

The background of the cover is a photograph of a large, ornate Cambodian temple tower, likely Angkor Wat, with a red color overlay. The tower is the central focus, with its intricate carvings and tiered structure clearly visible. The red overlay is uniform across the entire image, creating a strong visual theme.

# CAMBODIAN INTELLECTUAL PROPERTY

---

The Complete Guide to  
Intellectual Property in Cambodia

---

**BY PHENG THEA & DAVID HASKEL**

The Complete Guide to  
Intellectual Property in  
Cambodia

David Haskel & Pheng Thea

**Abacus IP**

436 Plov Lum, Chamkar Orvleuk 2  
Sangkat Kakab 2, Khan Posenchey  
120913, Phnom Penh, Cambodia

[www.abacus-ip.com](http://www.abacus-ip.com)

[info@abacus-ip.com](mailto:info@abacus-ip.com)

Copyright © 2017 - 2024 David Haskel & Pheng Thea

Third Edition

All rights reserved

# Contents

<b>Trademark .....</b>	<b>1</b>
Historical Background.....	1
Definition of Mark.....	2
Tradenames.....	3
Application Process .....	3
Trademark e-Filing .....	6
Registrations under the Madrid System.....	6
Trademark Database and Search .....	7
Prohibitions on Registration .....	8
Maintaining a Mark.....	9
Recordal of License or Franchise Agreement.....	11
Recordal of Exclusive Rights .....	13
Opposition .....	14
Invalidation .....	16
Removal.....	17
Cancellation.....	18
Unfair Competition .....	19
Counterfeits & Border Measures.....	20
Infringement and Remedies .....	22
Penalties.....	24
<b>Copyright and Related Rights .....</b>	<b>26</b>
Introduction.....	26
Types of Copyrightable Works.....	26
Authorship .....	28
Gaining Copyright Protection.....	30
Rights of Authors.....	31
Limitations on the Rights of Authors.....	32

Duration of Economic Rights .....	34
Transfer and Exploitation of Economic Rights .....	34
Performance Rights .....	35
Phonogram Producer Rights.....	37
Audiovisual Producer Rights.....	38
Broadcasting Organization Rights.....	39
Collective Management Rights .....	40
Disputes and Penalties .....	41

**Patent..... 42**

Introduction.....	42
Patentable Inventions.....	43
Novelty .....	45
Inventive Step.....	46
Industrial Applicability.....	46
Utility Model Certificates .....	47
Right to Patent & Naming of Inventor.....	47
Patent Application Process.....	48
Application Acceleration with Japanese Patent Office .....	49
Recognition of Korean Patents in Cambodia	50
Acceleration Based on a US Patent.....	52
Re-Registration of a Singaporean Patent.....	54
Validation of European Patents .....	55
Validation of Chinese Patents in Cambodia..	57
Patent Duration and Annual Fees.....	59
Unity of Invention, Amendment & Division	60
Patent Rights.....	60
Government Exploitation & Non-Voluntary Licenses .....	61
Invalidation & Opposition .....	62

**Industrial Design..... 64**

Introduction.....	64
Registerable Industrial Designs.....	65
Application Process.....	66
Rights, Duration and Renewal.....	68
Invalidation.....	69
Change in Ownership and License Contract.....	69
Infringement, Remedies & Penalties.....	70
<b>Geographical Indication.....</b>	<b>72</b>
Introduction.....	72
Scope of Application.....	73
Application Procedure.....	74
Foreign Geographical Indications.....	76
Book of Specifications and Control Compliance.....	76
Rights.....	77
Geographical Indications and Trademarks....	79
Enforcement and Penalties.....	79
<b>Other Forms of IP.....</b>	<b>82</b>
Integrated Circuit Layout Designs.....	82
Plant Breeder's Right.....	85
Future Developments.....	89
<b>Index.....</b>	<b>90</b>
Quick Reference: Trademark.....	96
Quick Reference: Patent.....	98
Quick Reference: Copyright.....	100
Quick Reference: Industrial Design.....	102

## **Chapter 1:**

# **Trademark**

### **Historical Background**

While trademarks, as well as other forms of intellectual property, were protected by law during the French colonial period and following independence in 1953, the administrative and legal systems were all but destroyed in the 1970s. The current trademark laws and administrative system trace their roots to the early 1990s and the Paris Peace Agreement which ended the civil war.

In 1991, the External Relations and Trademark Office of the Foreign Trade Division of the Ministry of Commerce was established and began accepting and registering international trademarks. Foreign mark applications were applied for and registered under the External Relations and Trademark Office the Foreign Trade Division of the Ministry of Commerce, while domestic mark applications were applied for and registered under the Ministry of Industry, Mines and Energy, despite a lack of law or regulation in force.

On 22 September 1997, the Department of Intellectual Property replaced the previous structure, and was established under the supervision of the Director General of Technical Affairs of the Ministry of Commerce. Two years later, the Ministerial

## *Trademark*

Committee Governing the Three Areas of IP was established to prepare laws necessary for Cambodia's accession to the World Trade Organization.

Shortly thereafter, the National Assembly promulgated the Law Concerning Marks, Trade Names and Acts of Unfair Competition ("Trademark Law") on February 7, 2002. This Law was followed by the Sub-Decree on the Implementation of the Trademark Law in 2006.

In recent years, several Prakas (Declarations) have been issued by the Ministry of Commerce in order to improve the registration and enforcement of trademarks. These include procedures on online filing of applications, applications for international applications under the Madrid system, certification marks, and exclusive distributorship.

### **Definition of Mark**

Cambodian Trademark Law defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise.<sup>1</sup> Such signs specifically include words, names, letters, numerals, logos, devices, labels, signatures, slogans, colors (and colors combinations), shapes, three-dimensional signs, and holograms. Thus, the shape and look of a product, as well as its packaging, are registerable. Non-traditional non-visible marks, such as sound, smell, gestures and motion, are not capable of being registered. Color marks must consist of at least two colors, which excludes single-color marks.

---

<sup>1</sup> Trademark Law, Art. 2



## *Trademark*

The law defines a collective mark as a trademark owned by an organization, whose members use it to identify themselves with a level of quality or geographical origin or other characteristics set by the organization. The collective mark must be a visible sign capable of distinguishing origin or any other common characteristic, including the quality of goods or services of different enterprise which use the sign under the control of the registered owner of the collective mark.<sup>2</sup>

### **Tradenames**

The Trademark Law defines the term “trade name” - also referred to as business name or company name - as a name and/or designation identifying and distinguishing an enterprise.<sup>3</sup> Trade names that, by their nature or use, are contrary to public order, morality, or are deceptive as to the enterprise identified, are prohibited.<sup>4</sup> Trade names are protected even without registration against unlawful acts of third parties.<sup>5</sup> Subsequent use of a trade name or any similar name that is likely to mislead the public is prohibited.

### **Application Process**

All trademarks are applied for and registered with the Ministry of Commerce’s Department of Intellectual Property Rights (D/IPR). Foreign applicants must be represented by a

---

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Trademark Law, Art. 20

<sup>5</sup> Trademark Law, Art. 21(a)

## *Trademark*

Cambodian trademark agent residing and practicing in the Kingdom of Cambodia. <sup>6</sup> Domestic applicants, whether individuals or companies, may apply for registration themselves or retain a licensed agent to do so on their behalf. If an agent is retained, a power of attorney (POA) must be notarized by a notary public or certified by a lawyer. The notarized or certified POA can be submitted on filing or within two months of the application date.<sup>7</sup>

Although Cambodia is not a signatory to the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks, nor the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, it still follows these two classification systems. Class headings are not acceptable, except if the nature of the goods or services is clear. If the mark consists of, or contains figurative elements, these must be described using the Vienna Classification. Similarly, when the mark consists of, or contains non-English words, the transliteration and the meaning are also required. If filing the same mark in multiple classes, one must file one multi-class application, rather than several individual single-class applications.

For a mark application claiming a priority date under the Paris Convention, it must be filed within six months from the date of the earlier application. The application must contain the office of priority filing, priority filing date, and application number and name of the country. A certified copy of the priority document must be submitted within three months from the date of the request by the Registrar.<sup>8</sup>

---

<sup>6</sup> Trademark Law, Art. 58

<sup>7</sup> Sub-Decree on Implementation of the Trademark Law, Art. 7

<sup>8</sup> Sub-Decree on Implementation of the Trademark Law, Art. 13

## *Trademark*

The minimum requirements for filing a trademark application are as follows:<sup>9</sup>

- Full name of applicant;
- Full address of applicant;
- A specimen of the mark;
- International classification, and goods and/or services specification;
- Payment of the current official fee for trademark filing.

With the above information, the Registrar will issue the Acknowledgement of Filing Instruction and the mark information will be published on an online database of the D/IPR and the World Intellectual Property Organization (WIPO). Any further required information and documents must be submitted thereafter.

The current process for registering trademarks in Cambodia usually takes around nine months to one year, although longer waiting times may be encountered depending on the nature of the mark, the applicant and the Registrar's capacity. If an applicant believes they will be seriously disadvantaged due to the delay between filing and registration, they may request expedited examination. The request must be in writing and accompanied by a declaration setting forth the reasons for the request.

The D/IPR will issue the notice of acceptance of mark registration when the mark application is deemed to comply

---

<sup>9</sup> Sub-Decree on Implementation of the Trademark Law, Art. 16 and Announcement No. 0016

## *Trademark*

with the requirements of the Trademark Law and the certificate of mark registration will be issued.

### **Trademark e-Filing**

In addition to traditional paper-filing, the D/IPR accepts trademark applications- as well as appeals and a selection of post-grant matters - to be filed online through their e-filing system.<sup>10</sup> Only applicants with permanent residence or principal place of business in Cambodia can use the system. This excludes foreign applicants, who must be represented by a local trademark agent in any case.

In order to use the e-filing system, a written request must be submitted in person to the D/IPR to setup an account. Filing fees can only be paid through one of three cooperating banks (ACLEDA, Canadia Bank and Wing Bank). As soon as the filing fees have been made and verified by the system, the application number and filing dates will provided.

### **Registrations under the Madrid System**

Cambodia became a member of the Madrid System for the International Registration of Mark on June 5, 2015. The system facilitates the filing of applications in multiple countries around the globe. Rather than having to file a trademark application in each country, a brand owner can file a single application with their national or regional IP office, and then select which other countries they want to register in.

---

<sup>10</sup> <https://efiling.cambodiaip.gov.kh/efiling>, Prakas on the Procedures for Filing Trademark Application Online, 2017

## *Trademark*

This greatly simplifies and reduces the cost of the process, as more than 120 countries are part of the system. Following Cambodia's accession to the Madrid Protocol, the Cambodian government enacted a Prakas (Declaration) on the Procedures for the International Registration of Marks under the Madrid Protocol on November 1, 2016. The declaration sets forth procedures and documents that are required where Cambodia is an office of origin, or where Cambodia is chosen as the designated office by a contracting party.

### **Trademark Database and Search**

The database of trademark registrations and applications is maintained as part of the WIPO Global Brand Database, available directly through the WIPO website<sup>11</sup> or through the D/IPR website<sup>12</sup>. In addition, ASEAN IP Register<sup>13</sup>, the common online trademark information platform of ASEAN member states, replicates the database, however it is only updated weekly.

An official registerability or similarity search may be requested by any interested party by submitting the appropriate request form, indicating the mark and classes to be searched, and payment of the official fee with the D/IPR. The resulting search report will indicate whether the mark can or cannot be registered and the reasons why not, whereas the similarity search will only reveal prior marks that are similar and identical. While such a search report is indicative of whether the D/IPR will issue a provisional refusal or not, such refusals can be challenged and overcome.

---

<sup>11</sup> <http://www.wipo.int/branddb/kh/en/>

<sup>12</sup> <http://www.cambodiaip.gov.kh/SearchMark.aspx>

<sup>13</sup> <https://asean-ipregister.wipo.net/>

Thus, a negative search report should not be understood as the final conclusion on registerability.

## **Prohibitions on Registration**

A mark cannot be validly registered if it is:<sup>14</sup>

- Incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- Contrary to public order or morality or good custom;
- Likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
- Identical with, or is an imitation of, or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;
- Identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well known in the Kingdom of Cambodia for identical or similar goods or services of another enterprise;
- Identical with, or confusingly similar to, or constitutes a

---

<sup>14</sup> Trademark Law, Art. 4

## *Trademark*

translation of a mark or trade name which is well-known and registered in the Kingdom of Cambodia for goods or services which are not identical or similar to those in respect of which registration is applied for, provided that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark such that the interests of the owner of the well-known mark are likely to be damaged by such use; or

- Identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.

Should the application not comply with one or more of these points, the D/IPR will issue a notification of provisional refusal of mark registration. The applicant then has to reply to the D/IPR within 60 days. Another 60 days will be given upon the request for extension of time. If the D/IPR does not receive a response within this period, the application is considered lapsed and the application fee will not be refunded.

## **Maintaining a Mark**

In order to maintain or renew a registration, a request for endorsement of affidavit of use or non-use must be submitted to the D/IPR within one year following the fifth anniversary of the date of registration of the mark, or the date of registration of

## *Trademark*

renewal when the registered mark has been renewed.<sup>15</sup> The Registrar has the power to remove the registered mark from the registry if the owner or their legal representative fails to comply with this provision.<sup>16</sup>

In current practice however, the Registrar rarely removes a mark from the registry on their own initiative, but it may be a ground for cancellation if a third party submits a request.

Despite the name, there is in practice no “affidavit” to be filed. Rather, the applicant or their representative needs to submit the relevant form, and if the mark is in use, evidence thereof must be submitted. This can take the form of pictures of the product on sale, sales receipts, advertising material, newspaper cuttings, or other forms. Alternatively, if the mark is not being used in Cambodia, the affidavit can nevertheless be endorsed on the grounds that it is intended to be used, there is no intention to abandon it, and the non-use is justifiable.

A copy of the latest trademark certificate must be submitted, or in the case of an International Registration, the Statement of Grant of Protection. The process for recordal of affidavit of use/non-use takes a few months to be completed.

