

A Snapshot of Franchise Requirements in ASEAN Countries**Kevin Wong and Ashley Chew****Ella Cheong LLC**

The Association of Southeast Asian Nations (ASEAN) is a region of increasingly significant interest to global businesses and corporations. There are currently 10 member states, namely, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. ASEAN is predicted to become the world's fourth largest economy by 2030¹ especially with the establishment of the ASEAN Economic Community (AEC) in 2015, as its member states continue committing to economic integration.

Many companies have expanded their brand presence in ASEAN countries and enjoyed success with proper legal protection and assistance. As each country has its own different set of laws, regulations and practices, companies should be mindful of the diversity in the regional legal landscape and associated potential issues/pitfalls, before engaging in such investments and partnerships.

Ella Cheong's professional team has considerable knowledge and experience in IP transactional work and a track record for effectively assisting business owners who are keen to expand in the region, whether through franchising or other means. Companies exploring franchising as a lucrative business expansion model to penetrate the Southeast Asian markets, and expand their brand globally, may wish to contact us for help in navigating the nuances of each country of interest and tailoring a bespoke strategy to suit their budget and expansion plans.

For a snapshot of some relevant (non-exhaustive) franchise requirements in ASEAN, please refer to the following tabulation for each country arranged in alphabetical order:

	BRUNEI
Relevant Laws and Regulations	There is no specific franchise legislation in Brunei. Franchising is regulated by contract and commercial law between the franchisor and franchisee. Applicable laws that may apply to franchise businesses include the following: • Trade Marks Act • Unfair Contract Terms Act • Companies Act

¹ https://www.asean2018.sg/Newsroom/Press-Releases/Press-Release-Details/20180426_AEC_Opening_Remarks

Restrictions Relating to Franchise	If the franchise is intended to be set up as a local company, local laws require companies to have at least 1 residential director if there are 2 directors or at least 2 residential directors if there are more than 2 directors.
Documents Required for Registration	Franchises are governed by contract, and there is no franchise registration system requiring submission of documents.
Estimated Registration Timeframe(s)	Not applicable.

	CAMBODIA
Relevant Laws and Regulations	There is no specific franchise legislation in Cambodia. Franchising is regulated by contract and commercial law between the franchisor and franchisee. Relevant laws that may apply include the following: • The Civil Code • The Law Concerning Marks, Trade Names and Acts of Unfair Competition Franchise and license agreements pertaining to registered trademarks have to be recorded with Cambodia's Ministry of Commerce. Nevertheless, if they are not recorded, the franchise business is unaffected but the relevant trade mark rights are unable to be enforced against any third parties to the agreements.
Restrictions Relating to Franchise	Trade mark regulations stipulate that a licensor has effective control over the quality of goods and services of a licensee with regard to the manner in which a trade mark is used. Furthermore, franchise agreements prepared in a foreign jurisdiction must have the following provisions localised in order to be effective: • Intellectual Property Provisions • Real Estate Provisions • Advertising Requirements • Tax-related Clauses • Guarantee-related Provisions • Non-compete Obligations • Dispute Resolution Clauses The following payments which are related to a franchise and made to non-residents of Cambodia are subject to 14% withholding tax: • Royalties • Rent • Interest

	• Management and Technical Services • Dividends • Marketing and Advertising Expenses However, Cambodia has various agreements with other nations relating to the avoidance of double-taxation. In addition, banking transactions made with foreign entities are required to be made through a bank pre-approved by the Cambodian National Bank.
Documents Required for Registration	Franchising agreements, like trademark licenses, have to be recorded with the Ministry of Commerce of Cambodia. The following documents are required: • Notarised power of attorney • Notarized/certified copy of franchising agreement with Khmer translation; • Copy of related trade mark registration certificate; and • other corporate documents (depending on the specific case).
Estimated Registration Timeframe(s)	Recordal of documents with the Ministry of Commerce may take up to 4 months.

