

International IP Licensing Considerations (India)

Key issues in cross-border IP licensing for Indian startups going global

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| 1. | This is a working document for international ip documents — fill in all bracketed fields before use. |
| 2. | Review annually or whenever relevant laws, regulations, or business circumstances change. |
| 3. | Keep a signed copy on file and ensure the IP Manager has the current version. |
| 4. | Template only — not legal advice. Consult a qualified IP advocate for your specific situation. |

1. GOVERNING LAW AND JURISDICTION

1.1 Choice of Law. International IP licensing agreements involve parties in multiple jurisdictions. The choice of governing law significantly affects: the interpretation of contract terms; the availability of remedies; the enforceability of limitation of liability clauses; and the treatment of moral rights (which vary significantly between jurisdictions). Indian companies licensing IP internationally should consider: Indian law (appropriate where the licensee is also Indian or where India-specific terms are paramount); English law (widely accepted in international commercial contracts — extensive case law); Singapore law (common choice for Asia-Pacific licensing, especially with SIAC arbitration); and New York law (preferred for US licensees).

1.2 Dispute Resolution. For cross-border licensing disputes, arbitration is generally preferred over litigation because: arbitral awards are enforceable in 170+ countries under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958; India has acceded to the New York Convention and most Indian companies' jurisdictions; arbitration avoids complex and costly multi-jurisdiction court proceedings; and confidentiality of arbitral proceedings protects commercial information. Common seats for cross-border IP arbitration involving Indian parties: Singapore (SIAC), London (LCIA), Mumbai (MCIA), Delhi (DIAC).

2. TRANSFER PRICING AND TAX

2.1 Transfer Pricing for Related-Party IP Licences. Royalty payments between related parties (e.g. between an Indian parent company and its foreign subsidiary) must comply with transfer pricing rules. Under Sections 92–92F of the Income Tax Act 1961, the arm's length price of IP licences between associated enterprises must be determined using one of the prescribed methods (CUP, RPM, CPM, TNMM, PS). Failure to price at arm's length can result in transfer pricing adjustments and penalties. Engage a transfer pricing specialist for all intragroup IP licensing arrangements.

2.2 Withholding Tax on Cross-Border Royalties. Royalties paid by Indian companies to foreign IP owners are subject to withholding tax (TDS) under Section 195 of the Income Tax Act 1961. The rate varies based on the applicable DTAA. Key DTAA rates: USA — 15% or 20%; UK — 15%; Singapore — 10%; Mauritius — 15%; Germany — 10%. The foreign licensor should provide a Tax Residency Certificate to claim DTAA benefits. Without a valid TRC, the default higher rate (20%) applies.

3. CURRENCY, PAYMENTS, AND FEMA COMPLIANCE

3.1 RBI and FEMA Requirements. Royalty payments from an Indian company to a foreign licensor are capital account transactions regulated by the Foreign Exchange Management Act 1999 (FEMA). Under the current Automatic Route: royalty payments for transfer of technology do not require prior RBI approval but must be made through authorised dealer banks; the royalty rate must be at arm's length; and annual returns must be filed with the RBI through the Authorised Dealer bank. Monitor RBI circulars for updated requirements — the foreign exchange regulatory framework evolves.

3.2 Currency Risk Management. Cross-border IP licences denominated in foreign currencies expose Indian licensors and licensees to currency risk. Strategies for managing currency risk in IP licensing: (a) denominate royalties in INR where the counterparty accepts; (b) include a currency adjustment clause that adjusts the royalty rate if the INR/USD or INR/EUR exchange rate moves beyond a defined threshold; (c) use natural hedging by matching royalty receipt timing with foreign currency payables; or (d) enter forward contracts for large royalty streams.

REGULATORY APPROVALS AND COMPLIANCE FOR CROSS-BORDER LICENCES

4.1 Technology Transfer Under Indian Competition Law. The Competition Act 2002 applies to IP licensing agreements if they have an appreciable adverse effect on competition in India. Licensing restrictions that are scrutinised by the Competition Commission of India (CCI) include: exclusive grant-back clauses that require the licensee to assign improvements to the licensor; tie-in clauses requiring the licensee to purchase unrelated goods from the licensor; territory restrictions that partition markets; no-challenge clauses preventing the licensee from challenging the validity of the licensed IP; and post-expiry royalty obligations. The CCI has taken the position that Section 3(5) of the Competition Act exempts 'reasonable conditions' in IP licences, but the definition of 'reasonable' continues to evolve.

