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## IP & Technology

### **Prakas No 368 dated November 01, 2016 regarding Procedure for International Registration of Mark**

The purpose of this Prakas is to implement the Madrid Protocol and the Procedure for International Registration and Protection of Marks. The Prakas sets out the procedure for the registration of marks in Cambodia. It covers all persons or entities with Cambodian nationality or who reside permanently in Cambodia or run a legal commercial and industrial establishment in Cambodia.

The applicant shall submit its application which includes its name and address (or representative address as the case may be), specimen of the mark to be registered, the specification of goods or services produced and the country chosen for registration to the Department of Intellectual Property (DIP) of the Ministry of Commerce (MoC).

The Prakas provides for two main procedures for the international registration of mark: procedure under which Cambodia is an origin country and that under which Cambodia is chosen as a country for international registration.

In case where Cambodia is the origin country, the DIP shall review and certify whether or not the application fulfill all the requirements for registration. Once the application meets all the requirements, the DIP shall send the application to International Bureau (IB) of WIPO. If the application does not meet the requirements, DIP will notify the applicant to rectify its application within seven days.

If Cambodia is chosen as a country of registration, the DIP shall review the mark in accordance with the applicable laws and regulations. The DIP will decide if the mark shall be protected or not. If it is not protected, DIP will issue a temporary rejection, which should be communicated to the IB. In the meantime, the applicant of this rejected mark can lodge a complaint in accordance with the procedure set forth by the Sub-Decree on Marks and Relevant Provisions. After sending the temporary rejection of protecting a mark to IB, the DIP shall issue a final decision where it shall states one of the below statements:

- The temporary rejection is revoked and the applied mark is fully protected in Cambodia; or
- The temporary rejection is revoked in part and the mark is protected in Cambodia with regard to certain goods and services that are applied for; or
- The mark application is fully rejected.

## Labor Law and National Social Security

### **Inter-ministerial Prakas N°173 on the Mechanism for the Settlement of Health Care Service**

The Prakas is aimed at establishing the procedure for the payments of medical treatment and health care services and transportation services provided by recognized medical facilities to patients, injured persons, or corpses covered by the Social Security Fund. There are two modes of payments: payment per case and payment per type of service.

The payment per case is a flat fee payment, which is determined by two parameters: the types of conditions/diseases and the types of recognized medical facilities. For example, the fee for birth delivery (type of condition) at local health center (type of recognized medical facilities) is 80,000 riels and the fee for small injury surgery (type of condition) at a level-1 referral hospital (type of facilities) 16,000 riels.

The payment per type of service is applicable to special cases that include the types of conditions (as described in the payment per case) plus special services or cares, for example

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an injury treatment which includes imaging, blood infusion, etc.

The Prakas provides a schedule of flat fees for the payment per case and a list of additional cares and services for payment per type of service.

The payment for the transportation of the patients or the injured persons in case of emergency, seriously ill-persons or bodies is applied to those who have used the service of recognized local medical facility's ambulance or any means of transportation with proper proven documents. Any local hospitals which signed the MOU with National Social Security Fund must apply the payment procedure adopted by the Ministry of Labor and Vocational Training and Ministry of Health.

### **Joint-Prakas No. 291 on the Agreement on the Use and Provision of Health Care Service Between National Social Security Fund (NSSF) and Health Care Service Facilities**

This Prakas has a purpose to determine the modalities and procedure on using and providing health service between the NSSF and health care service facilities.

In this Prakas, public health care service facilities have an obligation to sign an agreement with NSSF. Private health care service facilities can sign agreements with NSSF only if they are licensed by the Ministry of Health and have been evaluated by NSSF on the basis of their service standards and quality.

NSSF can sign agreement with health care service facilities depending on the needs, geographical locations, and the facilities' conditions as well as adequate infrastructure resources for providing health services, such as ability to provide treatment service and medical care, health prevention service, patient referral service or victim, and corpse transportation service. They must meet with the following sets of quality:

- Proper buildings and good hygiene environment
- Medicine, materials, equipment, and medical tools and other necessary methods for supporting the diagnosis and providing the treatment and care following the rules, regulations, and other licenses of the Ministry of Health. Health employees must have technical competency and ethics and the facilities must be adequately staffed.

Service fee payment to health care service facilities can be made only if there is a determination on possibility of providing treatment service and medical care, the level of fee payment according to the case type, and the level of fee payment according to service type by NSSF as well as it shall not be lower than the level which is set by the Ministry of Health.

NSSF can decline all the service fee payment or a part of fee service which is submitted by health care service facilities in the following cases:

- Health service which is provided more than necessary conditions of health or disease.
- Intervention or form of diagnosis, treatment and care which are not in conformity with the treatment protocol or with technical guidelines adopted by the Ministry of Health.
- Using no quality medicine or having no clear source or without license, which is acknowledged by the Ministry of Health, and issuing improper prescription.
- Forged document or misinformation for the reimbursement of service fee.

## **Public Law**

### **Royal Kram No. 0816/013 on the Promulgation of the Law on the Management of the Donation, Implantation of Cells, Tissues, and Human Organ (PCM)**

Law on the Management of the Donation, Implantation of Cells, Tissues, and Human Organs which is promulgated on June 30, 2016 has the purpose of improving the quality, efficiency, and transparency in life saving treatment and enhancing the welfare of the citizens by implanting cells, tissues, or human organs and preventing cell, tissue, or human organ trafficking.

This Law sets rules and procedure in the management of donation, implantation of cell, tissue, and human organ with safety and conformity with professional ethics.

