invention or utility solutions to processes of plant variety or animal breed production that are not of biological nature. Whether a process is considered to be biological or not is based on the degree of technical intervention by humans in the said process. If the technical intervention by humans in the process is a critical or controlling factor for its products or effectiveness, the process does not involve a biological nature. For example, a process of irradiating cattle for high-yield production of milk is protectable.

On the other hand, microorganisms are not mentioned in article 59 of the IP Law and, therefore, are protectable as inventions. In particular, point 5.8.2.8 of the Guidelines for Patent Examination states that microorganisms and microbiological processes are eligible for patent protection if they are not in opposition to the social ethics and public order and not prejudicial to national defence and security.

Law stated - 1 December 2025

Trade secrets and know-how

16 Is there specific legislation in your jurisdiction that governs trade secrets or know-how? If so, is there a legal definition of trade secrets or know-how? In either case, how are trade secrets and know-how treated by the courts?

Yes. Vietnam's IP Law and the Law on Technology Transfer No. 07/2017/QH 14, dated 19 June 2017 and effective from 1 July 2018, govern trade secrets and know-how. Under article 4.23 of the IP Law, a trade secret means 'information obtained from activities of financial or intellectual investment, which has not yet been disclosed and can be used in business'. Under article 2.1 of the Law on Technology Transfer, know-how means 'information accumulated and discovered during the process of research, production and business by the technology owner, which is decisive for the quality and competitive capacity of technology and technological products. Know-how includes technical know-how and technological know-how.'

So far, there have been very few cases regarding trade secrets brought before the court. Taking into account the lack of precedents and the limited IP expertise of the court, it is unpredictable how trade secrets and know-how will be treated by the court.

Law stated - 1 December 2025

17 Does the law allow a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties in your jurisdiction, both during and after the term of the licence agreement? Is there any distinction to be made with respect to improvements to which the licensee may have contributed?

Yes. The law allows a licensor to restrict disclosure or use of trade secrets and know-how by the licensee or third parties, both during and after the term of the licence agreement, as agreed by the two parties in the related licence agreement, except when:

- disclosing or using trade secrets acquired without knowing or having the obligation to know that they have been unlawfully acquired by others;
- disclosing secret data in order to protect the public;
- using secret data not for commercial purposes;
- disclosing or using trade secrets obtained independently; and
- disclosing or using trade secrets obtained by analysing or evaluating lawfully distributed products, unless otherwise agreed upon by the analysts or evaluators and the owners of such business secrets or sellers of such products.

The law provides that the licensee owns the IPR for their improvements. This can be interpreted to mean that the law does not allow a licensor to restrict or prohibit the use of improvements to which the licensee may have contributed.

Law stated - 1 December 2025

Copyright

18 What constitutes copyright in your jurisdiction and how can it be protected?

In Vietnam, the following types of work are copyrightable:

- literary and scientific works including textbooks, teaching courses, and other works expressed in written language or other characters;
- lectures, addresses and other speeches;
- press works;
- musical works;
- dramatic works;
- cinematographic works and works created by a process analogous to cinematography;
- works of art and works of applied art;
- photographic works;
- architectural works;
- sketches, plans, maps and drawings related to topography, architecture or scientific works;
- folklore and folk-art works of folk culture; and
- computer programs and data compilations.

To be protected, the work must be created personally by the authors through their intellectual labour without copying the works of others.

Law stated - 1 December 2025

SOFTWARE LICENSING

Perpetual software licences

19 Does the law in your jurisdiction recognise the validity of 'perpetual' software licences? If not, or if it is not advisable for other reasons, are there other means of addressing concerns relating to 'perpetual' licences?

Article 47.1 of Vietnam's Law on Intellectual Property (IP Law) defines a copyright licence as the permission given by the copyright holder for other entities to use its rights for a definite term. Such a provision can be interpreted to mean that the licence of a copyrighted work, including a software licence, must be for a definite term. As such, 'perpetual' software licences may not be accepted. To address concerns relating to 'perpetual licences', the licence agreement may indicate a licence term concurrent with the term of protection of the licensed software.