	INDONESIA
Relevant Laws and Regulations	The regulations relating to franchising include the following: • Government Regulation No. 42 of year 2007 on Franchise • Regulation of the Minister of Trade No. 53/M-DAG/PER/8/2012 on Implementation of Franchise • Regulation of the Minister of Trade No. 53/M-DAG/PER/9/2014 on Amendment of Regulation of the Minister of Trade No. 53/M-DAG/PER/8/2012 on Implementation of Franchise • Director General of Domestic Trade Decree No. 16/PDN/KEP/3 of 2014 on the Technical Guidelines for Franchise Implementation • Regulation of the Minister of Trade No. 60/M-DAG/PER/9 of 2013 regarding the Obligation to Use Franchise Logo
Restrictions Relating to Franchise	While there are no restrictions on the type of franchise that can be recorded, there are certain points to note. Franchise agreements must be governed by and have disputes resolved by Indonesian law. Furthermore, there is a limit on the number of stores that can be owned by the franchisor or franchisee. Additional outlets would subsequently have to be owned by independent sub-franchisees.
Documents Required for Registration	<u>Registration of Franchise Prospectus</u> Documents required to be filed by the franchisor, to be notarised and attested by the Indonesian Embassy and translated into Bahasa Indonesia: • Power of attorney • Application letter • Franchisor's identification (passport/ID) (directors, shareholders and commissionaires) • Copy of franchisor's business license • History of franchisor's business; • Franchisor's organisational structure (from Board of Directors, Shareholders, Commissionaires, up to franchisor's operational level) • Number of outlets owned by franchisor • List of current franchisees • Composition of franchised goods • Employment composition • Audited financial statements for the last 2 years • Trade mark registration certificates in Indonesia or filing receipt of trade mark application in Indonesia • Rights and obligations of the franchisor and franchisee • Copy of franchise agreement Before entering into a franchise agreement with a franchisee, the franchisor must provide a prospectus which discloses its business information to the franchisee. This disclosure document must also be registered with the Ministry of Trade in Indonesia. There is no

	obligation on the franchisor to continue to update the disclosure document. <u>Registration of Franchise Agreement</u> Documents required to be filed by the franchisee, to be translated into Bahasa Indonesia and submitted for registration: • Power of attorney • Application letter • Copy of the Prospectus of the Offered Franchise • Copy of franchisee's Articles of Association • Copy of franchisee's business licenses • Copy of identification of franchisee's directors/owners • Copy of trade mark registration certificate. • Employment composition (local and foreign staff) • Composition of franchised goods • Copy of franchise agreement and its Bahasa Indonesia translation
Estimated Registration Timeframe(s)	Registration of the franchise prospectus and franchise agreement should take about 3 months from the application filing date in a straightforward case.

	LAOS
Relevant Laws and Regulations	There is no specific law or regulation governing franchises in Laos. However, franchise agreements must be notarised by the Notary Office, Ministry of Justice, and registered with the State Asset Management Department, Ministry of Finance.
Restrictions Relating to Franchise	There are no specific restrictions relating to the provisions of the franchise agreement between parties, as long it follows the rules and principles as set out in the Contract and Tort Law No. 01/NA of 8 December 2008.
Documents Required for Registration	The following documents are required for the purposes of notarisation and registration: • Copies of corporate documents and/or passports of the parties to the agreement; and • 4 sets of the signed agreement The above documents are required to be translated into the Lao language.
Estimated Registration Timeframe(s)	Notarisation and registration of documents should take about 4 working days.

	MALAYSIA
Relevant Laws and Regulations	Franchises in Malaysia are regulated by The Franchise Act 1998. The Act requires the franchise to be registered. It also governs certain provisions in the agreement as well as the conduct of the parties involved.
Restrictions Relating to Franchise	Foreign companies must incorporate a local subsidiary company, set up a branch office or register a local representative office in order to carry out business in Malaysia. Under the Franchise Act, there are also certain restrictions relating to the provisions in the franchise agreement, such as the following: • The franchisor must not unfairly discriminate among franchisees in relation to charges levied to them, e.g. franchise fees and royalties, fees for goods/services and equipment • The franchise agreement must be for a term of at least 5 years • The franchisee must guarantee that will not compete under any other business that is similar to the franchise during the term of the franchise, and for 2 years after expiry or termination of the franchise The Franchise Act contains more information regulating the business of the franchise, depending on the nature and shareholding of the business. For example, the Act does not allow franchisors to hold any shares in the franchisee company.
Documents Required for Registration	Documents required to be submitted by the franchisor for the Registry of Franchise's approval include: • Information about the franchisor, including a certified true copy of its certificate of incorporation • Information about the franchise business (including the nature of the business and number of franchise outlets worldwide) • Materials relating to the franchise business and outlets (brochures, photographs, etc.) • Certified true copy of trade mark registration/application in franchisor's home country and in Malaysia • Financial information (including certified true copy of franchisor's relevant audited accounts for the last 3 years, and information about initial investments required on franchisee's part) • Information about the franchise agreement and parties' obligations thereunder Once approval has been granted to the franchisor, the franchisee would then have to register with the Ministry of Domestic Trade prior to commencing operations. A master franchisee is also required to similarly register as such before allowing sub-franchising operations in Malaysia, and would have to present relevant audited accounts for the last 3 years in order to proceed.