4.2 FEMA Compliance for Technology Import Licences. When an Indian company licences technology from a foreign licensor, compliance with FEMA 1999 is required for: remittance of royalty payments abroad (requires payment through an authorised dealer bank; annual ODI/FLA returns if above threshold; may require RBI reporting for large or unusual transactions); lump sum payments for technology acquisition (subject to enhanced scrutiny for large amounts); and equity swaps where IP is received in exchange for equity in the Indian company (treated as foreign investment and requires FEMA compliance for the equity component).

4.3 Documentation and Record-Keeping. For cross-border IP licences, maintain: (a) the signed original licence agreement (or certified copies for each party); (b) Form 15CA and 15CB tax certificates for each royalty payment; (c) Tax Residency Certificates from the foreign licensor for DTAA benefits; (d) Records of all payments, exchange rates, and bank transaction confirmations; (e) Evidence of quality control activities (for trademark licences); (f) Records of IP use and royalty calculation worksheets; and (g) Correspondence with the Patent/Trademark Office regarding the recordal of the licence. These records should be maintained for at least 7 years for tax purposes and for the duration of the licence plus 3 years.

GOVERNING LAW, DISPUTE RESOLUTION, AND ARBITRATION CLAUSES

5.1 Drafting an Effective Arbitration Clause. For cross-border IP licensing agreements, an arbitration clause should specify: (a) the arbitration institution (SIAC, LCIA, ICC, or MCIA); (b) the seat of arbitration (legal seat — determines procedural law); (c) the place of hearing (physical location — can differ from seat); (d) the number of arbitrators (1 for disputes below USD 500,000; 3 for larger disputes); (e) the language of arbitration; (f) the governing law of the arbitration agreement (typically same as substantive governing law); and (g) confidentiality of proceedings. Example clause: 'Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration in Singapore under the rules of the Singapore International Arbitration Centre (SIAC), which rules are deemed to be incorporated by reference into this clause. The seat of arbitration shall be Singapore. The Tribunal shall consist of [one/three] arbitrator(s). The language of arbitration shall be English.'

5.2 Enforcement of Arbitration Awards in India. India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Foreign arbitration awards are enforceable in India under Part II of the Arbitration and Conciliation Act 1996 subject to limited grounds for refusal (public policy, procedural irregularity). The 'public policy' exception in India has been narrowed by the Supreme Court over the years — enforcement of foreign awards is generally reliable. However, enforcement proceedings in Indian courts can take 2–5 years. For IP licensing disputes where urgent injunctive relief may be needed, include an emergency arbitration provision or a carve-out for urgent interim relief from competent courts.

EMERGING ISSUES IN CROSS-BORDER IP LICENSING

6.1 AI and Data Licensing — Emerging Framework. Cross-border AI and data licensing raises novel questions not fully addressed by existing IP law: (a) Ownership of AI-generated outputs — most jurisdictions do not recognise copyright in purely AI-generated work without human authorship. License agreements for AI services must address output ownership explicitly. (b) Training data licences — licensing data for AI model training is a distinct use case that standard data licences may not cover. Specify in licence agreements whether the licensed data may be used for AI training. (c) Model weights and parameters — trained AI models may constitute trade secrets or copyrightable works in some jurisdictions. Licensing of model weights is an emerging product category. (d) GDPR and DPDP Act implications — cross-border data sharing for AI training must comply with both the source country's data protection law and the destination country's rules.

6.2 Blockchain and Web3 IP Licensing. Tokenised IP licensing and NFT-based rights management are emerging models that Indian startups should understand: (a) NFTs can represent licences to underlying IP but the NFT and the underlying IP are legally distinct — transferring an NFT does not automatically transfer the IP rights unless the smart contract explicitly provides for this; (b) smart contracts encoding IP licence terms are subject to the Indian Contract Act 1872 in India; (c) blockchain-based IP registries are being explored by WIPO and some national IP offices as supplementary evidence of creation dates; and (d) DAOs and decentralised IP pools raise novel ownership questions. Indian IP law has not yet addressed these issues specifically — contract provisions must be drafted carefully to fill the gap.

6.3 Climate Tech and Green Technology Licensing. For startups in climate technology, clean energy, and environmental innovation: (a) WIPO Green is a global platform for facilitating access to environmentally sound technologies — consider listing your IP here for global licensing opportunities; (b) the TRIPS Agreement includes provisions for compulsory licensing of technologies needed for public health emergencies and environmental crises; (c) climate tech patents filed through PCT can be fast-tracked through the PPH (Patent Prosecution Highway) between India and several countries; and (d) some jurisdictions (EU, UK) are developing specific IP frameworks for climate technologies that provide enhanced protection or reduced licensing costs.