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**PRACTICAL GUIDE
INTELLECTUAL PROPERTY**

TABLE OF CONTENTS

About HBS LAW	2
HBS Law IP Practice & Team	4
Introduction	8
Marks	10
Well-Known Marks	13
Trade Names	14
Patents	15
Utility Model Certificates	18
Industrial Designs	20
Copyright	22
Geographical Indications	24
IP Infringement and Enforcement	26

About HBS LAW

Established in 2005, HBS Law is a multi-service law firm. We work with a broad client base which includes major international companies. Our team has solid expertise to assist foreign and local clients in a wide range of sectors. We also assist educational institutions, international organizations, Government agencies and senior Government leaders.

A combination of teamwork, specialist skills and cooperative relationships with Government means that we are at the forefront of Cambodia's rapid legal development. HBS Law is frequently called upon to participate in precedent-setting deals and advice on new legislation and regulations.

By building our business in response to clients' needs, HBS Law has become a significant and credible practice in South East Asia. Our philosophy of developing relations of trust and honesty with our clients is profoundly important. Consequently, our clients entrust us with their most complex legal matters.

Responding to the growing demand of IP advice and services, HBS Law has established a specialized IP Department to provide tailored services in IP matters. Our IP Department consists of qualified practicing lawyers, accredited trademark agents and experienced advisors. They have acquired deep knowledge of IP matters and experiences locally and internationally. HBS Law has represented many high-profile clients in IP Registration and Enforcement. Success in our works has led us to a leading local law firm in IP protection, as mentioned in Chambers Asia Pacific^[1] and Global IP Net^[2]. Furthermore, HBS Law assists both national and international clients, in providing legal advices on all aspects of IPR. It strives to provide practical and cost-effective solutions to clients in IP matters.

This practice of IP Department focuses on intellectual property filing, market research, investigation and enforcement, contract drafting, and IP dispute resolution. We assist clients in drafting or reviewing franchise agreement, development agreement, technology transfer, trademark license and IP assignment, and the recordal of license

¹ www.chambersandpartners.com

² www.directoryip.com

agreement with the Department of Intellectual Property Rights (DIPR) of Ministry of Commerce (MoC).

Our services include, but not limited to, the following:

- Drafting and advising on IP agreements such as right transfer, license or assignment, agency and distributorship under Cambodian laws and practice;
- Providing legal advice to IP owners and other party on their legal rights, relations and proper use and exploitation of their IP;;
- Preparing and filing the application for registration of trademarks, trade names, patents, utility models, industrial designs, copyrights and franchises;
- Conducting due diligence and search on due registration and compliance of IP and carrying out market survey and investigation to identify infringement of IP rights;
- Conducting raid actions on parallel or counterfeit goods in Cambodian markets;
- Filing lawsuit, objection petition and claims to competent courts and other relevant authorities in order to protect owners' rights.



HBS LAW IP PRACTICE & TEAM



LY Tayseng
Managing Director

Tayseng is an experienced business lawyer with a strong focus primarily on Corporate, Banking, Finance and M&As, sectors but has also worked on Commercial, IP, Labour, Dispute Resolution and Litigation. He acts regularly for local and foreign banks and MFIs. Moreover, he frequently advises multinational corporations or world class international banks on complex financing projects, equity investments, IPOs, M&As and infrastructure projects. He is the first lawyer accredited by the Securities and Exchange Commission of Cambodia to advise on securities laws and regulations, by the Ministry of Commerce as Mark Agent and is a Labour Arbitrator for the Labour Arbitration Council. In addition to his private practice, he was also appointed as a member of the Council of Jurists of the RGC, and a legal team in the General Secretariat of the Supreme National Economic Council under the auspice of the Prime Minister's cabinet. He attended world class executive legal education program at Harvard Law School and business management at Auckland University's Business School. He obtained his Master of Laws from Nagoya University, Japan, a Bachelor of Law from the Royal University of Law and Economics, Cambodia, and Bachelor of Law from the University Lumière Lyon 2, France.



