



# INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT MANUAL FOR CAMBODIA



FINANCIAL SECTOR AND  
INTELLECTUAL PROPERTY  
PROGRAMME



# **INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT MANUAL FOR CAMBODIA**

## ABOUT BRITCHAM CAMBODIA

The British Chamber of Commerce of Cambodia (BritCham Cambodia) was founded as the British Business Association of Cambodia in 1995 by Senaka Fernando MBE. In 2013, it was officially registered as a Chamber of Commerce with the Cambodian government. The Chamber is also a founding member of the [European Chamber of Commerce in Cambodia](#) (EuroCham Cambodia)

BritCham aims to provide a forum for British Businesspeople having an interest in Cambodia to meet together in a spirit of friendship and cooperation for mutual benefit and with a view to fostering good commercial and social relations with our Cambodian counterparts and the community at large.

This Manual was developed under the Financial Sector and Intellectual Property (FSIP) programme, a component of the ASEAN Economic Reform Programme funded by the United Kingdom's cross government Prosperity Fund 1. The Manual was created and coordinated by Rouse & Co International, in conjunction with PwC, the FSIP Programme. The Manual is for informational purposes only and the views recommendations and contents of this Manual do not necessarily represent and are not necessarily endorsed by BritCham Cambodia, PwC or Rouse. So, users of this Manual should take local legal advice on specific cases.

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# 1. INTRODUCTION

The South-East Asian Financial Sector and Intellectual Property (FSIP) Programme is part of the UK Prosperity Fund which was announced as part of the 2015 Strategic Defence and Security Review. It supports the United Nations Sustainable Development Goals, as well as the 2015 UK Aid Strategy by promoting growth and prosperity in developing countries.

The key objectives of the project are to strengthen the overall business environment as a key enabler for inclusive economic growth which can provide significant positive impact on poverty and inequality, across six SE Asian countries. Overall, the project would be to address barriers to growth through improving the global business environment, strengthening institutions, and encouraging greater global private investment, particularly in developing SE Asian countries. In addition, more productive SE Asian economies provide greater trade opportunities for international and UK business.

One of the work streams under the FSIP programme is the Intellectual Property (IP) work stream. In many developing countries, market failures and weaknesses typically manifest a range of IP challenges. These include lower quantities of and weaker quality IP creation as well as insufficiently strong legal remedies to protect and enforce IP (e.g., through civil Court, administrative and criminal IP protection systems). IP system transparency is a challenge in any developing country when the IP systems are not well-tested, clear and robust. A large informal economy magnifies IP problems.

IP enforcement remains a source of business concern in Cambodia. The inadequacy of IP enforcement information and resulting lack of transparency is a barrier for foreign investors. One of the projects under the FSIP Programme aims to address the lack of adequate IP enforcement information through an IP enforcement Manual. This Manual on IP enforcement in Cambodia has been developed for businesses operating in or planning to expand into Cambodia. It is published by the British Chamber of Commerce, Cambodia and aims to provide foreign businesses with a picture of how the IP enforcement system works in Cambodia. It includes details of the laws and regulations as well as the IP enforcement procedures in Cambodia. It uses a definition of enforcement that parallels the World Trade Organization's Trade Related Aspects of Intellectual Property (TRIPS) Agreement. This means it focuses on trade mark and copyright enforcement procedures – which in common parlance means trade mark counterfeiting and copyright piracy. The types of enforcement systems used to deal with these two issues are most commonly criminal, administrative, including Customs, as well as the civil Courts. Other forms of IP exist (e.g., patents, designs) but their enforcement is more usually limited to or appropriate for civil Court systems only.

The Manual is up to date as of November 2021. The Manual is for informational purposes only so users of this Manual should take local legal advice on specific IP cases.

## 2. OVERVIEW OF CAMBODIA'S LEGAL AND IP SYSTEM

With a renewed economic dynamism, Cambodia has started a new growth cycle. Growing from an economy that is very dependent on raw materials and tourism, Cambodia is now engaged towards industry and export. Cambodia is one of the fastest-growing economies in Southeast Asia and currently ranks 11th in the world in terms of high GDP growth over the last decade. With a forecasted 7% economic growth per year for the next five years and a rapidly growing consumer class that is earning triple the average income, it is an attractive market to invest and do business in.

Significant opportunities are available for businesses in a number of different sectors. UK companies are finding opportunities in education and vocational training, construction, manufacturing, retail, automotive, agribusiness, tourism and the financial/professional services.

However, doing business in Cambodia takes patience and perseverance. Companies should be prepared to invest time and resources in regular visits over a period of months, sometimes years, before seeing returns.<sup>1</sup>

Cambodia's legal system is primarily based on the French civil law tradition. Under the 1993 constitution, Cambodia is a constitutional monarchy with the King as its head of state. The King represents a symbol of unity and eternity of the nation. The Head of Government is an elected Prime Minister. Legislative power is vested in a bicameral parliament, while the judicial power is exercised by a constitutionally independent judiciary. The constitution preserves the validity of previously enacted legislation to the extent that the latter is not inconsistent with the constitution itself. Cambodia's legal system therefore comprises legislation enacted prior to the current constitution, as well as more recent laws, which have been adopted since 1993 to support the emerging market-based economy.

