

IPR in Cambodia

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Speaker's bio

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Over a continuous presence of more than 25 years, Philippe Girard-Foley has helped many European companies protect and defend their IP rights and establish a successful business in Asia, through direct investment, partnership, distributorship, agency, franchising or otherwise. He is a regular speaker at events focusing on ASEAN matters, and has authored several publications on ASEAN IP laws including the chapters on Malaysia, Indonesia and Vietnam of 'Intellectual Property Rights - Acquisition, Scope and Enforcement' for the EU program Asia Invest.

Philippe Girard-Foley has received both a civil law and common law education (Paris Sorbonne, Paris Institute of Political Sciences 'Sciences Po', University of Pennsylvania Law School, CIArb London) and is a member of the Paris Bar from France as well as an associate member of the Victoria Law Institute from Australia. Philippe joined South East Asia IPR SME Helpdesk network in 2013.

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The fundamentals

A civil law v common law system

- officially recognised as “an hybrid legal system with French, Soviet and Vietnamese influence”
- even more hybrid with common law inspiration for certain laws (distinction between civil and commercial matters comparable to Vietnam)
- also UN Transitional Authority in Cambodia

Among neighbours in ASEAN

- Legislative outlook (including for IPR's) closer to Vietnam than to Malaysia or Singapore - not dissimilar to China either

A sincere willingness to “modernise”

- laws for the protection of IPR's and facilitation of commerce
- signatory to various conventions and membership of multilateral bodies

What sets the Cambodian legal system apart from most ASEAN counterparts

- A developing legal system: the laws currently in force are “new” (economy opening and being liberalised since 1989)
- A State-driven development
- A strong reliance on foreign inspiration to rebuild the legal system
- An officially “open” system on the world (re Constitutional Council Case n°131 of 2007)

More unusual characteristics

- common law influence derived from foreign legal assistance
- much more unusually, “filling the gaps” of the law with customs, tradition, conscience and equity (law on Court Organisation 1993)
- international law recognised as a source of Cambodian law (Case 131)

...but a civil influenced judicial system

- the Courts of Appeal review matters of fact and matters of law but the Supreme Court reviews only matters of law
- a Constitutional Council interprets the Constitution and assesses the conformity of the laws to the Constitution

...but a reluctance in practice vis-a-vis international law

- Cambodia has been a signatory of the New York Convention since 1960
- a reminder: the Convention provides for the enforcement of foreign arbitral awards
- but there is no record of any arbitral award being enforced by a Cambodian judge

...but the policy pointing in the opposite direction !

- Cambodia has adopted in 2006 its Law on Commercial Arbitration
- Second version, to comply with WTO joined in 2004
- The Law follows the UNCITRAL “Model Law” (admittedly with some confusion regarding supervision of the Courts, interim measures and the “National Arbitration Center”)
- but the Law itself provides that foreign awards are recognised and binding

What it means for Intellectual Property Rights

- Laws have been adopted and regulations have been enacted whose content is broadly in line with international principles
- Yet enforcement remains largely untested
- Alternative means of enforcement such as arbitration remain in principle open

In terms of domestic legislation, Cambodia covers the field

- Law on Patents, Utility Models and Industrial Designs (2003)
- Prakas (Declaration) n°706 on Procedure granting patent and utility models certificates
- Law on Marks, Trade Names and Acts of Unfair Competition (2002)
- contains provisions on Trade Secrets (with sub-decree of 2006)
- Law on Copyright and Related Rights (2003)
- Law on Geographical Indications (2014)

Compliance with international commitments of Cambodia

- The Law on Trademarks complies with TRIPS on issues such as border control measures, well-known marks...etc.
- The Law on Copyright complies with TRIPS and the Berne Convention
- The Law on Patents protects patents, industrial designs and utility models in accordance with international principles

Cambodia a member of principal multilateral conventions

- As of December 2016 Cambodia became bound by PCT (meaning that applicants from the other PCT countries may extend their filings to Cambodia within 30 months from the priority date)
- Cambodia became in January 2017 the first Validation State in Asia for the European Patent Office (EPO)
- Cambodia acceded in February 2017 to the Hague Agreement on Registration of Industrial Designs

In addition to strategic bilateral agreements in Asia

- Owners of a Singapore granted patent can re-register the same in Cambodia at any time during the term of the patent
- In July 2016 the Ministry of Industry made a Declaration (Prakas) on Acceleration of Patent Registration for Japanese Patent Applications in cooperation with the Japan Patent Office

Not a perfect world: the weakness about enforcement

- sharing of jurisdiction among enforcement agencies
- right to act ex officio but lack of knowledge
- no specialised Courts

Take – away messages



- be aware of the full scope of IP protection available in Cambodia - not underestimate
- register locally as much as possible without relying solely on international agreements - take into account the expectations of enforcement agencies
- work closely with the various enforcement agencies, build up a relationship with them, help them to do their job by informing them (with updates) of one's IP Rights

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- ✓ Local partners
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