The certificate of mark registration is valid for ten years from the date of filing of the mark application and may be renewed for consecutive periods of ten years indefinitely.<sup>17</sup> The renewal mark application may be submitted to the D/IPR within six months preceding the expiry of the registration.<sup>18</sup> In case the owner of the registered mark or their legal representative fails to submit the mark renewal application within six months preceding the

---

<sup>15</sup> Sub-Decree on the Implementation of the Trademark Law, Art. 21

<sup>16</sup> Id.

<sup>17</sup> Trademark Law, Art. 12

<sup>18</sup> Sub-Decree on the Implementation of the Trademark Law, Art. 22



## *Trademark*

expiry of the registration, it can still be submitted in a grace period of another six months, subject to late fees. The registration of renewal will not be granted if the owner of the registered mark or their legal representative fails to submit the request for affidavit of use/non-use in the sixth year.

Any changes in the mark application or certificate of mark registration must be made in writing to the D/IPR. The Registrar will amend the mark application or records in the certificate of mark registration as soon as the request and other supporting documents are in order and will then issue a certificate of recordal of change. Changes have no effect against third parties until they are properly recorded.

### **Recordal of License or Franchise Agreement**

License and franchise agreements concerning a registered trademark or a pending application may be registered and recorded with the D/IPR.<sup>19</sup> License contracts must provide for effective control by the licensor of the quality of the goods or services of the licensee. If the license contract does not provide for quality control or the quality control is not effectively enforced, the license contract will be invalid.<sup>20</sup> License agreements for collective mark are prohibited.

License and franchise contracts are recorded and registered with the D/IPR. The contents of license contracts will be kept confidential, but the name of both parties and details of the marks will be published. Any unrecorded and unregistered

---

<sup>19</sup> Prakas on the Recordal of License and Franchise Agreement, Art. 3

<sup>20</sup> Trademark Law, Art. 19

## *Trademark*

license contract has no effect against third parties.<sup>21</sup> License contracts in English language must be translated into Khmer and certified by a Cambodian mark agent or professional translator authorized by the Ministry of Commerce.<sup>22</sup>

The recordal is valid for a maximum of five years from the date of the recordal, or the term of the license or the remaining validity of the mark registration, if either is less than five years. The recordal may be renewed for subsequent five-year terms, upon application and payment of the official fee.<sup>23</sup>

In order to be recordable, a license or franchise agreement must at a minimum contain the following information:<sup>24</sup>

- Identification of the licensor and licensee
  - Name, nationality, and permanent residence if the licensor or licensee is a natural person
  - Company's name, nationality, and registered address if licensor or licensee is a legal person
- Mark details including the mark, registration number or application number, classification, and goods/services subject to be recorded.
- Type of license contract, specifically whether it is an exclusive, non-exclusive, single license, and/or sub-

---

<sup>21</sup> Trademark Law, Art. 52

<sup>22</sup> Announcement No. 0738

<sup>23</sup> Prakas on the Procedure of Recordal of License and Franchise Agreement 2020

<sup>24</sup> Prakas on the Procedure of Recordal of License and Franchise Agreement 2020

## *Trademark*

license contract.

- The duration period shall be indicated in the license agreement itself, or can be determined by referring to another agreement.
- Conditions for monitoring the effectiveness and quality control on goods or services.
- Signatures of both parties certified by the notary public or competent authorities.

A recorded licensee may enforce the trademark registration, provided that they have first requested the trademark owner to take action, and they refused or failed to do so.<sup>25</sup>

### **Recordal of Exclusive Rights**

The application for recordal of exclusive rights follows similar procedures to the recordal of a license or franchise contract. The beneficiary must be a legal person who concluded a contract or exclusive right agreement with the registered owner of a mark. The contract or exclusive right agreement must be notarized by a notary public or certified by a lawyer. The agreement must specifically list the products or services covered.<sup>26</sup>

The beneficiary must submit a request for recordal of their exclusive right along with other supporting documents to the

---

<sup>25</sup> Trademark Law, Art. 27

<sup>26</sup> Announcement Concerning the Recording of Exclusive Licenses, 2019

## *Trademark*

D/IPR. If the documents are in order, the D/IPR will issue a recognition letter to the beneficiary within 60 days. Regardless of the term in the contract or exclusive right agreement, the recognition letter is valid for two years and takes effect three months after the date of recordal. The beneficiary must publish this recognition letter in a well-known newspaper on three consecutive days.

### **Opposition**

Once a trademark application is granted, the Registrar will publish the registration in the Official Gazette and update the status of the mark on the online database of the D/IPR and WIPO. Any interested person may file a notice of opposition, along with supporting evidence to the Registrar and payment of the official fee, within 90 days from the date of publication.<sup>27</sup> A notarized POA is required if an opponent is being represented by a Cambodian trademark agent.

Under the Trademark Law, the grounds for opposition are<sup>28</sup>:

- The registration does not satisfy the definition of a mark as “any visible sign capable of distinguishing the goods or services of an enterprise.”<sup>29</sup>
- Incapable of distinguishing the goods or services of one enterprise from those of other enterprises;<sup>30</sup>

---

<sup>27</sup> Trademark Law, Art. 10(c)

<sup>28</sup> Id.

<sup>29</sup> Trademark Law, Art. 2(a)

<sup>30</sup> Trademark Law, Art. 4(a)

## *Trademark*

- Contrary to public order or morality or good custom;<sup>31</sup>
- Likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;<sup>32</sup>
- Identical with, or is an imitation of, or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;<sup>33</sup>
- Identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well known in the Kingdom of Cambodia for identical or similar goods or services of another enterprise;<sup>34</sup>
- Identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well-known and registered in the Kingdom of Cambodia for goods or services which are not identical or similar to those in respect of which registration is applied for, provided that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark such that the interests of the owner of the well-known mark

---

<sup>31</sup> Trademark Law, Art. 4(b)

<sup>32</sup> Trademark Law, Art. 4(c)

<sup>33</sup> Trademark Law, Art. 4(d)

<sup>34</sup> Trademark Law, Art. 4(e)

## *Trademark*

are likely to be damaged by such use;<sup>35</sup>

- Identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion; or<sup>36</sup>
- The application did not comply with the procedural requirements of the Registrar, including payment of the official fees.<sup>37</sup>

Under current practice, the Registrar allows the applicant to file a counter statement within 45 days from the receipt of the notice of opposition. If the applicant does not submit a counter statement or does not take any actions within 45 days, they are deemed to have abandoned the registration.<sup>38</sup> A hearing may be held upon the request from either party.<sup>39</sup>

The D/IPR may invalidate, remove or cancel a registered mark from the Registry if one or more requirements of Articles 2, 4, 10, 13, 14 and 15 of the Trademark Law are not fulfilled.

## **Invalidation**

Invalidation allows any interested person to, at any time, submit a request in writing for invalidation of the registered mark to the

---

<sup>35</sup> Trademark Law, Art. 4(f)

<sup>36</sup> Trademark Law, Art. 4(g)

<sup>37</sup> Trademark Law, Art. 5

<sup>38</sup> Trademark Law, Art. 10(d)

<sup>39</sup> Trademark Law, Art. 10(e)

## *Trademark*

D/IPR on the grounds that it is indistinguishable from other marks or contrary to public interest as prescribed in the Article 2(a) and Article 4(a-g) of Trademark Law.<sup>40</sup> These are the same grounds as for opposition, with the exception that opposition may also be based upon procedural deficiencies under Article 5.

The Registrar will issue a notice to their representative with the grounds of invalidation. Failure to submit a counter statement within 45 days from the date of receipt will result in the registered mark being invalidated and published in the Official Gazette. The Registrar's decision is subject to appeal to the competent court within three months from the date of the decision.<sup>41</sup>

## **Removal**

Removal allows for any interested person to submit a request in writing for removal of the registered mark on the grounds that up to one month prior to filing the request or after its registration, the mark has not been used by the registered owner or a licensee during a continuous period of five years.<sup>42</sup> However, the registered mark may not be removed from the Registry if the registered owner or licensee proves that special circumstances prevented the use of the mark, and that there was no intention not to use or to abandon the same in respect of those goods or services.<sup>43</sup> In addition, the registered mark still can be removed if the registered owner or their representative fails to submit the request for endorsement of affidavit of use or non-use.<sup>44</sup>

---

<sup>40</sup> Trademark Law, Art. 13

<sup>41</sup> Sub-Decree on Implementation of the Trademark Law, Art. 24(7)

<sup>42</sup> Trademark Law, Art. 15

<sup>43</sup> Id.

<sup>44</sup> Sub-Decree on Trademark Law, Art. 21(4)

## **Cancellation**

The D/IPR has the right to cancel a registered mark on the following conditions:<sup>45</sup>

- The applicant does not apply for renewal of the registered mark within the period prescribed;
- The registered owner requests the removal;
- The registered owner has not complied, within 90 days, with the conditions or restrictions prescribed under Article 8;
- The registered owner ceases to have an address for service in the Kingdom of Cambodia;
- It is convinced upon evidence that the registered owner is not the legitimate owner;
- It is convinced that the registered mark is similar or identical to a well-known mark owned by a third party.

Although the Trademark Law allows the D/IPR to cancel a registered mark on the above conditions on its own initiative, an interested person can also use those conditions as grounds for a cancellation request. One or more conditions as provided above must be included in a request for cancellation or a notice of cancellation of the D/IPR.

---

<sup>45</sup> Trademark Law, Art. 14



## **Unfair Competition**

The Trademark Law also contains provisions regarding acts of unfair competition. The law broadly prohibits unlawful acts of competition that are contrary to honest practices in industrial, commercial, or service-related matters.<sup>46</sup>

The following acts are deemed to constitute acts of unfair competitions:<sup>47</sup>

- All acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial, commercial or service activities of a competitor;
- False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial, commercial or service activities of a competitor; and
- Indications or allegations, the use of which in the nature of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of goods.

Although, there are only three clauses defining acts of unfair competition in the Trademark Law, these provisions may be grounds for businesses to seek redress if they are aware of any unfair acts or dishonest practices which their competitors are engaged

---

<sup>46</sup> Trademark Law, Art. 22

<sup>47</sup> Trademark Law, Art. 23

in. This could include, for instance, misleading advertising, discrediting of a competitor, enticing or poaching a key employee away, passing-off and trade secret misappropriation.

## **Counterfeits & Border Measures**

A trademark owner may request to have customs clearance suspended for goods suspected of being counterfeited.<sup>48</sup> The customs authorities may also suspend clearance on their own initiative when they have *prima facie* evidence that the goods are counterfeit.<sup>49</sup> A counterfeit good is defined as any (including the packing thereof) that bears a trademark identical to a registered trademark for those same goods without authorization.<sup>50</sup>

Both the courts and the General Department of Customs and Excise are competent to accept and decide on the application for customs suspension.<sup>51</sup> The application must include:<sup>52</sup>

- An extract from the register of marks;
- A statement of the grounds, in particular *prima facie* evidence that the goods are counterfeit;
- A complete description of the goods bearing the trademark;
- A sample of the trademarked goods, if requested or

---

<sup>48</sup> Trademark Law, Art. 35

<sup>49</sup> Trademark Law, Art. 43

<sup>50</sup> Trademark Law, Art. 61

<sup>51</sup> Trademark Law, Art. 35

<sup>52</sup> Trademark Law, Art. 36

## *Trademark*

appropriate;

- Name and address of applicant and representative;
- An authorization from trademark owner to file the application, if applicable;
- Payment of official fee;

The applicant may be required to provide a security or equivalent assurance sufficient to cover the value of the suspected goods.<sup>53</sup> In case the authorities determine the suspension was wrongful, the applicant may be required to pay compensation to the importer.<sup>54</sup>

According to the Trademark Law, the court or customs authority will notify the applicant within ten working days of the request.<sup>55</sup> If the application is successful, the goods will be suspended at clearance for an initial period, as stated in the notification.<sup>56</sup> The importer will immediately be notified of the suspension, including the reasons therefore.<sup>57</sup> The applicant then has ten working days to file an infringement complaint to the competent court, otherwise the goods will be released.<sup>58</sup> Once a complaint has been filed, the defendant may request a hearing before the customs authority to have the suspension modified, revoked or confirmed.<sup>59</sup>

---

<sup>53</sup> Trademark Law, Art. 38

<sup>54</sup> Trademark Law, Art. 41

<sup>55</sup> Trademark Law, Art. 37

<sup>56</sup> Trademark Law, Art. 39

<sup>57</sup> Id.

<sup>58</sup> Trademark Law, Art. 40

<sup>59</sup> Id.

Following a court decision, the customs authorities have the power to order destruction of the counterfeit goods.<sup>60</sup> Re-exportation of the goods is expressly forbidden.<sup>61</sup>

## **Infringement and Remedies**

The owner of a registered trademark enjoys the exclusive right to prevent others from marketing products and services with identical or confusingly similar marks. The exclusive rights are guaranteed in Article 11 of the Trademark Law.

Trademark infringement occurs when a sign which is identical with or confusingly similar to a registered trademark has been used by any person other than the registered owner without their agreement, in relation to the goods or services which are identical or similar to the registered goods or services. The Trademark Law defines three acts which are considered infringing:

- **Infringement of Registered Mark:** An unauthorized use of a registered mark or a sign which is identical with or confusingly similar to a registered mark, in relation to any goods or services for which it has been registered.<sup>62</sup>
  
- **Infringement of Registered Well-Known Mark:** Use of a sign which is identical with or confusingly similar to a well-known mark have been used without the agreement of the owner of the well-known mark. Such use must be in relation to goods and services identical with or similar to the goods or services for which the

---

<sup>60</sup> Trademark Law, Art. 46

<sup>61</sup> Id.

<sup>62</sup> Trademark Law, Art. 24

well-known mark has been registered or in relation to goods and services which are not identical with or similar to those in respect of which the well-known mark has been registered and the use of the sign in relation to these goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner are likely to be damaged by such use.<sup>63</sup>

- **Infringement of Unregistered Well-Know Mark:** Use of a sign which is identical with or confusingly similar to an unregistered well-known mark without the agreement of the owner provided that the sign is used in relation to goods or services identical with or similar to the goods or services for which the mark is well-known.<sup>64</sup>

Parallel imports, also known as grey market goods, are genuine products put on sale in one country and then exported to another without the trademark owner's permission. Cambodia abides by the national exhaustion principle, whereby a trademark owner can prohibit parallel importation. This is reflected in Article 11(c) of the Trademark Law, which states that "the rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in the *Kingdom of Cambodia* by the registered owner or with his or her consent" (emphasis added). As foreign sales have not taken place in Cambodia, the unauthorized sale of grey market goods would be an infringement of the trademark owner's rights.