Estimated Registration Timeframe(s)	Once an application for registration is filed, it should take about 6 months to be approved by the Registry of Franchise in a straightforward case.
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	MYANMAR
Relevant Laws and Regulations	There is no specific franchise legislation in Myanmar. Franchising is regulated by contract between the relevant parties. Franchise fees are subject to 2% withholding tax for resident foreigners and 3.5% withholding tax for non-resident foreigners, while franchise-related royalties are subject to 15% withholding tax for resident foreigners and 20% percent for non-resident foreigners (subject to double tax agreements Myanmar has with certain countries to avoid double taxation).
Restrictions Relating to Franchise	There are restrictions on foreign ownership/control of certain businesses, such as the import, export, and sale of goods. In addition, foreign investment in food and beverage and retail businesses must be via joint venture with local partner.
Documents Required for Registration	Franchises are governed by contract, and there is no franchise registration system requiring submission of documents.
Estimated Registration Timeframe(s)	Not applicable.

	PHILIPPINES
Relevant Laws and Regulations	There is no specific law governing franchises in Philippines. However, any franchise agreement would have to comply with the relevant provisions found in various laws, such as: • Civil Code • Corporation Code • Intellectual Property Code (e.g. requiring compliance with rules governing the provisions of franchise agreements as technology transfer arrangements, or TTAs) • Tax Code (e.g. tax rate of 30% for domestic and resident corporations, withholding tax of 20% in respect of royalties to domestic or resident foreign corporations; withholding tax of 30% for royalties paid to non-residents, subject to any applicable tax treaties otherwise) Other relevant laws that franchisors should take note of for compliance include:

	• Foreign Investment Act (FIA) • Foreign Investment Negative List • Philippine Competition Act • Data Privacy Act.
Restrictions Relating to Franchise	The Intellectual Property Code prevents franchise agreements from imposing product tying obligations on the franchisee. The franchisor cannot also require the franchisee to employ specific personnel directed by the franchisor. Moreover, restrictions in relation to technology transfer and non-compete obligations after the expiration of the TTA are prohibited under the Code.
Documents Required for Registration	Documents/Information required to be submitted by a foreign corporation would depend on whether it is: (i) entering into a franchise with an existing local entity (ii) setting up a new entity – e.g. its articles of incorporation and by-laws (iii) establishing a branch office – e.g. Application to Do Business under the FIA, board resolution on establishment of branch office With regard to the franchise agreement itself, as a TTA it must provide for the following: • Philippine law as governing interpretation, and in the event of litigation the venue must be the proper court of the place of the licensee's principal office • Continued availability of and access to improvements in technological techniques and processes during the term of the agreement • Philippine taxes on all payments relating to the TTA must be borne by the franchisor, subject to certain exemptions • In the event of arbitration, proceedings must be governed by the Procedure for Arbitration of the Arbitration Law of the Philippines, the Arbitration Rules of the United Nations Commission on International Law (UNCITRAL Arbitration Rules) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce; and the arbitration venue must be the Philippines or any neutral country
Estimated Registration Timeframe(s)	Registration of company with the SEC is done online, and it may take a total of up to 6 weeks before the registration is completed with other relevant government agencies; while registration of a TTA with the Documentation, Information, and Technology Transfer Bureau (DITTB) should take about 3 months in a straightforward case.