Law stated - 1 December 2025

Legal requirements

20 Are there any legal requirements to be complied with prior to granting software licences, including import or export restrictions?

Software products that are incorporated in a medium, such as CD, VCD, DVD or hard disk, may be considered 'cultural products' and, if so, may be subject to content censorship. Under the law, any products having contents contrary to social ethics and public policy or prejudicial to national defence and security will be banned. As such, for the import or export of software products that are considered to be cultural products, the importer or exporter needs to obtain an import licence and approval of the content of such products from the competent authorities.

Law stated - 1 December 2025

Restrictions on users

21 Are there legal restrictions in your jurisdiction with respect to the restrictions a licensor can put on users of its software in a licence agreement?

Under the law, the licensee is entitled to make a single copy of the licensed software for backup and replacement without transferring such a copy to other organisations or individuals. The licensee is also entitled to fix any errors on this copy, when necessary, for their use. Other than that, there are no legal restrictions in Vietnam concerning the restrictions a licensor can put on users of its software in a licence agreement, such as prohibiting the licensees from carrying out any form of reverse engineering or decompiling of a software program.

Law stated - 1 December 2025

ROYALTIES AND OTHER PAYMENTS, CURRENCY CONVERSION AND TAXES

Relevant legislation

22 Is there any legislation that governs the nature, amount or manner or frequency of payments of royalties or other fees or costs (including interest on late payments) in an international licensing relationship, or require regulatory approval of the royalty rate or other fees or costs (including interest on late payments) payable by a licensee in your jurisdiction?

In general, parties are free to agree on the amount, royalty rate or manner of payment of royalties or other fees or costs of an international licensing agreement. There is no regulatory approval requirement for the royalty rate or other fees or costs. According to

the Civil Code 2015, the agreed interest rate must not exceed 20 per cent per annum of the amount overdue.

Law stated - 1 December 2025

Restrictions

23 Are there any restrictions on transfer and remittance of currency in your jurisdiction? Are there any associated regulatory reporting requirements?

The current regulations on foreign exchange are the Ordinance on Foreign Exchange and its guiding regulations, which govern every outbound payment, whether to an overseas licensor or otherwise.

The foreign exchange rule is that:

> within the territory of Vietnam, except for a few narrow exceptions allowing the use of foreign currency, local currency must be used for all transactions of offers, payments, advertisements, quotations, pricing, prices in contracts, agreements and other similar forms (including the conversion or adjustment of the prices of goods and services, and the values of contracts and agreements).

This means that the licensee's transactions with its onshore vendors would generally need to be denominated and paid in local currency. However, the current laws allow a licensee's transaction with its offshore vendors to be denominated and paid in foreign currency (ie, Vietnamese dong). For outbound transfers, commercial banks in Vietnam are imbued by law with the discretion to scrutinise and examine underlying documents before allowing outbound transfers. Thus, offshore vendors may need to provide the local licensee with some documents, such as invoices, for implementing such outbound transfers.

Law stated - 1 December 2025

Taxation of foreign licensor

24 In what circumstances may a foreign licensor be taxed on its income in your jurisdiction?

A foreign licensor having Vietnam-sourced income from engaging in a licence agreement with a Vietnamese contracting party will be subject to foreign contractor tax (FCT). The FCT is subject to any double-taxation avoidance agreement that Vietnam has entered into with the country under whose laws the foreign licensor is duly established. FCT, consisting of corporate income tax (CIT) and value-added tax (VAT), is collected through a withholding mechanism. FCT rates vary and are specified according to the nature of the service supplied. For the CIT component, the rate varies from 0.1 per cent to 10 per cent. For the VAT component, the rate can range from exempted to 5 per cent.

Law stated - 1 December 2025

COMPETITION LAW ISSUES

Restrictions on trade

25 Are practices that potentially restrict trade prohibited or otherwise regulated in your jurisdiction?

Yes. In Vietnam, antitrust and unfair competition are generally governed by the Competition Law and its guiding legislation. Depending on the nature of the activities, potentially trade-restricting activities can be considered competition restraints or acts of unfair competition that are prohibited under the law. For example, under the current Competition Law, which came into effect on 1 July 2019, agreements to restrain technical or technological development or agreements not to trade with parties not participating in the agreements are prohibited if such agreements 'have or potentially have the effect of significantly restricting competition in the market'.

