

## Contents

- Trademarks
- Patents & Utility Models
- Industrial Designs
- Copyright
- Geographical Indicators
- Integrated Circuits
- Trade Secrets
- Right of Publicity

Intellectual property is a vital asset for many firms doing business in Cambodia. Whether it be to distinguish goods from those of a competitor, protecting the fruits of research investment, or maintaining the confidentiality of financial plans, IP considerations surface in virtually all industries.

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of several laws regulating intellectual property rights. While it will be a number of years before Cambodia comes into full WTO compliance, investors can take advantage of this developing regulatory framework and seek out protection for their inventions, trademarks, industrial designs, and other creative products.

Although the laws are still in the early stages of development, relatively efficient procedures for registering and enforcing important IP rights are in place. Ignoring or postponing registering IP assets can be very costly in the long run.

This publication provides an overview of the principal areas of IP in Cambodia. Where there is no specific law – such as trade secrets or right of publicity – relevant articles of other laws are discussed. For more specific information, the reader is directed to our individual publications on each of the major IP regimes.

## Trademarks

Trademarks allow their owners to prevent others from using identical or confusingly similar marks on their goods and services. Every enterprise operates under a trade name, and most also have trademarks that are separately protectable.

Indeed, registering and enforcing one's trademarks is crucial to differentiating one's products from those of competitors. While unregistered trade names receive a degree of protection, proper registration is a virtual necessity for any successful business.

Trademarks and related IPRs are protected under the Law on Marks, Trade Names and Acts of Unfair Competition of 2002. The Law lists the steps for registering a trademark and the scope of protection. An applicant who has already registered a mark in another member country of the Paris Convention will have priority in registering the mark in Cambodia.



The application process begins with the filing of an application form, fifteen specimens of the mark, and if filed by an agent, an original notarized power of attorney. Unless the application is rejected and requires an appeal, it usually takes about four months from filing to issuance of the final certificate.

Registrations are valid for ten years, renewable for successive ten-year terms. In the sixth year of the initial term, and of each renewal term, the mark owner must submit an Affidavit of Use or Non-Use, and pay an official fee.

The Law also provides procedures for opposing, invalidating, and cancelling the marks of third parties. This can be crucial to prevent others from registering marks that are confusingly similar to one's own.

A trademark owner has the right to prevent others from infringing their mark. The three main enforcement options are: i) sue in civil court for money damages and/or specific relief, ii) request the customs authorities to suspend clearance of imported infringing goods, and iii) seek criminal prosecution and/or fines.

Trademark law is the most developed field of IP in Cambodia. Though enforcement could be improved, registration procedures are well established and routinely practiced.

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## CAMBODIAN IP LAWS:

- Law on Marks, Trade Names, and Acts of Unfair Competition (2002), procedural sub-decree (2006)
- Law on Patents, Utility Model Certificates, and Industrial Designs (2003) , procedural sub-decree (2006)
- Law on Copyright and Related Rights (2003)
- Law on Plant Variety Protection (2008)
- Prakas on Geographical Indication Registration (2009)
- Prakas on the Registration of Integrated Circuit Layout Design (2011)

## IP LAWS REMAINING TO BE PASSED:

- Law on Trade Secret and Undisclosed Information
- Law on Geographical Indications
- Law on Compulsory Licensing for Public Health
- Law on Integrated Circuits and Layout Design

## IP TREATY MEMBERSHIP

- Paris Convention for the Protection of Industrial Property (1883)
- WIPO Convention (1967)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)
- Convention on Biological Diversity (1992)

## Patents & Utility Models

Patents and utility models protect the technical aspects of inventions. To receive a patent or utility model, the invention must be new and industrially applicable. For a patent, the invention must also involve an inventive-step, meaning it is not obvious to one skilled in the art. This is the key difference between the two - a utility model can be obvious, whereas a patentable invention cannot.

The Law on Patents, Utility Models and Industrial Designs (2003) governs this area of IP. A protectable invention can be any idea which permits in practice the solution to a specific problem in the field of technology. The Law categorically excludes certain types of inventions, such as scientific theories and mathematical formulae. It also excludes inventions which are not socially “useful”, as they would harm public health or morality, such as illegal narcotics.

In exchange for a patent or utility model, the inventor must disclose the invention to the public. This way the body of public knowledge increases, and is available to all once the term of protection expires.