NY Vichet

Director of IP
Attorney-at-law
Trademark Agent

Mr. NY is currently an attorney-at-law and a director in charge of Intellectual Property Department at HBS LAW. In 2007, he obtained a French Bachelor's Degree of Law from University Lumière Lyon 2 in France and a Cambodian Bachelor's Degree of Law from Royal University of Law and Economics in Cambodia, and in 2009 his Master's Degree in International Economic Law from University Toulouse 1 in France. In 2016, he completed a special training program from Center of International Study of Intellectual Property/ Centre des Etudes Internationales de la Propriété Intellectuelle (CEIPI), Strasbourg, France.

Since 2013, he was elected as Chairman of the Council of Intellectual Property Association of Cambodia (I.P.A.C). He was also accredited as Legal Trademark Agent by the Ministry of Commerce of the Kingdom of Cambodia in 2013. He is also a vice-president of Asian Patent Attorney Association – APAA Cambodia Group and has been actively involved in hosting various IP programs in Cambodia.



OUK Samnang

Attorney-at-Law
Trademark Agent

Joining HBS LAW in 2014, since then he has been practicing in litigation practice group where he works in banking, capital market, M&A, and tax litigation and contract drafting.

He also involves in intellectual property right matter that focusing the enforcement for IP right.

Ms. NENH graduated with a Bachelor's Degree from the Royal University of Law and Economics in 2010, majoring in Law. She was a member in the Company Secretary, Administrator and Practice Groups from 2008 to 2014.



NENH Muoykheng
Attorney-at-Law
Trademark Agent

She is currently a member of the Corporate Registration and Tax, Intellectual Property Rights, and Civil Litigation Practice Groups at HBS Law.



**SOPHORN
Pouvchannita**
Trademark Agent

Joining HBS LAW in 2013, she practices laws concerning Intellectual Property Rights and commercial transactions. Being a Legal Mark Agent, she specializes in registration and enforcement of Trademark, Patent, Industrial Design and Copyright. She also works in various big projects in Cambodia since 2014.

Main work consist of conducting legal due diligent, drafting, advising and participating in negotiation in relation to commercial transaction under the aspect of Cambodian Law.



LAY Vongkhim
Trademark Agent

Ms. LAY Vongkhim graduated a Bachelor of Law from Royal University of Law and Economics (RULE) in 2015, and she also obtained a Bachelor of Arts in English, majoring in Teaching English as a Foreign Language (B-Ed/TEFL) at Institute of Foreign Languages (IFL) in 2016.

In addition, Ms. LAY has been recognized by Ministry of Commerce as a Legal Mark Agent of Cambodia. Ms. Lay joined HBS LAW as a Legal Advisor on Intellectual Property.



OEURN Mealtey
Legal Advisor

Ms. OEURN obtained her Master's Degree from the Transnational Law and Business University, Seoul, South Korea in 2017. She also holds a Bachelor Degree of international program called English Languages Based Bachelor of Law (ELBBL), from Royal University of Law and Economics.

Currently, Ms OEURN advises and assists clients in Intellectual Property Rights related matters including trademarks, patent, industrial designs, utility model, copyrights.

INTRODUCTION

This IP Guide aims to provide general information on the legal and regulatory framework governing the filing and protection of Intellectual Property Rights (IPR) in the Kingdom of Cambodia. The following are key laws and regulations governing IPR:

- Law on Management of Quality and Safety of Goods and Services 2000
- Law concerning Marks, Trade Names and Acts of Unfair Competition 2002 (Trademark Law)
- Law on Patents, Utility Model Certificates and Industrial Designs 2003 (Patent Law), and the amendment to articles 37, 38, 109 and 136 of Patent Law in 2017
- Law on Copyright and Related Rights 2003 (Copyright Law)
- Law on Seed Management and Breeder Rights 2008
- Law on Geographical Indication 2014 (GI Law)

