



## CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

### RESPONSES FROM THAILAND

#### Civil and Administrative Procedures and Remedies (Questions 1-14)

##### 1. Specify the courts which have jurisdiction

The Central Intellectual Property and International Trade Court (CIPIT) and the Supreme Court (Intellectual Property and International Trade Division) have jurisdiction over disputes relating to intellectual property rights violations. The CIPIT acts as the Court of First Instance and appeals are heard by the Supreme Court.

##### 2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearance before the court by the right holders?

According to Section 55 of the Civil Procedure Code B.E.2477 (1934), right holders or their authorized representatives through a power of attorney have standing to assert IPRs. With power of attorney, personal appearance before the court by the right holders is not mandatory.

##### 3. What authority do the judicial authorities have to order, at the request of opposing party, a party to a proceeding to produce evidence which lies within its control?

To ensure convenience, expediency and fairness of proceedings, the Chief Justice of the Central Intellectual Property and International Trade Court is empowered, subject to the approval of the President of the Supreme Court, to issue rules on proceedings and hearing of evidence provided that they do not impair the right of defense of an accused in a criminal case. The Court may call any knowledgeable persons or experts to appear and give their opinion for its consideration. Where there are no such provisions and Rules on the issue, the provisions of the Civil Procedure Code, the Criminal Procedure Code or the Act of the Establishment of Kwaeng Court and its Criminal Procedure Code shall apply *mutatis mutandis*. (The Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E.2539 (1996) (Sections 26, 30 and 31)).

##### 4. What means exist to identify and protect confidential information brought forward as evidence?

In the appropriate case or for the protection of intellectual property rights or the prevention of damage that might be incurred to international business of a party, if a party requests, or if the Court deems inappropriate to disclose in whole or any part of the facts or circumstances in the case, the Court may issue the following order:

- (1) Prohibiting the public from attending in whole or in any part of the hearing, and holding the hearing in camera, or
- (2) Prohibiting the publication of such facts or circumstances.

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<sup>1</sup> Document IP/C/5.

Irrespective of whether the Court has issued such order, the order or judgment of the Court adjudicating the case shall be read in open court, and the publication, either in whole or in part, of the order or judgment or an impartial and accurate summary thereof shall not be deemed unlawful. (Rule 24 of the Rules for Intellectual Property and International Trade Cases B.E.2540 (1997)).

This has to be read in conjunction with Section 36 of the Civil Procedure Code B.E.2477 (1934) which provides that the hearing shall be incurred to the parties and open to the public, except in specific circumstances where the hearing may be close session. Where appropriate, whole or any part of the facts or circumstances in the case shall not be disclosed.

**5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use.**

Injunctions

Under **Section 65 of the Copyright Act B.E.2537 (1994)**, if there is an explicit evidence that a person is doing or about to do any act which is an infringement of copyright or performer's rights, the owner of copyright or performer's rights may seek the injunction from the court to order the person to stop or refrain from such act.

The injunction of the court according to paragraph one does not prejudice the owner of copyright or performer's rights to claim damages under Section 64.

Under **Section 116 of the Trademark Act B.E.2534 (1991)**, if there is clear evidence someone is committing or is about to commit an act under Sections 108, 109 or 110, the owner of the trademark, service mark, certification mark or collective mark may apply to the court to stop or refrain from such act.

Under **Section 77bis of the Patent Act B.E.2522 (1979)**, if there is clear evidence that any person is committing or about to commit any act in infringement of the rights of the owner of a patent or petty patent under Section 36, 63 or Sections 65*decies* and 36, the owner of the patent or petty patent may request the court to order the person to stop or refrain from committing such infringement. The order of the court shall not deprive the owner of the patent or petty patent to claim damages under Section 77*ter*.

Under **Section 8 of the Trade Secrets Act B.E.2545 (2002)**, where there is clear evidence that an infringement of trade secrets has been committed or is imminent, the affected or imminently to be affected controller of trade secrets has the following remedies:

(1) Petition the court for an interim injunction, temporarily to stop the infringement of trade secrets; and,

(2) File an action in the court for a permanent injunction, permanently to stop the infringement of trade secrets and claim damages from the wrongdoer.

The petition under (1) may be filed prior to the action under (2).