	SINGAPORE
Relevant Laws and Regulations	There is no specific franchise legislation in Singapore. Instead, franchises are regulated by contract between the relevant parties. Applicable laws that may apply to franchise businesses include the following: • Companies Act • Unfair Contract Terms Act • Contracts (Rights of Third Parties) Act • Employment Act • Trade Marks Act • Competition Act Franchise-related royalties are subject to 10% withholding tax for non-resident foreign franchisors, subject to double tax agreements Singapore has with certain countries to avoid double taxation.
Restrictions Relating to Franchise	There are no specific restrictions relating to the provisions of the franchise agreement between parties, as long as they are in compliance with applicable laws, e.g. Competition Act, which prohibits provisions promoting anti-competitive practices.
Documents Required for Franchise Registration	Franchises are governed by contract, and there is no franchise registration system requiring submission of documents.
Estimated Registration Timeframe(s)	Not applicable.

	THAILAND
Relevant Laws and Regulations	There is no law or legislation that specifically governs franchises in Thailand. However, laws that contain provisions which are relevant to franchises include the following: • Civil and Commercial Code • Trade Mark Act • Act Relating to Price of Merchandise and Service • Revenue Code • Alien Business Operation Act • Labour Protection Act • Investment Promotion Act • Trade Competition Act • Unfair Contract Terms Act It is important to note that franchise agreements pertaining to registered trade marks must be recorded. Otherwise, the trade mark license would be deemed invalid. Franchise-related royalties are subject to 15% withholding tax for foreign franchisors without a permanent establishment in Thailand, subject to double tax agreements Thailand has with certain countries to avoid double taxation.
Restrictions Relating to Franchise	Foreign individuals and companies are barred from holding a majority shareholding in Thai companies in connection with business activities regulated under the Foreign Business Act. In addition, provisions in franchise agreements relating to the following may be considered a violation of the Trade Competition Act: • Price fixing • Purchasing/Product tying • Product line restrictions • Geographical exclusivity
Documents Required for Registration	Franchises are governed by contract, and there is no franchise registration system requiring submission of documents.
Estimated Registration Timeframe(s)	Not applicable.

	VIETNAM
Relevant Laws and Regulations	Franchising is regulated mainly by the following: • Commercial Law, Decree 35/2006/ND-CP • Circular 09/2006/TT-BTM • Circular 12/VBHN-BCT Before setting up a franchise in Vietnam, foreign corporations are required to register with the Ministry of Industry and Commerce prior to entering into a franchise agreement. Unless otherwise agreed between the parties, draft franchise agreement and franchise disclosure documents must be provided by the franchisor to the franchisee at least 15 working days prior to entering into the franchise agreement. Franchise fees payable by the local franchisee to any foreign franchisors are subject to withholding tax considerations under the local tax regulations of Vietnam. The local franchisee is required to declare and pay the withholding tax for and on behalf of the foreign franchisor.
Restrictions Relating to Franchise	The franchise system must have been in operation for at least 1 year. Similarly, a local franchisee must have been operating the franchise system for at least 1 year before it can be sub-franchised. Foreign investment/involvement is prohibited in relation to certain industries. There are also some industries where foreign activity is subject to certain conditions, depending on the type of business. For some industries, competition law provisions also prohibit certain agreements that will confer parties a combined market share of 30% and above of the relevant industry.
Documents Required for Registration	Documents required to be submitted by a foreign franchisor for franchise registration are as follows: • Power of attorney • Application for franchise registration • Notarised and legalised copy of franchisor's business registration certificate • Franchise disclosure document • Copy of franchise agreement • Notarised and/or legalised copies of certificates of IP protection (if applicable) • Certified true copy of audited financial statement for the last financial year • Notarised documentary evidence of approval to sub-franchise (if applicable)

**Estimated
Registration
Timeframe(s)**

If all documents are provided, registration with the Ministry would normally be completed within about 5-10 working days.

If you have any questions or comments regarding this article, please contact our Mr. Kevin Wong (kevin.wong@ellacheong.asia) or Ms. Ashley Chew (ashley.chew@ellacheong.asia).

