



PROJECT DYNAMIC

**A short guide on contracts for
the VICPA**

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THE MATERIALS WERE
PREPARED BY STUDENTS AND
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INTRODUCTION

Project Dynamic is a project that aims to empower groups under the Freelancers and Self-Employed Unit (U FSE) of the National Trades Union Congress (NTUC) by providing them with an avenue to learn about their contractual rights and liabilities.

As the world emerges from the COVID-19 pandemic, it remains full of opportunities for creatives. In order to prevent general exploitation, this guide serves to provide some insight to better aid professionals under the Visual, Audio, Creative Content Professionals Association (VICPA) in understanding their contractual rights and liabilities.

CONTENTS

- 1). Who are Freelancers?
- 2). What is a Contract?
- 3). Points on Interest in a Contract?
- 4). Dispute Resolution and Remedies
- 5). Copyright
- b). Trademark
- 7). Do Freelancers have Family-Related Leave Benefits?

WHO ARE FREELANCERS?

Freelancers are people who operate their own business or trade without employing any worker. They usually provide services to their clients and are free to negotiate their terms and benefits.



Typically, there is no employer and employee relationship between them and their clients. Hence, they are not covered under the Employment Act and Work Injury Compensation Act.

CPF

Self-employed persons earning an annual net trade income of more than \$6,000 ARE REQUIRED to make CPF contributions to their Medisave Account (MA) at the prevailing rate.

Freelancers that are not in an employer-employee relationship with their clients will not be entitled to receive CPF. Hence, the nature of the contractual relationship between the parties matters.

TAX

Under the Income Tax Act (Cap. 134, 2014 Rev. Ed. Sing.), a self-employed person is liable for income tax.

If notified, taxpayers are required to file a tax return with the Inland Revenue Authority of Singapore ('IRAS'), and IRAS will subsequently issue a notice of assessment setting out the details of income tax payable and the terms of payment.

WHAT IS A CONTRACT?

What does a contract comprise of?

1. Offer and Acceptance

Contract is only enforceable when there is acceptance from a party of an offer by another party, on the condition of no further negotiation



2. Consideration

Parties must put up something of value for exchange (e.g. money in exchange for a service); these need not be proportional



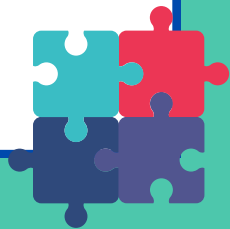
3. Intention to create legal relations

Parties must express an interest in involving the law in their exchanges



4. Certainty & Completeness

Contract must have all key terms and details to be valid and enforceable



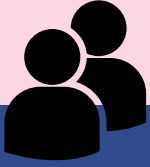
What renders a contract invalid?

1. Party **does not have the capacity to consent**
2. Party is **mistaken, threatened or coerced** into a contract
3. Party **does not hold the authority to make a promise** on behalf of another party

POINTS OF INTEREST IN THE CONTRACT

*While it is not exhaustive, do refer to the following points as a reference/checklist when entering a contract!

PT. I



Identity of Parties

1. **People and businesses are distinct entities in law from each other.**
Thus, link each entity to their UEN / Reg Nos. (for companies), or NRIC / Passport Nos. (for people) to prevent confusion.
2. Ensure that the names reflected throughout the contract are consistent and you know which entity you are owing what to.

1. What are the deliverables, and when are they due?
2. When does performance begin, and for how long does it continue?
3. Who are the receivers of the deliverables, and what are they entitled to demand?
4. Are there any specifications on the quality of the work, and who gets to decide on it?



Terms Relating to Performance



Terms Relating to Remuneration

1. How much is being paid and on what basis (lump sum or hourly rate?)
2. When will it be paid (e.g. before/upon performance, on a stipulated date, upon approval/acceptance of deliverables, in instalments?)
3. What are they paying for (e.g. will they cover costs like transportation, food?)
4. Which entity is paying?

The parties to a contract may be bound by an obligation of confidentiality, and cannot disclose sensitive information exchanged between them.