The owner of a mark can seek remedies from a court of competent jurisdiction or from the D/IPR. Upon the request

---

<sup>63</sup> Trademark Law, Art. 25

<sup>64</sup> Trademark Law, Art. 26

## *Trademark*

from the owner, the court will issue an injunction to prevent infringement, imminent infringement, or other unlawful act, to award damages and/or to grant any other remedy provided in the general law.<sup>65</sup>

In practice, remedies for acts of infringement obtained through court proceeding are costly, time-consuming, and complicated to determine.

Conversely, the D/IPR can act as mediator in settling any infringement disputes. Any party to a trademark or unfair competition dispute can initiate a mediation process by request in writing to the D/IPR. A hearing will typically be arranged if either party requests it or at the D/IPR's own discretion. If a settlement is reached, it is binding on both parties. If no settlement is reached, either party may bring action in a competent court.

## **Penalties**

Use of a registered trademark, service mark, collective mark or trade name without consent from the registered owner will be considered as an act of infringement. Counterfeiters of a trademark, service mark, collective mark or trade name are subject to a fine from 1,000,000 to 20,000,000 Riels (approximately USD 250 to USD 5,000) and to imprisonment from one year to five years, or both.<sup>66</sup> The fine and sentence for counterfeiting are doubled for a repeated offense.<sup>67</sup>

---

<sup>65</sup> Trademark Law, Art. 27

<sup>66</sup> Trademark Law, Art. 64

<sup>67</sup> Trademark Law, Art. 67

## *Trademark*

For imitation of a mark not arising to counterfeiting, the fine is from 5,000,000 to 10,000,000 million Riels (approximately USD 1,250 to USD 2,500), imprisonment from one month to one year, or both.<sup>68</sup> Repeat offenders are subject to doubled fine and imprisonment. Managing directors, managers and representatives of juristic persons may be subject to criminal prosecution, unless they can prove that they had neither known nor consented to the commission of the offence.<sup>69</sup> Finally, a court has the authority to order the destruction of any goods found to be infringing, whether or not the defendant was convicted of an offense.<sup>70</sup>

---

<sup>68</sup> Trademark Law, Art. 65

<sup>69</sup> Trademark Law, Art. 68

<sup>70</sup> Trademark Law, Art. 69

## **Chapter 2:**

# **Copyright and Related Rights**

### **Introduction**

The Law on Copyright and Related Rights affords authors of original works a set of exclusive economic and moral rights. As stated in Article 1 of the law, by providing authors with a just and legitimate exploitation of their cultural products, the law aims to contribute to the development of culture.

The law was enacted in 2003 as part of Cambodia's accession to the World Trade Organization. Cambodia is a member of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Berne Convention for the Protection of Literary and Artistic Works.

### **Types of Copyrightable Works**

A “work” is defined as a product in which thoughts or sentiments are expressed in a creative way, and can be literary,



## *Copyright & Related Rights*

scientific, artistic or musical.<sup>71</sup> The law lists thirteen broad types of copyrightable works:<sup>72</sup>

- All kinds of reading books or other literary, artistic, scientific, and educational documents;
- Lectures, speeches, sermons, oral or written pleadings and other works with the same characteristics;
- Dramatic works or musical dramas;
- Choreographic works, either modern or adapted from traditional works or folklore;
- Circus performances and pantomimes;
- Musical compositions, with or without words;
- Audiovisual works;
- Works of painting, engraving, sculpture or other works of collages, or applied arts;
- Photographic works, or those realized with the aid of techniques similar to photography;
- Architectural works;
- Maps, plans, sketches or works pertaining to geography, topography, or other sciences;

---

<sup>71</sup> Law on Copyright and Related Rights, Art. 2

<sup>72</sup> Law on Copyright and Related Rights, Art. 7

## *Copyright & Related Rights*

- Computer program and the design encyclopedia documentation relevant to those programs;
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

Specifically excluded from protection are:<sup>73</sup>

- Constitution, Law, Royal Decree, Sub-Decree and other regulations, and their translations;
- Proclamations (Prakas), decision, certificate, other instructed circulars issued by state organizations, and their translations;
- Court decisions or other court warrants, and their translations;
- Idea, formality, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained or embodied in any work.

## **Authorship**

It is presumed that the author is the natural person or persons in whose name the work is created and disclosed.<sup>74</sup> Upon creation, the author is the first holder of the moral and economic rights.<sup>75</sup>

---

<sup>73</sup> Law on Copyright and Related Rights, Art. 10

<sup>74</sup> Law on Copyright and Related Rights, Art. 11

<sup>75</sup> Law on Copyright and Related Rights, Art. 16

If the author is an employee and created the work as part of their job, unless stated otherwise in their employment contract, the economic rights are considered automatically transferred to the employer.<sup>76</sup> The employee is still considered the original author, and retains the moral rights to the work.

When two or more persons jointly create a work, they are deemed co-authors of a work of collaboration.<sup>77</sup> Unanimous and written consent of all co-authors is required to exercise their rights.<sup>78</sup> So for example, if a collaboration is to be licensed, all co-authors must sign the license agreement. In case of disagreement, they can petition the court for resolution.<sup>79</sup> For audiovisual works (ex. films), it is presumed that the following are co-authors:<sup>80</sup>

- Director;
- Author of scenario;
- Author of adaptation;
- Author of the spoken text;
- Author of the musical compositions, with or without words, specially created for the sake of the work;
- Author of the graphic arts for animated works.

---

<sup>76</sup> Id.

<sup>77</sup> Law on Copyright and Related Rights, Art. 12

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Law on Copyright and Related Rights, Art. 15

## **Gaining Copyright Protection**

Every work is automatically protected, though authors and right-holders may (but are not required to) deposit their works at the Ministry of Culture and Fine Arts.<sup>81</sup> Whether or not it is publicly available or disclosed, a work is considered to be created simply when the author's idea is realized, even if incomplete.<sup>82</sup> Works must be "original", meaning they are the true intellectual creation of their author.<sup>83</sup>

Since its accession to the Berne Convention in March 2022, Cambodia now grants the same protection to foreign works as those created in Cambodia.

The voluntary deposit at the Ministry of Culture and Fine Arts requires the author's real name, date of first publication, date of creation of the work, and a record of the author's right.<sup>84</sup> The author's information will be incorporated into the application form. A notarized or certified power of attorney will be required if the application is filed through a local representative. Upon submission of the application form, the POA if local representative is appointed, and payment of the registration fee, the Registrar will issue a certificate of registration.<sup>85</sup> The primary benefit of the registration is to serve as evidence should a dispute arise.

---

<sup>81</sup> Law on Copyright and Related Rights, Art. 38

<sup>82</sup> Law on Copyright and Related Rights, Art. 5

<sup>83</sup> Law on Copyright and Related Rights, Art. 4

<sup>84</sup> Law on Copyright and Related Rights, Art. 39

<sup>85</sup> Law on Copyright and Related Rights, Art. 40

## **Rights of Authors**

Authors' rights are divided into two categories - moral rights and economic rights - which are enforceable against all persons.<sup>86</sup> Moral rights are as follows:<sup>87</sup>

- Exclusive right to decide the manner and timing of disclosure of the work, as well as the principle to govern this disclosure;
- For the purpose of relation with the public, the right in respect of his name, title, and work;
- Right to oppose all forms of distortion, mutilation or modification of the work, which would be prejudicial to their honor or reputation.

These three moral rights are perpetual, inalienable, undistrainable and imprescriptible - meaning they last forever, cannot be sold or otherwise transferred, and cannot be seized or otherwise taken away. Moral rights are inherited by an author's heirs upon their death.<sup>88</sup>

Economic rights are the exclusive rights to exploit the work, through authorization of reproduction, communication to the public, and creation of derivative works, specifically:<sup>89</sup>

- Translation into a foreign language;
- Adaptation and simplification or undertaking any

---

<sup>86</sup> Law on Copyright and Related Rights, Art. 18

<sup>87</sup> Law on Copyright and Related Rights, Art. 20

<sup>88</sup> Law on Copyright and Related Rights, Art. 19

<sup>89</sup> Law on Copyright and Related Rights, Art. 21

modifications;

- Rental or public lending of the original or a copy of an audiovisual work, or a work embodied in a phonogram, computer program, database or musical work in the form of musical notation;
- Public distribution by sale, rental of the original or a copy of the work that has not already been subject to a sale or transfer of ownership authorized by the owner of copyright;
- Importation into Cambodia;
- Reproduction;
- Public performance;
- Public display;
- Broadcasting;
- Other means of communication to the public.

## **Limitations on the Rights of Authors**

Importation and copying of copyrighted works, with certain exceptions, is permitted for personal use.<sup>90</sup> Further limitations allow for:<sup>91</sup>

---

<sup>90</sup> Law on Copyright and Related Rights, Arts. 23 and 24

<sup>91</sup> Law on Copyright and Related Rights, Arts. 25 and 29

### *Copyright & Related Rights*

- Free and private representations made exclusively to a close circle of people such as family and friends;
- Arrangement to preserve in a library the copy of a work for the purpose of conservation or research;
- Use of work for education, so long as not for financial gain;
- Translation of works from Khmer into ethnic minority languages, and vice versa;
- Analysis and short quotations justified by the critical, polemical, pedagogical, scientific or informative nature of the work, so long as properly attributed;
- Broadcasting of press commentary, so long as properly attributed;
- Dissemination of speeches addressed to the public either entirely or in part, through press release or TV broadcasting, so long as properly attributed;
- Adaptation of comic, style or caricature, so long as properly attributed;
- Reproduction of graphic or plastic work which is situated in a public place, when this reproduction doesn't constitute the principal subject for subsequent reproduction, so long as properly attributed.

Works based on the true story of life of any person or family requires their authorization, or that of their heirs.<sup>92</sup>

## **Duration of Economic Rights**

Economic rights begin at the date of creation, and end fifty years after the death of the author.<sup>93</sup> For collaborations, the economic rights expire fifty years after the death of the last surviving author.<sup>94</sup> When the work is published anonymously or under a different name, the period of protection is seventy-five years after publication.<sup>95</sup> Collective, audiovisual and posthumous works are protected for seventy-five years from the end of the calendar year in which they were made accessible to the public.<sup>96</sup> This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.<sup>97</sup>

## **Transfer and Exploitation of Economic Rights**

Any contract for the exploitation or transfer of economic rights must be made in writing, and otherwise is null and void.<sup>98</sup> Any of the economic rights can be transferred individually or collectively, the transfer of one right does not imply or require the transfer of others.<sup>99</sup> Economic rights can be transferred to the author's heir

---

<sup>92</sup> Law on Copyright and Related Rights, Art. 26

<sup>93</sup> Law on Copyright and Related Rights, Art. 30

<sup>94</sup> Id.

<sup>95</sup> Law on Copyright and Related Rights, Art. 31

<sup>96</sup> Id.

<sup>97</sup> Id.

<sup>98</sup> Law on Copyright and Related Rights, Art. 34

<sup>99</sup> Law on Copyright and Related Rights, Art. 32



or any third party by the author's will.<sup>100</sup> When no heir or will exists, the Ministry of Culture and Fine Arts shall be responsible for governing and administering the economic rights.<sup>101</sup>

## **Performance Rights**

A performance is defined as the acting on stage, namely dancing, musical performance, singing or delivering in other ways and means of artistic work, tradition, habit, literary, education or science.<sup>102</sup> Crucially, the rights reside in the *performers*, rather than others involved in the production, such as directors, authors, composers or choreographers.<sup>103</sup> The performer has the exclusive right to undertake and authorize the following:<sup>104</sup>

- Broadcasting and communicating the performance to the public, with certain exceptions;
- Recording the performance, and reproducing thereof;
- Distributing to the public by sale or transfer of ownership, of an original recording that has not been distributed with the performer's authorization;
- Renting or lending to the public of a recording;
- Authorizing broadcasting through any broadcasting organization (radio and television), to the exclusion of

---

<sup>100</sup> Law on Copyright and Related Rights, Art. 33

<sup>101</sup> Id.

<sup>102</sup> Law on Copyright and Related Rights, Art. 2 (c)

<sup>103</sup> Law on Copyright and Related Rights, Art. 2 (d)

<sup>104</sup> Law on Copyright and Related Rights, Art. 41

other organizations;

- Authorizing broadcasting through any broadcasting organization, without the right of recording.

Independent of the aforementioned economic rights, and even after transferring them, the performers retain the right to require their written name to be displayed in connection with the live performance or recording of a work.<sup>105</sup> The performers further retain the moral right to prevent all deformation, mutilation or other modification of the performance that prejudice their reputation.<sup>106</sup> However, performers cannot forbid reproduction and communication to the public of their performance if it is merely accessory to an event constituting the principal subject of a scene, work or audiovisual piece.<sup>107</sup>

The performer's exclusive economic and moral rights are subject to the same limitations on author's rights listed above, as well as limitations for:<sup>108</sup>

- Reporting of short fragments for news events;
- Reproduction merely for scientific research purpose;
- Reproduction for educational purpose, except if the work was produced specifically for educational purposes;
- Quotation of short citations, provided it is reasonable

---

<sup>105</sup> Law on Copyright and Related Rights, Art. 42

<sup>106</sup> Id.

<sup>107</sup> Law on Copyright and Related Rights, Art. 43

<sup>108</sup> Law on Copyright and Related Rights, Art. 50

and justified;

- Recording of picture and sound for simultaneous broadcasting of a ceremony, meeting or other national event.

