

Kuwait has recently ratified the joining of Berne & Paris Conventions

Tarek Abu Mariam - Senior Associate - Corporate / Mergers and Acquisitions / Intellectual Property
- Kuwait City

November 2014

On 11 May 2014, two new laws nos. 35 & 36 for the year 2014 were published in the official gazette no. 1183 ratifying the joining of the State of Kuwait to the Berne Convention for the Protection of Literary and Artistic Works, and to the Paris Convention for the Protection of Industrial Property, respectively.

The Berne Convention requires its signatories to recognize the copyright of works of authors from other signatory countries (members of the Berne Union) in the same way as it recognizes the copyright of its own nationals. Article 3 of the Convention covers the criteria of eligibility for protection which stipulates:

1. The protection of this Convention shall apply to:

- authors who are nationals of one of the countries of the Union, for their works, whether published or not;
- authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

2. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

3. The expression “published works” means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

4. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

5. The key points of the Paris Convention are: National treatment which is tackled by Articles 2 & 3, and Priority right which is tackled by Article 4 to this treaty.

Articles 2 & 3 of the treaty stipulate:

1. National treatment means that juristic and natural persons who are either nationals of or domiciled in a state that is a party to the Convention shall, as regards the protection of industrial property, enjoy in all the other countries of the Union, the advantages that their respective laws grant to nationals.
2. Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention.
3. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Whereby Article 3 stipulates:

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Priority right means that an applicant from one contracting State shall be able to use its first filing date (in one of the contracting States) as the effective filing date in another contracting State, provided that the applicant files a subsequent application within 6 months (for industrial designs and trademarks) or 12 months (for patents and utility models) from the first filing.

As of September 2013, the Paris Convention had 175 contracting member countries, which makes it one of the most widely adopted treaties worldwide, and making the State of Kuwait the 176th member.