The arrival of UNTAC in 1992 brought further important changes to the judicial system in Cambodia, including the creation of an Appeal Court. This resulted in a three-tiered Court system, consisting of Courts of first instance (municipal, provincial, or military Courts), the Appeal Court and the Supreme Court. As noted above, the 1993 constitution provides for the independence of the judiciary from the executive and the legislature. The territorial jurisdiction of provincial and municipal Courts covers their respective provinces and municipalities, while the military Court has jurisdiction over the entire country. Judgments of these Courts of first instance can be appealed on questions of fact and law to the Appeal Court. The Supreme Court generally adjudicates only questions of law on appeal from the Appeal Court.

The state of Cambodia's legal system has not improved. Although the Constitution guarantees the independence of the judiciary, concerns have been raised as to lingering systemic weaknesses within the judicial branch of government.

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<sup>1</sup> BritCham Cambodia/DIT/ UKEF/gov.uk

## HOW TO USE THIS MANUAL

This Manual covers three main areas of IP enforcement as they apply to counterfeit (trademark infringing) and pirated (copyright infringing) goods. The first area is criminal actions, which usually means conducting raids to seize suspected counterfeit and pirated goods, followed by criminal prosecutions<sup>2</sup> through the criminal Courts. The second is Court actions brought in the civil Courts against IP infringers. In the case of counterfeit and pirated goods this usually means bringing a Court case against a counterfeiter for an order to stop infringing as well as claiming damages. Because preparing a lawsuit is expensive and time consuming, civil cases are used carefully, usually only where a target has resources to pay damages. Lastly, there are in some countries, administrative options for IP infringement (including using customs to intercept IP infringing goods at borders).

Outside the legal system there is a fourth avenue, for dealing with online IP enforcement. This typically means how to remove pirated content and counterfeit goods from ecommerce platforms, or internet service providers. This is typically done with notices under the ecommerce platforms', or internet service providers' contractual terms of service. In some countries, laws also back this up.

There are many other areas of IP enforcement outside the areas above, from patent to designs to trade secrets which are beyond the scope of this Manual. IP protection is a complex area of law and practice. There are many technical terms and special procedures which often differ from other areas of law. This Manual uses those terms where necessary but also provide definitions.

The aim of this Manual is to provide a summary of the rules and their practical application. This is done by explaining the legal provisions themselves and how they work in practice. In addition, a practical commentary is included setting out details of how the rules work, including examples.

IP owners and those seeking to bring cases must always seek local legal advice. IP lawyers and brand protection professionals are employed in each country to advise on and assist in IP enforcement. Such professionals can be found by searching for IP in directories like the Legal 500 (<https://www.legal500.com/>) or Chambers ([chambers.com](https://www.chambers.com)), or through IP industry organizations like INTA ([inta.org](https://www.inta.org)) and the UK's Anti-Counterfeiting Group (<https://www.a-cg.org/>). Many countries also have a local IP association which can provide lists of IP lawyers.

IP professionals (for example in other countries) may use this Manual to learn how IP laws and practice operates in the country. Businessmen and women may use this to learn some of the basics and educate themselves on how IP enforcement works. The Manual highlights relevant IP Sections/Regulations/Acts so that IP owners and businesses have a basic understanding of the IP offences committed, possible defenses and how the law considers the two types of infringement namely trademark counterfeiting and copyright piracy. This way, businesses can better prepare their enforcement strategy and approaches. This Manual can also assist when engaging an IP law firm or IP investigator in a case.

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<sup>2</sup> the institution and conducting of legal proceedings against someone in respect of a criminal charge.

## 3. IP ENFORCEMENT MANUAL – CAMBODIA

### 3.1 THE IP ENFORCEMENT SYSTEM UNDER TRIPS

Cambodia has been a member of World Trade Organization since 2004, but it is exempted from obligations under TRIPs until July 2034 being a Least Developed Country.<sup>3</sup>

Cambodia is a civil law country therefore, written laws set out all the rules and procedures for IP enforcement. These comprise of:

- Civil remedies, comprising injunctions, damages, other remedies, right of information, right of indemnification to defendants, as well as provisional measures (preliminary injunctions and search and seizure order).
- Border measures; and
- Criminal remedies for trade mark and copyright infringements.

**Commentary:** *The TRIPS Agreement covers many forms of IP; however, the most commonly used IP enforcement procedures are for trade mark and copyrights. The illegal acts that trade mark and copyright enforcement procedures cover are commonly called counterfeiting and piracy respectively. Trade mark and copyright enforcement procedures generally include criminal, civil, customs and administrative remedies.*

### 3.2 TRADE MARKS AND COPYRIGHT

Cambodia has a first-to-file trade mark system. Trade marks must be registered at the Department of Intellectual Property Rights (DIPR) to be protected, under Article 3 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition (Trade Mark Law). While unregistered trade marks are not generally protected, there are exceptions to unregistered well-known trade marks in Cambodia. Under the Madrid Protocol, Cambodia accepts applications under the international registration system.

In June 2020, Cambodia officially ratified the Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention). The ratification will not only bring IP protection in Cambodia in line with international standards but will also lead to prominent reforms on its copyright protection regime, which is currently governed solely by the Law on Copyrights and Related Rights (Copyright Law) enacted in 2003. However, it is not enacted, so the existing Cambodia Law remains in force for now. Copyright Law protects a wide range of creative works and confers both moral rights and the exclusive economic rights to conduct and control activities in relation to the author or owner's works. Based on the Copyright Law, works are automatically protected and enforceable in Cambodia if they are original and:

- Are works of nationals of Cambodia or of those who have habitual residence in Cambodia (including legal entities headquartered in Cambodia); or
- The work was first published, took place, fixed in Cambodia, or transmitted from transmitters in Cambodia; or
- For works of first published abroad, they were brought to be published in Cambodia within 30 days of being first published abroad; or
- Art works for architecture erected in Cambodia and other artistic works incorporated in a building or other structures located in Cambodia, etc.

