

Geographical Indication Protection Act B.E. 2546

Whereas it is proper to have a law on Geographical Indication Protection.

This Act contains certain provisions concerning the restriction of individual rights and freedom which, under Section 29 together with Section 50 of the Constitutional Law of the Kingdom of Thailand, can be done by virtue of the provisions of law.

Section 1

This Act shall be called "Geographical Indication Protection Act B.E. 2546"

Section 2

This Act shall come into force at the expiration of one hundred and eighty days from the date of publication in the Government Gazette.

CHAPTER 1 General provisions

Section 3 In this Act,

"Geographical indication" means a name, sign or anything which is used to call or represent a geographical origin which can identify that the product originating from that geographical origin is the product of quality, reputation or any unique characteristic of that geographical origin.

"Geographical origin" means an area of a country, district, region and locality including a sea, lake, river, watercourse, island, mountain or any other area similar thereto.

"Goods" means things which can be purchased, exchanged or transferred whether they

originate by nature or they are agricultural products including handicraft and industrial products.

"Generic name" means a name which is known commonly as referring to the name of a particular type of goods.

"Board" means the Geographical Indication Board.

"Competent Officer" means a person appointed by the Director General as a Registrar to perform duty under this Act.

"Registrar" means the Director General or a person appointed by the Minister as a registrar to perform duty under this Act.

"Director General" means the Director General of the intellectual Property Department.

"Minister" means the Minister in charge of this Act.

Section 4

The Minister of Commerce shall be in charge of this Act and have the power to appoint Registrars, issue Ministerial Regulations prescribing fees not exceeding those prescribed in the schedule annexed to this Act, reduce or preclude fees and implement other matters for the performance of duty under this Act.

The Ministerial Regulations shall take effect upon publication in the Government Gazette.

CHAPTER 2

Application for geographical indication

Section 5

A registrable geographical indication applied for any goods shall not be:

- (1) a generic name of the goods for which the geographical indication is to be used.
- (2) a geographical indication which is contrary to public order, morality or public policy.

Section 6

A foreign geographical indication protectable under this Act must have clear evidence that it is the geographical indication protected under the law of that country and has been continuously used until the date of application in Thailand.

Section 7

The following person is eligible to apply for registration of geographical indication:

- (1) an official division, government sector, state enterprise, local administrative organization or any other government organization being a juristic person whose responsibility covers the geographical area of the goods;
- (2) a natural person, group of persons or juristic person trading in relation to the goods using the geographical indication and has domiciles in that geographical area;
- (3) a consumer group or organization of the product using the geographical indication.

Section 8

The applicant under Section 7 who is not a Thai national and wishes to apply for a foreign geographical indication must have any of the following qualifications:

- (1) being of nationality of the country which is a contracting state to a convention or international treaty concerning the protection of geographical indication to which Thailand is also a party;
- (2) having domicile or active place of business in Thailand or in a contracting state to a convention or international treaty concerning the protection of geographical indication to which Thailand is also a party.

Section 9

Application for geographical indication shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 10

An application for geographical indication shall consist of details concerning quality, reputation or any other characteristics of the goods, geographical area and any other details prescribed in the Ministerial Regulations.

Section 11

Upon receipt of the geographical indication application, the Competent Officer shall examine the application as to its conformity with Sections 5,6,7,8,9 and 10 and shall submit his examination report to the Registrar within one hundred and twenty days from the application date.

Section 12

In the examination of application under Section 11, the Competent Officer may request the applicant or any relevant person to give statement or submit additional evidence to him. In case where an opinion of an expert in the field relating to the application may be required, the Registrar shall submit the case to an expert for examination and opinion.

Section 13

In case where the application is not in conformity with Sections 5, 6, 7, 8, 9 and 10, the Registrar shall, within thirty days upon receipt of the examination report, order a rejection of such application and notify the applicant together with reasons of such rejection within fifteen days after the rejection order has been made.

The applicant is entitled to appeal the Registrar's order to the Board within ninety days upon receipt of the rejection notification. The appeal shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 14

When the Board has made its decision on the appeal, it shall notify the applicant of its decision together with reasons within fifteen days after the decision has been made.