The donation and the receiving of human organ shall follow the conditions as follows:

#### 1. General principle

Donation and the receipt of human organ shall:

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- Respect the will of the donor and the recipient or be for the purpose of charity and humanity

- Not be made for trade purpose and not be commercially advertised

The term “trade” in this Law is referred to cell, tissue, or human organ trafficking form in order to make personal benefits.

- Ensure health safety of the donor and the recipient, and

- Keep confidential about the information about the donor and the recipient unless otherwise agreed by parties or unless it is stipulated by law.

### 2. Donor

- Donor shall have the age at least 18 years old and has enough ability to making a decision and judgment on the result of their activity in conformity with the law.

- For mentally handicapped persons, the donation of cell, tissue, and organ is prohibited even if there is an agreement from their parents or guardians.

- Donor has the right or allows the removal of their cell, tissue, and any organ by the voluntary donation for the purpose of disease treatment and not making any trade.

- Donor and recipient shall agree with each other in writing. This written agreement shall be made in front of the committee of implantation cell, tissue, and human organ. In case that the donor or recipient is illiterate, the agreement shall be taken in minutes that the parties are illiterate have agreed for the hospital to make a surgery and changing of their organ.

- Donor shall receive health care, welfare before, during, and after the donation, from the hospital which implants cell, tissue, and organ, at the hospital's expenses.

### 3. Recipient

- Recipient who waits for the donation of cell, tissue, or organ of any person who hasn't agreed with each other beforehand, the recipient shall register in the waiting list.

Besides these conditions, health professionals, hospital, and Ministry of Health, have duties as below:

#### 1. Duties for health professionals

- The health professionals of the hospital shall explain about the process of cell, tissue, and human organ donation and all consequences, or impacts, or danger which could happen to the donor before asking for the acceptance

- The health professionals of the hospital shall guarantee that donating person really understands and has full ability on the decision of donation

- The health professionals who has been allowed by the Ministry of Health to work relating to the implantation of cell, tissue, and human organ shall explain about the process of implantation of cell, tissue, or human organ, and all advantages, consequences, impacts, or danger which are associated with the implantation before having the acceptance from the recipient

- Every request on the acceptance on the donation of cell, tissue, or human organ shall be written in two copies, a copy of which should be retained at the hospital implanting cell, tissue, or organ, and another at the Ministry of Health

- After the removal of cell, tissue, or human organ, the health professionals of the hospital shall take measures to take care of cell, tissue, or human organ which has been removed by respecting technical principles.

#### 2. Duties of Hospital

- Hospital shall be responsible for creating a committee for the implantation of cell, tissue, or human organ to evaluate the capacity and ability to donate the cell, tissue, or organ; following up the progression of recovery after the surgery to remove cell, tissue, or organ until the health of the donor has become normal; providing treatment and follow-up on the health issue which is associated with the donation of cell, tissue, and organ

- The implantation of cell, tissue, and human organ shall not be allowed for the purpose of commerce

- The advertisement in the character of commerce related to buying and selling of human organ shall be prohibited.

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### 3. Duties of the Ministry of Health

- The Ministry of Health shall conduct inspections of all activities related to implantation of cell, tissue, or organ

- Hospital and health professionals in the implantation of cell, tissue, or human organ shall ask for the information from the Ministry of Health

This Prakas also determine the criminal penalties for those who violate this Law.

### **Circular No. 08 on The Management of All Types of Markets in Cambodia**

Markets and lands in general belong to the state. However, the government grants the right of possession, right of use, and right of usufruct to those who occupy the stands, or other vending shops in the markets. These occupants can transfer their right of possession, right of use, and right of usufruct to their descendants or other people.

There are four types of markets:

1. Type A markets: These markets consist of buildings and other supporting amenities, which are donated by the government.

In Type A markets, the term of the rights of possession, use, and usufruct is not limited. Occupants can transfer those rights to their descendants and third parties. They have no obligation to pay for rentals, but must pay duties and applicable taxes.

2. Type B Markets: Those that belong to the state but are auctioned off to private bidders to collect duties from vendors. The vendors receive the right of possession, right of use, and right of usufruct on the stall or others selling locations.

In Type B markets, occupants have unlimited term of rights of possession, use, and usufruct. They can transfer those rights to their descendants and third parties. They have the obligation to pay for rentals of locations and duties and applicable taxes.

3. Type C Markets: Those that the government grants the private investors the right to invest in buildings and other supporting amenities on the state's property. The term of investment is limited, during which the investors are allowed to recoup and benefit from the costs of investment by collecting duties and rentals of stalls, shops, and stands. Investors must pay royalties to the cities or provincial governments. At the end of the term, the investors must return the markets to the state.

Existing occupants prior to the private investment are allowed to continue their rights of possession, use, and usufruct. They can transfer those rights to their descendants or third parties. They must pay for rentals to investors, duties and other applicable taxes. After the end of the investment term, the term of the rights of possession, use, and usufruct is not limited. They can transfer those rights to their descendants or third parties. They must pay for rentals to investors, dues and other applicable taxes.

4. Type D Markets: It is a type of concession granted by the government. The term of concession is limited. The investors must buy lands from the state and build the markets and other amenities. Investors must pay royalties to the cities or provincial governments. At the end of the term, the investors must return the markets to the state. At the end of the term, the investors must return the markets to the state. [Editor's note: It is not clear why lands that are bought by the concessionaire must be returned to the state. They should have right of ownership from the lands from the purchase].

The rights and obligations of the occupants in Type C markets also apply for those in Type D markets.