



The Complete Guide to **INTELLECTUAL PROPERTY** **IN CAMBODIA**

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Intellectual Property in
Cambodia

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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 largely 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 hundreds of 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.

In 1997, the Intellectual Property Division 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 Committee

Governing the Three Areas of IP was established to prepare laws relating to 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 the last few 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.¹ 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.

¹ Trademark Law, Art. 2

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A collective mark is 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.²

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.³ Trade names that, by their nature or use, are contrary to public order, morality, or are deceptive as to the enterprise identified, are prohibited.⁴ Trade names are protected, even without registration, against unlawful acts of third parties.⁵ 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). The department will accept a single mark application

² Id.

³ Id.

⁴ Trademark Law, Art. 20

⁵ Trademark Law, Art. 21(a)

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with multiple classes, but the official filing fee must be paid for each class. Foreign mark applicants must be represented by a Cambodian trademark agent residing and practicing in the Kingdom of Cambodia.⁶ 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.⁷

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.

For a mark application claiming a priority date under the Paris Convention, it must be made within six months from the date of the earlier application. The application must contain the name of 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.⁸

⁶ Trademark Law, Art. 58

⁷ Sub-Decree on Implementation of the Trademark Law, Art. 7

⁸ Sub-Decree on Implementation of the Trademark Law, Art. 13

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The minimum requirements for filing are as follows:⁹

- Full name of applicant;
- Full address of applicant;
- 15 specimens of mark for each class;
- International classification, and goods and/or services specification;
- Official fee of USD 105 for each class.

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). 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. 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 with the requirements of the Trademark Law and the certificate of

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

mark registration will be granted after the registration fee has been paid.

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. This greatly simplifies and reduces the cost of the process, as more than 110 countries are part of the system. Following Cambodia's accession to the Madrid Protocol, the Cambodian government enacted a new 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 complete database of trademark registrations and applications is maintained as part of the WIPO Global Brand Database, available directly through the WIPO website¹⁰ or

¹⁰ <http://www.wipo.int/branddb/kh/en/>

through the D/IPR website¹¹. In addition, ASEAN TMview¹², 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 registerability search report will indicate whether the mark can or cannot be registered, whereas the similarity search will only reveal prior marks that are similar and identical.

Prohibitions on Registration

A mark cannot be validly registered if it is:¹³

- 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

¹¹ <http://www.cambodiaip.gov.kh/SearchMark.aspx>

¹² <http://www.asean-tmview.org>

¹³ Trademark Law, Art. 4

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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 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 of these points, the D/IPR will issue a notification of provisional refusal of mark registration. The applicant or appointed agent has to reply to D/IPR within 60 days. Another 45 days will be given, upon the request for extension of time. If the D/IPR does not receive a

response within this period, the mark application will be lapsed and the application fee will not be refunded.

Maintaining a Mark

In order to maintain or renew the registration, the 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 renewal when the registered mark has been renewed.¹⁴ The Registrar will remove the registered mark from the registry if the owner or their legal representative fails to comply with this provision.¹⁵

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.

The minimum requirements for filing a request for endorsement of affidavit of use/non-use are an original/duplicate mark registration certificate and an original signed affidavit of use/non-use form. Only the original mark certificate/duplicate mark certificate issued by the D/IPR is acceptable. The process for recordal of affidavit of use/non-use takes approximately four to five months to be completed.

The certificate of mark registration is valid for ten years from the date of filing mark application and may be renewed for consecutive periods of ten years indefinitely.¹⁶ The renewal mark application may be submitted to the D/IPR within six months

¹⁴ Sub-Decree on the Implementation of the Trademark Law, Art. 21

¹⁵ Id.

¹⁶ Trademark Law, Art. 12

preceding the expiry of the registration.¹⁷ In case the owner of the registered mark or their legal representative fails to submit the mark renewal application within six months preceding the expiry of the registration, it can still be submitted in a grace period of another six months. 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. In this case, the owner of the registered mark or their legal representative can submit a request for affidavit of use/non-use before or together with a renewal application.

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. All changes will be published in an online database of the D/IPR and WIPO. 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 may be registered and recorded with the D/IPR. Licenses for pending applications may not be recorded. 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

¹⁷ Sub-Decree on the Implementation of the Trademark Law, Art. 22

control is not effectively enforced, the license contract will be invalid.¹⁸ 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 license contract has no effect against third parties.¹⁹ 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.²⁰

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.²¹

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

¹⁸ Trademark Law, Art. 19

¹⁹ Trademark Law, Art. 52

²⁰ Announcement No. 0738

²¹ Trademark Law, Art. 27

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

As soon as an 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.²² A notarized POA is required if an opponent is being represented by a Cambodian trademark agent.

Under the Trademark Law, the grounds for opposition are²³:

- The registration does not satisfy the definition of a mark as “any visible sign capable of distinguishing the goods or services of an enterprise.”²⁴
- Incapable of distinguishing the goods or services of one enterprise from those of other enterprises;²⁵
- Contrary to public order or morality or good custom;²⁶
- Likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or

²² Trademark Law, Art. 10(c)

²³ Id.