The same provisions regarding transfer and deposit of an author's rights, described above, apply to performance rights.<sup>109</sup> Performance rights last fifty years following the calendar year in which the performance was fixed in phonogram, or if it was not, then from the end of the calendar year in which the performance took place.<sup>110</sup>

### **Phonogram Producer Rights**

A "phonogram" is defined in the law as the fixation of the sounds of a performance or other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work.<sup>111</sup> In other words, a phonogram is a sound recording, made in any format (CD, cassette, MP3, etc.) but not the sound of a film, television show or computer game (these would be audiovisual works). All reproductions, sales, exchanges, leases and communication to the public require the producer's authorization.<sup>112</sup> The producer further enjoys the economic right to distribute, by sale or transfer of ownership, the original and copies of the phonogram, unless they have already been subjected to authorized distribution.<sup>113</sup>

---

<sup>109</sup> Law on Copyright and Related Rights, Arts. 54 and 55

<sup>110</sup> Law on Copyright and Related Rights, Art. 53 (1)

<sup>111</sup> Law on Copyright and Related Rights, Art. 2 (j)

<sup>112</sup> Law on Copyright and Related Rights, Art. 45

<sup>113</sup> Id.

This embodies the concept of the first sale doctrine, meaning the exclusive rights in a particular recording expire on the first authorized sale. The producer also has the right to import copies for communication to the public.<sup>114</sup>

The limitations concerning performance rights, described above, also apply to phonogram producers.<sup>115</sup> Likewise, the same provisions regarding transfer and deposit of an author's rights, described above, apply to phonogram producer rights.<sup>116</sup>

Phonogram producer rights last fifty years following the calendar year in which the work was published, or if it was not, then the year of fixation of the phonogram.<sup>117</sup>

## **Audiovisual Producer Rights**

An audiovisual work is defined as one consisting of a series of inter-linked pictures giving the impression of movement, with or without sound.<sup>118</sup> The producer is the natural or legal person who has the initiative and responsibility in recording the work.<sup>119</sup> All reproduction of the recording for purpose of communicating to the public, sale, exchange and lease requires the producer's authorization.<sup>120</sup> The transfer of audiovisual rights must be made together with the author's rights and performer's rights incorporated into the production.<sup>121</sup>

---

<sup>114</sup> Id.

<sup>115</sup> Law on Copyright and Related Rights, Art. 50

<sup>116</sup> Law on Copyright and Related Rights, Arts. 54 and 55

<sup>117</sup> Law on Copyright and Related Rights, Art. 53 (2)

<sup>118</sup> Law on Copyright and Related Rights, Art. 2 (g)

<sup>119</sup> Law on Copyright and Related Rights, Art. 46

<sup>120</sup> Id.

<sup>121</sup> Id.

The limitations concerning performance rights, described above, also apply to audiovisual producers.<sup>122</sup>

Audiovisual works are protected for seventy-five years from the end of the calendar year in which they were made accessible to the public.<sup>123</sup> This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.<sup>124</sup>

## **Broadcasting Organization Rights**

Broadcasting organizations, consisting of radio, television and cable television, have the exclusive right to undertake or authorize the fixation of its broadcast, communication to the public, re-broadcasting, reproduction, distribution and first lease of the copy of their broadcast.<sup>125</sup> Reproduction of a broadcast for sale, lease, exchange, broadcasting or communicating to the public requires the organization's authorization.<sup>126</sup>

The limitations concerning performance rights, described above, also apply to broadcasting organizations.<sup>127</sup> Likewise, the same provisions regarding transfer and deposit of an author's rights, described above, apply to broadcasting organization rights.<sup>128</sup>

---

<sup>122</sup> Law on Copyright and Related Rights, Art. 50

<sup>123</sup> Law on Copyright and Related Rights, Art. 31

<sup>124</sup> *Id.*

<sup>125</sup> Law on Copyright and Related Rights, Art. 47

<sup>126</sup> Law on Copyright and Related Rights, Art. 48

<sup>127</sup> Law on Copyright and Related Rights, Art. 50

<sup>128</sup> Law on Copyright and Related Rights, Arts. 54 & 55

The duration of protection of the broadcasting program is fifty years following the end of the calendar year in which the program was broadcast.<sup>129</sup>

## **Collective Management Rights**

Collective management organizations (CMOs) can be established by authors, performers, phonogram and audiovisual producers to protect and manage their economic rights.<sup>130</sup> The legal framework is provided for under Chapter IV of the Law on Copyright and Related Rights as well as the Prakas (Declaration) on Collective Management Organization dated July 5, 2016. The CMO is formed to administer the licensing of rights, collection of royalties and enforcement measures of its member right holders.

Only authors and owners of related rights (performances, phonograms, audiovisual works, and broadcasts) who are of Cambodian nationality may form a CMO.<sup>131</sup> The application, to be made to the Department of Copyright and Related Rights of the Ministry of Culture and Fine Arts, must include the statute and internal rules governing the organization.<sup>132</sup> The registration is valid for a period of five years and the registration can be renewed for subsequent two-year terms indefinitely.<sup>133</sup>

Any person interested in exploiting works controlled by the CMO may seek an authorization and pay remuneration.<sup>134</sup> The

---

<sup>129</sup> Law on Copyright and Related Rights, Art. 53 (3)

<sup>130</sup> Law on Copyright and Related Rights, Art. 56

<sup>131</sup> Prakas on Collective Management Organization, Art. 4

<sup>132</sup> Prakas on Collective Management Organization, Arts. 6 and 7

<sup>133</sup> Prakas on Collective Management Organization, Art. 8

<sup>134</sup> Prakas on Collective Management Organization, Art. 11

authorization must be in a contract form and must determine the kind of works to be exploited, the number of works, the place to be used and time period.<sup>135</sup> Finally, the Prakas enables the Ministry of Culture and Fine Arts to settle disputes between CMOs and licensees, as well as between members of the CMO.<sup>136</sup>

## **Disputes and Penalties**

Any copyright holder who suffers or risks suffering a violation of their rights, may petition the court to prohibit the violation of their rights, if it will be imminent, or to desist from violating their rights, if they are ongoing.<sup>137</sup>

In addition, the plaintiff is entitled to compensation for damages, to redress of moral injury, to the return of disputed equipment and materials, and return of any benefits deriving from the infringement.<sup>138</sup>

Furthermore, the law also imposes criminal penalties for certain copyright infringement activity. Infringement of production and reproduction rights is punishable by six to twelve months imprisonment and/or 5 - 25 million Riel (Approx. USD 1,250 - 6,250) fine (doubled for repeat offenses).<sup>139</sup>

---

<sup>135</sup> Id.

<sup>136</sup> Prakas on Collective Management Organization, Art. 12

<sup>137</sup> Law on Copyright and Related Rights, Art. 57

<sup>138</sup> Id.

<sup>139</sup> Law on Copyright and Related Rights, Art. 64

## Chapter 3:

# Patent

### Introduction

The Law on Patents, Utility Models and Industrial Designs, enacted in 2003 as part of Cambodia's accession to the World Trade Organization, provides inventors with a set of exclusive rights, in exchange for disclosure of their invention to the public. Law is complemented by two Prakas (Declaration) regarding procedural matters from 2006<sup>140</sup> and 2019<sup>141</sup>, as well as an amendment to the Law in 2017.<sup>142</sup>

Patents are registered with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation (MISTI). In 2015, the MISTI concluded a Memorandum of Understanding on the Co-Operation in Industrial Property with the Intellectual Property of Singapore Office (IPOS), resulting in the first patent being granted in 2015 through cooperation with the IPOS.

---

<sup>140</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, 2006

<sup>141</sup> Prakas (Declaration) on the Management and Procedures for Grant of Patent and Utility Model, 2019

<sup>142</sup> Amendment of the Law on Patents, Utility Model Certificates and Industrial Designs, 2017



Further agreements have been reached with the patent offices of Japan, Korea and the United States allowing for the acceleration of a Cambodian patent application on the basis of a patent filed with either of these offices. Cambodia is also the first country in Asia to allow for validation of European patents through an agreement with the European Patent Office. Chinese patents may also be validated in Cambodia through an agreement with the Chinese National Intellectual Property Administration. Details of each of these programs are covered in this chapter.

- Cambodia is also a party to the ASEAN Patent Examination Co-Operation (ASPEC) program, allowing applicants in other ASEAN patent offices to save time and money when applying for Cambodian patent protection. There are currently nine participating ASEAN IP offices (Brunei, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam). The program allows Cambodian application to use the search and examination results from any of these IP offices as a reference in the Cambodian patent prosecution when that IP office has found at least one claim to be novel and inventive.

Finally, Cambodia became a member of the Patent Cooperation Treaty, per Instruction of Accession dated August 24, 2016 and deposited with WIPO on the September 8, 2016, which came into force on December 8, 2016.

## **Patentable Inventions**

An invention is defined in the law as “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology” and may be, or relate to, a product or a

## *Patent*

process.<sup>143</sup> Any invention can be the subject of a patent, except for:<sup>144</sup>

- Discoveries, scientific theories and mathematical models;
- 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 practiced on the human or animal body; this provision does not apply to products for use in any of these methods;
- Pharmaceutical products;
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;
- Plant varieties.<sup>145</sup>

Computer software is patentable if it is a:<sup>146</sup>

- Process invention, which in whole or in part, consists of steps that are performed by computer and are directed

---

<sup>143</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 3

<sup>144</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 4

<sup>145</sup> Plant varieties are protected under the Law on Seed Management and Plant Breeder's Right (Royal Kram No NS/RKM/0508/015)

<sup>146</sup> Prakas on the Procedure for the Grant of Patents and Utility Model Certificates, Rule 44

by a computer; or

- Product invention consisting of elements of a computer-implemented invention, including in particular:
  - o Machine-readable computer program codes stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
  - o A general-purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

## **Novelty**

The first requirement for an invention to be patentable is that it be a *new* invention, meaning it is not anticipated by prior art.<sup>147</sup>

Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention. Disclosure to the public of the invention shall not be taken into consideration:<sup>148</sup>

- If it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application; and

---

<sup>147</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 6

<sup>148</sup> *Id.*

- If it was by reason 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.

## **Inventive Step**

Second, an invention must involve an “inventive step.”<sup>149</sup> An invention involves an inventive step if, having considered the prior art, it would not have been obvious to a person having ordinary skill in the art.

## **Industrial Applicability**

Third, an invention must be industrially applicable, meaning it can be made or used in any kind of industry.<sup>150</sup> However, if the commercial exploitation of the invention would be contrary to public order or morality, or would be harmful to human, animal, or plant life or health, or would seriously prejudice the environment, or is prohibited by law, then it cannot be patented.<sup>151</sup>

---

<sup>149</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 7

<sup>150</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 8

<sup>151</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 9

## **Utility Model Certificates**

Utility model certificates are a special form of patent, with a lower standard of registerability and shorter duration term. Whereas a patent must be new, involve an inventive step and be industrially applicable, a utility model need only be new and industrially applicable.<sup>152</sup> Whereas a patent expires twenty years after filing, a utility model certificate expires after seven years, with no possibility of renewal.<sup>153</sup> Applicants may, prior to grant or refusal, apply for their patent application to be converted into a utility model application, and vice versa.<sup>154</sup> The conversion may only be done once.<sup>155</sup>

## **Right to Patent & Naming of Inventor**

Only the inventor or inventors have a right to a patent.<sup>156</sup> When two or more persons have independently arrived at the same invention, the person whose application is filed first, or if priority is claimed, the earliest priority date, has the right to the patent.<sup>157</sup> Unless agreed otherwise, the right to patents of inventions made pursuant to an employment contract belong to the employer.<sup>158</sup> The inventor's name will be stated on the patent, unless the inventor opts to remain anonymous.<sup>159</sup>

---

<sup>152</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 69

<sup>153</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 73

<sup>154</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 75

<sup>155</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 76

<sup>156</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Arts. 10 & 11

<sup>157</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 12

<sup>158</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 14

<sup>159</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 15

## **Patent Application Process**

Patent applications can be filed in person with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation. E-filing of applications is currently not available.

Applications may claim priority based on an earlier national, regional or international patent application, according to the Paris Convention<sup>160</sup> and the Patent Cooperation Treaty. In such case, the Department of Industrial Property will request a certified copy of the priority application, as well as any search or examination reports or foreign office actions.

The patent application form must be made in Khmer and be accompanied by a description of the invention, one or more claims, one or more drawings when necessary to understand the invention, and an abstract, and be accompanied by payment of the official fee.<sup>161</sup> The descriptions must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person having ordinary skill in the art.<sup>162</sup>

If the application claims a prior filing date, a certified copy of the priority application is required<sup>163</sup> and must be submitted within three months from the request's date by the Registrar.<sup>164</sup> Where a certified copy of the priority documents is in a language other than Khmer, it must be translated into Khmer and be submitted

---

<sup>160</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 27

<sup>161</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 16

<sup>162</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 18

<sup>163</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 28

<sup>164</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 20 (5)

to the Registrar within six months from the request.<sup>165</sup> In addition, an English translation for non-English language documents is also required by the Registrar for the purpose of searching and examination, and must be submitted to the Registrar within six months from the filing date.<sup>166</sup>

The Department of Industrial Property will require the original notarized power of attorney, in case the Cambodian patent agent is appointed to undertake the filing.<sup>167</sup> Further, a notarized statement justifying the applicant's right is required where the applicant is not an inventor of the claimed invention.<sup>168</sup> The original notarized power of attorney, the statement justifying the applicant's right and a certified copy of the priority application must be submitted with the application or at a later date. The Registrar will issue a letter requesting these documents within two weeks of filing.

## **Application Acceleration with Japanese Patent Office**

An applicant for a Japanese patent that has been filed in Cambodia may request for acceleration of their Cambodian patent application under the Cooperation for Facilitating Patent Grant (CPG). According to the Prakas (Declaration) on the Implementation of the CPG, the request for acceleration of patent decision based on the CPG must be submitted to the

---

<sup>165</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 20 (6)

<sup>166</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 11

<sup>167</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 33 (1)

<sup>168</sup> Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 6 (3)

Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation along with a certified copy of the patent gazette in the corresponding Japanese Patent Office patent application and its English translation, a translation of claims and specifications in English and Khmer, and a claims correspondence table. The applicant must submit a translation in Khmer to the Department of Industrial Property within six months of the date on which the request was filed for the CPG.<sup>169</sup>

### **Recognition of Korean Patents in Cambodia**

Korean patents may be recognized in Cambodia under the Patent Recognition Program of South Korean and Cambodia, which entered into force on November 1, 2019.<sup>170</sup>

The program, which mirrors the acceleration program for Japanese patents described above, allows holders of a Cambodian patent application to request an accelerated decision based on examination results from the Korean Intellectual Property Office (KIPO).