Cambodia has become a member of the World Intellectual Property Organization (WIPO) in 1995, and the 10th member of Association of South-East Asian Nations (ASEAN) in 1999. In 2004, she also became a member of the World Trade Organization (WTO) and in the meantime, Cambodia signed the Agreement of Trade-Related Aspects of Intellectual Property Rights. In 2015, Cambodia has acceded to Madrid Protocol for International Trademark Registration and Patent Cooperation Treaty (PCT) in 2016. Recently, Cambodia signed Memoranda of Understanding for granting and recognition of patent with Singapore (Intellectual Property Office of Singapore – IPOS) in 2016, Japan (Japan Patent Office – JPO) in 2016, European Patent Office – EPO in 2017, and China (State Intellectual Property Office – SIPO) in 2018. Moreover, Cambodia signed the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications on March 09, 2018.

Intellectual Property is the creation of mind such as inventions, literary and artistic works, symbols, names, images, and designs used in commerce. Generally, an idea is not protected unless it is created in a form and substance protectable under the relevant laws governing intellectual property. IP is an intangible asset of firms doing business in Cambodia and it is important to have protection of such assets from any infringement by other party.

This IP Guide provides some responses to questions concerning the practices and procedures for IP filing, protection, prosecution and enforcement by competent authorities and courts in Cambodia.



MARKS

WHAT IS MARK?

A mark is a visible sign capable of distinguishing the goods or services of an enterprise. A mark used to identify goods of an enterprise is called a “**trademark**” and a mark used to identify services of an enterprise is called a “**service mark**”.

The legal definition of the mark refers to only visible signs such as drawings, brand names, words, numerals (a stylized number), designs, logos, devices (graphic), labels (trade dress), colored marks, combinations of colors, signatures, three dimensional signs (3-D), slogans, shapes or configurations of an object or any combination thereof. These signs could be protected in Cambodia if they meet the legal requirements stipulated in the Trademark Law.

WHY YOUR MARK MUST BE PROTECTED?

A mark is chosen for use on your company's products and/or services because it would bring the following advantages:

- It earn trust from and attracts customers to consume your enterprise's goods and/or services;
- It illustrates the quality of your goods and/or services and enterprise's reputation;
- In terms of competition, a mark is an important tool for your company to integrate into the global market.

It could also help the owner to achieve an unexpected enormous income if it is protected from abuse or misuse by any third party.

HOW IS A MARK PROTECTED?

A mark is protected under Cambodian laws when it is registered with the Ministry of Commerce (MoC). No mark can be accepted for registration, if it is:

- generic or descriptive;
- contrary to public order or morality;
- deceptive;
- armorial bearing, flags or State names, official symbol of any country or organization;

- confusingly similar to or identical with an unregistered or registered well-known mark in Cambodia or overseas for identical or similar goods or services; or
- confusingly similar to or identical with the registered or applied mark in Cambodia.

LEGAL TRADEMARK AGENT

Any applicant who does not have the residence or registered address in Cambodia shall be represented by a Legal Trademark Agent, who is recognized by MoC, and is residing and practicing in Cambodia in filing a registration application with the Registrar.

PRIORITY CLAIM

A mark filed in a foreign country is permitted to claim its priority date in Cambodia within 6 (six) months from filing date at the foreign trademark office.

The applicant who wishes to claim priority shall provide the priority of trademark application documents issued by the foreign trademark office to the Trademark Office of Cambodia.

HOW LONG DOES REGISTRATION PROCESS TAKE?

In Cambodia, the process of the mark registration could take up to 9 (nine) months. The length of process depends sometimes on the workload of the Registrar and completeness of the required documentation.

Likewise, the registration could take longer time if the applied mark encounters any objection from any related third party, or refusal from the Registrar.

THE RIGHTS CONFERRED BY REGISTERED MARK

The right holder shall have:

- exclusive right to use the mark on goods/services as mentioned in the registration application.
- right to transfer his/her mark to anyone. The transfer of a mark, either by license or by assignment should be in writing and recorded with the Registrar.
- right to institute court proceedings against anyone who uses his/her registered mark without his/her prior consent.

HOW LONG WILL THE PROTECTION OF TRADEMARK LAST?