²⁴ Trademark Law, Art. 2(a)

²⁵ Trademark Law, Art. 4(a)

²⁶ Trademark Law, Art. 4(b)

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services concerned or their nature or characteristics;²⁷

- 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;²⁸
- 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;²⁹
- 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 are likely to be damaged by such use; or³⁰
- 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

²⁷ Trademark Law, Art. 4(c)

²⁸ Trademark Law, Art. 4(d)

²⁹ Trademark Law, Art. 4(e)

³⁰ Trademark Law, Art. 4(f)

closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.³¹

- The application did not comply with the procedural requirements of the Registrar, including payment of the official fees.³²

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 abandon the registration.³³ A hearing may be held upon the request from either party.³⁴

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 D/IPR on the grounds that it is indistinguishable or it is contrary to public interest as prescribed in the Article 2(a) and Article 4(a-g) of Trademark Law.³⁵ These are the same grounds as for opposition, with the exception that opposition may be based upon procedural deficiencies under Article 5. The Registrar will

³¹ Trademark Law, Art. 4(g)

³² Trademark Law, Art. 5

³³ Trademark Law, Art. 10(d)

³⁴ Trademark Law, Art. 10(e)

³⁵ Trademark Law, Art. 13

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 Appeal Board of the Ministry of Commerce or competent court within three months from the date of the decision.³⁶

Removal

Removal allows for any interested person to submit a request in writing for removal of the registered mark on the ground 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.³⁷ However, the registered mark may not be removed from the Registry if the registered owner or licensee proves that special circumstance 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.³⁸ 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.³⁹

³⁶ Sub-Decree on Implementation of the Trademark Law, Art. 24(7)

³⁷ Trademark Law, Art. 15

³⁸ Id.

³⁹ Sub-Decree on Trademark Law, Art. 21(4)

Cancellation

The D/IPR has the right to cancel a registered mark on the following conditions:⁴⁰

- 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.

⁴⁰ Trademark Law, Art. 14

Unfair Competition

The Trademark Law also contains provisions on acts of unfair competition. The law states a broad prohibition on unlawful acts of competition that are contrary to honest practices in industrial, commercial, or service-related matters.⁴¹ The following acts are deemed to constitute acts of unfair competitions:⁴²

- 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;
- 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 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.

⁴¹ Trademark Law, Art. 22

⁴² Trademark Law, Art. 23

Counterfeits & Border Measures

A trademark owner may request to have customs clearance suspended for goods suspected of being counterfeited.⁴³ The customs authorities may also suspend clearance on their own initiative when they have *prima facie* evidence that the goods are counterfeit.⁴⁴ 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.⁴⁵

Both the courts and the General Department of Customs and Excise are competent to accept and decide on the application for customs suspension.⁴⁶ The application must include:⁴⁷

- 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 appropriate;
- Name and address of applicant and representative;
- An authorization from trademark owner to file the

⁴³ Trademark Law, Art. 35

⁴⁴ Trademark Law, Art. 43

⁴⁵ Trademark Law, Art. 61

⁴⁶ Trademark Law, Art. 35

⁴⁷ Trademark Law, Art. 36

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.⁴⁸ In case the authorities determine the suspension was wrongful, the applicant may be required to pay compensation to the importer.⁴⁹

According to the law, the court or customs authority will notify the applicant within ten working days of the request.⁵⁰ If the application is successful, the goods will be suspended at clearance for an initial period, as stated in the notification.⁵¹ The importer will immediately be notified of the suspension, including the reasons therefore.⁵² The applicant then has ten working days to file an infringement complaint to the competent court, otherwise the goods will be released.⁵³ Once a complaint has been filed, the defendant may request a hearing before the customs authority to have the suspension modified, revoked or confirmed.⁵⁴

Following a court decision, the customs authorities have the power to order destruction of the counterfeit goods.⁵⁵ Re-exportation of the goods is expressly forbidden.⁵⁶

⁴⁸ Trademark Law, Art. 38

⁴⁹ Trademark Law, Art. 41

⁵⁰ Trademark Law, Art. 37

⁵¹ Trademark Law, Art. 39

⁵² Id.

⁵³ Trademark Law, Art. 40

⁵⁴ Id.

⁵⁵ Trademark Law, Art. 46

⁵⁶ Id.

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 as act of infringements:

- 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.⁵⁷
- 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 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

⁵⁷ Trademark Law, Art. 24

the interests of the owner are likely to be damaged by such use.⁵⁸

- 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.⁵⁹

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 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.⁶⁰

⁵⁸ Trademark Law, Art. 25

⁵⁹ Trademark Law, Art. 26

⁶⁰ Trademark Law, Art. 27

In practice, remedies for acts of infringement obtained through court proceeding are costly, time-consuming, and complicated. Conversely, the D/IPR can act as mediator in settling any infringement disputes. Any party to a mark 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. Infringers of 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.⁶¹ The fine and sentence for counterfeiting are doubled for a repeated offense.⁶²

Acts of unfair competition are subject to a fine from 5,000,000 to 10,000,000 million Riels (approximately USD 1,250 to USD 2,500) and to imprisonment from one month to one year, or both.⁶³ Repeat offenders are subject to double in both 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

⁶¹ Trademark Law, Art. 64

⁶² Trademark Law, Art. 67

⁶³ Trademark Law, Art. 65

nor consented to the commission of the offence.⁶⁴ 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.⁶⁵

⁶⁴ Trademark Law, Art. 68

⁶⁵ 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) but is not a member of the Berne Convention for the Protection of Literary and Artistic Works. Most recently, on July 5, 2016, the Ministry of Culture and Fine Arts issued a Prakas (declaration) on the Collective Management Organization (CMO). CMOs are formed by copyright owners to manage their rights in common, by administering licenses, collecting royalties, and enforcing rights on their behalf.

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, scientific, artistic or musical.⁶⁶ The law lists thirteen broad types of copyrightable works:⁶⁷

- 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;

⁶⁶ Law on Copyright and Related Rights, Art. 2

⁶⁷ Law on Copyright and Related Rights, Art. 7

Copyright & Related Rights

- Architectural works;
- Maps, plans, sketches or works pertaining to geography, topography, or other sciences;
- 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:⁶⁸

- 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.