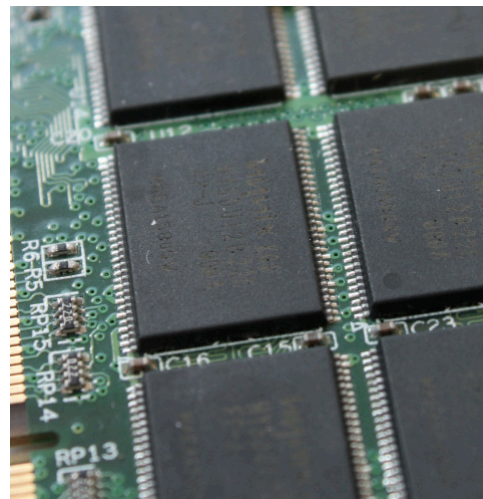
Patents last for 20 years from the date of filing. Utility models are valid for only 7 years. As utility models are less inventive than patented inventions, they are deemed to merit a shorter term of exclusivity. Owners of either must pay an annual maintenance fee, which increases over time, to keep the registration alive.

Patent applications are filed with the Department of Industrial Property of the Ministry of Industry, Mines, and Energy (MIME). While Cambodia is not a party to the Patent Cooperation Treaty, the Law provides a procedure for registering foreign applications in Cambodia.

Patent owners need to be aware that their rights are subject to revocation and abridgement by the government. The Ministry has the right to exploit a patented invention itself, or allow a third party to do the same, to promote the public interest (e.g. national defense, nutrition, health, and development).

Further, holders who delay in exploiting their inventions risk having the government grant others licenses without their permission. Looking to the future, the government is currently considering a new law on compulsory licenses for certain drug patents.

The owner of a patent has the right to exclude others from making, importing, selling, stocking, offering for sale, and using infringing products. Both licensees and the patent owner have the right to bring a civil suit, seeking monetary damages and injunctive relief. The Law, however, does not provide a procedure for suspension of customs clearance for infringing goods.



## Industrial Designs

Industrial designs protect a product’s special appearance, so long as it is new. The owner has the right to exclude others from exploiting the design, by making or selling it, for example.

The design can be a composition of lines or colors, a three-dimensional shape, or a novel material. Any technical product features are not protected, as that is the domain of patent law. Nor does it extend in a way that leaves no freedom as to arbitrary features of appearance.

As with patents and utility models, industrial designs are registered with the Department of Industrial Property of the Ministry of Industry, Mines, and Energy. In practice, the registration procedures are very similar.

Industrial design registrations last for a period of five years from the filing date, renewable for two further consecutive five-year terms, for a total of fifteen years.

Industrial designs are closely related to both copyrights and trademarks. In fact, there is significant overlap amongst the three, though each covers a different aspect of the product.

## Copyright

Cambodia’s Law on Copyright and Related Rights (2003) provides protection for original works of authorship. Books, sculptures, architecture, computer programs, paintings, photographs, musical compositions and many other types of work are governed by the Law.

Authors have both economic and moral rights to their works. Economic rights relate to the commercial exploitation of the work, and allow the author to prevent others from making copies or derivative works.

For most authors, the economic rights expire fifty years after their death. Special rules apply

|                                  | SUBJECT MATTER   | TERM   | REGISTRATION                                       |
|----------------------------------|--|--|--|
| Trademark                        | Any visible sign capable of distinguishing the goods or services of an enterprise  | 10 years, renewable indefinitely                       | Mandatory<br>Ministry of Commerce                  |
| Patent                           | Inventions that are new, industrially applicable, and involve an inventive step  | 20 years   | Mandatory<br>Ministry of Industry, Mines, & Energy |
| Utility Model                    | Inventions that are new and industrially applicable  | 7 years  | Mandatory<br>Ministry of Industry, Mines, & Energy |
| Industrial Design                | Any composition of lines or colors, or any three-dimensional form, or any material, so long as it gives a special appearance to a product  | 5 years, renewable twice                               | Mandatory<br>Ministry of Industry, Mines, & Energy |
| Copyright                        | Original works of authorship   | Life of the author + 50 years, with certain exceptions | Voluntary<br>Ministry of Culture & Fine Arts       |
| Geographical Indicator           | A name or sign used on a products which corresponds to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin.   | 10 years, renewable indefinitely                       | Mandatory<br>Ministry of Commerce                  |
| Integrated Circuit Layout Design | 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 | 10 years, nonrenewable                                 | Mandatory<br>Ministry of Industry, Mines, & Energy |

***"Unlike trademarks, patents, and most other IPRs, there is no need to register a copyright. Works are protected automatically from the time of creation."***

for anonymous, pseudonymous, posthumous, collective, and audiovisual works.