A registered mark is protected for 10 (ten) years from the filing date and is successively renewable for every 10 year.

The right holder is obliged to file an affidavit of use/non-use within the 6th year anniversary from the registration date with the Registrar, failing which the registered mark could be cancelled or removed from the register by the Registrar.

WHAT ARE THE INFRINGEMENT SOLUTIONS?

The right holder shall have the right to institute criminal action against the infringer. The infringer could be any person who:

- uses or imitates the owner's registered mark;
- sells, offers for sale, intends to sell, imports or exports the goods and/or services bearing the owner's registered mark.

To deal with the infringement of IPR, the following actions would be available for the mark owner:

- 1) Send a Cease & Desist letter to infringer or initiate a private negotiation with infringer;
- 2) Filing a letter with Ministry of Commerce for intervention;
- 3) Filing a complaint with enforcement authorities, including Cambodia Import-Export Inspection and Fraud Repression Directorate General – Camcontrol, Economic Police Bureau, Counter Counterfeit Committee of Cambodia (CCCC), or prosecution office of competent courts; or
- 4) Filing a complaint with the General Department of Customs and Exile (GDCE) of Cambodia for stopping the infringement through border of Cambodia in accordance with the Law on Customs.

An infringement of a mark in Cambodia shall be liable to a fine of up to 20 (twenty) million Riels (approximately US\$ 5,000) and/or to imprisonment of up to 5 (five) years.

In addition to the above criminal sanction, the right holder could also pursue a civil action against the infringer for compensation of damages.



WELL-KNOWN MARKS

WHAT IS WELL-KNOWN MARK?

The Trademark Law does not provide for the definition of a “well-known” mark. However, a well-known mark could be acknowledged by the DIPR when it meets a number of criteria.

In determining whether a mark is well-known or not, the Convention on Trade-Related Aspects of Intellectual Property Rights (TRIPs) provides that all members shall take into account the public’s knowledge of the mark in the relevant sector, including the knowledge of the public in the member countries concerned as a result of the promotion of the mark and also should the mark comply with all criteria set forth in Article 6*bis* of Paris Convention for the Protection of Industrial Property 1883.

HOW IS A WELL-KNOWN MARK PROTECTED?

A well-known mark, either registered or non-registered, is protected in Cambodia. It is protected against any reproduction or imitation in relation to goods or services identical with or similar to goods or services provided by the owner of the well-known mark if the use would indicate a connection between those goods or services and those of the owner of the well-known mark, and the owner’s interest is likely to be damaged by such use.



TRADE NAMES

HOW IS A TRADE NAME PROTECTED?

Trade name refers to the enterprise's name or business name. Trade name is protected under the Trademark Law. The trade name is used to identify the name of each enterprise and is also protected under the other specific commercial laws and regulations.

Under the 1995 Law on Commercial Rules and Commercial Register, amended in 1999, the enterprise's name shall be registered with the Department of Business Registration of the Ministry of Commerce. However, according to the Prakas No. 222/MOC/SM 2012 of the Ministry of Commerce dated 30 October 2012 on the Registration of the Name of Enterprise, Association and their Protection, the applicant for registration of the trade name is required to conduct a name search with the DIPR. In case an applied trade name is similar to a registered mark, it is not registrable as a trade name.

The search will take approximately 3 (three) working days. Upon the request of the relevant party, the IP Registrar will issue a letter confirming whether or not the proposed name is registrable. The confirmation letter is valid for 7 days from the signing date, and subject to an extension upon the request of the relevant party with reasonable grounds.

HOW TO ENFORCE RIGHTS ON TRADE NAME?

The right holder shall have the right to institute criminal action against infringers in accordance with the Trademark Law. Any use or imitation of a registered trade name without prior consent of the right holder shall be deemed as an infringing act, which is subject to a punishment of a fine of up to 20,000,000 Riels (approximately US\$ 5,000) and/or to imprisonment of up to 5 (five) years.

In addition to the above criminal sanction, the right holder could also pursue a civil action against the infringer for compensation of damages.