Confidentiality/ Non-disclosure



Exclusion/Limitation of Liability

Terms that absolve one party of responsibility for any losses that may arise in the course of contractual performance (e.g., due to negligence leading to bodily injury).

Exclusion of liability for death or personal injury is entirely not allowed.

POINTS OF INTEREST IN THE CONTRACT

*While it is not exhaustive, do refer to the following points as a reference/checklist when entering a contract!

PT. II

Force Majeure/ Frustration

Terms which protect either or both parties in the event that something unforeseeable goes wrong and the contract cannot be performed.

(e.g. a natural disaster, a pandemic)

1. Identify what conditions will allow for it to kick in.
2. Stipulate that the contract is either rendered invalid upon such conditions, or that one or both parties can't be sued for the consequences of the unforeseeable event.

Restraints of Trade

Terms that bar an employee/contractor from working outside of the contractual agreement (e.g. preventing them from working for a competitor, working in a particular area after their work with the current employer ends).

Any restraint that extends indefinitely (or is too expansive) will likely be struck down by a court and rendered unenforceable.

Termination of Contract

Terms that stipulate when a contract can be rendered invalid and parties are no longer bound by the agreement.

1. Can termination be done with advance notice? How much in advance?
2. Are there certain conditions allowed to give rise to termination?
 - e.g. Failure to perform certain key actions

Governing Law

The contract may stipulate what kind of law should govern it and what kind of court it can be brought to. If so, the contract may only be enforceable if brought to and ruled upon by the stipulated courts.

Particularly important for contracts made by parties from different countries.

Penalties

Terms that may legally penalize a party for failing to do something, often by confiscating a deposit they've put down as collateral or allowing the other party to claim a certain sum of them for their loss.

Should the amount be disproportionate, then it can be challenged in court and ruled out.

METHODS TO RESOLVE DISPUTES

NEGOTIATION

Parties can come to an agreement without involving outside parties or resorting to Courts.



MEDIATION

Parties can seek help from a mediator who acts as a neutral third party to assist parties to resolve the matter.



Parties can refer the matter to arbitrators by whose decision they agree to be bound. This option limits their rights of recourse to the Courts and/or rights of review and appeals of the arbitrator's decision.



Parties can choose to bring the matter to court.



ARBITRATION

LITIGATION

REMEDIES TO BREACH OF CONTRACT

1. TERMINATION

Party may relieve himself of further contractual obligations under certain conditions. This does not require parties to go to court.

Right to terminate can arise from:

- A term in the contract which specifies the conditions under which such a right is to arise
- A breach of an important obligation in the contract, which might effectively deprive the other party of any benefit of the contract

2. CLAIM FOR LIQUIDATED DAMAGES



Only applicable if there is a clause in the contract which stipulates what liquidated damages can be claimed and by who. This can be done without going to Court.

For liquidated damages to be recognised and allowable by Court, the sum must be a genuine estimate of the losses that are to result from the breach, and not extravagant or extortionate.

3. JUDICIAL REMEDIES



Including but not limited to,

- DAMAGES
- ACTION FOR A SUM
- SPECIFIC PERFORMANCE
- INJUNCTION

(Do consult a professional for accurate legal advice.)

COPYRIGHT

What Is a Copyright?

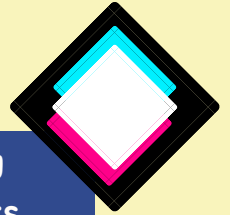


Type of Intellectual Property that only covers **tangible creations**

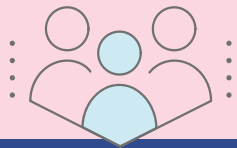
It **need not be applied**. However, evidence should be prepared to prove that the work was created on the claimed date.

It can also be leased out or sold, and expires after a certain duration of time.