There is a voluntary recordal and deposit system of copyright works with the Ministry of Culture and Fine Arts (MCFA). The recordal/deposit of work however does not confer legal advantage for enforcement but practically serves the purpose of providing existence to any given copyrighted work or for providing a presumption as to the ownership of the copyrighted work.

<sup>3</sup> [https://www.wto.org/english/news\\_e/news21\\_e/trip\\_30jun21\\_e.htm](https://www.wto.org/english/news_e/news21_e/trip_30jun21_e.htm)

**Commentary:** *The Trade Mark Law is now largely TRIPS compliant. Some problems remain with implementation. These include an uncertain substantive examination process, slow application pendency (there is a backlog at DIPR), and enforcement.*

*The Copyright law is generally in line with the TRIPS Agreement. The Berne Convention provides for automatic protection of literary and artistic works without local publication formalities. However, Cambodia does not grant automatic copyright protection. Therefore, the copyright holders must follow the local publication requirements to have their work protected in Cambodia. This presents difficulties for international copyright owners.*

*Copyright enforcements consists of three main routes: administrative actions, civil litigation and criminal prosecution. Beyond these, private mediation via legal professionals is considered more effective and is a viable option.*

### 3.3 CRIMINAL IP ENFORCEMENT

In conjunction with other applicable laws partly related to criminal IP enforcement, Trade Mark Law and Copyright Law are the main legal frameworks in place which focus on enforceable procedures to deal with types of infringements in Cambodia. Trade mark and copyright infringements are ‘complaint-based’ crimes. This means the IP owner must file a formal complaint with the enforcement authorities before any action can be taken. IP crimes are brought to the criminal Courts either by filing a complaint directly to the Court; or the IP owner may petition for the assistance of enforcement authorities such as the Cambodia Counter Counterfeit Committee (CCCC) or the Anti-Crime/ Economic Police (EP). In both cases they can summon, investigate, and secure evidence (and in the police’s case, arrest); however, in each case, a file must be passed to the Prosecutor who then takes over and decides whether to prosecute in the criminal Courts.

**Commentary:** *The outcome of the criminal enforcement is much less predictable as the process lacks transparency. There are two possible consequences.*

*The first consequence – corruption. In particular, the prosecutor may dismiss the case on the basis that there is insufficient evidence. However, a way to avoid this consequence is to take private enforcement action before seeking assistance from the enforcement authorities. The IP owner should have good evidence for the private enforcement action and remain closely involved during the raid action. This will inform the authorities and the prosecutor that there is awareness of the situation, and the party is then in a better position to obstruct possible corruption.*

*The second consequence – in Cambodia, litigation is time consuming. It may take several years for a dispute to reach Court. After the raid action, neither the Court nor the authorities are responsible for storage of the seized goods. Therefore, the IP owner must pay for a commercial warehouse. If the prosecutor seals the warehouse and issues a warrant to keep the evidence, the IP owner must provide a supporting budget for the authorities to protect the warehouse. As the process it may take at least two years to complete, this can get expensive.*

*In some circumstances, the authorities and the prosecutor allow the suspected infringer and the IP owner to settle the dispute. In such a situation, the IP owner can request compensation from the infringer. However, the seized goods remain under the prosecutor’s discretion. If all the goods are counterfeit, the Court will order destruction.*

#### 3.3.1 Criminal Acts defined in the Trade Mark Law

Trade mark infringement occurs when an infringer carries out any of the acts defined in Articles 24, 25, and 26 of the Trade mark Law.

- Article 24: unauthorized use of a mark identical or similar to a registered mark for goods or services identical or similar to those of the registered mark.
- Article 25: unauthorized use of a mark identical with or confusingly similar to a registered well-known mark in Cambodia for identical or similar goods and services to those of the registered well-known mark. In case of dissimilar goods or services, the use must be in such a way that indicates a connection between those goods and services and the owner of the well-known mark and that the interest of the owner of the well-known mark are likely to be damaged by such use.
- Article 26: unauthorized use of a mark identical or confusingly similar to an unregistered well-known mark in Cambodia for identical or similar goods and services to those of the well-known mark.

### 3.3.2 Criminal Procedure for Trade Mark Infringement

Article 11 and 27 of the Trade mark Law states that offences under Articles 24, 25 and 26 constitute complaint-based offences. Trade mark owners are required to file a complaint before any action is taken. Criminal trade mark cases may be filed with the EP or CCCC.

### 3.3.3 Economic Police or CCCC

According to Rule 5(3) of Prakas on Duty, Obligation, Rights and Structures of Anti-Economic Crime Police Department, the Economic Police has a duty to monitor and inspect all activities and offences against intellectual property infringement and to conduct searches and investigations (in cooperation other authorities and Court officials) to collect evidence and initiate Court proceedings.

CCCC is a joint task force consisting of 14 ministries.<sup>4</sup> According to Sub-Decree No. 150, dated 31 October 2014 and Prakas No. 5619 dated, 23<sup>rd</sup> December 2014, CCCC is mainly tasked with combating counterfeit products harmful to health and social safety in Cambodia.