PATENTS

WHAT IS PATENT?

Patent is a title granted to a patent applicant by the governmental authorities to protect an invention.

Invention means a novel, inventive idea which gives a solution to a specific problem in the field of technology. An invention could be, or could relate to, a product or a process.

WHAT ARE THE LEGAL REQUIREMENTS TO GRANT A PATENT?

An invention which meets the following conditions shall be eligible for patent protection:

- **Novelty:** An invention must be new, i.e. it shall not be disclosed to the public anywhere in the world.
- **Inventive step:** An invention would not have been obvious to a person of ordinary skill in the relevant field.
- **Applicability of industrial sector:** It can be made or used in industry.

However, the Patent Law provides an exhaustive list of items which are excluded from patent protection. They are as follows:

- ✚ Discoveries, scientific theories and mathematical methods;
- ✚ Schemes, rules or methods for doing business, performing purely mental acts or playing games^[3];
- ✚ Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; this provision shall not apply to products for use in any of those methods;
- ✚ Pharmaceutical products as provided in article 136 of the Patent Law^[4];
- ✚ Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;

³ They are protected under Trade Secret Law which is in draft form.

⁴ Article 136 of the Patent Law: "The pharmaceutical products mentioned in the article 4 of this law shall be excluded from patent protection until January 01, 2016, according to the Declaration on Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health of the Ministerial Conference of the World Trade Organization dated November 14, 2001 in Doha of Qatar."

 Plant varieties^[5].

HOW IS AN INVENTION PROTECTED?

An invention is protected by a patent when it is registered with the Ministry of Industry and Handicraft (MIH). The right holder shall pay the government fee for registration of a patent. The registration process normally takes at least 3 (three) years from the filing date. This period may take longer due to the backlog of works of the Registrar. Certain technology fields may take even longer.

As per mentioned in above, according to the cooperation of patent recognition with IPOS, JPO, CIPO, EPO, and member of PCT, there are currently various ways for getting the patent protection in Cambodia.

HOW LONG DOES THE PATENT PROTECTION LAST?

Once a patent is granted, the invention shall be protected for 20 (twenty) years from the filing date. This protection period cannot be renewed.

With regard to the patent filing for protection in Cambodia throughout the MoUs with IPOS and JPO, the duration for protection will last only within the remaining duration of the principal duration protection in the origin countries.

The patent holder shall pay the annual fee to the Registrar for guaranteeing the validity of the patent.

RIGHTS CONFERRED BY PATENT

The exclusive rights to the patent shall belong to the patent holder. The exploitation of a patented invention could be made in various ways:

- Patent granted in respect of a product: making, offering for sale, selling and using the product; stocking such product for the purposes of offering for sale, selling or using;
- Patent granted in respect of a process: using the process; doing any of the acts referred to in using the process such as making,

⁵ They are subject to be protected by a separate law on plant varieties.

offering for sale, selling and using the product; stocking such product for the purposes of offering for sale, selling or using.

Any exploitation of a patent shall have prior consent of the patent holder. The transfer of rights of patent to any person shall be made in writing and registered with the MIH.

COMPULSORY LICENSING

The Patent Law grants rights to the Royal Government of Cambodia to issue a compulsory license to the patent holder to exploit the patent or transfer it to a third party if the patent is not exploited or is insufficiently exploited in the Kingdom of Cambodia by the patent holder. However, the patent holder also has the right to provide counter-arguments to convince the Government to the contrary.

The compulsory license of the Government aims to have the patent holder produced his invention for the public interest. Also, the Government has the right to assign a State organization or any third party to exploit the patented invention for public interest without the patent holder's prior consent for some reasons, such as national security, or economic development.

ENFORCEMENT OF PATENT IN CAMBODIA

Any use of a patent by a third party without the patent holder's prior consent shall be deemed as patent infringement. In this case, the patent right holder shall have the right to institute court proceedings against the infringers.

An act of patent infringement is an offence and is subjected to a punishment of a fine of up to 20,000,000 Riels and/or imprisonment of up to 5 (five) years. The penalty shall be doubled if the infringer repeats the offense within 5 (five) years from the date of the previous conviction. The right holder may also seek civil compensation for damages.