The above provisions have to be read together with **Rules 12 and 13 of the Rules for Intellectual Property and International Trade Cases B.E.2540 (1997)**. An application for the Court order under Section 65 of the Copyright Act, B.E.2537, Section 77*bis* of the Patent Act, B.E.2522, Section 116 of the Trademark Act, B.E.2534 or other intellectual property legislation, shall state the facts establishing a *prima facie* case and the reasons sufficient for the Court to believe that it is appropriate to grant such order. The application also has to include a statement confirming the facts of a person who witnessed the cause of the application, in order to substantiate such application. In this connection, the application will be granted if the Court believes that:

(1) There is reasonable ground for the application and the time the application is filed, as well as sufficient reasons for the Court to grant such application; and,

(2) The nature of the damage incurred by the applicant is such that the damage cannot be restored by monetary measures or any other form of indemnity or the prospective defendant is not in a position to compensate the applicant for the damage, or it might be difficult to enforce the judgment against the prospective defendant afterwards.

In considering the application, the Court will take into account the balance of the extent of damage that might be incurred by both parties.

Damages, including recovery of profits, and expenses, including attorney's fees:

In the case of infringement of copyright or performer's rights, the Court has the authority to order the infringer to compensate the owner of copyright or performer's rights for damages the amount which the Court considers appropriate by taking into account the seriousness of injury including the loss of benefits and expenses necessary for the enforcement of the right of the owner of copyright or performer's rights (Section 64 of the Copyright Act B.E.2537 (1994)).

For trademark cases, the Court will determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act. Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages for any injury caused (Section 438 of the Civil and Commercial Code B.E.2468 (1925)).

In case of an infringement of the rights of the owner of a patent or petty patent, the Court can order the infringer to pay the owner of the patent or petty patent damages in an amount deemed appropriate by the Court, taking into consideration the gravity of the injury including the loss of benefits and expenses necessary to enforce the rights of the owner of the patent or petty patent (Sections 36, 63, 65*decies* and 77*ter* of the Patent Act B.E.2522 (1979)).

In trade secret cases, in determining the measure of damages, the Court may:

(1) In addition to the damages for the actual damage suffered, include in the damages for the plaintiff, account of profits accrued from or in connection with the infringement by the infringer.

(2) In case where the Court is unable to measure the damages under (1), order such amount of damages to the controller of trade secrets, as it deems appropriate.

(3) In case where there is clear evidence that the infringement of trade secrets is conducted wilfully or maliciously causing the trade secrets to cease the quality of secrecy, order the infringer to pay punitive damages in addition to the amount of damages granted under (1) and (2). However, the punitive damages shall not exceed two times the amount of damages under (1) or (2) (Sections 8(2) and 13 of the Trade Secrets Act B.E.2545 (2002)).

Destruction or other disposal of infringing goods and materials/implement for their production

Under **Section 75 of the Copyright Act B.E.2537 (1994)**, all things made or imported into the Kingdom which constitutes an infringement of copyright or performer's rights within the meaning of the Copyright Act and the ownership of which are still vested upon the offender will belong to the owner of copyright or performer's rights provided that the things used for committing the offence must be all forfeited.

Under **Section 115 of the Trademark Act B.E.2534 (1991)**, all goods which are imported for distribution or had in possession for distribution in violation of the Act must be confiscated whether or not anyone has been convicted of the offence.

Under **Section 77*quarter* of the Patent Act B.E.2522 (1979)**, all goods in the possession of the infringer which infringe the rights of the owner of a patent or petty patent must be confiscated. The Court may order the destruction of the goods or other measures to prevent further distribution of the goods.

Under **Sections 8(2) and 11 paragraph 3 and 4 of the Trade Secrets Act B.E.2545 (2002)**, in an action for injunction, the controller of trade secret may request the court to order the destruction or confiscation of materials, apparatus, tools or other equipments used in the infringement of trade secrets. The products that are manufactured by the infringement of trade secrets and are still owned by the infringer will be transferred to the State or the controller of trade secrets as so ordered by the Court. In case where the possession of such product is illegal, the Court may order its destruction.