**Commentary:** *Based on our experience, the CCCC is the most effective and efficient enforcement authority for combating counterfeit products and protecting the rights of IP owners. In addition, one aim of the CCCC is also to inform the public of the health risks associated with using fake pharmaceuticals. Several criminal raids are carried out each year; therefore, despite the challenges it may be effective in bringing a specific infringement to an end once the raid is carried out.*

*In the event of an infringement, IP owners can file a petition with the CCCC, requesting approval from the head of the CCCC. The CCCC will proceed with actions upon receipt of a search warrant from the prosecutor. Following the raid, the prosecutor, rather than CCCC, has discretion whether to pursue the case.*

### 3.3.4 Criminal Prosecution of Trade Mark Crimes

The Trade Mark Law does not provide a procedure for filing a complaint to criminal Court. Therefore, the Code of Criminal Procedure of Cambodia is used to deal with criminal prosecution of trade marks. According to Articles 5 and 6 of the Code on Criminal Procedure, a trade mark owner may file a complaint as a plaintiff before the investigating judge or prosecutor to initiate criminal action.

**Commentary:** *Most of the cases which the IP owners file a complaint as a plaintiff before the prosecutor are straightforward cases. The suspected infringers are generally small business owners and/or business retailers. IP owners can usually secure evidence and generally an in-depth investigation is not required for such cases.*

<sup>4</sup> Ministry of Interior, Ministry of Justice, Ministry of Public Health, Ministry of Industry and Handicraft, Ministry of Information, Ministry of Tourism, Ministry of Education, Youths and Sports, Ministry of Agriculture, Forestry and Fishery, General Commissariat of National Police, General Department of Immigration, National Military Police, General Department of Customs and Excise, General Department of Cambodia Import-Export Inspection and Fraud Suspension (Camcontrol), and Department of Anti Economic Crime Police.

### 3.3.5 Criminal Penalties for Trade Mark Infringement

In a criminal trade mark case, the Court has the authority to imprison and/or impose monetary fines.

The Trade Mark Law imposes penalties against trade mark infringements as below:

- Under Article 64 of the Trade Mark Law, any person who counterfeits a trade mark registered in Cambodia shall be liable to imprisonment from one to five years and/or a monetary fine of one to twenty million riels (cUSD 250 - 5,000).
- Under Article 65 of the Trade mark Law, any person who imitates a trade mark registered in Cambodia shall be liable to imprisonment from one month to one year and/or a monetary fine of five to ten million riels (cUSD 1,250 – 2,500).
- Under Article 66 of the Trade mark Law, any person who purposely imports, sells, offers for sale or has for the purpose of sale of goods bearing a counterfeit mark shall be liable to imprisonment from one to five years and/or a monetary fine of one to twenty million riels (cUSD 250 – 5,000). For those who purposely import, sell, offer for sale, or has for the purpose of sale of goods bearing an imitated mark shall be liable to one month to one year and/or a monetary fine of five to ten million riels (cUSD 1,250 – 2,500).
- Under Article 67 of the Trade mark Law, any person who repeats the same offence is subject to a double fine and imprisonment as stated in Article 64 and 65.

**Commentary:** *The Trade Mark Law provides the maximum fines and imprisonment, however, in practice, there is still a lack of consistency in sentencing for IP offences and only minor fines are given. It is very rare that the case is reached to this stage.*

### 3.3.6 Defences to Trade Mark Infringement

Article 47 of the Trade Mark Law provides that counterfeit goods of a non-commercial nature in travelers' personal luggage are excluded from the application of the Trade mark Law.

### 3.3.7 Criminal Acts defined in the Copyright Law

Criminal offences for copyright or related rights infringement are set out under Article 62, 64 and 65 of the Copyright Law. These are separated into differently defined categories of infringing criminal acts.

3.3.7.1	Economic Rights Infringement	<p>Article 62 defines unlawful acts in relation to copyright and related rights infringement including rights management information and technological circumvention:</p> <ul style="list-style-type: none"> <li>▪ The production or reproduction for sale or lease of any device or means specifically designed or adapted to circumvent any device or means or intended to restrict the quantity of the reproduction of a work, a phonogram or a broadcast, or to impair the quality of the copies being made;</li> <li>▪ The production or importation for sale or lease of any device or means that is susceptible to assist the unauthorized person in the reception of an encrypted program, which is broadcasted or otherwise communicated to the public, including broadcasting by satellite.</li> <li>▪ The suppression or modification, without permission of the right-holder, of all information related to the regime of rights presented in electronic form.</li> <li>▪ The distribution or importation for the purpose of distribution, broadcasting through broadcasting organization, communication to the public or making available to the public, without authorization, of works or performances, of phonogram or broadcast of the broadcasting organization, while knowing that the</li> </ul>
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		information related to the regime of rights, presented in electronic form, has already been suppressed or modified.
3.3.7.2	Collective Management Organization (CMO) offences	<p>Under Article 11 of the Prakas (Declaration) of Collective Management Organization (CMO), any person who uses without permission any type of work of an author under the supervision of CMO commits an offense.</p> <p>Article 14 of the Declaration requires that any CMO must obtain approval from MCFA, and such approval may be revoked if any irregularities are found in the conduct of CMO.</p>

**Commentary:** Copyright owners are recommended to voluntarily register copyright with the Ministry of Culture and Fine Arts. The ministry will then issue a certificate of registration, which can later serve as evidence in future judicial or administrative proceedings.

### 3.3.8 Criminal Procedure for Copyright infringement

Article 57 of the Copyright Law states that whoever suffers or risks suffering a violation of his/her copyright or related right can file a petition to the Court. Criminal copyright cases may be filed with the Economic Police or CCCC.