UTILITY MODEL CERTIFICATES (UMC)

WHAT IS UMC?

A utility model certificate is a certificate granted by the governmental authorities for the protection of a utility model (UM). A UM means any invention which is new and industry applicable and may be, or may relate to, a product or process.

Utility model certificates may be granted only for certain type of inventions. The law excludes the following six types of inventions from protection:

- Discoveries, scientific theories and mathematical methods;
- Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- Methods for treatment of the human or animal body by surgery or therapy as well as diagnostic methods practised on the human or animal body. However, products for use in any of these methods are not excluded from protection;
- Certain pharmaceutical products (until January 1, 2016);
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;
- Plant varieties^[6]

HOW IS UM PROTECTED IN CAMBODIA?

A UM is protected in Cambodia when it is registered with the Ministry of Industry and Handicraft (MIH). The application must contain a request, a description of the invention, one or more claims (for items of protection) and drawings, and an abstract [explaining the UM's function(s)].

Also, the applied invention could be registrable when it meets two legal conditions, i.e. it must be new and industry applicable.

HOW LONG IS A UMC PROTECTED?

A UMC is protected for 7 years from the filing date of application and cannot be renewed. After 7 years of protection, the invention becomes public domain, i.e. any person can use, reproduce, sell or offer for sale

⁶ Plant varieties are protected under a separate law, Royal Kram No NS/RKM/0508/015 on Seed Management and Plant Breeder's Right

to the public without being considered as an act of infringement of the prior right holder.

The right holder shall pay the annual fee for protection to the Registrar, failing which the Registrar shall have the right to cancel the utility model certificate from the Register.

WHAT ARE THE RIGHTS CONFERRED BY UMC?

The owner of a product utility model certificate has the right to prevent others from making, importing, selling, offering for sale, and using the product, and from stocking the product for the purpose of sale or use. Also, the owner has the right to prevent others from using the process and from doing any of the acts covered by a product certificate where the product is obtained directly by means of the process. The owner may institute court proceedings against anyone who performs such acts, or who makes such acts more likely to occur.

A civil infringement suit may be brought by both the owner and a licensee. The court has wide discretion to decide on the monetary damages and order injunctive relief. Moreover, the Law provides that the infringer shall be subjected to a fine of up to 20,000,000 Riels (approximately US\$5,000) and/or imprisonment of up to 5 years. In the event of repeated offense committed within 5 years from the previous conviction, the repeat offenders are subjected to double the fine and imprisonment terms.



INDUSTRIAL DESIGNS (ID)

WHAT IS ID?

An ID may be any composition of lines or colors, or any three-dimensional form, or any material, as long as it gives a special appearance to a product of industry or handicraft. This special appearance must be judged by the eyes visually. Thus, non-visual characteristics such as those related to smell or touch are not protected.

HOW IS AN ID PROTECTED?

An ID is protected in Cambodia when it is registered with the MIH. An ID is registrable if it is new, i.e. it has not been disclosed to the public anywhere in the world by publication in tangible form or by use or in any way, prior to the filing date or, if applicable, the priority date of the application for registration. However, the disclosure of the ID stated as below shall not be taken into account:

- Any disclosure occurring within 12 (twelve) months preceding the filing date or, if applicable, priority date of the application;
- Any disclosure occurring by reasons or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

In some cases, an ID can be protected by either Patent Law or Copyright Law. Therefore, the method of ID protection can be at the option of the right holder.

HOW LONG IS AN ID PROTECTED?

A registered ID is valid for a period of 5 (five) years from the filing date, renewable for two further consecutive five-year terms. The renewal filing must be accompanied by payment of a renewal fee, which can be paid up to 6 (six) months late with payment of a surcharge.

WHAT ARE THE RIGHTS CONFERED BY ID?

The owner of a registered industrial design has the right to exclude others from exploiting the design in Cambodia. Exploitation is defined as the making, selling, or import of articles incorporating the design.