Moral rights, on the other hand, are perpetual and non-transferable. They allow an author to prevent the destruction or modification of their work, to insist on public attribution as the author, and to decide on the manner and timing of the work's publication.

The Law limits these rights in a number of ways. For instance, reproducing a work for non-commercial educational or private home use is generally permitted. Contrary to public perception, copyright is not an absolute right to prohibit all uses of one's work.

Unlike trademarks, patents, and most other IPRs, there is no need to register a copyright. Works are protected automatically from the time of creation.

Nevertheless, there is a voluntary deposit procedure to register works with the Ministry of Culture and Fine Arts. Though the Law does not require, nor specify any particular advantage to registering, it could help in enforcing one's rights in administrative or judicial proceedings.

### **Geographical Indicators**

A geographical indication is a name or sign used on certain products which corresponds to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin. Examples of well-known geographical indications include Champagne, Florida Oranges, and Prosciutto di Parma. With a registered GI, regional producers should be better able to distinguish their goods from those of competitors,



## ABOUT US

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Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

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and hopefully charge a premium price.

Since early 2009, GIs are registrable with the Ministry of Commerce under an interim regulation, as the National Assembly considers a full GI law to comply with its WTO obligations.

As part of the registration procedure, the applicant must submit a Book of Specifications detailing the geographical area, production conditions, and qualification process for the products. Both domestic and foreign GIs can be registered. The initial term of protection is for ten years, renewable indefinitely.

Thus far, there have been two applications for GI registrations – Kampot Pepper and Palm Sugar from Kompung Speu. Both are still pending and should be issued some time in 2010.

## Integrated Circuits

The layout design of integrated circuits, also known as microchips, can be registered through the Ministry of Industry, Mines and Energy.

The design must not have been commercially exploited before or was subject of commercial exploitation for a period not exceeding two years in any part of the world. In addition, it must be original, meaning that it is a result of its creator's own intellectual effort, and is not commonplace among creators of designs and manufacturers of integrated circuits at the time of its creation.

Registrations are valid for a period of ten years, with payment of an annual annuity.

## Trade Secrets

A trade secret is typically defined as any commercially valuable information that is not known, nor readily ascertainable, and is subject to reasonable efforts to maintain its secrecy.

Cambodia has no law specific to trade secrets, though a draft is under consideration. Nevertheless, provisions in a variety of laws impose duties of confidentiality and penalties for divulgence of commercial secrets.

Non-disclosure agreements are often used to maintain the confidentiality of information that needs to be shared, with an employee or contractor for example. Such agreements are contracts like any other, and should be enforceable under the Contract Law (1988).

The Law on Commercial Enterprises (2005) prohibits the unauthorized publication of a firm's financial statements. It also requires the Ministry of Commerce to maintain the confidentiality of most company documents in its records. The Law on Audit (2000) also imposes a duty of confidentiality



on government auditors.

The Law on Banking and Financial Institutions (1999) prohibits certain people from disclosing any confidential information in accounting or administrative documents. The Law provides for criminal penalties of up to five years imprisonment and \$60,000 in fines.

As in virtually every country, the Law on the Bar (1995) requires lawyers to maintain client confidences.

Finally, the newly promulgated Penal Code (2010) contains several provisions on point. It must be noted that only part of this new code is currently in force, the rest coming into effect in 2011. Under the new code, any person who holds, by reason of their position, profession, function or mission, confidential information, and divulges such information, is subject to criminal prosecution. The Law also criminalizes the intercepting of mail, tapping into telephone calls, and hacking of computer networks.

## Right of Publicity

The right of publicity allows an individual to prohibit or control the use of his identity for commercial purposes. This would prohibit, for instance, placing on a product's package a photograph of someone without their permission. There is no law in Cambodia specifically on point, nor are any drafts currently under consideration.

The unauthorized use of someone's identity for commercial purposes may be considered a form of unfair competition, in violation of "honest practice". However, to the author's knowledge, this has never been tested in a Cambodian court of law.

Perhaps the only legal provision treating the right of publicity is Article 26 of the Law on Copyright and Related Rights (2003), which prohibits unauthorized biographies.