Under **Sections 43(6), 44 and 45 of the Agricultural Standards Act B.E.2551 (2008)**, the agricultural commodity seized by the authorized officer, the Agricultural Standards Committee may:

(1) In the case where producer, exporter or importer has not been granted a voluntary standard certificate and uses or displays of a voluntary standard certification mark in violation, the Committee may order to correct or recondition the agricultural commodity so as to be complied with the voluntary standard, or to destroy the certification mark or to remove it from the agricultural commodity. In the case where the mark cannot be destroyed or removed from the agricultural commodity, the Committee may order such commodity to be destroyed;

(2) In the case where the producer, exporter or importer has not been granted a mandatory standard certificate for such agricultural commodity stipulated by the Ministerial Regulation, the Committee may order to destroy that agricultural commodity, or in the case of import, the Committee may order to return or await for the mandatory standard certificate application of the producer, exporter or importer, wherever the case may be. The producer, exporter or importer will be liable for any incurred expenses in relation to the correction, reconditioning, destruction, returning or awaiting for the mandatory standard certificate application, or the destruction or removal of voluntary standard certification mark from the agricultural commodity.

If the seized agricultural commodity or articles are not claimed by the owner within 90 days or where the public prosecutor issues the final order not to file a lawsuit, or where the Court decides not to confiscate those articles, and the owner has not requested for their return within 90 days from the date of acknowledgement of the final order not to file the lawsuit or from the date of rendering the final judgment by the Court or the date of being notified that no lawsuit has been filed, the ownership will be vested in the State and administered by the authority as appropriate.

If the seized articles are perishable, or the holding of which may cause a risk of damage or incur expenses more than their value, the authority may arrange public auction even before the case is closed. The net proceeds from the sale after deduction of expenses and any other charges will be retained instead.

**6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?**

In the interest of justice, the Court may order, with or without a party request, any party to adduce and present any evidence within control of a party, provided that such evidence is necessary to any material issue in the case (Rule 39 of the Rules for Intellectual Property and International Trade Cases B.E.2540 (1997)).

**7. Describe provisions relating to the indemnification of defendants wrongly enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them.**

Where the injunctive relief is granted, any damage that the prospective defendant might incur must be taken into account. The Court can order the applicant to provide security for such damage in the amount within the period and under the conditions which the Court deems appropriate (Rule 15 of the Rules for Intellectual Property and International Trade Cases B.E.2540 (1997)).

**8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and costs.**

Pursuant to Section 27 of the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E.2539 (1996), the Intellectual Property and International Trade Court shall proceed with the hearing without adjournment until the hearing is over, save in case of unavoidable necessity. After the hearing is over, the Court shall promptly render a judgment or an order.

The Court's fee and other charges in civil proceeding are provided in Table 1 and 2 annexed to the Civil Procedure Code B.E.2477 (1934). The Court fee varies depending the type and amount of claim for compensation. In practice, the proceedings usually take no more than one year.

**9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

Under **Section 72 of Trademark Act B.E.2534**, the Registrar can cancel the registration of a license agreement upon request by the trademark owner together with the licensee and if it can be proved to have expired.

Any interested person or the Registrar may petition the Board of Trademark to cancel the registration of a trademark license agreement if it is shown that:

(1) the use of trademark by the license has confused or misled the public or is contrary to public order or morality or to public policy, or

(2) the trademark owner can no longer exercise effective control over the quality of the goods under license.

Cancellation of trademark licenses under this Section shall comply with the rules and procedures prescribes in the Ministerial Regulation.

**Section 77 of Copyright Act B.E.2537 (1994)** empowers the Director General of the Intellectual Property Department to prescribe the fine for the offence according to Section 69 paragraph one and Section 70 paragraph one.

Under **Section 43 of the Geographical Indications Protection Act B.E.2546 (2003)**, offences may be settled by a fine fixed by Director General of the Department of Intellectual Property.

Under **Sections 46, 47, 47bis, 49 and 50 of the Patent Act B.E.2522 (1979)**, at any time after the expiration of 3 years from the grant of a patent or 4 years from the date of application, whichever is later, any person may apply to the Director-General of the Department of Intellectual Property for a license if it appears, at the time when such application is filed, that the patentee unjustifiably fails to exercise his legitimate rights as follows:

(1) that the patented product has not been produced or the patented process has not been applied in the country, without any legitimate reason; or

(2) that no product produced under the patent is sold in any domestic market, or that such a product is sold but at unreasonably high prices or does not meet the public demand, without any legitimate reason.

Whether it is an application under (1) or (2), the applicant for a license must show that he has made an effort to obtain a license from the patentee having proposed conditions and remuneration reasonably sufficient under the circumstances but unable to reach an agreement within a reasonable period.