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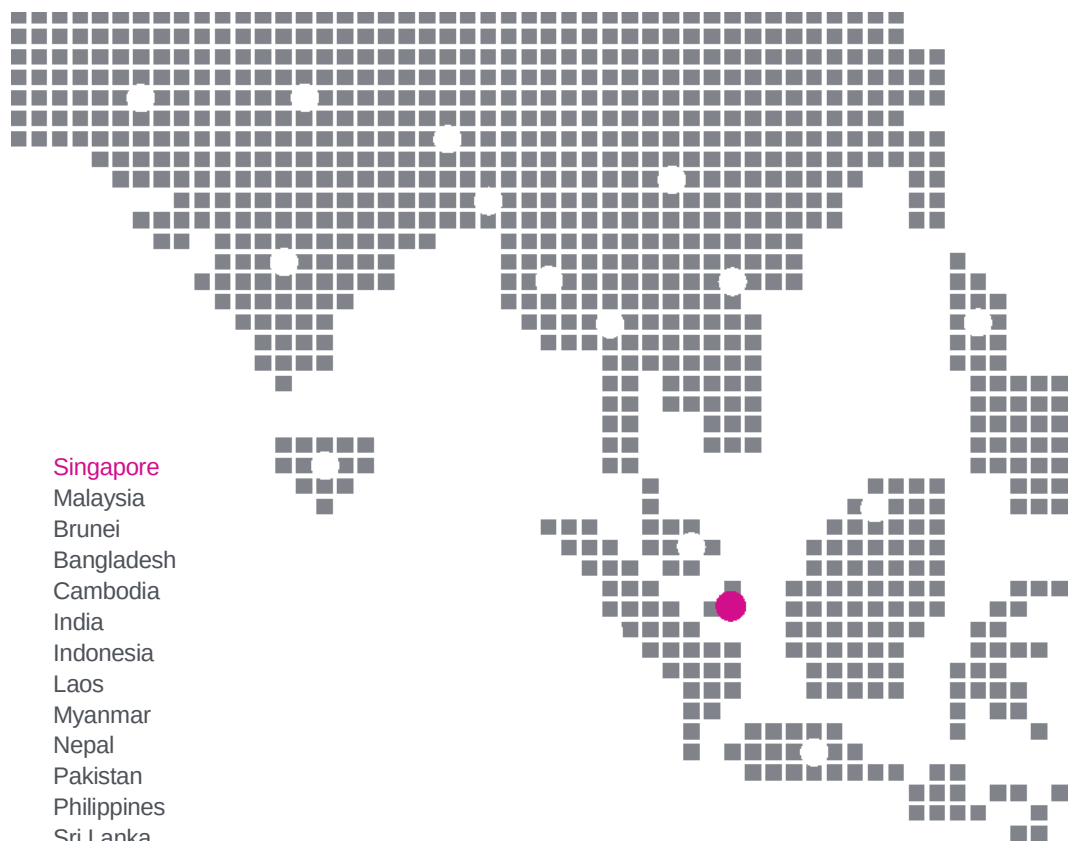
OUR PEOPLE

OUR INSIGHT IS YOUR ADVANTAGE

At Ella Cheong LLC, our professionals have a wealth of knowledge and experience in all aspects of domestic and international intellectual property law. Our extensive legal and industry experience allows us to move swiftly in finding the right strategy for your business.

From initial contact with our firm to completion of a matter on your behalf, you will find a team recognised for delivering exceptional leadership, client service and value.

The insight and clarity offered by our dynamic team help clients navigate risks, regulatory issues and the diverse challenges of a competitive marketplace - in the boardroom or the courtroom.



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ABOUT US

THE SMART CHOICE

Ella Cheong LLC is a law firm that specialises in intellectual property in the Southeast Asian region. We protect the fruits of creativity with effective solutions to meet diverse needs.

Apart from its regional IP practice focussing on Southeast Asia and South Asia, (ie, Singapore, Malaysia, Brunei, Indonesia, the Philippines, Thailand, Vietnam, Cambodia, Laos, Myanmar, India, Pakistan, Sri Lanka, Bangladesh and Nepal) Ella Cheong LLC provides a comprehensive scope of services, including IP transactions (franchising and licensing), protection, enforcement and strategy development.

Our professionals are experienced in delivering effective solutions, involving IP across a broad spectrum of industries, to a wide range of setups: individuals, small to medium-sized businesses and multinational corporations alike. We embody a track record of providing strategic business advice, addressing complex legal issues and helping clients navigate risks, regulatory issues and the diverse challenges of a competitive marketplace- in the boardroom or the courtroom.

