
Intellectual Property

New Prakas on Procedures for Certification and Recordal of Exclusive Right of Using Marks

On 25 June 2021, the Ministry of Commerce ("**MOC**") issued a new Prakas to set out new procedures governing the certification of exclusive right on mark registration and the recordal of authorisation letter on exclusive right of using the mark. The new Prakas No. 0117 abrogates Prakas No. 186 of MOC on Procedures for Recording and Filing of Authorisation Letter to Import Goods Bearing Exclusive Mark dated 31 May 2016 ("**Prakas No. 186**").

Under Prakas No. 0117, the exclusive right to import and distribute goods in Cambodia ("**Exclusive Right**") is recognised through the application for the certification of exclusive right on mark registration ("**Exclusive Right Certification**") and the recordal of authorisation letter on exclusive right of using the mark ("**Exclusive Right Recordal**") with MOC. The "**Letter of Exclusive Right Certification**" refers to a letter issued by MOC certifying the exclusive right on mark registration for the importation and distribution of goods in Cambodia per the request of the local owner of the mark who registered the mark and who has the address in Cambodia. The "**Letter of Exclusive Right Recordal**" refers to a letter issued by MOC certifying the recordal of the granting of exclusive right of using the mark for the importation and distribution of goods in Cambodia from the grantor of the exclusive right, who registered the mark in Cambodia, to the grantee, which is a legal entity registered in Cambodia.

Prakas No. 0117 also applies to the recordal of sub-granting of the Exclusive Right.

Excluded Goods

Prakas No. 0117 sets out a list of goods that cannot be subject to Exclusive Right Certification or Exclusive Right Recordal:

- a. used goods;
- b. medical products for humans and animals;
- c. agricultural fertilisers and pesticides; and
- d. goods that are restricted under the applicable laws and regulations.

Goods in points (a) and (d) above can be subject to Exclusive Right Certification or Exclusive Right Recordal if necessary import permits issued by the relevant authorities are submitted to MOC as supporting documents.

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Rights under Letters of Exclusive Right Certification and Exclusive Right Recordal and Limitations

The local owner of a mark who is issued a Letter of Exclusive Right Certification has the right to produce, promote, sell, export and import goods bearing the mark registered by the local owner. Moreover, the local owner of the mark who is issued a Letter of Exclusive Right Certification or the grantee who receives the Letter of Exclusive Right Recordal has the right to file a complaint to the General Department of Customs and Excise of the Ministry of Economy and Finance ("**GDCE**"), the relevant authorities or competent courts against any person who operates parallel import or distributes goods bearing the same mark which is the subject of the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal.

Prakas No. 0117 imposes certain limitations to the above rights. A local owner or a grantee cannot apply for the Exclusive Right Certification or the Exclusive Right Recordal, respectively, and cannot import goods under the following conditions:

- a. goods imported for use by the Royal Palace, the Senate, the National Assembly, the Constitution Council, the Supreme Council of Magistracy and other governmental ministries and institutions;
- b. goods imported for non-commercial purposes and intended to serve the interest of society, charity, personal, diplomatic mission, community, association, local non-government organisation (NGO) and international non-government organisation (INGO), technical cooperation agency of any government; for additional installation or processing, scientific experiment and research, goods sample for display, agricultural development, agricultural production agreement, private investment project, public investment and all kinds of used goods;
- c. goods imported for an individual's personal use and non-commercial purpose; and
- d. goods imported for export purpose.

Publication

Upon the issuance of the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal, the local owner of the mark or the grantee is required to publish the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal on the front page of a local newspaper in Cambodia and on social media.

The Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal will be also published on the MOC website and/or the Department of Intellectual Property website. GDCE will also be notified of the issuance of such Letter of Exclusive Right Certification or Letter of Exclusive Right Recordal.

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Validity

The Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal is valid for two years from its effective date which is determined or indicated in the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal, or for a period shorter than two years if the remaining validity of the mark registration certificate, the Authorisation Letter or the letter of sub-authorisation of the Exclusive Right is less than two years.

Renewal of the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal

The request for renewal of the Letter of Exclusive Right Certification or the Letter of Exclusive Right Recordal must be submitted to MOC within 30 days before expiration of such Letter of Exclusive Right Certification or Letter of Exclusive Right Recordal.

If the request for renewal is not submitted within the stipulated timeline, the request for renewal will be no longer necessary. The local owner or grantee must instead file a request for a new Letter of Exclusive Right Certification or Letter of Exclusive Right Recordal.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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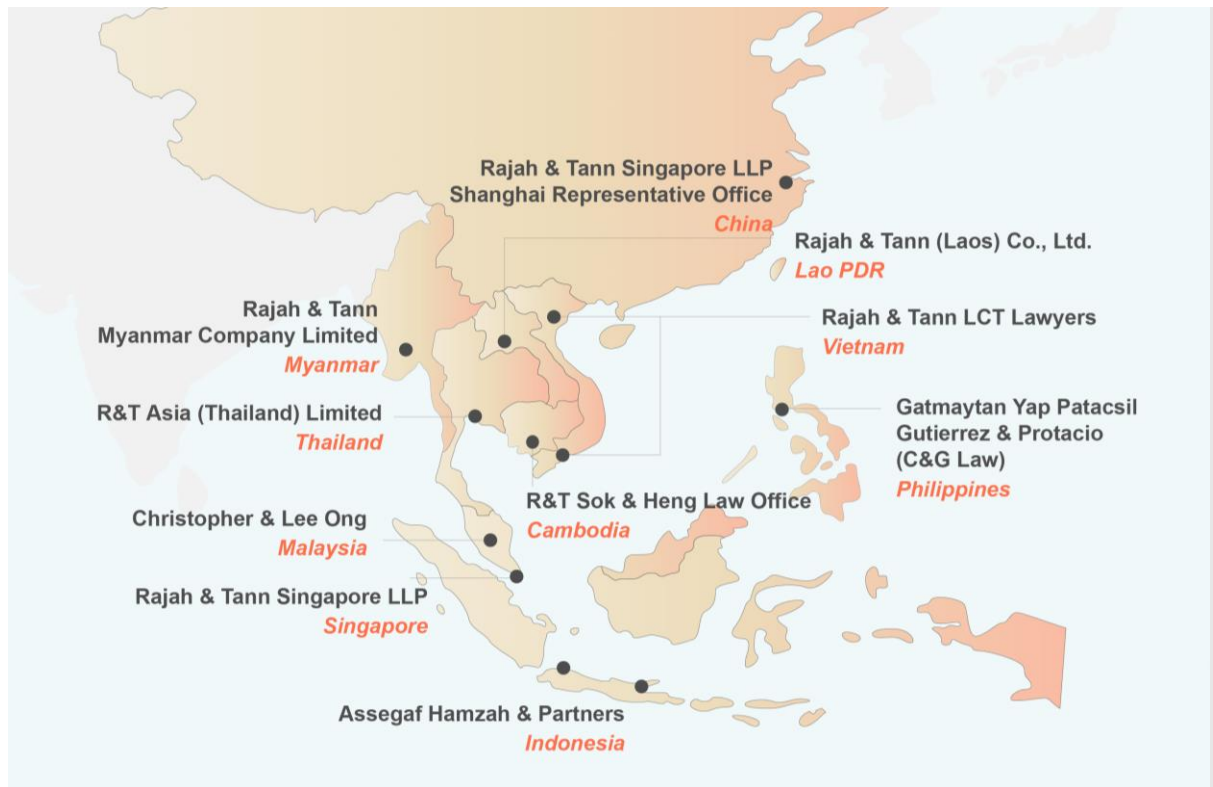
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