Law stated - 1 December 2025

Legal restrictions

26 Are there any legal restrictions in respect of the following provisions in licence agreements: duration, exclusivity, internet sales prohibitions, non-competition restrictions and grant-back provisions?

Yes. The Law on Intellectual Property (IP Law) does not recognise a perpetual licence for copyright. The IP Law also stipulates that a licence agreement shall be terminated upon the termination of the validity of the licensed industrial property rights, which means the duration of a licence shall not exceed the term of protection of the licensed object. In addition, the IP Law does not allow provisions that unreasonably restrict the right of the licensee, particularly provisions that do not derive from the rights of the licensor. Specifically, the following provisions are not allowed:

- prohibiting the licensee from improving the industrial property object (other than marks);
- compelling the licensee to transfer to the licensor, free of charge, improvements to the industrial property object made by the licensee or the right of industrial property registration or industrial property rights to such improvements;
- directly or indirectly restricting the licensee from exporting goods produced or services provided under the licence contract to territories where the licensor neither holds the respective industrial property rights nor has the exclusive right to import such goods;
- compelling the licensee to buy all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the

licensor not for the purpose of ensuring the quality of goods produced or services provided by the licensee; and

- forbidding the licensee to complain about or initiate lawsuits about the validity of the industrial property rights or the licensor's right to license.

If a licence agreement contains any of the above provisions, such provisions shall be invalid.

In addition, the Competition Law contains a number of provisions that could potentially restrict licence agreements, including prohibiting agreements that provide for an exclusive arrangement, or competition restrictions where the parties thereto hold a dominant market position in the relevant market or where such agreements 'have or potentially have the effect of significantly restricting competition in the market in Vietnam', unless the transaction is exempted under the law.

Law stated - 1 December 2025

IP-related court rulings

27 Have courts in your jurisdiction held that certain uses (or abuses) of intellectual property rights have been anticompetitive?

There have been no rulings by the courts that certain uses (or abuses) of intellectual property rights (IPRs) have been anticompetitive. However, the local laws have some provisions relating to the use or abuse of IPRs that could be considered anticompetitive. The law does not specifically mention the situation of 'pay for delay' deals to keep generic drugs or improvements to a product off the market, or changing the design of products to extend the term of intellectual property (IP) protection.

However, when enterprises hold a dominant market position (a dominant market position exists when one enterprise has significant market power as set out by the law or has at least a 30 per cent market share of the relevant market; a group of enterprises is deemed to hold a dominant market position when they act together to cause a competition-restraining impact and have significant market power as set out by the law or two enterprises have at least a 50 per cent market share, three enterprises have at least a 65 per cent market share, four enterprises have at least a 75 per cent market share, or five enterprises have at least an 85 per cent market share), they are not allowed to have agreements to restrain technical or technological development. However, the current laws do not have any specific provisions to clarify what constitutes an 'agreement to restrain technical or technological development'. In practice, as an example, acquiring invention patents, utility solution patents or industrial design patents for destruction or non-use purposes could be deemed as prohibited acts of enterprises holding a dominant market position or prohibited competition-restraining agreements if such agreements 'have or potentially have the effect of significantly restricting competition in the market'.

Law stated - 1 December 2025

INDEMNIFICATION, DISCLAIMERS OF LIABILITY, DAMAGES AND LIMITATION OF DAMAGES

Indemnification provisions

28 Are indemnification provisions commonly used in your jurisdiction and, if so, are they generally enforceable? Is insurance coverage for the protection of a foreign licensor available in support of an indemnification provision?

Indemnification provisions are commonly used in international licensing contracts of varying subject matter and there are no expressed prohibitions against them. However, note that Vietnamese contract law adopts the doctrine of 'compensation for damage' under which 'damage' must be actual and direct. Similarly, insurance coverage is commonly used for the protection of a foreign licensor in support of an indemnification provision. However, the concept is relatively untested in Vietnam. Similarly, there is no legal guidance as to what constitutes a reasonable or otherwise enforceable indemnification provision.