Managing Copyrights



- The artist's ownership is typically **forfeited under employment or commission**
- Damages or injunctions can be sought for copyright violations

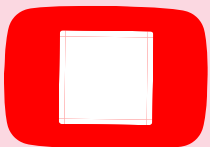


Using Others' Copyrights

Consent needs to be obtained (generally through a contract)

- If you contract services of someone who produces intellectual property, you typically buy the rights of the I.P. as well. Do ensure that it is reflected in the contract
- When leasing or buying copyrights, be careful that your right to use the copyright is not overly restricted by the seller

However, consent may not be required if it deemed as fair dealing, which includes use for non-commercial, educational purposes, criticism or reporting of events



Leasing Copyrights to Others

If the ownership is not assigned wholly and permanently,



1. How long will ownership be assigned?
2. In what capacity can the other party use the work (on what mediums, for what purposes etc.)
3. Where can the other party use the work?

TRADEMARK

What Is a Trademark?



A sign or symbol to identify the business that a service or good comes from.

- Can be protected to restrict others from using its name or logo.
- The protection is not compulsory to register and **needs to be renewed every 10 years.**

What Can be Trademarked?

Any combination of these elements

- Letters
- Words
- Names
- Signatures
- Labels
- Devices
- Tickets
- Shapes and colours

Registering a Trademark



You can find out how to register trademarks in Singapore from the link below!


<https://www.ipos.gov.sg/about-ip/trade-marks/how-to-register>

Registering a trademark internationally is also possible through the Madrid Protocol, where you are able to gain protection in limited countries through one office. The application will be submitted through the same Intellectual Property Office (IPO) to the World IPO.

Types of Trademark

- Greyscale and Colour marks
 - Filing trademarks in colour makes it less likely to be rejected
 - Marks are given protection the way they are registered, so a trademark should be filed in colour if colour is an important element
 - **No additional charge for colour vs grayscale in Singapore**
- Series mark
 - Claiming of rights in a series of variation of the same mark

DO FREELANCERS HAVE ANY FAMILY-RELATED LEAVE BENEFITS?



Government-Paid Childcare Leave (GPCL) Eligible working parents who have **any Singapore citizen child below 7 y/o** can enjoy up to 6 days of leave per relevant period.

Extended Childcare Leave (ECL) Eligible working parents who have **any Singapore citizen child between 7 and 12 y/o** can enjoy 2 days of leave per relevant period.


Unpaid Infant Care Leave (UICL) Eligible working parents who have **any Singapore citizen child below 2 y/o** can enjoy 6 days of unpaid leave per relevant period.

<https://www.profamilyleave.msf.gov.sg/schemes/childcare-leave>

<https://www.profamilyleave.msf.gov.sg/schemes/unpaid-Infant-Care-Love>

Click The Links for Further Information!

Government-Paid Maternity Leave (GPML) Eligible working mothers can enjoy up to 16 weeks of leave, to be taken within 12 months from child's date of birth.



Adoption Leave for Mothers (AL) Eligible adoptive working mothers can enjoy up to 12 weeks of leave, to be taken within 12 months from FIA date.

Government-Paid Paternity Leave (GPPL) Eligible working fathers (including adoptive fathers) can enjoy up to 2 weeks of leave, to be taken within 12 months from child's date of birth.

Government-Paid Shared Parental Leave (SPL) Eligible working fathers can enjoy up to 4 weeks of leave, to be taken within 12 months from child's date of birth, through sharing up to 4 weeks of their wife's GPML or AL benefits.

<https://www.profamilyleave.msf.gov.sg/schemes/maternity-leave>

<https://www.profamilyleave.msf.gov.sg/schemes/adoption-leave>

<https://www.profamilyleave.msf.gov.sg/schemes/paternity-leave>

<https://www.profamilyleave.msf.gov.sg/schemes/shared-parental-leave>

Government-Paid Maternity Benefit (GPMB) <https://www.profamilyleave.msf.gov.sg/schemes/paternity-benefit>

Government-Paid Adoption Benefit (GPAB) <https://www.profamilyleave.msf.gov.sg/schemes/adoption-benefit>



Government-Paid Paternity Benefit (GPPB) <https://www.profamilyleave.msf.gov.sg/schemes/maternity-benefit>