

Applicable procedures to challenge and enforce rights in appellations of origin and geographical indications in the Kingdom of Cambodia

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The applicable procedures to challenge and enforce rights in appellations of origin and geographical indications in the Kingdom of Cambodia are detailed in Articles 19 to 21 of the Law on Geographical Indications of January 20, 2014, as well as the Ministerial Regulation (Prakas) of December 29, 2016, on the Procedure for the Registration and Protection of Geographical Indications.

For ease of reference, the relevant provisions are reproduced hereunder.

I. OPPOSITION

A- Law on Geographical Indications of January 20, 2014

(Chapter 3: Procedure for Geographical Indication Registration, Section III: Opposition)

Article 15: Duration of Opposition

Within 90 (ninety) days from the publication date of the registration as provided in Article 12 of this law, any interested person may oppose the geographical indication registration to the Ministry of Commerce.

Article 16: Opposition Conditions

The grounds for opposition against the geographical indication registration are:

a. Non-compliance with the definitions relating to geographical indication within Article 4 of this law.

b. That the registered geographical indication is not able to be registered as geographical indication as stated in Article 10 of this law and regulations.

Article 17: Opposition Procedure

The Ministry of Commerce shall notify the applicant of the opposition in writing. The applicant shall submit a counter-statement within 45 days from the notification date. At the request of applicant, the Ministry of Commerce may provide an extension for another 45 days;

The Ministry of Commerce shall notify its decision and the reason for its decision to the applicant and the opponent;

The decision of the Ministry of Commerce can be the subject of appeal by applicant and/or opponent according to Article 18 of this law;

If needed or at the request of any party, the Ministry of Commerce shall organize a hearing of the opposition.

The decision relating to the opposition shall be published in the Official Gazette.

The detail of opposition procedures shall be determined by Prakas (Ministerial Regulation of December 29, 2016 on the Procedure for the Registration and Protection of Geographical Indications) of Minister of Commerce.

B- Ministerial Regulation (Prakas) of December 29, 2016, on the Procedure for the Registration and Protection of Geographical Indications

(Chapter 3: Procedure for Geographical Indication Registration, Section 4: Opposition)

Article 25: Grounds for Opposition

1. A reasoned statement of opposition as referred to in Articles 15 to 17 of the Law shall be admissible only if it is received by the Department of Intellectual Property within the time limit set out in the Law and if it: a) shows the non-compliance with the definitions relating to geographical indication within Article 4 of the Law; b) shows that the registered geographical indication is not able to be registered as a geographical indication as stated in Article 10 of the Law and Regulations.

2. The grounds for opposition shall be assessed in comply with the laws and regulations and in relation to the territory of the Kingdom of Cambodia.

Article 26: Opposition procedure and consultations

1. Within 90 (ninety) days from the date of publication in the Official Gazette, any natural or legal person having a legitimate and established interest may lodge a notice of opposition with the Department of Intellectual Property.

2. A notice of opposition shall contain a declaration that the geographical indication application falls under the grounds of opposition laid down in the Law and this Regulation. A notice of opposition that does not contain this declaration is void.

3. If a notice of opposition is lodged with the Department of Intellectual Property and is followed within by a reasoned statement of opposition, the Department of Intellectual Property shall check the admissibility of this reasoned statement of opposition.

4. Within 90 (ninety) days after the receipt of an admissible reasoned statement of opposition and the notification of the applicant, the Department of Intellectual Property shall invite the parties to engage in appropriate consultations for a reasonable period that shall not exceed 90 (ninety) days.

5. Both parts shall start such appropriate consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for registration complies with the conditions of the Law and the Regulation. If no agreement is reached, this information shall also be provided to the Department of Intellectual Property.