### 3.3.9 Criminal Prosecution of Copyright infringement

Criminal prosecution for copyright is the same as for trade marks – please refer to section 3.3.4 above.

### 3.3.10 Criminal Penalties of Copyright and Related Right infringement

Penalties are provided in Articles 64 and 65 of the Copyright Law and vary depending on the type of offence.

Article 64 imposes penalties for copyright infringement and states that all production, reproduction, or performance, or communication to the public, by whatever means, (of a work) in violation of the author's right, as defined by this law, are offences which must be punished by law. The penalties are as follows:

- Infringement of production or reproduction is punishable by six months to twelve-month imprisonment and/or five to twenty-five million riels fine.
- Importation or exportation of product obtained from the infringed acts of reproduction is punishable by six months to twelve-month imprisonment and/ or two to ten million riels fine.
- Performance or communication to the public is punishable one to three-month imprisonment and/ or one to five million riels fine. In case of several offenses, punishment will be multiplied by the number of offenses.
- Double punishment of the previous case is applied in case of repeated offense.

Article 65 imposes penalties for related rights infringement as follows:

- Production or reproduction (of a work) without authorization of the performer or phonogram producer or video producer or broadcasting organization, is punishable by six to twelve-month imprisonment and/or five to twenty-five million riels fine.
- Importation or exportation of phonogram, cassette, or video cassette without authorization of the performer or phonogram producer or video producer or broadcasting organization, is punishable by one to three-months imprisonment and/ or 2-10-million riels fine.
- Broadcasting by broadcasting organization without permission of the performer or phonogram producer or video producer or broadcasting organization, is punishable by one to three-months imprisonment and/or 2-10 million riels fine.
- Double punishment is applied in case of a repeated offense.

**Commentary:** A copyright owner may file a petition to the Court or seek assistance of the enforcement authorities. Copyright infringement is punishable by imprisonment or fine or both, with a double penalty for repeat offenders.

*The Cambodian public has very limited awareness and understanding of IP rights, specifically copyright and related rights. From our experience, to fight against infringement in Cambodia, private enforcement actions such as investigation and warning letter programs are more effective and efficient to deal with an infringement.*

### **3.3.11 Defences/exceptions: acts not considered as copyright infringement**

Under Articles 23, 24, 25, 28, 29 and 50 of the Copyright Law, the following acts are not considered as copyright infringement:

- The importation of a copy or private reproduction of a published work for personal use. However, this does not extend to the reproduction:
  - of a work of architecture like buildings or other construction;
  - In the form of reprography of the whole or part of a book, musical work in the form of musical notation;
  - of the whole or of a substantial part of a database in digital form;
  - of a computer program (other than a backup copy);
  - of any work, in case where reproduction would affect legitimate interest of the author or right-holder.
- Private representation made to family or friends.
- The use or reproduction of part or extract of published works for purposes of conservation, research, education – all of which are non-profit;
- Translation related to a minority language.
- Analyses or short quotation.
- Broadcasting of a press commentary.
- Dissemination of speeches addressed to public.
- Adaptation of comic style, or caricature, based on original work.
- Reproduction of a graphic or plastic work situated in the public which is not subject to subsequent reproduction.
- Reasonable portion of a citation of published work with an indication of source and/or the author's name.

\*The criminal procedure for trade mark and copyright infringement is shown by way of a flowchart in Annex 1 of this Chapter.

## **3.4 CIVIL IP ENFORCEMENT**

The Cambodia judicial system consists of municipal/provincial Courts (Court of first instance), Appellate Court and supreme Court. There is no separate commercial or IP Court. All civil cases including intellectual property civil disputes fall under the jurisdiction of municipal/provincial Courts at first instance.

Unlike other developed countries where there is an IP Court, an IP case shall be brought to the municipal or provincial Courts where the defendant resides or is domiciled, or has a registered address, or business or representative office.

### **3.4.1 Trade Mark and Copyright Civil Case Rules**

Neither the Trade Mark Law nor Copyright Law set out the detailed procedures to file a civil IP lawsuit at Court. The procedure to file a civil lawsuit is laid out under the Code of Civil Procedure and it is beyond the scope of this IP Enforcement Manual to cover each civil law procedure possible in an IP case.

Civil IP cases are governed by:

- The law under which the case is filed – the Trade Mark Law or the Copyright Law; and
- Code of Civil Procedure.

### 3.4.2 Trade Mark Infringement

#### 3.4.2.1 Registered Trade Mark Infringement

Based on Articles 11, 27 and 69 of the Trade Mark Law, the registered trade mark owner may file a civil lawsuit with the municipal/provincial Court against anyone who unlawfully uses mark that is similar to or identical for similar goods and services and request:

- Injunction, including preliminary injunction and provisional measures;
- Damages; and/or
- Destruction of counterfeit goods.

#### 3.4.2.2 Well-known Trade Mark Infringement

Although an unregistered well-known mark is protected against infringement under the Trade Mark Law, it is not likely that such trade mark rights can be enforced against any infringement in the absence of registration.

### 3.4.3 Copyright Infringement

Copyright disputes can be subject to civil litigation and a petition can be filed by the authors or right holders. Copyright civil Court cases include offences as set out in section 3.3.7.1 above.

#### 3.4.4 Civil IP Remedies in Trade mark and Copyright infringement

All civil IP remedies for Trade Mark and Copyright cases are stated in the Trade Mark Law and Copyright Laws respectively.