Law stated - 1 December 2025

Waivers and limitations

29 Can the parties contractually agree to waive or limit certain types of damages? Are disclaimers and limitations of liability generally enforceable? What are the exceptions, if any?

Both waivers and limits on liability are frequently used in international licensing agreements and are not prohibited in Vietnam. Thus, parties can contractually agree to waive or limit liability to certain types of damages. However, under Vietnamese contract law, a party is obligated to compensate the other party for all actual and direct damages. Since the enforcement and scopes of both are relatively untested, in practice, the enforceability of this waiver or limit on liability must be under the judge's discretion. Currently, these matters have not been clarified under Vietnamese law or jurisprudence.

Law stated - 1 December 2025

TERMINATION

Right to terminate

30 Does the law impose conditions on, or otherwise limit, the right to terminate or not to renew an international licensing relationship; or require the payment of an indemnity or other form of compensation upon termination or non-renewal? More specifically, have courts in your jurisdiction extended to licensing relationships the application of commercial agency laws that contain such rights or remedies or provide such indemnities?

There are no conditions or other limitations on the right to terminate or not renew a licensing relationship. Vietnamese law does not differentiate between national and

international licensing relationships. The concerned parties can reach agreements on any circumstances or obligations of the parties for termination or non-renewal of a licence agreement.

Law stated - 1 December 2025

Impact of termination

31 What is the impact of the termination or expiration of a licence agreement on any sub-licence granted by the licensee, in the absence of any contractual provision addressing this issue? Would a contractual provision addressing this issue be enforceable, in either case?

In the absence of any contractual provision stating otherwise, the termination or expiration of a licence agreement will result in the termination or expiration of any sub-licence granted by the licensee. If there are contractual provisions on this issue, the law respects such agreements between the concerned parties and a contractual provision addressing this issue will be enforceable, except when the termination of the licence agreement is caused by the termination of the validity of the licensed industrial property rights.

Law stated - 1 December 2025

BANKRUPTCY

Impact of licensee bankruptcy

32 What is the impact of the bankruptcy of the licensee on the legal relationship with its licensor; and any sub-licence that the licensee may have granted? Can the licensor structure its international licence agreement to terminate it prior to the bankruptcy and remove the licensee's rights?

The bankruptcy of the licensee will not automatically result in the termination of the licensing relationship with the licensor and any sub-licensee. However, during the bankruptcy proceeding, on the perception that the performance of the licence contract may have negative impacts on the licensee, the creditors or the licensee may request the competent authority to suspend the execution of the contract.

The licensor can structure its international licence agreement to terminate the licence and remove the licensee's rights by including bankruptcy as a condition for termination of the licence as agreed to by both licensor and licensee under the licence agreement.

Law stated - 1 December 2025

Impact of licensor bankruptcy

33 What is the impact of the bankruptcy of the licensor on the legal relationship with its licensee; and any sub-licence the licensee has granted? Are there any steps a licensee can take to protect its interest if the licensor becomes bankrupt?

The bankruptcy of the licensor will not automatically result in the termination of the licensing relationship with the licensee and any sub-licensee. However, during the bankruptcy proceeding, on the perception that the performance of the licence contract may have negative impacts on the licensor, the creditors or the licensor may request the competent authority to suspend the execution of the contract.

The licensee can protect its interest if the licensor becomes bankrupt by including bankruptcy as a condition for termination of the licence as agreed to by both licensor and licensee under the licence agreement.

Law stated - 1 December 2025

GOVERNING LAW AND DISPUTE RESOLUTION

Restrictions on governing law

34 Are there any restrictions on an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?

In most cases, an international licensing agreement that involves a foreign element (eg, one party is an offshore organisation or individual or the assets are located offshore) can be governed by foreign law, provided that the application of that foreign law is not contrary to the 'fundamental principles of Vietnamese law'. However, the 'fundamental principles of Vietnamese law' have been interpreted very broadly and even seemingly minor inconsistencies could render contract terms unenforceable. Therefore, even provisions that seem almost standard to overseas licensors should be examined very carefully to ensure enforceability.