Under the program, the MISTI has agreed to deliver a decision within three months from the filing of the acceleration request, assuming that all the requirements are fulfilled.

At the outset, the Cambodian patent application must meet one of the following:

---

<sup>169</sup> Prakas on the Acceleration of Patent Grant under the CPG, Art. 5

<sup>170</sup> Prakas (Declaration) on the Acceleration of Patent Grant in Cambodia  
Based on Patent Recognition Program of a Cambodia-Related Patent  
with the Korean Intellectual Property Office



## *Patent*

- A patent application validly claiming priority under the Paris Convention based on the corresponding KIPO patent application;
- A patent application that serves as the basis for validly claiming priority under the Paris Convention for the corresponding KIPO patent application including a PCT patent application that entered the national phase; or
- A patent application that is based on the same patent application for claiming priority under the Paris Convention, as the corresponding KIPO patent application including PCT patent application that entered the national phase.

To request acceleration under the PRP, the applicant must have a granted Korean registration with an earliest filing date the same as the Cambodian patent and a granted Korean patent. Further, there must be claims in the Cambodian patent that are the same as one or more of the Korean patents.

For documentation, the request to the Ministry of Industry, Science, Technology and Innovation requires:

- A copy of the patent gazette in the corresponding KIPO patent application, and its certification by KIPO;
- Translation of claims and specification described in the patent gazette in English;
- Translation of claims and specification described in the patent gazette in Khmer. The applicant shall provide the translation of the specification within one month from the date on which the request was filed;

- Claims correspondence table between all the claims in the Cambodian application and those in the Korean patent that were deemed patentable. It is permitted to delete part of the claims granted by KIPO, so long as the deleted ones are still present on the table in a way that makes clear the correspondence between the two patents.

### **Acceleration Based on a US Patent**

Under a bilateral program agreed on October 23, 2020, US patents may be used to accelerate the examination of Cambodian patent applications.

Under the regulation <sup>171</sup>, holders of Cambodian patent applications may request an accelerated decision based on a granted US patent.

At the outset, the Cambodian patent application must meet one of the following:

- A patent application validly claiming priority under the Paris Convention based on the corresponding US patent application;
- A patent application that serves as the basis for validly claiming priority under the Paris Convention for the corresponding US patent application including a PCT

---

<sup>171</sup> Prakas (Declaration) on the Acceleration of Patent Grant in Cambodia Under the Cooperation on the Cambodia-Related Patent Application with the United States Patent and Trademark Office", issued on March 29, 2021

## *Patent*

patent application that entered the national phase; or

- A patent application that is based on the same patent application for claiming priority under the Paris Convention, as the corresponding US patent application including PCT patent application that entered the national phase.

It should be stressed that the patent must still meet the subject matter criteria for Cambodian patents, which differs from the US standard. In particular, Cambodia does not currently provide patent protection for pharmaceutical products. Thus, such patents would not be granted under the program, even if a US corresponding patent has been granted.

Further, only patents with filing dates after January 22, 2003 (the date of entry into force of the Cambodian Patent Law), may take advantage of the program.

To request acceleration, the applicant must have a granted US registration with an earliest filing date the same as the Cambodian patent and a granted US patent. Further, there must be claims in the Cambodian patent that are the same as one or more of the US patent.

Regarding documentation, the request for acceleration must include:

- A copy of the patent gazette in the corresponding US patent application, and its certification by the USPTO;
- Translation of claims and specification described in the patent gazette in Khmer. The applicant shall provide the translation of the specification within one month from the date on which the request was filed;

- Claims correspondence table between all the claims in the Cambodian application and those in the US patent that were deemed patentable.

## **Re-Registration of a Singaporean Patent**

The Intellectual Property Office of Singapore (IPOS) and Cambodia's Ministry of Industry, Science, Technology and Innovation concluded a Memorandum of Understanding permitting for the filing of Cambodian patents through the Singaporean authority, and vice versa. The Memorandum of Understanding is valid until January 20, 2025 and can be renewed upon the mutual consent of both parties.<sup>172</sup> After the Ministry of Industry, Science, Technology and Innovation issued a Prakas (Declaration) on implementation the Memorandum on July 25, 2016, applicants are allowed to file for Cambodian patents through the IPOS.

In order to register, the applicant must have first been granted a patent in Singapore. The Singaporean patent must be in-force at the time of filing a request for registration in Cambodia. In addition, the patent must have a filing date on or after February 11, 2003.<sup>173</sup>

The request for registration of a Singaporean patent must be made to the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation, and accompanied by a payment of the filing fee, a certified copy certificate of grant of the Singaporean patent, a certified copy of

---

<sup>172</sup> Memorandum of Understanding on the Co-Operation in Industrial Property, Art. 10

<sup>173</sup> Prakas on the Registration of Singapore Patent in Cambodia, Art. 5

final specifications, a copy of abstract and a copy of original notarized POA if a local patent agent is appointed.<sup>174</sup> Although, a certified copy of the Certificate of Grant of Singapore patent is required to be submitted, the Registrar still examines this based on the Patent Law and its related declaration. Cambodian translations must be submitted to the Patent Office within six months from the date of filing a request for registration.<sup>175</sup> The registration fee and annual fee must be paid within three months from date of Registrar's notification.<sup>176</sup>

Patent rights received under this declaration may not be enforced against any prior rights which already existed before the date of filing a request for registration of Singapore patent in Cambodia. A person who has been using or exploiting that patented invention in Cambodia may continue to use or exploit it, even though the Singapore patent was granted by the Cambodia Department of Industrial Property.<sup>177</sup>

Decisions of the Ministry of Industry, Science, Technology and Innovation regarding the granting of a patent may be appealed to the competent court within three months of the decision.

## **Validation of European Patents**

Under the Agreement between the President of the European Patent Office and the Cambodian Minister of Ministry of Industry, Science, Technology and Innovation, signed January 23, 2017, holders of European patent applications may apply to have their patents validated, thereby extending their rights to the

---

<sup>174</sup> Prakas on the Registration of Singapore Patent in Cambodia, Art. 4

<sup>175</sup> Id.

<sup>176</sup> Prakas on the Registration of Singapore Patent in Cambodia, Art. 10(3)

<sup>177</sup> Prakas on the Registration of Singapore Patent in Cambodia, Art. 11

Kingdom of Cambodia. The Agreement was ratified by Royal Kram on November 24, 2017<sup>178</sup> and the validation procedures set forth in a Prakas (declaration) dated December 8, 2017.<sup>179</sup>

Validation must be specifically requested, and is available for both applications directly filed with the EPO, as well as European PCT applications.

The European application must have been filed on or after March 1, 2018, the date of entry into force of the validation agreement. Further, pharmaceutical product patents are excluded from protection under Cambodian patent law, and therefore cannot be validated.

The first step in the validation process, is to pay the validation fee of EUR 180 within six months from publication of the search report in the European Patent Bulletin, or for European PCT applications, within the period for performing acts required to enter the European phase. This payment must be done by the agent representing the applicant before the EPO. There is a two-month grace period following expiration of the six-month window, subject to a 50% surcharge.

Second, assuming the validation fee was properly paid, within three months of the EPO granting the application, request for validation must be submitted to the Cambodian Ministry of Industry, Science, Technology and Innovation.

The patent title, abstract and claims will need to be translated from English into Khmer, the national language of Cambodia. A publication fee and a certificate fee will be due upon acceptance.

---

<sup>178</sup> Royal Kram No. NS/RKM/1117/017 on the Ratification of the Agreement on Validation of European Patents

<sup>179</sup> Prakas (declaration) No. 282 MIH/2017 on the Regulation and Procedures for the Validation of European Patents in Cambodia

Following successful validation, the patent owner will be issued an official patent certificate from the Ministry of Industry, Science, Technology and Innovation.

## **Validation of Chinese Patents in Cambodia**

Under a recent Memorandum of Understanding<sup>180</sup> between the Cambodian Ministry of Industry, Science, Technology and Innovation and the Chinese National Intellectual Property Administration (CNIPA), Chinese invention patents may be validated by filing the necessary documents and payment of the prescribed fee, thereby extending the exclusive rights to Cambodia.<sup>181</sup>

The Chinese patent must have been granted and be in good order, with a filing date after January 22, 2003 (the date of signature of the Cambodian patent law). As the system is retrospective, all Chinese invention patents, so long as filed after the effective date, are eligible for validation.

Design patents and utility models are excluded from the validation system. Further, the validation is unilateral – Cambodian patents may not be validated in China.

Validation must be requested by a licensed agent in Cambodia before the Department of Industrial Property within the MISTI.

The validation request is composed of:

---

<sup>180</sup> MOU on Bilateral Cooperation on Intellectual Property between Cambodia and China, 2017

<sup>181</sup> Prakas (Declaration) on the Re-Registration of Chinese Patents in Cambodia - 2018

## *Patent*

- Request form
- Certified copy of the Chinese patent
- Description, claims, abstracts and drawings (if any) in Chinese and English translation
- Certificate of patent registration issued by CNIPA in Chinese and English translation
- Original notarized power of attorney appointing the agent
- Translation into the Khmer language, which can be filed within six months of the request

The validated patent is valid in Cambodia for the remaining term of the Chinese patent, subject to the prescribed annual maintenance fees. Thus, if the Chinese patent has six years of its term remaining, the validated Cambodian patent will have a six-year term.

The MISTI only examines the request for formalities; should there be any deficiency, the requestor will have the opportunity to rectify it within two months.

Given the great number of patents in the Chinese patent registry and simple procedure, this validation route has become the most popular path to securing a patent in Cambodia.



## **Patent Duration and Annual Fees**

A patent is valid for 20 years from its filing date, subject to payment of the following annual maintenance fees<sup>182</sup>:

<b>Year</b>	<b>Official Fee (USD)</b>	<b>Year</b>	<b>Official Fee (USD)</b>
1st	-	11th	350
2nd	20	12th	400
3rd	20	13th	450
4th	40	14th	500
5th	100	15th	550
6th	140	16th	610
7th	180	17th	670
8th	220	18th	740
9th	260	19th	810
10th	300	20th	890

The annuities are due from the date of application, and may be pre-paid three months before the annuity period. There is a six-month grace period for late payments, subject to a daily penalty. If the annuity has not been paid by the end of the grace period, the patent will be considered as abandoned and invalid. However, the patent owner may still request for restoration at any time for

---

<sup>182</sup> Joint Prakas (Declaration) on Public Service Fees, dated July 8, 2015

the remaining life of the patent (20 years from application date). A restoration fee, as well as the daily late fee and regular annuity amounts would be due.

## **Unity of Invention, Amendment & Division**

A patent must relate to only one invention, or a group of inventions so linked so as to form a general inventive concept.<sup>183</sup> Up until the application is ready to be granted, the application may be amended, so long as it does not go beyond the original disclosures.<sup>184</sup> Similarly, the application may be divided into two or more applications.<sup>185</sup>

## **Patent Rights**

The core patent right is the right to prevent others from exploiting the patented invention.<sup>186</sup> “Exploitation” of a patented product means the making, importing, offering for sale, selling, stocking, using, or using of it. For patented processes, exploitation means using the process, or exploiting any product obtained directly by means of the product.<sup>187</sup>

The patent owner can institute court proceedings against any infringer, or anyone who performs acts which make infringement likely to occur.<sup>188</sup>

---

<sup>183</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 23

<sup>184</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 24

<sup>185</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 25

<sup>186</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 41

<sup>187</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 42

<sup>188</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 43

## *Patent*

Certain limitations to patent rights exist, namely:<sup>189</sup>

- Acts with respect to articles put on the market by the patent owner or with their consent;
- Articles on vehicles temporarily or accidentally entering Cambodia;
- Experimental purposes;
- Users of the invention, or those making effective and serious preparations for use, prior to the priority date.

Upon request of the patent owner, or by a licensee in certain circumstances, a court may grant an injunction to prevent infringement or imminent infringement, award damages, or any other remedy provided for by law.<sup>190</sup> Further, anyone who knowingly infringes a patent shall be criminally punished by a fine of 5-20 million Riels (approx. USD 1,250-5,000), and/or imprisonment from one to five years.<sup>191</sup> Repeat infringers are subject to double fines and imprisonment.<sup>192</sup>

## **Government Exploitation & Non-Voluntary Licenses**

Patent rights are not absolute, but subject to important limitations for government exploitation and non-voluntary licenses. The Government of Cambodia may decide, even without the agreement of the patent owner, that a government

---

<sup>189</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 44

<sup>190</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 126

<sup>191</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 133

<sup>192</sup> *Id.*

agency or a designated third-person may exploit the patent for the public interest in particular, national security, nutrition, health or development of vital economic sectors.<sup>193</sup> Further, if a court decides the patent owner's or licensee's use of the patent has been anti-competitive, they may permit government or third party-exploitation.<sup>194</sup> In either case, the patent owner has a right to a hearing and the payment of adequate remuneration.<sup>195</sup>

In addition to government and third-party exploitation, the law allows for the granting of non-voluntary licenses. Four years after the filing of the patent, or three years from its granting, whichever comes later, anyone may submit a request to the Minister for a non-voluntary license. This will be granted if it can be satisfactorily shown that the patented invention is not exploited, or is insufficiently exploited in Cambodia.<sup>196</sup> However, the patent owner may prevent the issuing of the non-voluntary license if they can show justifying circumstances.<sup>197</sup> As with government and third-party exploitation, the patent owner is entitled to compensation.<sup>198</sup>

## **Invalidation & Opposition**

Any interested party may request the invalidation of a granted patent.<sup>199</sup> The request will be granted if it can be shown that the patent's subject matter is improper, it is not novel, does not involve an inventive step, is not industrially applicable, or if its

---

<sup>193</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 47

<sup>194</sup> Id.