⁶⁸ Law on Copyright and Related Rights, Art. 10

Authorship

It is presumed that the author is the natural person or persons in whose name the work is created and disclosed.⁶⁹ Upon creation, the author is the first holder of the moral and economic rights.⁷⁰ 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.⁷¹ 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.⁷² Unanimous and written consent of all co-authors is required to exercise their rights.⁷³ 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.⁷⁴ For audiovisual works (ex. films), it is presumed that the following are co-authors:⁷⁵

- Director;
- Author of scenario;
- Author of adaptation;
- Author of the spoken text;

⁶⁹ Law on Copyright and Related Rights, Art. 11

⁷⁰ Law on Copyright and Related Rights, Art. 16

⁷¹ Id.

⁷² Law on Copyright and Related Rights, Art. 12

⁷³ Id.

⁷⁴ Id.

⁷⁵ Law on Copyright and Related Rights, Art. 15

- 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.

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.⁷⁶ 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.⁷⁷ Works must be "original", meaning they are the true intellectual creation of their author.⁷⁸

Works of authors will be automatically protected where:⁷⁹

- The authors are nationals of, or have their habitual residence in Cambodia, including legal entities established under Cambodian law and having headquarters located in the territory of Cambodia;
- Works first published in the Kingdom of Cambodia, including works first published abroad that were then published in Cambodia within 30 days of their first communication to the public;
- Audiovisual works, the producer of which has his

⁷⁶ Law on Copyright and Related Rights, Art. 38

⁷⁷ Law on Copyright and Related Rights, Art. 5

⁷⁸ Law on Copyright and Related Rights, Art. 4

⁷⁹ Law on Copyright and Related Rights, Art. 3

headquarters or habitual residence in Cambodia;

- Works of architecture erected in Cambodia and other artistic works incorporated in a building or other structure located in Cambodia;
- Works for which Cambodia has obligation to grant protection under international treaties.

The protection required under international treaties merits particular attention, as many foreign copyright holders mistakenly believe their works are automatically protected in Cambodia. This is not the case, due to an important exception. While Cambodia is a member of the World Trade Organization and thus bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which requires, through the Berne Convention, to automatically extend copyright protection to foreign works, Cambodia is exempted from this obligation as a least developed country until July 1, 2021.⁸⁰ Until this exemption expires, foreign works will not be protected unless they satisfy the requirements specified above regarding a connection to 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.⁸¹ 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

⁸⁰ See WTO Extension of the Transition Period, Art. 66.1

⁸¹ Law on Copyright and Related Rights, Art. 39

of USD 15, the Registrar will issue a certificate of registration.⁸² Under current practice, it usually takes around 14 days to obtain the certificate. The primary benefit of the registration is to serve as an evidence should a dispute arise.

Rights of Authors

Authors' rights are divided into two categories - moral rights and economic rights - which are enforceable against all persons.⁸³ Moral rights are as follows:⁸⁴

- 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.⁸⁵

⁸² Law on Copyright and Related Rights, Art. 40

⁸³ Law on Copyright and Related Rights, Art. 18

⁸⁴ Law on Copyright and Related Rights, Art. 20

⁸⁵ Law on Copyright and Related Rights, Art. 19

Copyright & Related Rights

Economic rights are the exclusive rights to exploit the work, through authorization of reproduction, communication to the public, and creation of derivative works, specifically:⁸⁶

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

⁸⁶ Law on Copyright and Related Rights, Art. 21

Limitations on the Rights of Authors

Importation and copying of copyrighted works, with certain exceptions, is permitted for personal use.⁸⁷ Further limitations allow for:⁸⁸

- 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;

⁸⁷ Law on Copyright and Related Rights, Arts. 23 and 24

⁸⁸ Law on Copyright and Related Rights, Arts. 25 and 29

- 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 principle 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.⁸⁹

Duration of Economic Rights

Economic rights begin at the date of creation, and end fifty years after the death of the author.⁹⁰ For collaborations, the economic rights expire fifty years after the death of the last surviving author.⁹¹ When the work is published anonymously or under a different name, the period of protection is seventy-five years after publication.⁹² 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.⁹³ This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.⁹⁴

⁸⁹ Law on Copyright and Related Rights, Art. 26

⁹⁰ Law on Copyright and Related Rights, Art. 30

⁹¹ Id.

⁹² Law on Copyright and Related Rights, Art. 31

⁹³ Id.

⁹⁴ Id.

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.⁹⁵ 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.⁹⁶ Economic rights can be transferred to the author's heir or any third party by the author's will.⁹⁷ When no heir or will exists, the Ministry of Culture and Fine Arts shall be responsible for governing and administering the economic rights.⁹⁸

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.⁹⁹ Crucially, the rights reside in the *performers*, rather than others involved in the production, such as directors, authors, composers or choreographers.¹⁰⁰ The performer has the exclusive right to undertake and authorize the following:¹⁰¹

- Broadcasting and communicating the performance to the public, with certain exceptions;
- Recording the performance, and reproducing thereof;

⁹⁵ Law on Copyright and Related Rights, Art. 34

⁹⁶ Law on Copyright and Related Rights, Art. 32

⁹⁷ Law on Copyright and Related Rights, Art. 33

⁹⁸ *Id.*

⁹⁹ Law on Copyright and Related Rights, Art. 2 (c)

¹⁰⁰ Law on Copyright and Related Rights, Art. 2 (d)

¹⁰¹ Law on Copyright and Related Rights, Art. 41

- 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 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 on the live performance or in the recording.¹⁰² The performers further retain the moral right to prevent all deformation, mutilation or other modifications of the performance that prejudice their reputation.¹⁰³ 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.¹⁰⁴

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:¹⁰⁵

- Reporting of short fragments for news events;

¹⁰² Law on Copyright and Related Rights, Art. 42

¹⁰³ Id.