Law stated - 1 December 2025

Contractual agreement to arbitration

35 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another?

Generally, if the agreement involves a foreign element (eg, one party is an offshore organisation or individual or the assets are located offshore), the parties can mutually agree and set out in their agreement the method for settlement of dispute (ie, by arbitration or court, Vietnamese or foreign) provided that the dispute does not fall into the exclusive jurisdiction of a Vietnamese court.

If a foreign arbitration organisation is selected, the arbitration proceedings can be conducted in another country.

In principle, foreign arbitration awards may be enforceable in Vietnam if such awards are declared in a country or by arbitration of a country that is a party to an international treaty that Vietnam has signed or acceded to. Since Vietnam is a party to the United Nations

Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), foreign arbitration awards could thus be enforceable in Vietnam.

Law stated - 1 December 2025

Enforceability

36 Would a court judgment or arbitral award from another jurisdiction be enforceable in your jurisdiction? Is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

Yes. Ostensibly, a foreign court judgment or a foreign arbitration award can be enforceable in Vietnam in accordance with applicable regulations.

In the case of dispute settlement by foreign arbitration, Vietnam is a member of the New York Convention. A foreign award from a country that is not a party to the Convention may also be enforced in Vietnam on a reciprocal basis. However, foreign arbitral awards need to be recognised in a Vietnamese court before they can be enforced (unless there is voluntary compliance by the franchisor), unlike domestically rendered arbitral awards. The recognition proceedings are cumbersome and usually take a year or more to complete.

In the case of dispute settlement by the foreign court, the possibility of enforcing a foreign court judgment in Vietnam is very limited. A foreign court judgment may be enforced in Vietnam on a treaty or reciprocal basis. A treaty on mutual legal assistance with a foreign country is a potential occasion to recognise and enforce the foreign court's judgments. However, Vietnam has entered into very few treaties of this type, with limited countries.

Law stated - 1 December 2025

Injunctive relief

37 Is injunctive relief available in your jurisdiction? May it be waived contractually? If so, what conditions must be met for a contractual waiver to be enforceable? May the parties waive their entitlement to claim specific categories of damages in an arbitration clause?

Yes. Vietnam has provisional emergency measures (roughly akin to temporary injunctive relief in certain other jurisdictions). Provisional emergency measures are where courts can provisionally deal with the urgent requests of the involved parties, to protect evidence and preserve their current conditions to avoid irrecoverable damage or to ensure judgment execution.

There is no legal guidance as to the precise extent or scope of the waiver of injunctive relief, which is relatively untested in Vietnam. This means that injunctive relief can be waived contractually, but it cannot be enforceable in practice. The enforceability of this waiver must be under the judge's discretion. Currently, these matters have not been clarified under Vietnamese law or jurisprudence.

Law stated - 1 December 2025

UPDATES & TRENDS

Key developments of the past year

38 Please identify any recent developments in laws or regulations, or any landmark cases, that have (or are expected to have) a notable impact on licensing agreements in your jurisdiction (including any significant proposals for new legislation or regulations, even if not yet adopted). Explain briefly how licensing agreements might be affected.

Following the National Assembly's ratification of the revised Law on Intellectual Property in June 2022 (IP Law), the Vietnamese government issued Decrees 17 and 65 – taking immediate effect on 26 April 2023 and 23 August 2023 respectively – to provide necessary guidance for the implementation of the Amended IP Law with respect to copyrights, related rights and industrial property rights. The Minister of Science and Technology later issued Circular 23, taking immediate effect on 30 November 2023, to provide further detailed guidance on the amended IP Law and Decree 65. Circular 23 is pending further amendment after a public comment period.

The licence regulations, however, were unaffected by these amendments, except for:

- licences related to patents, industrial designs or layout designs that are the results of scientific and technological tasks funded by the state budget; or
- compulsory licences under which the patent owner failed to perform its obligations to use the patent in situations where disease prevention and treatment for the people was needed.

To the best of our knowledge, Vietnam has not yet ruled on any compulsory licence in response to any health needs after these legal documents become effective.

Law stated - 1 December 2025

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