The registered industrial designs may be freely assigned and licensed. All changes in ownership (assignments) must be in writing and recorded by the Registrar, failing which the assignment has no effect against third parties.

A civil infringement suit may be brought by both the right holder, his/her licensee. The court has wide discretion to decide on monetary damages and order injunctive relief. Moreover, the Law provides that the infringer is subjected to a criminal fine of up to 20,000,000 Riels (approximately US\$ 5,000) and/or imprisonment of up to 5 (five) years. In the event of repeated offense committed within 5 (five) years from the previous conviction, the repeat offenders are subjected to double the fine and imprisonment terms.



COPYRIGHT

WHAT IS A COPYRIGHT?

Cambodian Copyright Law protects original intellectual work of the author. The “work” means a product which thoughts or sentiments are expressed in a creative way, and which falls within the literary, scientific, artistic or musical domains.

HOW IS COPYRIGHT PROTECTED?

Cambodia has not yet ratified the Berne Convention for the Protection of Literary and Artistic works 1886 which provides the protection of the rights of the authors in their literary and artistic works. However, under Cambodian law, copyright protection is available for either local or foreign works. A local work means any work created by any person in Cambodia. A foreign work refers to any work created by any person outside Cambodian territory. The foreign work is protected under Cambodian Copyright Law when it is published in Cambodia within 30 (thirty) days from the first publication date in a foreign country.

A work, either registered or non-registered, is eligible for protection under Cambodian law; i.e. Copyright protection is automatic. The author may choose the non-registered work protection by recording or submitting his/her work to the Ministry of Culture and Fine Arts (MCFA) as an evidence of ownership.

HOW LONG DOES COPYRIGHT PROTECTION LAST?

The author of a work shall enjoy an exclusive right on that work, which includes both moral right and economic right.

- The moral right of the author is perpetual, inalienable, undistrainable, and imprescriptible.
- The economic right refers to the exclusive right of the author to exploit his/her own work through the authorization of reproduction, communication to the public and creation of derivative work. The economic right is protected for the author's life plus 50-year *post mortem* (after the author's death).

LIMITATION OF COPYRIGHT

Any use, reproduction or commercialization of the work shall have prior agreement with the author. However, the Copyright Law excludes copyright protection for any use, reproduction or quotation of works without right-holder's prior consent for the purpose of education or scientific research, and private use.

HOW CAN YOU ENFORCE YOUR COPYRIGHT?

The right holder may institute legal proceedings against any act of copyright infringement. Any person who commits copyright infringement shall be subjected to a fine of up to 25,000,000 Riels and/or imprisonment of up to 12 (twelve) months. Double punishment applies in cases of repeated offense.

Besides the above sanctions, the right holder may claim compensation for damages, and for return of any disputed equipment or materials, as well as the return of any benefits derived from that illegal act.



GEOGRAPHICAL INDICATION (GI)

Cambodia adopted a Law on Geographical Indication on 20 January 2014. This law is aimed at determining the legal requirements for registration and protection of GI in the Kingdom of Cambodia for agricultural products, food-processing industry, handicrafts or other products in compliance with the legal requirements of this law. To date, there are two products which are currently protected under GI Law in Cambodia:

- Kampong Speu Palm Sugar in Kampong Speu Province; and
- Kampot Pepper in Kampot Province.

The law provides the protection for both national and foreign GI.

WHAT IS GI?

Article 22.1 of the TRIPS Agreement defines “GI” as: *“indications which identify a good as originating in the territory of a [WTO] Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”* Its definition may vary based on the local laws of each WTO Member State.

In Cambodia, GI refers to the name, sign and/or other distinctive pictures which are used to designate or represent the geographical origin and can identify the goods originating from such geographical origin where the quality, reputation or other characteristic of the goods is attributable to the geographical origin.

REQUIREMENTS FOR GI REGISTRATION

Any agricultural goods, foodstuffs, handcrafted goods, and other goods which are produced or processed in the Kingdom of Cambodia in compliance with the regulations in force shall be subject to GI protection. The mentioned goods will be protected in Cambodia when they are registered with the Ministry of Commerce.