¹⁰⁴ Law on Copyright and Related Rights, Art. 43

¹⁰⁵ Law on Copyright and Related Rights, Art. 50

- 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 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.¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸ 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

¹⁰⁶ Law on Copyright and Related Rights, Arts. 54 and 55

¹⁰⁷ Law on Copyright and Related Rights, Art. 53 (1)

¹⁰⁸ Law on Copyright and Related Rights, Art. 2 (j)

reproductions, sales, exchanges, leases and communication to the public require the producer's authorization.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹

The limitations concerning performance rights, described above, also apply to phonogram producers.¹¹² Likewise, the same provisions regarding transfer and deposit of an author's rights, described above, apply to phonogram producer rights.¹¹³

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.¹¹⁴

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.¹¹⁵ The producer is the natural or legal person who has the initiative and responsibility in recording the work.¹¹⁶ All reproduction of the recording for purpose of communicating

¹⁰⁹ Law on Copyright and Related Rights, Art. 45

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Law on Copyright and Related Rights, Art. 50

¹¹³ Law on Copyright and Related Rights, Arts. 54 and 55

¹¹⁴ Law on Copyright and Related Rights, Art. 53 (2)

¹¹⁵ Law on Copyright and Related Rights, Art. 2 (g)

¹¹⁶ Law on Copyright and Related Rights, Art. 46

to the public, sale, exchange and lease requires the producer's authorization.¹¹⁷ The transfer of audiovisual rights must be made together with the author's rights and performer's rights incorporated into the production.¹¹⁸

The limitations concerning performance rights, described above, also apply to audiovisual producers.¹¹⁹

Audiovisual works are protected for seventy-five years from the end of the calendar year in which they were made accessible to the public.¹²⁰ This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.¹²¹

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.¹²² Reproduction of a broadcast for sale, lease, exchange, broadcasting or communicating to the public requires the organization's authorization.¹²³

The limitations concerning performance rights, described above, also apply to broadcasting organizations.¹²⁴ Likewise, the same

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Law on Copyright and Related Rights, Art. 50

¹²⁰ Law on Copyright and Related Rights, Art. 31

¹²¹ Id.

¹²² Law on Copyright and Related Rights, Art. 47

¹²³ Law on Copyright and Related Rights, Art. 48

¹²⁴ Law on Copyright and Related Rights, Art. 50

provisions regarding transfer and deposit of an author's rights, described above, apply to broadcasting organization rights.¹²⁵

The duration of protection of the broadcasting program is fifty years following the end of the calendar year in which the program was broadcast.¹²⁶

Collective Management Rights

Collective management organizations (CMO) can be established by authors, performers, phonogram and audiovisual producers to protect and manage their economic rights.¹²⁷ 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.¹²⁸ 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.¹²⁹ The registration is valid for a period of five years and the registration can be renewed for subsequent two-year terms indefinitely.¹³⁰

¹²⁵ Law on Copyright and Related Rights, Arts. 54 & 55

¹²⁶ Law on Copyright and Related Rights, Art. 53 (3)

¹²⁷ Law on Copyright and Related Rights, Art. 56

¹²⁸ Prakas on Collective Management Organization, Art. 4

¹²⁹ Prakas on Collective Management Organization, Arts. 6 and 7

¹³⁰ Prakas on Collective Management Organization, Art. 8

Natural and legal person interested in exploiting works controlled by the CMO may seek an authorization and pay remuneration.¹³¹ The 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.¹³² 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.¹³³

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.¹³⁴

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.¹³⁵

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).¹³⁶

¹³¹ Prakas on Collective Management Organization, Art. 11

¹³² Id.

¹³³ Prakas on Collective Management Organization, Art. 12

¹³⁴ Law on Copyright and Related Rights, Art. 57

¹³⁵ Id.

¹³⁶ 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. The Law on Patents, Utility Models and Industrial Designs has been amended on the article 37, 38, 109 and 136 on 24 November 2017. The Law is complemented by a Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, dated June 29, 2006.

Patents are registered with the Department of Industrial Property of the Ministry of Industry and Handicraft (MIH). While several hundred applications have been filed in the years since the enactment of the law, none had been granted. In 2015, the MIH 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. Similarly, the MIH also signed a Joint Statement of Intent on Cooperation for Facilitating Patent Grant of Cambodia-related Patent Application with the Japan Patent Office (JPO) on May 04, 2016, which allows for a further option for filing through the JPO. In

order to implement the Memorandum and the Joint Statement, the Ministry of Industry and Handicraft issued two new Prakas (Declarations) on July 25, 2016 on the procedures for accelerating, registering and granting the patent in Cambodia.

Looking forward, similar agreements were signed with the European Patent Office and the State Intellectual Property Office of China in 2017. On 8 December 2017, the Ministry of Industry and Handicraft issued one Prakas (Declaration) on the procedures of validation of European Patent in Cambodia. In addition, the implementing regulation with the State Intellectual Property Office of China will be detailed in our next edition..