OUR PHILOSOPHY

We believe that IP is critical to commercial success. We care about what's happening with our clients' businesses and work hard to understand our clients' needs, expectations and concerns. Our client-driven culture is personalised, innovative and responsive. Our team strives to provide quality and cost-effectiveness targeted at meeting IP and commercial needs. We take pride in our ability to think out-of-the-box, and our commitment to finding the best approach for each individual case.

What matters most is what works.

OUR HISTORY

The firm takes its name from Ella Cheong, an internationally well-respected intellectual property practitioner who started professional practice in Hong Kong in the 70's. In 1986, Ella Cheong set up the initial form of our practice in Singapore to meet the intellectual property demands of international businesses in this region and the rapidly evolving IP needs of local businesses.

The practice has grown and adapted to the changing IP landscape in the region over the years. The practice has come full circle as a well-known brand in IP services in Asia and represents the culmination of a significant wealth of knowledge, experience and capability in IP services which our clients can count on.

**KEVIN WONG**
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Kevin is an advocate and solicitor in Singapore, and is admitted as a solicitor in England and Wales.

A graduate of the National University of Singapore, Kevin is an experienced attorney in the fields of IP management and transactional work. He has advised a wide range of local and foreign clients on their intellectual property (IP) rights and portfolios around the world, including companies in the aerospace, retail, environmental solutions, marketing communications, beauty, and sports and lifestyle industries.

His scope of work includes trade mark clearance and strategy, trade mark filing and prosecution, international registration under the Madrid Protocol, information technology (domain names) and enforcement/disputes, including trade mark oppositions, invalidations and revocations.

Kevin is a regular participant and speaker at local and international IP events, and has contributed as a consultant and tutor at local IP clinics and courses. He also has many years of editorial experience and has contributed articles and commentaries to various IP publications with an international audience, including World Trademark Review (WTR), Asia IP and the IPKat's blog. He also co-authored the Singapore chapter of the book "Getting the Deal Through: Trademarks" published in 2015.

He is also currently a member of the Young Practitioners Committee for the International Trademark Association (INTA), as well as the Singapore group of the International Association for the Protection of Intellectual Property (AIPPI).

Kevin has been recognized as a Recommended Individual in WTR 1000 – The World's Leading Trademark Professionals, as well as a trade mark star in MIP (Managing Intellectual Property) IP Stars. He is also listed in the WIPR (World Intellectual Property Review) Leaders Directory.

QUALIFICATIONS

- Bachelor of Laws (Hons)
- Advocate & Solicitor, Supreme Court of Singapore
- Admitted as Solicitor, England & Wales

MEMBERSHIPS

- Law Society of Singapore
- Singapore Academy of Law
- International Association for the Protection of Intellectual Property (AIPPI)
- International Trade Mark Association (INTA)

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Ashley graduated from the National University of Singapore (NUS) and specialises in Intellectual Property (IP), Technology and Media Law. Ashley's practice spans both contentious and non-contentious matters, from IP and brand protection, to the commercialisation and enforcement of IP rights. In particular, she has represented notable clients' in the successful enforcement of IP infringement (and related) matters before the High Court and Court of Appeal in Singapore. She also works closely with her clients in their regional and worldwide strategic expansion of their brand through (amongst others) consultancy, franchise and license agreements. Ashley had prior experience in the public sector where she worked closely with the Registrars at the Intellectual Property Office of Singapore (IPOS) at the Trade Marks, Registered Designs and Patents Registry as well as the Hearings and Mediation Group.

Ashley's experience in the public sector has helped her clients, especially small and medium enterprises (SMEs), to successfully navigate through the various government grants, schemes and assistance such as the ICV, PIC, MRA and CDG, to name a few. A self-professed member of the local creative community, Ashley can be found supporting local talents at events and gigs around Singapore and does pro bono work such as the drafting of a Copyright guide for artists, designers, photographers, etc. (pending publication) on how to protect their IP rights. Ashley always goes the extra mile for her clients while delivering practical and innovative legal solutions to their problems.

QUALIFICATIONS

- Bachelor of Laws
- Advocate & Solicitor, Supreme Court of Singapore

MEMBERSHIPS

- Law Society of Singapore
- Singapore Academy of Law