Once the Board has made its decision, the applicant, if disagreeing with the decision, is entitled to bring the case to court within ninety days upon receipt of the decision notification. If the case is not brought to court within the period given, the Board's decision shall be deemed final.

Section 15

In case the application is in conformity with Sections 5, 6, 7, 8, 9 and 10 and the Registrar is of the opinion that it should be registered with or without any condition, the Registrar shall order publication of such registration in accordance with the rules prescribed in the Ministerial Regulations.

Section 16

Within ninety days after the publication date under Section 15, any interested person may file an opposition against the said application.

The opposition under paragraph one shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Section 17

In case where there is an opposition under Section 16, a copy of the opposition notice shall be sent to the applicant within fifteen days from the date of opposition.

The applicant is required to submit a counter-statement within ninety days upon receipt of the opposition copy and the Competent Officer shall send a copy of the counter-statement to the opposer. In case the applicant does not submit a counter-statement, the applicant shall be deemed to have abandoned the application.

In the examination of the opposition and counter-statement, Section 12 shall apply *mutatis mutandis*.

Section 18

When the Registrar has made its decision on the opposition and counter-statement, it

shall notify the applicant and the opposer of its decision together with reasons within fifteen days after the decision has been made.

The applicant and the opposer are entitled to appeal the Registrar's decision to the Board within ninety days upon receipt of the decision notification. The appeal shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Once the Board has made its decision, the party disagreeing with the Board's decision is entitled to bring the case to court within ninety days upon receipt of the decision notification. If the case is not brought to court within the period given, the Board's decision shall be deemed final.

Section 19

If there is no opposition under Section 16 or there is but the Registrar, Board or Court, as the case may be, has issued final decision under Section 18 or a final judgment to dismiss the opposition, the Registrar shall, in accordance with the rules and procedures prescribed in the Ministerial Regulations, register the geographical indication applied for within fifteen days after the expiration of the period stipulated under Section 16 paragraph one or the date the Registrar has received the decision or judgment.

Section 20

When the Registrar has registered the geographical indication pursuant to Section 15 or Section 19, the protection of the geographical indication shall take effect from the date of application.

CHAPTER 3

Amendment and revocation of geographical indication registration

Section 21

In case where the registration contains trivial mistakes or inaccuracy, the Registrar may, upon its own notice or upon receipt of the applicant's request, order a correction of such

mistakes or inaccuracy.

Section 22

When the Registrar has registered the geographical indication pursuant to Section 19, if there appears later on any evidence showing that the application or registration has been unlawfully made, made by concealment, or contains any untrue statement at the time of registration, an interested person or the Competent Officer may request the Registrar to refer the case to the Board for an order to amend or revoke the registration. The amendment or revocation shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

Once the Board has ordered any amendment or revocation of the geographical indication registration pursuant to paragraph one above, it shall notify the applicant of its order together with reasons within fifteen days from the date the order has been made. Such amendment or revocation shall be published in accordance with the procedures prescribed in the Ministerial Regulations.

Section 23

If there are any changes of situation after the registration under Section 19 and such changes have rendered the registered geographical indication unregistrable under Section 5 or have altered any details concerning the geographical origin or any other details from those registered, an interested person or the Competent Officer may request the Registrar to refer the matter to the Board for a consideration in making an amendment or revocation. For this purpose, Section 22 paragraph, two shall apply *mutatis mutandis*.

Section 24

Except the case of revocation of registration pursuant to Section 5(2), when the Board has ordered an amendment or revocation pursuant to Section 22 or 23, an interested person disagreeing with the Board's decision may bring the case to court within ninety days upon receipt of the decision notification. If the case is not brought to court within the period given, the Board's decision shall be deemed final.

CHAPTER 4

Use and suspension of use of geographical indication

Section 25

When a geographical indication has been registered for any goods, the manufacturer of the goods, locating in that particular geographical area or the person trading in relation to such goods are entitled to use the registered geographical indication with respect to the goods for which it is registered in accordance with the conditions set forth by the Registrar.