Similarly if the working of any claim in a patent is likely to constitute an infringement of a claim in a patent of any other person, the patentee, desiring to exploit his own patent, may apply to the Director-General for a license under the patent of the other person under the criteria provided for in Section 47 of the Patent Act.

And if the working of any claim in the patent having obtained a license under (1) and (2) is likely to constitute an infringement of a claim in a patent of any other person, the applicant for a license may apply to the Director-General for a license under the patent of the other person under the criteria provided for in Section 47*bis*.

Where an application for a license is filed under the above mentioned circumstances, the competent officer may require the applicant, the patentee or the exclusive licensee to appear before him to give any statement, or to hand over to him any document or any other item. When the application has been considered by the competent officer and the Director-General has made his decision, the applicant, the patentee and the exclusive licensee shall be notified of the decision which is appealable to the Board within 60 days of receipt of the notice. Where it is decided by the Director-General that a license shall be granted to the applicant, the Director General has to set the royalty and the conditions for the exploitation of the patent and the restrictions on the rights of the patentee and the exclusive licensee as agreed upon by the patentee and the applicant. If no agreement has been reached by the parties within the period prescribed by the Director-General, the Director-General has to fix the royalty and prescribed the conditions and restriction as he deems appropriate subject to the following requirements:

- (1) the scope and duration of the license shall not be more than necessary under the circumstances;
- (2) the patentee shall be entitled to further license others;
- (3) the license shall not be entitled to assign the license to others, except with that part of the enterprise or goodwill particularly of the part under the license;
- (4) the licensing shall be aimed predominantly for the supply of the domestic market;
- (5) the remuneration fixed shall be adequate for the circumstances of the case.

The decision of the Director-General is appealable to the Board within 60 days from the date on which such decision is received.

**10. Describe the types of provisional measures that judicial authorities may order, and legal basis for such authority.**

Under **Section 65 of the Copyright Act B.E.2537 (1994)**, in case there is an explicit evidence that a person is doing or about to do any act which is an infringement of copyright or performer's rights, the owner of copyright or performer's rights may seek the injunction from the court to order the person to stop or refrain from such act. The injunction of the court should not prejudice the owner of copyright or performer's rights to claim damages under Section 64.

Under **Section 116 of the Trademark Act B.E.2534 (1991)**, if there is clear evidence someone is committing or is about to commit an act under Sections 108, 109 or 110 of the Act (i.e., counterfeiting, imitation of a trademark, service mark certification mark or collective mark; importation, distribution or having in possession for distribution of goods bearing a counterfeit and imitated mark; provision of a service under a counterfeit or imitated mark), the owner of the trademark, service mark, certification mark or collective mark may apply to the Court to stop or refrain from such act

Under **Section 77*bis* of the Patent Act B.E.2522 (1979)**, in case there is clear evidence that any person is committing or about to commit any act in infringement of the rights of the owner of a patent or petty patent under Sections 36, 63 or Sections 65*decies* of the Act, the owner of the patent or petty patent may request the Court to order the person to stop or refrain from committing such infringement. The order of the Court shall not deprive the owner of the patent or petty patent to claim damages under Section 77*ter*.

Under **Section 8 of the Trade Secrets Act B.E.2545 (2002)**, where there is clear evidence that an infringement of trade secrets has been committed or is imminent, the affected or imminently to be affected controller of trade secrets has the following remedies:

(1) Petition the court for an interim injunction, temporarily to stop the infringement of trade secrets; and,

(2) File an action in the court for a permanent injunction, permanently to stop the infringement of trade secrets and claim damages from the wrongdoer.

The petition under (1) may be filed prior to the action under (2).

**11. In what circumstances may such measures be ordered *inaudita altera parte*.**

The Court may adopt provisional measures *inaudita altera parte* in the case of extreme emergency in accordance with provisions of Sections 266-267 of the Civil Procedure Code B.E.2477 (1934).

**12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular, relevant time-limits and safeguards to protect the legitimate interests of the defendant.**

Rules 12-19 of the Rules for Intellectual Property and International Trade Cases B.E.2540 (1997) govern the entire procedures for provisional measures as follows:

Rule 12

An application for the Court order under Section 65 of the Copyright Act, B.E.2537, Section 77*bis* of the Patent Act, B.E.2522, Section 116 of the Trademark Act, B.E.2534 or other intellectual property legislation, shall state the facts establishing a *prima facie* case and the reasons sufficient for the Court to believe that it is appropriate to grant such order. The application shall also include a statement confirming the facts of a person who witnessed the cause of the application, in order to substantiate such application.