##### 3.4.4.1 Injunction and Preliminary Injunctions

Article 27 of Trade Mark Law provides that the Court may grant an injunction to prevent an infringement or an imminent infringement.

Similar to the Trade Mark Law, Articles 57 of the Copyright Law also allows the complainant to seek an injunction to prevent an infringement or an imminent infringement.

There is no detailed procedure on filing a request for an injunction or preliminary injunction in the Trade Mark Law and Copyright Law. The Court may refer to relevant provisions to make such request under the Code of Civil Procedure.

##### 3.4.4.2 Damages

Both the Trade Mark Law and Copyright Law contain provisions that entitle the successful party to an award of damages.

The Trade Mark Law does not, however contain detailed guidance on rules on the calculation or payment of damages.

The Copyright Law contains some reference to damages which provides that whoever suffers or risks suffering a violation of his/her copyright or related rights can file a petition to Court in order to claim compensation, to redress moral injury, to return the disputed equipment or material, as well as to return any benefits derived from the illegal act.

**Commentary:** *In practice, calculation or payment of damages are normally raised by the IP owners, but it depends on the Court's discretion/ order whether to grant an award. Any amount the Court would decide is generally low.*

#### **3.4.4.3 Other remedies**

Under Article 69 of the Trade Mark Law, the Court may order a temporary suspension or confiscation of goods suspected of being counterfeit and/or destruction of the infringing goods.

Under Article 58 of the Copyright Law, the Court has authority to order the confiscation, destruction of equipment or materials being produced or used or made available in an illegal manner, or of equipment used in the violation, and which are found in the possession of the defendant or are being held by the application of this law.

#### **3.4.4.4 Right to Information**

This refers to judicial orders that the infringer disclose the identity of third persons involved in the copyright and related right infringement. Presently, no such provision in Trade Mark Law or Copyright Law exists.

When specific laws as such are silent and provide no provision on disclosure of information, then rules on “Examination of Parties” of the Code of Civil Procedure will apply. Parties to the Court proceedings are obliged to provide true testimony as required by the Court. The refusal to testify without justifiable grounds is subject to a civil fine (Article 140 of Section II of Book II – Proceedings at the Court of First Instance of Code of Civil Procedure).

#### **3.4.4.5 Indemnification of Defendant**

This refers to protecting defendants from abuse by excessively aggressive Plaintiffs. Both the Trade Mark Law and the Copyright Law provides two references to indemnification of the Defendant. In particular when the complainant is held responsible for the injury caused to the defendant by:

- the execution of the provisional measures and
- the wrongful retention of goods (Article 34 and 41 of the Trade mark Law and Article 59 and 63 of the Copyright Law).

#### **3.4.4.6 Provisional measures**

Injunction and preliminary injunctions are described in section 4.4.1 above. However, other provisional measures can be made.

Under Articles 29, 35 and 69 of the Trade Mark Law, the trade mark owner may request the Court to issue a provisional decision to:

- Preserve relevant evidence with regard to the alleged infringement
- Suspend clearance of goods suspected of being counterfeit; and/or
- Confiscate suspected infringing goods.

According to Articles 58, 59 and 66 of the Copyright Law, the copyright owner or right holder can request the Court to:

- Confiscate equipment or materials being produced, used, or made available in an illegal manner in violation, and which are found in the possession of the defendant; and/or
- Confiscate subject matters reproduced from the unauthorized reproduction of a work; and/or
- Other measures to ensure the conservation of evidence, etc.

### **3.5 E-COMMERCE IP INFRINGEMENT FOR TRADE MARK AND COPYRIGHT**

This section sets out the possible violations that relate to online traders as well as online intermediaries (such as ISPs, ecommerce platforms, etc.) at a civil and criminal level.

The Trade Mark Law and Copyright Law contain no specific provisions on e-commerce/digital infringement.

However, a recently promulgated Law on E-Commerce in Cambodia provides generally that if online intermediaries or e-commerce service providers know that the content stored on their platforms may involve civil or criminal liabilities, they shall immediately take the following action(s):

- remove the suspected infringing contents and cease offering services in relation to such contents
- maintain contents as evidence and report to the Ministry of Posts and Telecommunication (MPTC) and other competent authorities about the facts and identity suspected infringers. Upon receipt of the complaint, MPTC may also order online intermediaries or traders to:
  - remove the infringing content
  - suspend or cease rendering services to whom the infringing content belongs or
  - suspend or cease services in relation to online contents.

Cambodia does not have specific internet or cyber laws.

### 3.6 CUSTOMS IP BORDER ENFORCEMENT

Cambodia does not have a customs recordal system in place. However, the IP owner or rights holder can file a complaint with the Customs to suspend the suspected goods (for counterfeit goods or physical pirated items) at the border.

Article 35, 37 and 38 of Trade Mark Law and Article 63 of Copyright Law provide that within 10 working days from receipt of the complaint, Customs shall confirm if the complaint is accepted, rejected or reserved for further consideration. Customs may ask the IP owner or rights holder to provide security or equivalent assurance to protect importers, exporters, or owner of the goods.

**Commentary:** *If the IP owner uses an exclusive distributor in Cambodia, we recommend registering an exclusive distributorship with the DIPR. This is to prevent parallel importation and may also contribute to intercepting counterfeits, as shipments are more carefully scrutinized by Customs on import.*

#### 3.6.1 Seizure/Suspension of Goods

According to Article 39 of Trade Mark Law and Article 63 of Copyright Law, upon accepting the complaint, Customs shall suspend clearance of suspected goods for the initial period, and any extension thereof which is not more than 10 working days, Customs is required immediately upon accepting the complaint, to suspend clearance of suspected goods for the initial period, and any extension thereof which is not more than of 10 working days, Customs is required to immediately notify the importer and the applicant of the suspension and the grounds of such suspension.