<sup>195</sup> Id.

<sup>196</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 56

<sup>197</sup> Id.

<sup>198</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 57

<sup>199</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 65

## *Patent*

exploitation is contrary to public order, morality, or prohibited by law.<sup>200</sup> Further grounds for invalidation include insufficient description, improper claims or insufficient drawings.<sup>201</sup>

Further, third parties shall be entitled to file an opposition against any published patent or utility model certificate application within three months from the date of publication.<sup>202</sup>

---

<sup>200</sup> Law on Patents, Utility Model Certificates and Industrial Designs, Art. 66

<sup>201</sup> *Id.*

<sup>202</sup> Prakas (Declaration) on the Management and Procedures for the Grant of Patents and Utility Model Certificates, 2019, Art. 27.8

## Chapter 4:

# Industrial Design

### **Introduction**

An industrial design registration is a form of intellectual property that protects a new, special visual aspect of a product. In Cambodia, industrial designs are protected under the Law on Patents, Utility Models and Industrial Designs of 2003, along with two Prakas (Declaration) on the Procedure for Registration of Industrial Design of 2006 and 2021. Industrial designs are registered with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation. In addition, through a special agreement with the Intellectual Property Office of Singapore, industrial designs covering Cambodia may be registered through the Singaporean authority, and vice versa.

Most recently, Cambodia acceded to The Hague System for the International Registration of Industrial Designs, effective February 25, 2017. The system provides a practical solution for registering up to a hundred designs in over 75 territories through one single international application. This development simplifies the procedures and reduces the cost for foreign IP holders protecting their rights in Cambodia. By number of registrations, industrial designs are the second most important form of IP in Cambodia, after trademarks.

## **Registerable Industrial Designs**

An industrial design is defined in the law as “any composition of lines or colors or any three-dimensional form, or any material, whether or not associated with lines or colors, [...] provided that such composition, form or material gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft, and appeals to and is judged by the eye.”<sup>203</sup> Thus, aspects that pertain to other senses, such as touch or sound, are not protectable. Protection does not extend to parts of a design which serve solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.<sup>204</sup>

Industrial designs must be “new” to be registered, meaning they cannot have been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date.<sup>205</sup> Disclosures to the public shall not be taken into consideration if a) it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application or, b) by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party.<sup>206</sup> Industrial designs that are contrary to public order or morality cannot be registered in Cambodia.<sup>207</sup>

---

<sup>203</sup> Law on Patents, Utility Models and Industrial Designs, Art. 89

<sup>204</sup> Law on Patents, Utility Models and Industrial Designs, Art. 90

<sup>205</sup> Law on Patents, Utility Models and Industrial Designs, Arts. 91 & 92

<sup>206</sup> Law on Patents, Utility Models and Industrial Designs, Art. 92

<sup>207</sup> Law on Patents, Utility Models and Industrial Designs, Art. 93

## **Application Process**

Industrial design applications are filed with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation. The application form and any documents forming a part of an application must be submitted in the Khmer.<sup>208</sup> The required information for filling in the application form are as follows:

- Name, address, nationality and contact details of the applicant and inventor;
- Title of the industrial design;
- International classification of the industrial design;
- Indication of the kinds of products for which the industrial design is to be used;
- Indication of novelty and protectable points of industrial design;
- Short description of industrial design;
- Cambodian translation of the certified copy of the earlier application, if claiming priority;

The application form must be submitted with drawings, photographs or other adequate representation of the article. As soon as the required documentation is submitted and an official fee is paid to the Department of Industrial Property, the Registrar

---

<sup>208</sup> Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 7



will provide an application number and filing date to the applicant.<sup>209</sup>

Unless otherwise agreed in the employment contract, works created by an employee will belong to the employer. In this situation, an original notarized statement justifying the applicant's right to this registration would be required. Where an applicant's ordinary residence or principal place of business is outside Cambodia, the applicant must be represented by an agent residing and practicing in the Kingdom of Cambodia<sup>210</sup>. The applicant must provide an original notarized power of attorney to the Registrar within two months from the filing date.<sup>211</sup>

As Cambodia is a member of the Paris Convention and World Trade Organization, applications may claim priority based on an earlier national, regional or international application.<sup>212</sup> The period of priority is six months from the date of filing of the first application.<sup>213</sup> In such case, the Department of Industrial Property will request a certified copy of the priority application. The period for furnishing the certified copy of the earlier application is three months from the date of the request by the Registrar.<sup>214</sup> A Cambodian translation of the certified copy of the earlier application must be submitted to the Registrar within six months from the date of the request.<sup>215</sup>

The current processing time is approximately four to six months from application to obtaining the registration certificate,

---

<sup>209</sup> Law on Patents, Utility Models and Industrial Designs, Art. 101

<sup>210</sup> Law on Patents, Utility Models and Industrial Designs, Art. 116

<sup>211</sup> Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 18

<sup>212</sup> Law on Patents, Utility Models and Industrial Designs, Arts. 100 & 27

<sup>213</sup> Paris Convention, Art. 4

<sup>214</sup> Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 11

<sup>215</sup> *Id.*

assuming all the requirements are fulfilled.<sup>216</sup> This estimate is based on past experience and may take longer depending on the workload of the Registrar. Decisions of the Ministry of Industry, Science, Technology and Innovation regarding the registration or refusal of an industrial design may be appealed to the competent court within three months of the decision.<sup>217</sup>

## **Rights, Duration and Renewal**

The core industrial design right is the right to prevent others from exploiting the registered industrial design.<sup>218</sup> “Exploitation” means the making, selling or importing of articles incorporating the industrial design.<sup>219</sup> The owner of the registered industrial design can initiate court proceedings against any person who infringes the industrial design by performing such acts without agreement or consent, or who makes infringement more likely to occur.<sup>220</sup> Cambodia follows the principle of national exhaustion, meaning that parallel imports, also known as grey market goods, are held to be infringing.<sup>221</sup>

The registration of an industrial design is valid for five years from the filing date of the application for registration. The registration can be renewed for two further consecutive periods of five years through payment of the official fee, for a total of fifteen years.<sup>222</sup> The renewal application form must be submitted, along with the original registration certificate, within six months preceding

---

<sup>216</sup> Law on Patents, Utility Models and Industrial Designs, Art. 103

<sup>217</sup> Law on Patents, Utility Models and Industrial Designs, Art. 124

<sup>218</sup> Law on Patents, Utility Models and Industrial Designs, Art. 105

<sup>219</sup> Law on Patents, Utility Models and Industrial Designs, Art. 106

<sup>220</sup> Law on Patents, Utility Models and Industrial Designs, Art. 108

<sup>221</sup> Law on Patents, Utility Models and Industrial Designs, Art. 107

<sup>222</sup> Law on Patents, Utility Models and Industrial Designs, Art. 109

expiration of the registration.<sup>223</sup> The notarized original power of attorney is required if the owner of the industrial design is represented by an agent. There is a grace period of six months following the expiration date, subject to payment of a surcharge, after which the registration will be deemed abandoned.<sup>224</sup>

## **Invalidation**

Any interested party may request the invalidation of a granted industrial design to the competent court.<sup>225</sup> The request will be granted if it can be shown that the industrial design's subject matter is improper, if it does not meet the definition of an industrial design, if it is not new, if the owner is not the creator or successor in title, or if it is contrary to public order, morality, or prohibited by law.<sup>226</sup> An invalidated registration is deemed null and void from the date of registration.<sup>227</sup> The competent court has to notify the Department of Industrial Property for their record and publication.<sup>228</sup>

## **Change in Ownership and License Contract**

Any interested party to the registration or application of an industrial design can request the Registrar for change of ownership. The request for change in ownership must be in

---

<sup>223</sup> Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 16

<sup>224</sup> Id.

<sup>225</sup> Law on Patents, Utility Models and Industrial Designs, Art. 110

<sup>226</sup> Law on Patents, Utility Models and Industrial Designs, Art. 111

<sup>227</sup> Law on Patents, Utility Models and Industrial Designs, Art. 112

<sup>228</sup> Law on Patents, Utility Models and Industrial Designs, Art. 113

writing and be recorded and published by the Registrar. Such change will have no effect against third parties until such recording is completed.<sup>229</sup> Similarly, license contracts need to be recorded in the registry, or else are ineffective against third parties.<sup>230</sup> The Registrar will keep their contents confidential. A request for change in ownership or recordal of license contract is subjected to payment of official fees.

## **Infringement, Remedies & Penalties**

The owner of a registered industrial design enjoys the exclusive right to prevent others from making, selling or importing articles incorporating the industrial design. Infringement occurs when a registered industrial design has been exploited by any person without the agreement or consent of the owner.<sup>231</sup> Upon the request of the owner, the competent court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law.<sup>232</sup> A licensee whose license contract has been recorded with the Registrar may also request the competent court to take immediate action when the owner has refused or failed to do so.<sup>233</sup>

Criminal penalties for infringement are a fine of five million Riels (approx. USD 1,250) to twenty million Riels (approx. USD 5,000), imprisonment from one year to five years, or both. Double fine and/or imprisonment will be imposed if the offense

---

<sup>229</sup> Law on Patents, Utility Models and Industrial Designs, Art. 114

<sup>230</sup> Law on Patents, Utility Models and Industrial Designs, Art. 115

<sup>231</sup> Law on Patents, Utility Models and Industrial Designs, Art. 125

<sup>232</sup> Law on Patents, Utility Models and Industrial Designs, Art. 126

<sup>233</sup> *Id.*

## *Industrial Design*

occurred within five years from the date of previous conviction.<sup>234</sup>

The applicant and their agent are under a duty to provide correct statements in the application and documents to the Registrar, or may be subject to a fine and/or imprisonment.<sup>235</sup>

---

<sup>234</sup> Law on Patents, Utility Models and Industrial Designs, Art. 133

<sup>235</sup> Law on Patents, Utility Models and Industrial Designs, Art. 132

## Chapter 5:

# Geographical Indication

### **Introduction**

A geographical indication (GI) is a name or sign used on certain products corresponding to a specific geographic origin. The GI serves as a certification that the product has certain qualities, is made according to certain methods or enjoys a certain reputation stemming from its geographic origin. Geographical indications are granted legal protection in many countries, with the twin goals of protecting consumers from misleading products as well as producers against unfair competition.

In Cambodia, seven domestic geographical indications have been registered to date Kampot Pepper, Kampong Speu Palm Sugar, Mondulkiri wild honey, Koh Trong pomelo, Kampot salt and salt flower, Takeo lobster, and Kampot-Kep fish sauce.. Further potential geographical indications include Siem Reap Prahok, Khmer Silk, Kampot Durian and Koh Kong Crags. Further, four foreign GIs have been registered for Champagne, Cognac, Doi Tung Coffee and Scotch Whisky to date.

Geographical indications in Cambodia are based on three legal instruments. The first Declaration (Prakas) on the Procedures for Registration and Protection of Geographical Indications, dated May 18, 2009, served as the basis for the registration of Kampot

Pepper and Kampong Speu Palm Sugar. This declaration was however superseded by the Law on Geographical Indications, dated January 20, 2014. While this first Declaration is no longer in force, the law specifically states that any GI registered prior to the law (i.e. Kampot Pepper and Kampong Speu Palm Sugar) shall remain valid.<sup>236</sup> Following enactment of the law, another Declaration on the Procedures for Registration and Protection of Geographical Indications came into force on December 29, 2016.

On March 9, 2018, Cambodia became the first country to join the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. This provides a faster and cheaper procedure for producers to protect their distinctive designations abroad.<sup>237</sup>

## **Scope of Application**

Any goods, whether agricultural, foodstuffs, handicraft or other, can be the subject of a geographical indication, so long as they are produced or transformed in Cambodia.<sup>238</sup>

It is important to note that while a geographical indication will typically take its name from a geographic area, the production area of the GI goods is not necessarily coterminous with administrative borders found on a typical map. Thus, the production area of Kampot Pepper covers most, but not all, of Kampot province as well as all of neighboring Kep province.<sup>239</sup>

---

<sup>236</sup> Law on Geographical Indications Law, Art. 25

<sup>237</sup> “Cambodia first to join the Geneva Act of WIPO’s Lisbon Agreement” – WIPO Press Release, March 9, 2018.

<sup>238</sup> Law on Geographical Indications Law, Art. 3

<sup>239</sup> Book of Specifications of Kampot Pepper

Similarly, Kampong Speu palm sugar can be collected, produced and packaged in Kampong Speu province as well as parts of neighboring Kampong Chhnang, Kandal and Phnom Penh provinces.<sup>240</sup>

## **Application Procedure**

The first step in applying for a GI is to form what is known as a Geographical Indication Association with the Ministry of Interior. Producers' groups, operators, institutions and other interested parties wishing to obtain a GI must form such a non-profit association and deposit their statute with the Ministry of Commerce. The association itself, rather than its individual members, is the applicant and owner of the GI.<sup>241</sup> Aside from applying for and owning the GI, the primary role of the association is to ensure that its members comply with the book of specifications and other legal requirements.

Once the association is established, an application for registration can be filed with the Ministry of Commerce. The application shall consist of the relevant government form either in Khmer or English, the book of specifications, a sample of the product and a receipt of the filing fee.<sup>242</sup> Following the filing of the application, the Ministry of Commerce verifies that it satisfies the necessary requirements and will notify the applicant within forty-five days.<sup>243</sup> If the application is deemed deficient, the applicant has six months to rectify the issues identified or

---

<sup>240</sup> Book of Specifications of Kampong Speu Palm Sugar

<sup>241</sup> Law on Geographical Indications Law, Art. 7

<sup>242</sup> Law on Geographical Indications Law, Art. 8

<sup>243</sup> Law on Geographical Indications Law, Art. 9



## *Geographical Indication*

otherwise respond to the Registrar, otherwise the application will be deemed abandoned.

Once the application is deemed to be complete, it will enter the substantive examination phase. This involves the Ministry of Commerce verifying the accuracy of the information in the application, and ensuring that the indication is not contrary to laws, morality, religion, good custom or public order, is not misleading or confusing, is not the name of a plant variety or animal breed, and not a generic term.<sup>244</sup> The Ministry of Commerce will also visit the site of production of the goods, and may invite the applicant or interested persons to provide further explanation or evidence. The Ministry is also free to invite experts to provide advice and take that into consideration in deciding on the application.