Rule 13

In considering the application under Rule 12, the Court will grant the application if (1) there is reasonable ground for the application and the time the application is filed, as well as sufficient reasons for the Court to grant such application, and (2) the nature of the damage incurred by the applicant is such that the damage cannot be restituted by monetary measures or any other form of indemnity or the prospective defendant is not in a position to compensate the applicant for his damage, or it might be difficult to enforce the judgment against the prospective defendant afterwards. In considering the application, the Court shall take into account the balance of the extent of damage that might be incurred by both parties. If the Court issues an order dismissing the application, such order shall be final.

Rule 14

In case where the Court grants the application under Rule 13, the Court shall notify the prospective defendant of the order without delay.

The order under paragraph one shall immediately bind the prospective defendant even though the prospective defendant has not been notified of the order.

Rule 15

In case where the Court grants the application under Rule 13, taking into account any damage that the prospective defendant might incur, the Court shall order the applicant to provide security for such damage in the amount within the period and under the conditions which the Court deems appropriate.

Rule 16

In case where the Court grants the application under Rule 13, the defendant may file an application requesting the Court to repeal or modify the provisional measures of protection. The order of the Court repealing or modifying the measures shall be final. Within 30 days from the date on which the Court issues an order repealing or modifying the measures, a request for the Court

order may be filed to direct the applicant to compensate for the damage. If the Court finds, after making an inquiry, that the order granting provisional measures of protection which has been repealed or modified was granted due to the Court's misunderstanding that there is ground for taking an action against the defendant or sufficient reason to grant such provisional measures by the fault or negligence of the applicant, the Court may order the applicant to compensate the defendant in the amount the Court deems appropriate. If the applicant fails to comply with such Court order, the Court may enforce such order as if the applicant is a judgment debtor.

#### Rule 17

In case where the Court grants the application under Rule 13 but the applicant fails to institute an action relating to the application within 15 days from the date on which the application was granted or within the period prescribed by the Court, the provisional measures shall lapse at the expiration of the said period. In this case, the defendant may file with the Court, within 30 days from the date on which the provisional measures is deemed to lapse, a request for the Court order directing the applicant to compensate him for his damage in the amount the Court deems appropriate. If the applicant fails to comply with such order, the Court may enforce such order as if he is a judgment debtor.

#### Rule 18

In case where the Court grants the application under Rule 13 and an action is instituted in relation to the application within 15 days from the date on which the application was granted or within the period prescribed by the Court, the provisional measures granted or modified under Rule 16 shall continue to be in force, unless the Court issues an order repealing or modifying the measures according to a request of the defendant. In this case, Sections 260, 261 and 263 of the Civil Procedure Code shall apply *mutatis mutandis*.

#### Rule 19

The provisions on in-camera proceedings and prohibition of publication under Rule 24 and on hearing of a witness by means of videoconference under Rule 32 shall apply to the proceedings under Rule 13 and Rules 15-18 *mutatis mutandis*.

### **13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

With reference to Sections 266-267 of the Civil Procedure Code B.E.2477 (1934), and Section 27 of the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E.2539 (1996), the Intellectual Property and International Trade Court has to proceed with the hearing without adjournment until the hearing is over, except in case of unavoidable necessity. After the hearing is over, the court shall promptly render a judgment or an order. The proceedings are subject to filing fees, and in some cases, bonds or securities (Section 98 of the Customs Act B.E.2469).

### **14. Reply to the above questions in relation to any administrative provisional measures.**

Section 67 of Copyright Act B.E.2537 (1994) allows authorized officials according to the Penal Code:

(1) to enter a building, office, factory or warehouse of any person during sunrise and sunset or during the working hours of such place or to enter a vehicle to search or examine the merchandise when there is a reasonable suspicion that an offence under this Act is committed,

(2) to seize or forfeit documents or materials relating to the offence for the benefit of proceeding a litigation where there is a reasonable suspicion that an offence under this Act is committed,

(3) to order any person to testify or submit accounting books, documents or other evidences when there is a reasonable suspicion that the testimony, accounting books, documents



or such evidences shall be useful for the finding or the use as evidence for proving the offence under this Act.

Applicants of provisional measures in an administrative procedure are not required to pay any fees.