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 process.¹³⁷ Any invention can be the subject of a patent, except for:¹³⁸

- Discoveries, scientific theories and mathematical models;
- Schemes, rules or methods for doing business,

¹³⁷ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 3

¹³⁸ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 4

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.¹³⁹

Computer software is patentable if it is a:¹⁴⁰

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

¹³⁹ Plant varieties are protected under the Law on Seed Management and Plant Breeder's Right (Royal Kram No NS/RKM/0508/015)

¹⁴⁰ Prakas on the Procedure for the Grant of Patents and Utility Model Certificates, Rule 44

- 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.¹⁴¹

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.¹⁴²

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

¹⁴¹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 6

¹⁴² *Id.*

Inventive Step

Second, an invention must involve an “inventive step.”¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵

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.¹⁴⁶ Whereas a patent expires twenty years after filing, a utility model certificate expires after seven years, with no possibility of renewal.¹⁴⁷ Applicants may, prior to grant

¹⁴³ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 7

¹⁴⁴ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 8

¹⁴⁵ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 9

¹⁴⁶ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 69

¹⁴⁷ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 73

or refusal, apply for their patent application to be converted into a utility model application, and vice versa.¹⁴⁸ The conversion may only be done once.¹⁴⁹

Right to Patent & Naming of Inventor

Only the inventor or inventors have a right to a patent.¹⁵⁰ 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.¹⁵¹ Unless agreed otherwise, the right to patents of inventions made pursuant to an employment contract belong to the employer.¹⁵² The inventor's name will be stated on the patent, unless the inventor opts to remain anonymous.¹⁵³

Application Process

Patent applications can be filed with the Department of Industrial Property of the Ministry of Industry and Handicraft.

Applications may claim priority based on an earlier national, regional or international patent application, according to the Paris Convention¹⁵⁴ and the Patent Cooperation Treaty. In such case, the Department of Industrial Property will request a

¹⁴⁸ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 75

¹⁴⁹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 76

¹⁵⁰ Law on Patents, Utility Model Certificates and Industrial Designs, Arts. 10 & 11

¹⁵¹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 12

¹⁵² Law on Patents, Utility Model Certificates and Industrial Designs, Art. 14

¹⁵³ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 15

¹⁵⁴ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 27

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.¹⁵⁵ 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.¹⁵⁶ If the application claims a prior filing date, a certified copy of the priority application is required¹⁵⁷ and must be submitted within three months from the request's date by the Registrar.¹⁵⁸ Where a certified copy of the priority documents is in a language other than Khmer, it must be translated into Khmer and be submitted to the Registrar within six months from the request.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ Further, a notarized statement justifying the applicant's right is required where the

¹⁵⁵ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 16

¹⁵⁶ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 18

¹⁵⁷ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 28

¹⁵⁸ Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 20 (5)

¹⁵⁹ Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 20 (6)

¹⁶⁰ Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 11

¹⁶¹ Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 33 (1)

applicant is not an inventor of the claimed invention.¹⁶² 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.

Acceleration of Patent Application 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 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 Department of Industrial Property of the Ministry of Industry and Handicraft 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.¹⁶³

¹⁶² Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates, Art. 6 (3)

¹⁶³ Prakas on the Acceleration of Patent Grant under the CPG, Art. 5

Re-Registration of a Singaporean Patent

The Intellectual Property Office of Singapore (IPOS) and Cambodia's Ministry of Industry and Handicrafts 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 for five years from January 20, 2015 and can be renewed upon the mutual consent of both parties.¹⁶⁴ After the Ministry of Industry and Handicraft 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, 2003.¹⁶⁵

The request for registration of a Singaporean patent must be made to the Department of Industrial Property of the Ministry of Industry and Handicraft, and accompanied by a payment of the filing fee, a certified copy certificate of grant of the Singaporean patent, a certified copy of final specifications, a copy of abstract and a copy of original notarized POA if a local patent agent is appointed.¹⁶⁶ 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

¹⁶⁴ Memorandum of Understanding on the Co-Operation in Industrial Property, Art. 10

¹⁶⁵ Prakas on the Registration of Singapore Patent in Cambodia, Art. 5

¹⁶⁶ Prakas on the Registration of Singapore Patent in Cambodia, Art. 4

request for registration.¹⁶⁷ The registration fee and annual fee must be paid within three months from date of Registrar's notification.¹⁶⁸

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.¹⁶⁹

Decisions of the Ministry of Industry and Handicraft 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 Industry and Handicraft, signed January 23, 2017, holders of European patent applications may apply to have their patents validated, thereby extending their rights to the Kingdom of Cambodia. The Agreement was ratified by Royal Kram on November 24, 2017¹⁷⁰ and the validation procedures set forth in a Prakas (declaration) dated December 8, 2017.¹⁷¹

¹⁶⁷ Id.

¹⁶⁸ Prakas on the Registration of Singapore Patent in Cambodia, Art. 10(3)

¹⁶⁹ Prakas on the Registration of Singapore Patent in Cambodia, Art. 11

¹⁷⁰ Royal Kram No. NS/RKM/1117/017 on the Ratification of the Agreement on Validation of European Patents

¹⁷¹ Prakas (declaration) No. 282 MIH/2017 on the Regulation and Procedures for the Validation of European Patents in Cambodia

Patent

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 and Handicraft.

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.

