

ENSURING EMERGING MARKET PROTECTIONS - GARRIGUES

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Iberian businesses may be looking to new markets to reduce costs in their supply chains but while this may make economic sense basic commercial protections still have to be taken, says João Paulo Miranda, Head of Intellectual Property (IP) at Garrigues.

Las empresas de la Península Ibérica están deslocalizando sus cadenas de producción para reducir costes; pero aunque esto tenga sentido en términos económicos, supone un riesgo añadido en cuanto a la protección de la propiedad industrial, opina João Paulo Miranda, Director de PI en Garrigues.

"Businesses are notably looking to the BRIC economies – Brazil, Russia, India and China – to outsource manufacturing where labour costs can be significantly lower, but even if products are not

intended for sale there companies must see the need for local protections."

In China, for example, it is common for goods to appear in local markets. But neither the courts nor police can do anything to prevent counterfeiting or piracy if the Chinese IP rights have not been protected, says Miranda.

"This is a classic problem. It is not enough to have protection in Europe or the US and expect those rights to be transferable. You have to identify the source of the problem, and this means ensuring you have the official local authority to do so."

A growing issue also is the stealing of proprietary know-how. IP rights holders have to be aware of any deviation from contractual obligations – including confidentiality clauses – and be able to spot issues as soon as they arise, he says.

"This includes ensuring that employment contracts contain specific obligations and remedies for infringements such as data theft or leakage, for both third-party and the company's own staff. It is not uncommon for employees to be approached with offers to pass on information."

Fundamentally, rights holders have to ensure they are undertaking the necessary due diligence before entering into any agreements by which they will share proprietary know-how or brands. Companies need to approach the BRIC economies with a strategy encompassing both how they are going to do business and what happens if things go wrong.

"There are some relatively simple steps that can be taken to reduce vulnerabilities but adequate protection depends on having the right local intelligence and expertise. It is not always possible to prevent illegal actions but at least you can find remedies to limit their impact."