### Special Requirements Related to Border Measures (Question 15-19)

**15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

According to the Notifications and Regulations of Ministry of Commerce on Export and Import of Goods from and to the Kingdom of Thailand, the intellectual property rights protected by the Customs include right to trademark and copyright. The right holders can therefore made a request to the customs authority for suspension of any import and export of goods infringing trademark and copyright. The border measures will not apply to the goods carried or posted across the border by an individual within the reasonable amount for self-using.

Customs control and border measures have not yet applied to transit and transshipment of goods infringing intellectual property right.

**16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

Any right holder initiating procedures for suspension by the Customs authorities of the release of suspected counterfeit trademark or pirated copyright goods into free circulation is required to provide adequate evidence and sufficient information which includes a suspicion of infringement of the right holder's intellectual property right in order to make the suspension of goods by Customs authorities. The requirement to provide information shall not unreasonably deter recourse to these procedures.

The Customs authorities also require a right holder initiating procedures to suspend the release of suspected counterfeit trademarked goods or pirated copyright goods to provide a guarantee, in order to protect the defendant and the authorities and to prevent abuse.

**17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

There's no cost involved. The right holder has to request for suspension of goods within 24 hours after being notified by Customs authorities. The duration of suspension is 10 days which can be extended for another 10 days.

**18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

The competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal request from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported or exported are counterfeit or pirated.

**19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

Section 25 of the Customs Act B.E.2469 (1926) provides that all goods or articles seized under the Act shall be delivered into the custody of the competent Customs official. If there is no such official within a reasonable distance, they shall be delivered into the custody of the nearest *Amphoe*, who shall hold them on behalf of the Customs. All goods seized or forfeited under this Act or other laws relating to the Customs shall be disposed of as instructed by the Director-General.

If the goods seized are of perishable or their detention poses a risk of damage or the expense of detention is more than reasonable, the Director-General or the person authorized by him may instruct the competent official to sell them by auction or by other means as appropriate before they become property of the State, and the proceeds thereof, deducted by all expenses and charges, shall be retained instead of the goods.

Also, Section 17 of the Customs Act (No. 9) B.E.2482 (1939) provides that any goods shall in respect of which an offence has been committed under Section 27 of the Customs Law B.E.2469 take in conjunction with Section 16 of the Customs Act (No. 9) B.E.2482 shall be forfeited, irrespective of the conviction or non-conviction of any particular person.

Remarks:

Section 27 of the Customs Act B.E.2469 (1926) provides that "Any person imports or brings into the Kingdom any tax unpaid, restricted, or prohibited goods, or any goods which has not duly passed through the Customs, or exports or takes such goods out of the Kingdom or assists in any way in importing or exporting or removing or assisting to removal without permission from any ship, quay, go down, warehouse, place of security, or store room, or provide the place to keep, or conceals such goods, or arranges other persons to do so or is involved in any manner in carrying, removing, or dealing with such goods in any manner to avoid or attempt to avoid the payment of Customs tax or of any duties of avoid or attempt to avoid any provisions of law and restrictions relating to the importation, exportation, landing, warehousing, and delivery of goods with the intention to defraud the government tax of His Majesty the King with must be paid for such goods or avoids the prohibition or restriction of such goods, for each offence the shall be a fine of four times the amount of price of the goods including duty, or to imprisonment for a term not exceeding ten years, or to both."

This has to be read in conjunction with Section 16 of the Customs Act (No. 9) B.E.2482 (1939) which states that the execution of any act provided in Section 27 and Section 99 of the Customs Law B.E.2469 shall be deemed to be an offence, irrespective of the existence or non-existence of any wilful intent or negligence.

**Criminal Procedures (Question 20-25)**

**20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

The only court that has jurisdiction over criminal acts of IPRs infringement in Thailand is the Central Intellectual Property and International Trade Court.

**21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

The type of IPR infringements which employ criminal procedures and criminal penalties are as follows:

- 21.1 Trademark infringement under the Trademark Act B.E.2534 (1991)
- 21.2 Copyright infringement under the Copyright Act B.E.2537 (1994)
- 21.3 Patent infringement under the Patent Act B.E.2522 (1979)

- 21.4 Geographical Indications infringement under the Geographical Indications Protection Act B.E.2546 (2003)
- 21.5 Layout-designs of Integrated Circuits infringement under The Protection of Layout-designs of Integrated Circuits Act B.E.2543 (2000)
- 21.6 Plant Varieties infringement under The Plant Varieties Protection Act B.E.2542 (1999)
- 21.7 Trade Secret infringement under The Trade Secret Act B.E.2545 (2002)

**22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?**

Generally, investigation officers are responsible for the initiation of criminal proceedings. In case of copyright and trade secret (Section 33 of the Trade Secrets Act B.E.2545 (2002)), complaints by the right holders are required to enable investigation officers to initiate criminal prosecution. Otherwise, the investigation is considered unlawful. Other types of IPRs infringement cases can, however, be commenced by the own initiation of investigation officers without any involvement of the right holders.