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

Patent Duration and Annual Fees

A patent is valid for 20 years from its filing date, subject to payment of the following annual maintenance fees¹⁷²:

Year	Official Fee (USD)	Year	Official Fee (USD)
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

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.¹⁷³ Up until the application is ready to be granted, the

¹⁷² Joint Prakas (Declaration) on Public Service Fees, dated July 8, 2015

¹⁷³ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 23

application may be amended, so long as it does not go beyond the original disclosures.¹⁷⁴ Similarly, the application may be divided into two or more applications.¹⁷⁵

Patent Rights

The core patent right is the right to prevent others from exploiting the patented invention.¹⁷⁶ “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.¹⁷⁷

The patent owner can institute court proceedings against any infringer, or anyone who performs acts which make infringement likely to occur.¹⁷⁸

Certain limitations to patent rights exist, namely:¹⁷⁹

- 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;

¹⁷⁴ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 24

¹⁷⁵ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 25

¹⁷⁶ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 41

¹⁷⁷ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 42

¹⁷⁸ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 43

¹⁷⁹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 44

- 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.¹⁸⁰ 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.¹⁸¹ Repeat infringers are subject to double fines and imprisonment.¹⁸²

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 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.¹⁸³ 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.¹⁸⁴ In either case, the patent owner has a right to a hearing and the payment of adequate remuneration.¹⁸⁵

¹⁸⁰ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 126

¹⁸¹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 133

¹⁸² Id.

¹⁸³ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 47

¹⁸⁴ Id.

¹⁸⁵ Id.

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.¹⁸⁶ However, the patent owner may prevent the issuing of the non-voluntary license if they can show justifying circumstances.¹⁸⁷ As with government and third-party exploitation, the patent owner is entitled to compensation.¹⁸⁸

Invalidation

Any interested party may request the invalidation of a granted patent.¹⁸⁹ 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 exploitation is contrary to public order, morality, or prohibited by law.¹⁹⁰ Further grounds for invalidation include insufficient description, improper claims or insufficient drawings.¹⁹¹

¹⁸⁶ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 56

¹⁸⁷ *Id.*

¹⁸⁸ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 57

¹⁸⁹ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 65

¹⁹⁰ Law on Patents, Utility Model Certificates and Industrial Designs, Art. 66

¹⁹¹ *Id.*

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 a Prakas (Declaration) on the Procedure for Registration of Industrial Design of 2006. Industrial designs are registered with the Department of Industrial Property of the Ministry of Industry and Handicraft. 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 65 territories through one single international application. Together with Cambodia's recent accession to the Patent Cooperation Treaty and the Madrid System for International Registration of Trademarks, this development radically 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.”¹⁹² 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.¹⁹³

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.¹⁹⁴ 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

¹⁹² Law on Patents, Utility Models and Industrial Designs, Art. 89

¹⁹³ Law on Patents, Utility Models and Industrial Designs, Art. 90

¹⁹⁴ Law on Patents, Utility Models and Industrial Designs, Arts. 91 & 92

party.¹⁹⁵ Industrial designs that are contrary to public order or morality cannot be registered in Cambodia.¹⁹⁶

Application Process

Industrial design applications are filed with the Department of Industrial Property of the Ministry of Industry and Handicraft. The application form and any documents forming a part of an application must be submitted in the Khmer.¹⁹⁷ 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;

The application form must be submitted with drawings, photographs or other adequate representation of the article. As

¹⁹⁵ Law on Patents, Utility Models and Industrial Designs, Art. 92

¹⁹⁶ Law on Patents, Utility Models and Industrial Designs, Art. 93

¹⁹⁷ Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 7

soon as the required documentation is submitted and an official fee is paid to the Department of Industrial Property, the Registrar will provide an application number and filing date to the applicant.¹⁹⁸

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 Cambodia¹⁹⁹. The applicant must provide an original notarized power of attorney to the Registrar within two months from the filing date.²⁰⁰

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.²⁰¹ The period of priority is six months from the date of filing of the first application.²⁰² 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.²⁰³ 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.²⁰⁴

¹⁹⁸ Law on Patents, Utility Models and Industrial Designs, Art. 101

¹⁹⁹ Law on Patents, Utility Models and Industrial Designs, Art. 116

²⁰⁰ Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 18

²⁰¹ Law on Patents, Utility Models and Industrial Designs, Arts. 100 & 27

²⁰² Paris Convention, Art. 4

²⁰³ Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 11

²⁰⁴ *Id.*

The current processing time is approximately four to six months from application to obtaining the registration certificate, assuming all the requirements are fulfilled.²⁰⁵ This estimate is based on past experience and may take longer depending on the workload of the Registrar. Decisions of the Ministry of Industry and Handicraft regarding the registration or refusal of an industrial design may be appealed to the competent court within three months of the decision.²⁰⁶

Re-registration of Singaporean Industrial Designs

The Intellectual Property Office of Singapore (IPOS) and Cambodia's Ministry of Industry and Handicrafts concluded a Memorandum of Understanding permitting for the re-registration of Cambodian industrial designs through the Singaporean authority, and vice versa. The Memorandum of Understanding is valid for five years from 20 January 2015 and may be renewed upon the consent of both parties. The implementation of the MOU is currently waiting for enactment of enabling regulations, and thus applications are not yet accepted for re-registration.

Rights, Duration and Renewal

The core industrial design right is the right to prevent others from exploiting the registered industrial design.²⁰⁷ "Exploitation"

²⁰⁵ Law on Patents, Utility Models and Industrial Designs, Art. 103

²⁰⁶ Law on Patents, Utility Models and Industrial Designs, Art. 124

²⁰⁷ Law on Patents, Utility Models and Industrial Designs, Art. 105

means the making, selling or importing of articles incorporating the industrial design.²⁰⁸ 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.²⁰⁹ Cambodia follows the principle of national exhaustion, meaning that parallel imports, also known as grey market goods, are held to be infringing.²¹⁰

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.²¹¹ The renewal application form must be submitted, along with the original registration certificate, within six months preceding expiration of the registration.²¹² 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.²¹³

Invalidation

Any interested party may request the invalidation of a granted industrial design to the competent court.²¹⁴ The request will be