The application could be done in Khmer or English. Any document constituting a part of the application and which is not in Khmer or English shall be attached with its translation in Khmer or English. The following documents are required for filing the application for registration of GI:

- An original notarized power of attorney issued by a GI Association if the application is filed by an agent;
- A GI Association/Organization: Generally, a multi-professional organization which brings together producers, operators and traders of the product;
- An application form;
- A book of specifications: It refers to the document, issued by the applicant, which defines clearly the geographical area of production, production conditions and control mechanisms for the GI goods.

The administrative fees for mark registration shall also be applied to GI applications.

HOW LONG DOES GI PROTECTION LAST?

Once the Registrar accepts the registration, the Registrar will issue a GI certificate to the applicant. This certificate confers the exclusive rights to use the GI. These rights cannot be transferred to a third party. The GI protection lasts until the Ministry of Commerce cancels it from the Registrar for the reasons that the owner did not comply with conditions required by the law.

CANCELLATION OF THE REGISTERED GI

The registered GI may be cancelled by the Registrar before the expiration date in the following cases:

- The GI was not implemented in accordance with the plan defined in the book of specifications;
- The applicant does not provide documents or provide additional information at the request of the Department of Intellectual Property Rights.

AVAILABLE MEASURE AGAINST GI INFRINGEMENT

The GI Law also provides some available measures, including the procedure for opposition, provisional measures, border measures, and penalties related to GI infringement. The GI infringement is subjected to a statutory fine of up to 20,000,000 Riels (approximately US\$5,000) and an imprisonment from 1 to 5 years.

IP ENFORCEMENT AND DISPUTE RESOLUTION

Cambodian IP Laws provide the mechanism for protection of all IP matters. The following are the enforcement procedures available for the right holders.

ADMINISTRATIVE PROCEDURE

At the administrative level, the IP owner has the right to file a complaint or request seeking for intervention or mediation on IP infringement at the competent authorities.

For instance, for the trademark infringement matters, upon the receipt of the complaint or request from the owner by the DIPR, the DIPR will issue summon or invitation letter to the adversary party to come to the DIPR for providing the legal documents or supporting documents against the aforementioned complaint or request.

At the end of the procedure, the DIPR will issue the decision after hearing and considering the legal arguments and supporting documents submitted by the parties. The decision of the DIPR is the subject to an appeal to the court of first instance. The party who is not satisfied with the decision of the DIPR is entitled to appeal to the court of first instance within 3 (three) months from the date of DIPR's decision.

SENDING CEASE & DESIST LETTER

This is called a soft procedure for the right holder to fight against the IP Right infringers. In least developing countries (LDC), the public awareness of IPR is limited. In some cases, the infringers, known as retailers, sellers, or possibly distributors, may unintentionally sell or distribute the goods without knowing that their acts are deemed an infringement of third party's IPR.

In order to eliminate the infringing act and to avoid a time-consuming and costly court procedure, the right holder may initially send a C&D to the infringer to inform him/her to stop immediately the infringing act; otherwise court proceedings shall be taken against him/her. This could be an effective way to stop the infringement of right holder's IPR.

BORDER MEASURES

To stop or eliminate the import-export of infringing goods through all border checkpoints, the right holder may file a complaint with the General Department of Customs and Excise to stop any suspected goods imported or exported through the border checkpoints. In the event that the suspected goods are found and held by the Customs officers, they will notify the complainant immediately. Within 10 business days after receiving the notification, the seized goods shall be released if the notified complainant does not commence legal proceedings for the court to decide on the merits of the case.

PROVISIONAL MEASURES – INJUNCTION

In order to prevent the imminent risk of infringement, to protect the evidence of infringement and to preserve any interests of the right holder, the latter may file a complaint with the court requesting injunctive relief. In this case, necessary evidence of infringement shall be required. Meanwhile, the complainant may be required an appropriate deposit to compensate the defendant if IPR infringement is not constituted. The amount of deposit shall be determined by the court.





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