Under Section 28 of Criminal Procedure Code B.E.2477 (1934), (1) the public prosecutor and (2) the victim or injured person, including the intellectual property rights holder are entitled to institute criminal prosecution in court. "Injured Person" means a person who has received injury through the commission of any offence. This includes any other person who has the power to act on his or her behalf.

**23. Do private persons have standing to initiate criminal proceedings and, if so, who?**

Yes. Under Section 28 of Criminal Procedure Code B.E.2477 (1934), (1) the public prosecutor and (2) the victim or injured person, including the intellectual property rights holder are entitled to institute criminal prosecution in court. "Injured Person" means a person who has received injury through the commission of any offence. This includes any other person who has the power to act on his or her behalf.

**24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- imprisonment;
- monetary fines;
- seizure, forfeiture and destruction of infringing goods and materials and implements for their production;
- other.

Penalties to be imposed against each IPRs infringement actually vary, depending on the charges. The information below is only an example of the penalties for each type of IPR.

**Trademark**

Primary infringement (such as manufacturing of infringing goods) and secondary infringement (such as selling infringing goods) contain identical penalties, i.e. maximum penalty of 4 years' imprisonment, or 400,000 baht fine, or both. In case of repeat offenders who recommit trademark infringement within 5 years after the date the punishment of previous judgment has been served, double punishment will be imposed. After the judgment is rendered, infringing goods will be forfeited and subsequently destructed (Section 115).

**Copyright**

Primary infringement: maximum penalty of 6 months to 4 years' imprisonment, or 100,000-800,000 Baht fine, or both (Section 69). Secondary infringement: maximum penalty of 3 months-2 years' imprisonment, or 50,000-400,000 Baht fine, or both. (Section 71) In case of conviction, the right holders shall have the right of ownership over the infringing goods and over half of the fine paid by the defendant under the judgment. Other materials used in the wrongdoing shall be forfeited (Section 75). Similar to trademark infringement, in case of repeat offenders who

recommit trademark infringement within 5 years after the date the punishment of previous judgment has been served, double punishment will be imposed.

### **Patent**

Primary infringement and secondary infringement: maximum penalty of 2 years' imprisonment, or 400,000 Baht fine, or both (Section 85). Equipments, tools or materials used or to be used in patent infringement shall be forfeited under Criminal Code Section 33.

### **Geographical Indications**

Primary infringement: maximum penalty is 200,000 Baht fine (Section 39). Secondary infringement does not exist in the Geographical Indications Protection Act B.E.2546 (2003).

### **Trade Secrets**

Maximum penalty for trade secret infringement is 1 year imprisonment, or 200,000 Baht fine, or both (Section 33). It should be noted that the offense is compoundable (Section 37), which means it can be mutually settled between the right holder and the infringer.

### **Layout-designs of Integrated Circuits**

Primary infringement: maximum penalty of 50,000-500,000 Baht fine (Section 22(1), 48).  
Secondary infringement: maximum penalty of 20,000-200,000 Baht fine (Section 22(2), 49).

### **The Plant Varieties Protection Act**

Primary infringement and secondary infringement: maximum penalty of 2 years' imprisonment, or 400,000 Baht fine, or both (Section 33).

If the Court imposes a fine of less than 80,000 Baht and the fined person is not a juridical person and is unable to pay for the fine, that person may file a petition with the Court of First Instance and ask for an order to perform specific hours of community service instead (Section 30(1) of Penal Code).

### **25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.**

Length of criminal proceedings for IPRs infringement is not prescribed in written laws as it tends to be a practical matter. In general, however, it takes approximately 4-5 months before prosecutors can file the case to the court. In case of guilty plea, the court will render judgment immediately. However, if the defendant pleads not guilty, trials begin and generally take about 6 months to 3 years depending on the schedule of both parties and complexity of a particular case. There are no costs for IPRs prosecution.

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