²⁰⁸ Law on Patents, Utility Models and Industrial Designs, Art. 106

²⁰⁹ Law on Patents, Utility Models and Industrial Designs, Art. 108

²¹⁰ Law on Patents, Utility Models and Industrial Designs, Art. 107

²¹¹ Law on Patents, Utility Models and Industrial Designs, Art. 109

²¹² Prakas (Declaration) on the Procedures for Registration of Industrial Design, Art. 16

²¹³ *Id.*

²¹⁴ Law on Patents, Utility Models and Industrial Designs, Art. 110

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.²¹⁵ An invalidated registration is deemed null and void from the date of registration.²¹⁶ The competent court has to notify the Department of Industrial Property for their record and publication.²¹⁷

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 writing and be recorded and published by the Registrar. Such change will have no effect against third parties until such recording is completed.²¹⁸ Similarly, license contracts need to be recorded in the registry, or else are ineffective against third parties.²¹⁹ 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

²¹⁵ Law on Patents, Utility Models and Industrial Designs, Art. 111

²¹⁶ Law on Patents, Utility Models and Industrial Designs, Art. 112

²¹⁷ Law on Patents, Utility Models and Industrial Designs, Art. 113

²¹⁸ Law on Patents, Utility Models and Industrial Designs, Art. 114

²¹⁹ Law on Patents, Utility Models and Industrial Designs, Art. 115

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.²²⁰ 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.²²¹ 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.²²²

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 occurred within five years from the date of previous conviction.²²³

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.²²⁴

²²⁰ Law on Patents, Utility Models and Industrial Designs, Art. 125

²²¹ Law on Patents, Utility Models and Industrial Designs, Art. 126

²²² Id.

²²³ Law on Patents, Utility Models and Industrial Designs, Art. 133

²²⁴ 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, two geographical indications have been registered to date – Kampot Pepper and Kampong Speu Palm Sugar, both in 2010. They subsequently received protection in Vietnam (December 2016), Thailand (March 2017) and the European Union (February 2016 for Kampot Pepper, the application for Kampong Speu Palm Sugar is still pending.) Further potential geographical indications include Kep flower of salt, Kratie pomelo, Phnom Srok silk, Battambang fragrant rice, Battambang oranges, Siem Reap prahok, and Kampot durian.

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.²²⁵ 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.²²⁶ The Geneva Act will enter into force three months after five eligible parties have deposited their instruments of ratification or accession.²²⁷

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.²²⁸

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

²²⁵ Law on Geographical Indications Law, Art. 25

²²⁶ “Cambodia first to join the Geneva Act of WIPO’s Lisbon Agreement” – WIPO Press Release, March 9, 2018.

²²⁷ Id.

²²⁸ Law on Geographical Indications Law, Art. 3

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.²²⁹ 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.²³⁰

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.²³¹ 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. At present, two associations have been established – the Association for the Promotion of Kampong Speu Palm Sugar and the Kampot Pepper Promotion Association.

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

²²⁹ Book of Specifications of Kampot Pepper

²³⁰ Book of Specifications of Kampong Speu Palm Sugar

²³¹ Law on Geographical Indications Law, Art. 7

product and a receipt of the filing fee.²³² 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.²³³ If the application is deemed deficient, the applicant has six months to rectify the issues identified or 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.²³⁴ 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 date²³⁵, providing any interested party the opportunity to oppose the registration.²³⁶ Oppositions must be filed within 90 days of publication on the grounds provided in the Articles 4 (definition

²³² Law on Geographical Indications Law, Art. 8

²³³ Law on Geographical Indications Law, Art. 9

²³⁴ Law on Geographical Indications Law, Art. 11

²³⁵ Prakas No. 422 (Declaration) on Geographical Indications, Art. 15

²³⁶ Law on Geographical Indications Law, Art. 12

of GI) and 10 of the Law on Geographical Indications²³⁷, otherwise the registration shall be final.

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.²³⁸ The foreign GI must be registered in accordance with the laws of its country of origin and must not have fallen into disuse there.²³⁹

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.²⁴⁰ The application and opposition procedures are the same as for domestic applicants, as described above.²⁴¹

As of the date of publication, two foreign geographical indications have been applied for in Cambodia.

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.

²³⁷ Law on Geographical Indications Law, Art. 16

²³⁸ Law on Geographical Indications Law, Art. 19

²³⁹ Id.

²⁴⁰ Law on Geographical Indications Law, Art. 20

²⁴¹ Id.

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, but otherwise can be freely chosen by the GI Association.²⁴² 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.²⁴³ 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.²⁴⁴

The body is responsible for reporting any cases of non-compliance to the Ministry of Commerce, and the countermeasures and sanctions taken.²⁴⁵ 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.²⁴⁶

²⁴² Law on Geographical Indications Law, Art. 26

²⁴³ Id.

²⁴⁴ Id.

²⁴⁵ Id.

²⁴⁶ Law on Geographical Indications, Art. 27

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.²⁴⁷ This right may not be transferred to a third party.²⁴⁸ The owner of a GI, meaning the association, can complain to the competent court against any person who has engaged in unauthorized use of the GI. This is defined as any:²⁴⁹

- 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

²⁴⁷ Law on Geographical Indications Law, Art. 22

²⁴⁸ Id.

²⁴⁹ Law on Geographical Indications Law, Art. 23

origin of the goods.

A GI registration is valid indefinitely from the date of filing of the application, unless cancelled or invalidated.²⁵⁰

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.²⁵¹ 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.²⁵² 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.²⁵³

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.²⁵⁴ Any infringing goods that are imported, exported, sold or offered for

²⁵⁰ Law on Geographical Indications Law, Art. 24

²⁵¹ Law on Geographical Indications Law, Art. 31

²⁵² Id.