6. During the consultation period and if needed or at the request of any party, the Department of Intellectual Property shall organize a hearing during the opposition procedure, as referred in the Article 17 of the Law: a) The request for hearing shall be made after

30 (thirty) days of the date of submitting the information of no agreement to the Department of Intellectual Property, as referred in the Article 26 (4) of the Regulations. In case there is no request for hearing having been made within the above period and based on the discretionary power given to the Department of Intellectual Property by the Law or by the Regulations, the Department of Intellectual Property may invite concerned parties of the opposition for a hearing if it is deemed necessary. b) Upon receiving the request for hearing, the Department of Intellectual Property shall notify in writing about the date of hearing, at least 7 (seven) working days before, to the party who has requested for hearing and other interested parties. The hearing shall be organized within 30 (thirty) days from the notification of the request. c) In case there is no request for hearing having been made within the above period and based on the discretionary power given to the Department of Intellectual Property by the Law or by the Regulations, the Department of Intellectual Property may make his/her own decision without hearing or invite parties of opposition for the hearing if it is deemed necessary. d) The Department of Intellectual Property shall notify his/her decision within 2 (two) weeks from the date of decision.

7. At any time during these 90 (ninety) days, the Department of Intellectual Property may, at the request of the applicant or based on its discretionary power, extend the deadline for the consultations by a maximum of 90 (ninety) days.

8. The decision of the Department of Intellectual Property in relation to the opposition shall be published in the Official Gazette.

9. In the event there is no opposition under Chapter 3 section 3 of the Law, or there has been an opposition but the Ministry of Commerce or the GI Board or the Court, as the case may be, issued a final decision under Chapter 4 of the Law or a final judgment to dismiss the opposition, the Department of Intellectual Property shall maintain the registration of GI.

II. APPEAL

A- Law on Geographical Indications of January 20, 2014

(Chapter 4: Appeal)

Article 18: Rights and Duration of Appeal

Any interested person may appeal to the Geographical Indication Board or to the competent courts against the decision of the Ministry of Commerce;

Any interested person may appeal to the competent courts against the decision of the Geographical Indication Board;

The appeal shall be lodged within 90 (ninety) days from the date of receiving notification of the decision;

The appeal decision of the Geographical Indication Board shall be published in the Official Gazette and publicized.

B- Ministerial Regulation (Prakas) of December 29, 2016 on the Procedure for the Registration and Protection of Geographical Indications

(Chapter 4: Appeal procedure)

Article 27: Appeal procedure conditions

1. As referred in Articles 6, 17, 18, 21 of the Law, any interested person or his/her agent may file an appeal petition to the GI Board or to the competent courts against the decision of the Ministry of Commerce.

2. The appeal petition as referred to in paragraph (1) shall be filed in writing to the GI Board or to the competent courts within a period as referred to in Article 18 of the Law with the payment of fee as determined by laws and regulations.

Article 28: Appeal procedure within the GI Board

1. The appeal petition lodged within the GI Board shall be motivated.

2. When the GI Board receives a petition concerning the appeal of an applicant or any interested person, the GI Board shall within 30 (thirty) days check the admissibility of the appeal petition. The decision of the GI Board is notified to the applicant or any interested person.

3. The GI Board shall then examine the content of the appeal petition within 90 (ninety) days from the date of application. The decision of the GI Board shall be sent in a written notice, together with reasons, to the applicant or any interested person within 5 (fifteen) days from the date of the decision. If the applicant or the interested person does not agree with the decision of the Board, the applicant or the interested person shall have the right to bring an action in court within 90 (ninety) days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that the decision of the Board is final.

4. The Department must implement the decision of the GI Board or competent court.

Appeal procedure with the GI Board in Case of Opposition

1. The applicant and the opponent shall have the right to appeal against the decision referred to in Article 17 paragraph (2) of the Law of the Department of Intellectual Property of Ministry of Commerce to the GI Board within 90 (ninety) days from the date of receiving a notice of such decision. The appeal shall be in accordance with the rules and procedures prescribed in the article 25 of the Regulations.

2. The GI Board shall then examine the content of the appeal petition within 3 (three) months. The decision of the GI Board shall be sent in a written notice, together with reasons, to the applicant or any interested person within fifteen days from the date of the decision.

3. When the GI Board has a decision, if either party does not agree with the decision of the Board, such party shall have the right to bring an action in court within ninety days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that the decision of the GI Board is final.

4. The Department must implement the decision of the GI Board.