

GUIDELINES FOR THE DETERMINATION OF A REAL AND EFFECTIVE INDUSTRIAL OR COMMERCIAL ESTABLISHMENT

In order to file an international application under the Madrid Protocol, Hague Agreement or Patent Cooperation Treaty (PCT), an applicant may rely upon the condition of having a real and effective industrial or commercial establishment in the territory of a Contracting State, if he is not a national of the Contracting State or is domiciled in the Contracting State (see Rule 18.1(b)(i) PCT Rules; Article 2(1)(i) Madrid Protocol; Article 3 Hague Agreement).

The test of whether an applicant has a real and effective industrial or commercial establishment in Singapore is a question of fact, based on an assessment of all the relevant factors on a case-by-case basis. To assist applicants in determining if the condition of a “real and effective industrial or commercial establishment” is met, the following non-exhaustive factors may be taken into consideration:

1. Whether there is establishment of a place in Singapore from which the business of the applicant is conducted. The premises should be one where some industrial or commercial activity is conducted, as opposed to, for example a mere storage facility or P.O. box;
2. Whether the applicant conducts industrial or commercial activities and transactions from the establishment in Singapore on a regular basis;
3. Whether the applicant is involved in the solicitation or advertising/promotion of its business;
4. Whether the applicant has employees in Singapore to look after the applicant's affairs; and
5. Where the applicant employs an agent to conduct the applicant's business in Singapore:
 - a. whether the agent has the authority to enter into binding contracts on behalf of the applicant;
 - b. degree of control the applicant exercises over the running of the business conducted by the agent;
 - c. level of contribution the applicant makes to the financing of the business carried on by the agent; and
 - d. whether the agent displays the applicant's name at his premises or on his marketing materials, and if so, whether the agent does so in such a way as to indicate that he is representing the applicant.