²⁵³ Id.

²⁵⁴ Law on Geographical Indications Law, Art. 37

sale can be confiscated by the competent authorities upon a court decision, irrespective of anyone being convicted of an offence.²⁵⁵

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:²⁵⁶

- 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.

²⁵⁵ Id.

²⁵⁶ Law on Geographical Indications Law, Art. 39

Geographical Indication

Additional criminal penalties apply to legal entities found to be responsible for infringement of the geographical indication.²⁵⁷ 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 confiscated, confiscation of rights of third parties, publication of decisions, and broadcasting of decision by audiovisual communication.²⁵⁸

²⁵⁷ Geographical Indications Law, Art. 39

²⁵⁸ 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 and Handicraft.

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.”²⁵⁹ A layout design is defined as a “three dimensional

²⁵⁹ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(2)

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.”²⁶⁰

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.²⁶¹ The design must be original, meaning resulting from the creator’s own effort, and not commonplace at the time of creation.²⁶²

The application form must be accompanied with²⁶³:

- 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
- Information regarding any previous international registration and evidence setting out such registration

²⁶⁰ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 3(1)

²⁶¹ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 5

²⁶² Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 7

²⁶³ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 12

- 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.²⁶⁴ Any interested person may file an opposition within 30 days of publication.²⁶⁵

After final registration, the layout design may be subject to invalidation, upon request of any interested person, on the grounds that:²⁶⁶

- 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:²⁶⁷

- Reproducing in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality, and
- Importing, selling or otherwise distributing for

²⁶⁴ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(1)

²⁶⁵ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 15(2)

²⁶⁶ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 16

²⁶⁷ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 9

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.²⁶⁸

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.²⁶⁹ 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 or vines, or more than four years for all other varieties outside of Cambodia.²⁷⁰ Distinctness requires the variety to be clearly

²⁶⁸ Prakas (Declaration) on the Registration of Layout Design of Integrated Circuits, Art. 11

²⁶⁹ Law on Seed Management and Plant Breeder's Right, Art. 6

²⁷⁰ Law on Seed Management and Plant Breeder's Right, Art. 7

distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing or from the priority date.²⁷¹ Uniformity requires that the variety be sufficiently uniform in its relevant characteristics, regardless of whether it is reproduced sexually or asexually.²⁷² Finally, a variety is deemed stable if its relevant characteristics remain unchanged at the end of the cycle of propagation and in each generation.²⁷³

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.²⁷⁴ A plant variety may be registered with the Ministry of Industry and Handicraft, which will refer the application to the Ministry of Agriculture, Forestry and Fishery for technical testing.²⁷⁵ The law states that the application form be accompanied by other documents and information as required by a Decision of the Ministry of Industry and Handicraft, 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 Official Bulletin.²⁷⁶ The period of opposition is three months from the date of publication.²⁷⁷

²⁷¹ Law on Seed Management and Plant Breeder's Right, Art. 8

²⁷² Law on Seed Management and Plant Breeder's Right, Art. 9

²⁷³ Law on Seed Management and Plant Breeder's Right, Art. 10

²⁷⁴ Law on Seed Management and Plant Breeder's Right, Art. 13

²⁷⁵ Law on Seed Management and Plant Breeder's Right, Art. 11

²⁷⁶ Law on Seed Management and Plant Breeder's Right, Art. 30

²⁷⁷ Law on Seed Management and Plant Breeder's Right, Art. 32

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.²⁷⁸

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.²⁷⁹ These denominations must have been designated or registered in a member of UPOV.²⁸⁰ 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.²⁸¹ The denomination may also be the subject of a trade name, trademark or other similar indication.²⁸²

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.²⁸³ 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.²⁸⁴ The property right is 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.²⁸⁵ Further,

²⁷⁸ Law on Seed Management and Plant Breeder's Right, Art. 24

²⁷⁹ Law on Seed Management and Plant Breeder's Right, Art. 26(a)

²⁸⁰ Law on Seed Management and Plant Breeder's Right, Art. 26

²⁸¹ Law on Seed Management and Plant Breeder's Right, Art. 27

²⁸² *Id.*

²⁸³ Law on Seed Management and Plant Breeder's Right, Art. 15

²⁸⁴ *Id.*

²⁸⁵ Law on Seed Management and Plant Breeder's Right, Art. 16

anyone may request the Ministry of Industry and Handicraft 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.²⁸⁶

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.²⁸⁷ 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.²⁸⁸ An annual maintenance fee must be paid to keep the registration in force.²⁸⁹

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.²⁹⁰ 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 to five years, or both.²⁹¹ These penalties are doubled in case of repeat infringement.²⁹²

²⁸⁶ Law on Seed Management and Plant Breeder's Right, Art. 35

²⁸⁷ Law on Seed Management and Plant Breeder's Right, Art. 19

²⁸⁸ Law on Seed Management and Plant Breeder's Right, Art. 18

²⁸⁹ Law on Seed Management and Plant Breeder's Right, Art. 37

²⁹⁰ Law on Seed Management and Plant Breeder's Right, Art. 70

²⁹¹ Law on Seed Management and Plant Breeder's Right, Art. 72

²⁹² *Id.*

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, compulsory licensing for public health, as well as antitrust law. 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.

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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

Filing Requirements

- Full name of applicant;
- Full address of applicant;
- 15 specimens of mark for each class;
- 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 105 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
- Prakas (Declaration) on the Procedure for Registration of Industrial Designs, 2006
- Prakas on Registration of Singaporean Patents and Industrial Designs, 2016

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 the co-founder and principal of 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 co-founder and director of 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.

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