**Commentary:** *Although the law states that the IP owner can file a complaint with Customs to suspend the suspected goods; the process of filing is challenging and time consuming. When the IP owner files the petition to the Courts or customs, a petition must provide prima facie evidence showing that the shipment is counterfeit, a detailed description of the goods, and evidence of the IP registrations, etc. A general complaint will not be accepted. It may take 2-3 working days or more to prepare and file the request for customs suspension.*

#### 3.6.2 Examination of Suspended Goods

According to Article 42 of Trade mark Law which is also applicable to Copyright cases, Customs or other competent authorities may allow IP owners, importers or exporter to examine the goods, and take some samples of the goods for examination, testing and analyzing to determine whether the goods are counterfeit/pirated.

### 3.6.3 Legal Action/Settlement

According to Article 40 of Trade Mark Law and Article 63 of Copyright Law, within 10 working days from receipt of the suspension notice, if the Court proceedings have not been initiated by the plaintiff, or the duly empowered authority has not taken the provisional measure to extend the suspension of suspected goods, or no settlement is reached between the parties, Customs will release the goods, provided that all other conditions for importation or exportation have been complied with. The extension period can be made for a further 10 working days in appropriate cases.

\*The process for suspension/seizure of suspended goods for trade mark and/or copyright is shown in Annex 2 of this Chapter.

**Commentary:** *It should be noted that Article 41 of the Trade Mark Law provides for compensation for wrongful request of customs suspension of goods consignment in Cambodia. In cases where there is a wrongful request for customs suspension, the relevant authorities have the right to order an applicant to compensate for injury caused to them. However, the decision is not final and binding, the applicant has the right to file an appeal to the Court.*

## 3.7 ADMINISTRATIVE IP ENFORCEMENT

In Cambodia, administrative measures are not obligated by law. In a trade mark infringement case, the parties may seek intervention from DIPR. In a copyright infringement case, the parties may seek mediation from MCFA.

**Commentary:** *The DIPR plays a very important role in administrative proceedings where the parties can seek amicable settlements. The DIPR plays the role as a mediator at the request of both parties to provide the relevant documents and evidence to support their legal ownership. There are several hearings involved during the process.*

*This procedure is currently one of the most effective ways to resolve a trade mark dispute in Cambodia.*

*Similar to the trade mark dispute, the Ministry of Culture and Fine Arts can also play the role as mediator to resolve the copyright infringement.*

## 3.8 OTHER ENFORCEMENT ISSUES

### 3.8.1 Alternative Dispute Resolution

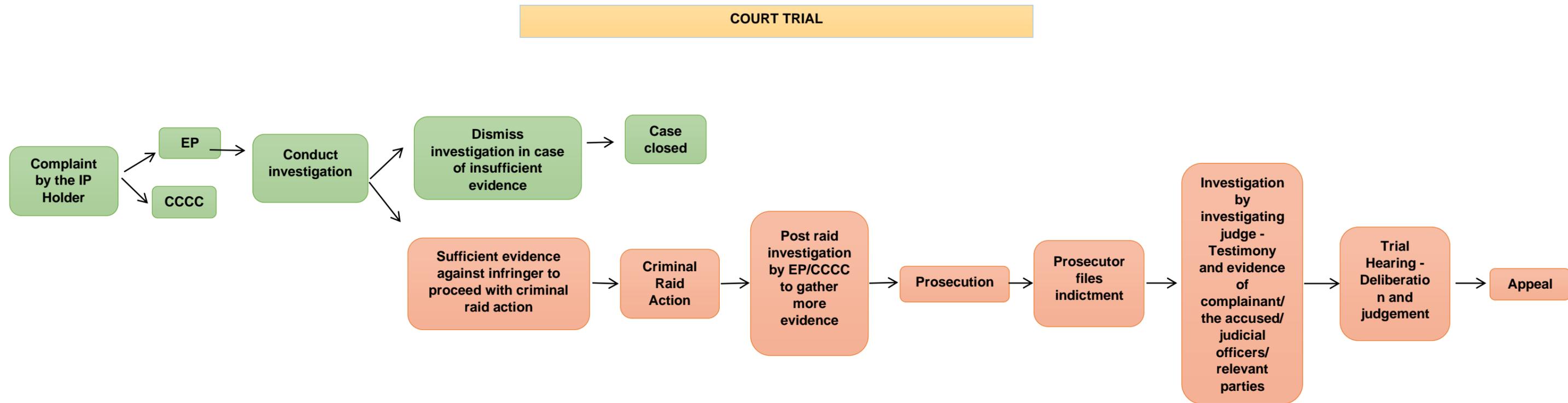
Neither the Trade Mark Law nor the Copyright Law obligates parties to dispute to go through any alternative dispute resolution.