Assuming the application passes substantive examination, the Ministry will register the GI and issue a certificate to the applicant. The GI will be published in the Official Gazette of the Ministry of Commerce no later than 30 days from the registration date<sup>245</sup>, providing any interested party the opportunity to oppose the registration.<sup>246</sup> Oppositions must be filed within 90 days of publication on the grounds provided in the Articles 4 (definition of GI) and 10 of the Law on Geographical Indications<sup>247</sup>, otherwise the registration shall be final.

---

<sup>244</sup> Law on Geographical Indications Law, Art. 11

<sup>245</sup> Prakas No. 422 (Declaration) on Geographical Indications, Art. 15

<sup>246</sup> Law on Geographical Indications Law, Art. 12

<sup>247</sup> Law on Geographical Indications Law, Art. 16

## **Foreign Geographical Indications**

Geographical Indications registered in any foreign country may be re-registered in Cambodia, thus giving the holder the same rights as a domestic GI.<sup>248</sup> The foreign GI must be registered in accordance with the laws of its country of origin and must not have fallen into disuse there.<sup>249</sup>

The application for registration of a foreign GI must be made by a legal trademark agent, administrative representative or foreign representative to the Ministry of Commerce.<sup>250</sup> The application and opposition procedures are the same as for domestic applicants, as described above.<sup>251</sup>

As of the date of publication, four foreign geographical indications have been registered in Cambodia for Champagne, Cognac, Doi Tung Coffee, and Scotch Whisky.

## **Book of Specifications and Control Compliance**

The book of specifications is promulgated by the GI Association, setting forth the geographic production area, production conditions and quality control process.

Compliance with the book of specifications is to be carried out by a certification or control body on an annual basis. The body must be legally registered in Cambodia, approved by the Ministry of Commerce, and accredited according to the International Standard Organization or otherwise has a reliable control system,

---

<sup>248</sup> Law on Geographical Indications Law, Art. 19

<sup>249</sup> Id.

<sup>250</sup> Law on Geographical Indications Law, Art. 20

<sup>251</sup> Id.

but otherwise can be freely chosen by the GI Association.<sup>252</sup> In the case of Kampot Pepper, the French group ECOCERT has served as certifying body. The body is to deliver an annual report to the Ministry of Commerce's Department of Intellectual Property Rights.<sup>253</sup> The report in a foreign language must be translated into Khmer with a certified translation, and include the list of certified producers, operators, products, quantities, and any measures taken.<sup>254</sup>

The body is responsible for reporting any cases of non-compliance to the Ministry of Commerce, and the countermeasures and sanctions taken.<sup>255</sup> These can range from remarks and advice to the permanent revocation of the operator or producer's right to use the GI.

The Ministry of Commerce has broad powers to monitor the certification body, including revoking their authority to certify compliance with the book of specifications and ordering the GI Association to seek a new body.<sup>256</sup>

## **Rights**

A registered GI may only be used by members of the association, producers, and/or operators on products made in compliance with the book of specifications.<sup>257</sup> This right may not be transferred to a third party.<sup>258</sup> The owner of a GI, meaning the

---

<sup>252</sup> Law on Geographical Indications Law, Art. 26

<sup>253</sup> Id.

<sup>254</sup> Id.

<sup>255</sup> Id.

<sup>256</sup> Law on Geographical Indications, Art. 27

<sup>257</sup> Law on Geographical Indications Law, Art. 22

<sup>258</sup> Id.

## *Geographical Indication*

association, can complain to the competent court against any person who has engaged in unauthorized use of the GI. This is defined as any:<sup>259</sup>

- Direct or indirect commercial misuse of a registered geographical indication in respect of identical or comparable goods to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;
- Unauthorized use, imitation, evocation or translation of the geographical indication even if the true origin of the goods is accompanied by the expression such as “style”, “type”, “method”, “manner”, “imitation”, or translations of such expressions, or of similar expressions likely to mislead the public;
- False or misleading indication as to origin, nature, or specific quality of the goods appearing on packaging, or in advertising materials or on other documents concerning the goods that are likely to mislead its origin;
- Other practices likely to mislead the public as to the true origin of the goods.

A GI registration is valid indefinitely from the date of filing of the application, unless cancelled or invalidated.<sup>260</sup>

---

<sup>259</sup> Law on Geographical Indications Law, Art. 23

<sup>260</sup> Law on Geographical Indications Law, Art. 24

## **Geographical Indications and Trademarks**

Geographical Indication registrations, and applications therefore, can prevent the registration of trademarks in certain circumstances. Thus, a trademark application will be rejected if there is an earlier-filed GI application that is identical or confusingly similar.<sup>261</sup> Further, once the GI is registered, it will prevent any trademarks for the same type of goods from being registered that are misleading, a broader standard than identical or confusingly similar.<sup>262</sup> However, trademarks registered in good faith prior to the GI are grandfathered-in, meaning they may continue to be used provided there are no other grounds for invalidation.<sup>263</sup>

## **Enforcement and Penalties**

As an interim measure, upon court order, goods that are suspected to be infringing a GI may be detained, as can any materials and core equipment used in their production.<sup>264</sup> Any infringing goods that are imported, exported, sold or offered for sale can be confiscated by the competent authorities upon a court decision, irrespective of anyone being convicted of an offence.<sup>265</sup>

Criminal punishment of imprisonment from one to five years, plus a fine of two million to twenty million Riels (approximately USD 500 to USD 5,000), shall apply to the following offences:<sup>266</sup>

---

<sup>261</sup> Law on Geographical Indications Law, Art. 31

<sup>262</sup> Id.

<sup>263</sup> Id.

<sup>264</sup> Law on Geographical Indications Law, Art. 37

<sup>265</sup> Id.

<sup>266</sup> Law on Geographical Indications Law, Art. 39

## *Geographical Indication*

- Misuse of a registered geographical indication for direct or indirect commercial purposes in respect of identical or comparable goods to those of the registered geographical indication where that misuse benefits or could benefit from the reputation of the geographical indication;
- Unauthorized use, imitation, or evocation or translation of the geographical indication even if the true origin of the goods is accompanied by the expression such as “style”, “type”, “method”, “manner”, “imitation”, or translations of such expressions, or of similar expressions likely to mislead the public;
- False or misleading indication as to the origin, nature, or specific quality of the goods appearing on packaging, or in advertising materials or on other documents concerning the goods that are likely to mislead as to its origin;
- Other acts likely to mislead the public as to the true origin of the goods.

Additional criminal penalties apply to legal entities found to be responsible for infringement of the geographical indication.<sup>267</sup> The criminal punishment for legal entities for the above acts shall be a fine from twenty million to fifty million Riels (approximately USD 5,000 to USD 12,500) with additional punishments stipulated in the Criminal Code, such as dissolution and liquidation of legal entities, placement under judicial supervision, prohibition from carrying on activities, disqualification from public tenders, ownership sale and destruction of items

---

<sup>267</sup> Geographical Indications Law, Art. 39

*Geographical Indication*

confiscated, confiscation of rights of third parties, publication of decisions, and broadcasting of decision by audiovisual communication.<sup>268</sup>

---

<sup>268</sup> Id.

## **Chapter 6:**

# **Other Forms of IP**

This final chapter includes a brief overview of two nascent forms of intellectual property in Cambodia, as well as a discussion of future prospects.

### **Integrated Circuit Layout Designs**

Integrated circuits, more commonly referred to as semiconductor or microchips, are afforded a special form of IP in Cambodia under the Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits of March 16, 2011. Layout designs can be registered with the Department of Industrial Property of the Ministry of Industry, Science, Technology and Innovation.

Under the Declaration, an integrated circuit is defined as “a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material, and which is intended to perform an electronic



function.”<sup>269</sup> A layout design is defined as a “three dimensional disposition of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three dimensional disposition prepared for an integrated circuit intended for manufacture.”<sup>270</sup>

To be registerable, a layout design must not have been commercially exploited previously or subject to commercial exploitation for more than two years anywhere in the world.<sup>271</sup> The design must be original, meaning resulting from the creator’s own effort, and not commonplace at the time of creation.<sup>272</sup>

The application form must be accompanied with<sup>273</sup>:

- Title of the integrated circuit,
- Commercial exploitation information,
- Claim of priority, if applicable
- Annexes including any photos/drawings and the description of the layout-design of integrated circuits,
- Power of attorney, if applicant represented by an agent

---

<sup>269</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(2)

<sup>270</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(1)

<sup>271</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 5

<sup>272</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 7

<sup>273</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 12

### *Other Forms of IP*

- Information regarding any previous international registration and evidence setting out such registration
- Receipt of payment for the official fee.

If the application meets the requirements as provided in the Declaration, the Registrar will publish necessary information in the industrial property bulletin prior to the registration the integrated circuit layout designs.<sup>274</sup> Any interested person may file an opposition within 30 days of publication.<sup>275</sup>

After final registration, the layout design may be subject to invalidation, upon request of any interested person, on the grounds that:<sup>276</sup>

- The layout-design of the integrated circuit has been commercially exploited before in any part of the world and the exploitation exceeds two years, or is not original;
- The owner is not the protected person under the Declaration.

The owner of an IC registration may legally exclude others from:<sup>277</sup>

- Reproducing in its entirety or any part thereof, except the act of reproducing any part that does not comply

---

<sup>274</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(1)

<sup>275</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(2)

<sup>276</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 16

<sup>277</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 9

with the requirement of originality, and

- Importing, selling or otherwise distributing for commercial purposes a protected layout-design or any material in which a protected layout-design is incorporated except by authorization from the owner.

The term of protection is ten years from either the date of filing, if the design had not been commercially exploited anywhere in the world, or otherwise the date of initial commercial exploitation.<sup>278</sup>

To date, the Registrar has yet to receive any applications for registration of a layout design. It is foreseen that a full law will be enacted in the future to replace the current Declaration.

## **Plant Breeder's Right**

The Law on Seed Management and Plant Breeder's Right, adopted on April 8, 2008, creates an intellectual property right in new plant varieties, under certain circumstances. While the law has been in place for almost a decade, no implementing regulations have been enacted and the system remains largely untested, with no applications yet to be filed.

The variety may be protected if it is new, distinct, uniform, and stable.<sup>279</sup> The novelty criteria requires that, as of the filing date, the variety has not been sold or otherwise marketed in Cambodia for more than one year, or more than six years in the case of trees

---

<sup>278</sup> Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 11

<sup>279</sup> Law on Seed Management and Plant Breeder's Right, Art. 6

or vines, or more than four years for all other varieties outside of Cambodia.<sup>280</sup> Distinctness requires the variety to be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing or from the priority date.<sup>281</sup> Uniformity requires that the variety be sufficiently uniform in its relevant characteristics, regardless of whether it is reproduced sexually or asexually.<sup>282</sup> Finally, a variety is deemed stable if its relevant characteristics remain unchanged at the end of the cycle of propagation and in each generation.<sup>283</sup>

The applicant must have bred, discovered and developed the plant variety, and be either a Cambodian national, a foreigner domiciled in Cambodia, habitually resident in a party to the International Union for the Protection of New Varieties of Plants (UPOV), or of a country that has concluded a reciprocal MOU with Cambodia.<sup>284</sup> A plant variety may be registered with the Ministry of Industry, Science, Technology and Innovation, which will refer the application to the Ministry of Agriculture, Forestry and Fishery for technical testing.<sup>285</sup> The law states that the application form be accompanied by other documents and information as required by a Decision of the Ministry of Industry, Science, Technology and Innovation, which has yet to be issued. If the technical tests of the Ministry of Agriculture, Forestry and Fishery are positive, and the denomination is acceptable, the Registrar must grant the certificate and publish a notice in the

---

<sup>280</sup> Law on Seed Management and Plant Breeder's Right, Art. 7

<sup>281</sup> Law on Seed Management and Plant Breeder's Right, Art. 8

<sup>282</sup> Law on Seed Management and Plant Breeder's Right, Art. 9

<sup>283</sup> Law on Seed Management and Plant Breeder's Right, Art. 10

<sup>284</sup> Law on Seed Management and Plant Breeder's Right, Art. 13

<sup>285</sup> Law on Seed Management and Plant Breeder's Right, Art. 11

Official Bulletin.<sup>286</sup> The period of opposition is three months from the date of publication.<sup>287</sup>

An application may claim a priority date based on a foreign application filed within the last twelve months in any country that is a member of the International Union for the Protection of New Varieties of Plants.<sup>288</sup>

In addition to the four technical criteria (novelty, distinctness, uniformity and stability), the applicant must denominate, or specify a name, for the variety in accordance with the provisions of law.<sup>289</sup> These denominations must have been designated or registered in a member of UPOV.<sup>290</sup> Those exploiting a protected variety in Cambodia must use the registered denomination, even after expiration of the plant breeder's right, except where a prior right prevents such use.<sup>291</sup> The denomination may also be the subject of a trade name, trademark or other similar indication.<sup>292</sup>

Anyone who produces or reproduces, conditions for the purpose of propagation, offers for sale, sells or markets, imports or exports, or stocks a protected variety shall be found to be infringing.<sup>293</sup> The scope of protection covers all varieties a) which are essentially derived from the protected variety, b) are not clearly distinguishable from it, and c) whose production requires the repeated use of the protected variety.<sup>294</sup> The property right is

---

<sup>286</sup> Law on Seed Management and Plant Breeder's Right, Art. 30

<sup>287</sup> Law on Seed Management and Plant Breeder's Right, Art. 32

<sup>288</sup> Law on Seed Management and Plant Breeder's Right, Art. 24

<sup>289</sup> Law on Seed Management and Plant Breeder's Right, Art. 26(a)

<sup>290</sup> Law on Seed Management and Plant Breeder's Right, Art. 26

<sup>291</sup> Law on Seed Management and Plant Breeder's Right, Art. 27

<sup>292</sup> Id.

<sup>293</sup> Law on Seed Management and Plant Breeder's Right, Art. 15

<sup>294</sup> Id.

subject to several important limitations, namely for experimental, private, and non-commercial purposes, as well as for the purpose of breeding other varieties, with certain exceptions.<sup>295</sup> Further, anyone may request the Ministry of Industry, Science, Technology and Innovation and the Ministry of Agriculture, Forestry and Fishery to grant a compulsory license based on the public interest, subject to adequate remuneration of the right owner.<sup>296</sup>

The term of protection is in general 20 years from the date of granting, except for varieties with special characteristics, such as trees and vines, where the term is 25 years.<sup>297</sup> The right owner may be required to provide the Registrar with a sample of the propagating material, as well as other available information concerning the variety, in order to maintain their right.<sup>298</sup> An annual maintenance fee must be paid to keep the registration in force.<sup>299</sup>

An aggrieved right owner may file a complaint to the competent court seeking damages, provisional measures to prevent infringement, imposition of fines, seizure and destruction of infringing items, and/or compensation.<sup>300</sup> The law provides for criminal penalties only in the case of a defendant knowingly infringing, which is punishable by a fine of between five to twenty million Riels (USD 1,250 to 5,000), imprisonment of one

---

<sup>295</sup> Law on Seed Management and Plant Breeder's Right, Art. 16

<sup>296</sup> Law on Seed Management and Plant Breeder's Right, Art. 35

<sup>297</sup> Law on Seed Management and Plant Breeder's Right, Art. 19

<sup>298</sup> Law on Seed Management and Plant Breeder's Right, Art. 18

<sup>299</sup> Law on Seed Management and Plant Breeder's Right, Art. 37

<sup>300</sup> Law on Seed Management and Plant Breeder's Right, Art. 70

to five years, or both.<sup>301</sup> These penalties are doubled in case of repeat infringement.<sup>302</sup>

## **Future Developments**

While the intellectual property landscape in Cambodia has made significant strides in recent years, with the enactment of important laws and implementing regulations, as well as accession to treaties such as the Madrid Protocol, Patent Cooperation Treaty and Hague Convention, there remain important gaps to be filled. Drafts of a number of other IP laws have been formulated, including on encrypted satellite signals, undisclosed information and trade secrets, and compulsory licensing for public health. In several cases, the drafts have been pending at different stages of the legislative process and it is difficult to predict if and when they will be enacted.

---

<sup>301</sup> Law on Seed Management and Plant Breeder's Right, Art. 72

<sup>302</sup> *Id.*

# Index

Affidavit of use, trademark.....	9
Amendment, patent.....	60
Application	
Copyright.....	30
Geographical indication.....	74
Industrial design.....	66
Integrated circuit.....	83
Patent.....	48
Plant breeder's right.....	86
Trademark.....	3
Utility model certificate.....	47
ASEAN TMview.....	7
Audiovisual works	
Authorship.....	29
Authorship, copyright.....	29
Berne Convention.....	26
Book of specifications, geographical indications.....	76
Border measures.....	20
Broadcasting organization rights.....	39
Cancellation, trademark.....	10, 18
Certification, geographical indication.....	76
Changes, trademark.....	11
Chinese Patent, Validation.....	57
Collaborative works, copyright.....	<i>See</i> Joint Works
Collective management organizations.....	40
Collective management rights.....	40
Collective trademark.....	3
Color trademark.....	2
Company name.....	<i>See</i> Tradename
Computer software	



*Index*

Copyright.....	28
Patent.....	44
Copyrightable works.....	28
Counterfeits .....	20
Customs suspension.....	20
Definition	
Audiovisual works.....	38
Copyright.....	26
Geographical indication .....	72
Industrial design .....	65
Integrated circuit.....	82
Patent.....	44
Plant breeder's right.....	85
Trademark .....	3
Denomination, plant breeder's right.....	87
Department of Intellectual Property Rights .....	3
Deposit, copyright .....	<i>See</i> Registration, copyright
Division, patent.....	60
Duration	
Audiovisual works.....	39
Broadcasting organization rights.....	40
Collaborative works .....	34
Collective management rights .....	40
Copyright.....	34
Geographical indication .....	78
Industrial design .....	68
Integrated circuit.....	85
Patent.....	59
Performance rights.....	37
Phonogram producer rights.....	38
Plant breeder's right .....	88
Trademark .....	10
Utility model certificate .....	47
Employee	
Copyright.....	29
Industrial design .....	67
Patent.....	47

*Index*

European Patent, Validation .....	55
Famous trademark .....	9, 16, 18, 22
Foreign Geographical Indications .....	76
Franchise agreement, trademark .....	11
General Department of Customs and Excise .....	20
Geographical indication association .....	74
Geographical indications, relation to trademarks .....	79
Government exploitation, patent .....	61
Gray market goods .....	<i>See</i> Parallel Imports
Hague System for the International Registration of Industrial Designs .....	64
Industrial applicability, patent .....	46
Infringement	
Copyright .....	41
Geographical indication .....	77, 79
Industrial design .....	70
Integrated circuit .....	84
Patent .....	61
Plant breeder's right .....	87
Trademark .....	22
International Union for the Protection of New Varieties of Plants .....	86, 87
Invalidation	
Industrial design .....	69
Integrated circuit .....	84
Patent .....	62
Trademark .....	16
Inventive step, patent .....	46
Japan, patent cooperation .....	42
Japanese Patent Office, Acceleration of Patent .....	49
Joint works, copyright .....	29
Korean Patents .....	50
License agreement	
Industrial design .....	69
Trademark .....	11
Limitations	
Copyright .....	32

*Index*

Patent.....	61
Performance rights.....	36
Phonogram producer rights.....	38
Lisbon Agreement .....	73
Madrid System.....	6
Maintenance	
Industrial design .....	68
Patent.....	59
Plant breeder's right .....	88
Trademark .....	9
Mediation, trademark .....	24
Ministry of Agriculture, Forestry and Fishery .....	86, 88
Ministry of Commerce .....	74
Ministry of Culture and Fine Arts .....	30, 40
Ministry of Industry and Handicraft.....	42, 48, 50, 54, 55, 64, 66, 68, 82, 86, 88
Ministry of Interior .....	74
Misleading advertising.....	20
Moral rights	
Copyright.....	31
Performers.....	36
Music recording, copyright.....	<i>See</i> Phonogram producer rights
Naming of inventor, patent.....	47
Nice Agreement .....	4
Non-traditional trademark.....	2
Non-voluntary license, patent.....	61
Novelty	
Industrial design .....	65
Integrated circuit.....	83
Patent.....	45
Plant breeder's right .....	85
Official Gazette .....	14, 17, 75
Opposition	
Geographical indication .....	75
Integrated circuit.....	84
Patent.....	62
Plant breeder's right .....	87

*Index*

Trademark .....	14
Parallel imports.....	23
Paris Convention.....	4, 48, 67
Patent Cooperation Treaty .....	43, 48
Patentable inventions .....	43
Penalties	
Copyright.....	41
Geographical indication .....	79
Industrial design .....	70
Patent.....	61
Plant breeder's right .....	88
Trademark .....	24
Performance rights .....	35
Phonogram producer rights .....	37
Priority	
Industrial design .....	65, 67
Patent.....	48
Plant breeder's right .....	87
Trademark .....	4
Prohibitions on registration, trademark .....	8
Provisional refusal, trademark.....	9
Registration	
Copyright.....	30
Geographical indication .....	74
Industrial design .....	66
Integrated circuit.....	83
Plant breeder's right .....	86
Trademark .....	3
Utility model certificate .....	47
Remedies	
Copyright.....	41
Geographical indication .....	79
Industrial design .....	70
Patent.....	61
Plant breeder's right .....	88
Trademark .....	22
Removal, trademark.....	17

*Index*

Renewal	
Industrial design .....	68
Trademark .....	10, 18
Right to patent.....	47
Rights conferred	
Audiovisual producer.....	38
Broadcasting organization rights.....	39
Copyright.....	31
Geographical indication .....	77
Industrial design .....	68
Integrated circuit.....	84
Patent.....	60
Performance rights.....	35
Phonogram producer rights.....	37
Plant breeder's rights.....	87
Trademark .....	13
Satellite signal encryption.....	89
Scope, geographical indication.....	73
Search, trademark.....	7
Singapore cooperation	
Industrial designs.....	64
Patents.....	42
Singaporean Patent, Re-Registration.....	54
Trade secrets .....	20, 89
Tradename .....	3
Trade-Related Aspects of Intellectual Property Rights.....	26
Transfer, copyright .....	35
Unfair Competition .....	19
Utility model certificates .....	47
Vienna Agreement .....	4
Well-known trademark.....	<i>See</i> Famous trademark
WIPO Global Brand Database.....	7
World Trade Organization .....	2, 26, 42, 67

## Quick Reference: Trademark

### Applicable Laws & Regulations (selected)

- Law on Marks, Trade Name and Acts of Unfair Competition
- Sub-Decree on the Implementation of the Law on Marks, Trade Name and Acts of Unfair Competition
- Announcement on Minimum Requirement for Mark Registration
- Announcement on Recordal of License Contract and Franchise Contract
- Announcement on Collective Mark Registration
- Instruction on the Acknowledgement of Exclusive Right in the Use of Mark
- Prakas (Declaration) on the Procedures to Record an Exclusive Distributorship
- Prakas (Declaration) on the Procedures for Registration and Protection of Certification Marks
- Prakas (Declaration) on the Procedures for Filing Trademark Application Online
- Prakas (Declaration) on the Recordal of License Contract and Franchise Contract

## **Filing Requirements**

- Full name of applicant;
- Full address of applicant;
- A specimen of the mark;
- International classification, and goods and/or services specification; and
- Certified copy of priority document, if applicable
- Notarized power of attorney, if applicable

## **Duration & Renewal Requirements**

- Initial 10-year term from filing of application
- Indefinite 10-year renewal terms
- Affidavit of use or non-use must be submitted in fifth year of registration

## **Official Fees**

- Application Filing: USD 110 per mark, per class

## **Quick Reference: Patent**

### **Applicable Laws & Regulations (selected)**

- Law on Patents, Utility Model Certificates and Industrial Designs
- Law on Amendment of the Article 37, 38, 109 and 136 of Patents, Utility Model Certificates and Industrial Designs
- Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates
- Prakas (Declaration) on Acceleration of Patent Registration for Japanese Patent Applications
- Prakas (Declaration) on Registration of Singaporean Patent

### **Filing Requirements**

- Full name, address, and nationality of applicant and inventor;
- International classification of the patent
- Priority claim information and certified copy of application, if applicable
- Patent specifications (title, description, claims, abstract, and drawings)



- Notarized power of attorney
- Notarized statement justifying applicant's right

### **Duration & Renewal Requirements**

- 20 years from filing date, subject to annual maintenance fees

### **Official Fees**

- Application Filing: USD 80 for up to 10 claims + USD 5 per additional claim
- Granting of Certificate: USD 150
- Publication: USD 30

## **Quick Reference: Copyright**

### **Applicable Laws & Regulations (selected)**

- Law on Copyright and Related Rights
- Prakas on Collective Management Organization

### **Filing Requirements**

- Full name of Author(s)
- Date of first publication of work
- Date of creation of work
- Record of author's right
- Notarized power of attorney, if applicable

## **Duration & Renewal Requirements**

- Most works: Life of the author + 50 years
- Anonymous, pseudonymous works, collective, audiovisual & posthumous works: 75 years from publication
- Performance works: 50 years from fixation, or if not fixed, then from performance
- Phonograms: 50 years from publication, or if not published, from fixation
- Broadcasts: 50 years from broadcasting

## **Official Fees**

- Application Filing: USD 15

## **Quick Reference: Industrial Design**

### **Applicable Laws & Regulations (selected)**

- Law on Patents, Utility Model Certificates and Industrial Designs, 2003
- Law on Amendment of the Article 37, 38, 109 and 136 of Patents, Utility Model Certificates and Industrial Designs
- Prakas (Declaration) on the Procedure for Registration of Industrial Designs, 2006 and 2021

### **Filing Requirements**

- Name, address, nationality and contact details of the applicant and inventor;
- Title of the industrial design;
- International classification of the industrial design;
- Indication of the kinds of products for which the industrial design is to be used;
- Indication of novelty and protectable points of industrial design;
- Short description of industrial design;
- Drawings, photographs or other adequate graphic

representation of the article;

- An original notarized Power of Attorney, if applicable;
- An original notarized statement justifying the applicant's right, if applicable;
- A certified copy of the priority documents and English translation thereof, if claimed.

### **Duration & Renewal Requirements**

- Initial term of five years from filing of application
- Two renewal terms of five years each, for a total of 15 years

### **Official Fees**

- Application Filing: USD 20
- Issuance: USD 50
- Publication: USD 30

## **Pheng Thea**

Pheng Thea is a Partner at Abacus IP, a full-service intellectual property agency in the Kingdom of Cambodia. A seasoned IP professional, Mr. Pheng is licensed by the Cambodian Ministry of Commerce's Department of Intellectual Property and certified by the World Intellectual Property Organization.

Prior to founding Abacus IP, Mr. Pheng lead the IP prosecution practice at a leading Cambodian law firm. His practice involved the registration and maintenance of hundreds of trademarks, patents, industrial designs and other forms of IP on behalf of innovators and businesses from around the globe.

Mr. Pheng is a graduate of the faculty of law of Pannasastra University of Cambodia. In addition, he holds a Certification in Intellectual Property Specialization from the World Intellectual Property Organization and the University of South Africa.

**David Haskel**

David Haskel is a Partner at Abacus IP, a full-service intellectual property agency in the Kingdom of Cambodia. A member of the State Bar of California, David maintains a broad practice across all areas of intellectual property in Cambodia

Prior to founding Abacus IP, David served as managing partner of a leading Cambodia law firm in Phnom Penh, representing clients in a wide range of commercial and IP matters. He has further legal experience with law firms in Silicon Valley, San Francisco and Berlin. Before entering the legal profession, David worked as a research associate with a non-partisan think tank in San Francisco.

David holds a Juris Doctor from the University of California, Berkeley, with a specialization in law and technology, as well as a Bachelor of Arts in political economy from the same institution. Having also studied at Sciences Po in Paris and Tsinghua University in Beijing, he speaks English, French, German and Mandarin.