### 3.8.2 Warning letters and settlements

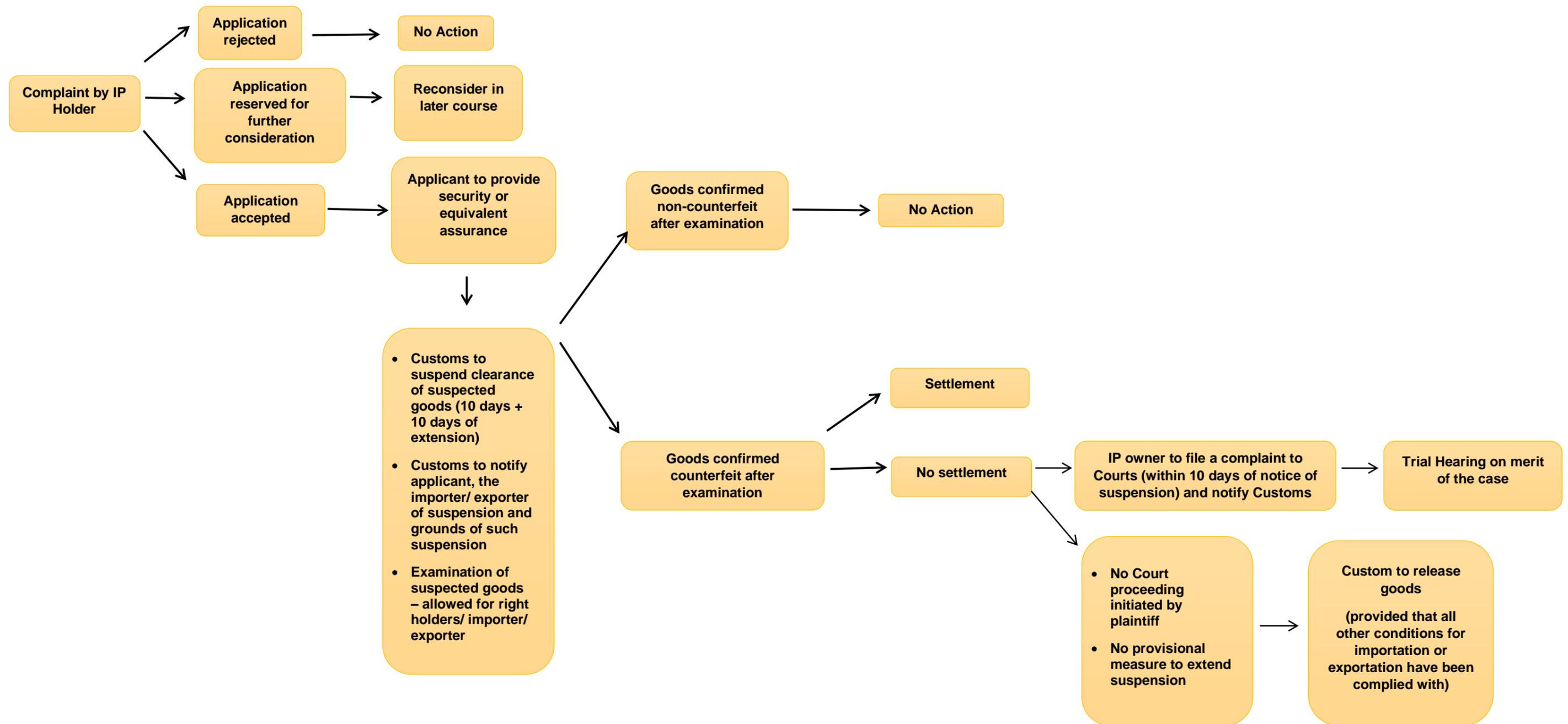
Many IP disputes are resolved by issuing a warning letter and then the IP owner and the alleged infringer resolve the dispute. A settlement agreement and undertaking can be used to reach a resolution.

**Commentary:** *Sending a Warning Letter may serve as an amicable and practical measure to reach out of Court resolution to deal with infringer. If done well (and of course depending on the infringer) the chance of successful negotiation with the infringer is high, around 80%. Most of the trade mark infringement cases are solved by warning letters in which the IP owner stated their concerns, the nature of infringement, and the legal consequences and then follows up. To be successful, the warning letter approach needs to be accompanied by persistent follow-up.*

# ANNEX 1: FLOWCHART FOR CRIMINAL PROCEDURE FOR TRADE MARK AND COPYRIGHTS



**ANNEX 2: FLOWCHART ON CUSTOMS PROCESS FOR SUSPENSION/SEIZURE OF SUSPENDED GOODS FOR TRADE MARK AND/OR COPYRIGHT**



### ANNEX 3: CONTACT DETAILS OF INTELLECTUAL PROPERTY OFFICES/ AUTHORITY

Country	Contact Details	Website
Cambodia	<p><b>Department of Intellectual Property Ministry of Commerce</b></p> <p>Address: Lot 19–61, MOC Road (113B Road), Phum Teuk Thla, Sangkat Teuk Thla, Khan Sen Sok, Phnom Penh, Cambodia</p> <p>(+855) 12 26 15 36 (+855) 12 807 346 (Hotline)</p>	<p><a href="http://www.cambodiaip.gov.kh/">http://www.cambodiaip.gov.kh/</a></p>
	<p><b>Counter Counterfeits Committee of Cambodia (CCCC)</b></p> <p>Address: 275 Norodom Blvd, Phnom Penh 12010, Cambodia</p> <p>(+855) 81 999 808</p>	<p><a href="https://cccc.gov.kh/">https://cccc.gov.kh/</a></p>
	<p><b>Ministry of Culture and Fine Art</b></p> <p>Address: 227 Preah Norodom Blvd (41), Khan Chamkamorn, Phnom Penh 12301, Cambodia</p> <p>(+855) 23 218 148</p>	<p><a href="http://www.mcfa.gov.kh/">http://www.mcfa.gov.kh/</a></p>