Section 26

In case where the person under Section 25 uses the geographical indication not in compliance with the conditions registered, the Registrar shall notify such person in writing requesting compliance with the conditions within a period given by the Registrar. If no compliance is given without any proper reasons, the Registrar may issue a written order suspending the use of the geographical indication of such person for a period of not exceeding two years from the date of receipt of the order.

The person whose use has been suspended under paragraph one is entitled to appeal the Registrar's order to the Board within ninety days upon receipt of the order. The appeal shall be made in accordance with the rules and procedures Prescribed in the Ministerial Regulations.

When the Board has made its decision, the party disagreeing with the Board's decision is entitled to bring the case to court within ninety days upon receipt of the decision notification. If the case is not brought to court within the period given, the Board's decision shall be deemed final.

Section 27

The following acts shall be deemed unlawful:

- (1) use of geographical indication in order to misrepresent or mislead other persons to

- believe that the goods which do not originate from the geographical origin indicated in the application are goods originating from such geographical origin.
- (2) use of geographical indication in any manner which will cause confusion or deception as to the geographical origin, quality, reputation or any other characteristics of the goods so as to cause damage to other traders.

The acts under paragraph one, if made prior to registration date of the geographical indication, shall be deemed lawful.

CHAPTER 5

Protection of geographical indication for specific goods

Section 28

The Minister may announce any particular type of goods to be a specific goods by way of issuing Ministerial Regulations.

Subject to the provision under paragraph four below, when a particular type of goods has been announced as a specific goods under paragraph one, use of the geographical indication with any goods not originating from the geographical origin indicated in the application shall be deemed an unlawful act regardless of any indication, use of any wording or performance of any action so as to declare the true place of origin of such goods by the user.

The declaration of the true place of origin of goods under paragraph two includes any use of the term "type", "category", "form", any wording or anything similar thereto to accompany the geographical indication used with the said goods.

The act under paragraph two shall not be deemed unlawful if the user has been using that geographical indication for ten consecutive years before April 15, 1994 or in good faith before the date mentioned.

Section 29

In case where specific goods prescribed under the Ministerial Regulations bear identical or similar geographical indication but they actually originate from a different geographical origin, when such geographical indication has been registered for the said goods, use of the said geographical indication shall be made in accordance with the rules and procedures prescribed in the Ministerial Regulations.

CHAPTER 6 Geographical Indication Board

Section 30

There shall be a committee called "Geographical Indication Board" consisting of the Under-Secretary of the Ministry of Commerce being the Chairman, the Under-Secretary of the Ministry of Agricultural and Co-operative, the Secretary-General to the Council of State, the Attorney-General, a representative from the Law Society and not more than fourteen qualified members appointed by the Cabinet from the fields of law, political science, science, agriculture, economics, liberal arts, history, geography, archaeology, six members out of which shall be appointed from private sectors and among which there shall be a mixture of qualified members from consumer protection organizations.

The Director General of the Intellectual Property Department shall be the Chairman and Secretary.

The Board may appoint any person to be an Assistant Secretary.

Section 31

The Board shall have the following power and duties:

- (1) to advise or consult the Minister in issuing the Ministerial Regulations under this Act;
- (2) to examine and decide appeals under this Act;
- (3) to examine and order amendment or revocation of the geographical indication

registration under this Act;

- (4) to examine other matters relating to the geographical indication as assigned by the Minister;
- (5) to appoint experts under Section 12;
- (6) to carry out any other necessary acts stipulated in this Act.

Section 32

Qualified members of the Board shall serve for a term of four years. Members who have vacated the office may be re-appointed but not for more than two consecutive terms.

Section 33

Apart from vacating office at the expiration of their term, members of the Board shall vacate the office upon:

- (1) death;
- (2) resignation;
- (3) dismissal by the Cabinet;
- (4) being adjudged bankrupt;
- (5) being adjudged incompetent or quasi-incompetent; or
- (6) imprisonment under final sentence of imprisonment unless for an offence of negligence or petty offence.

Section 34

Where there is an appointment of a substitute member to replace the member who vacates his office prior to the expiration of his term or there is an appointment of additional member during the term of the existing members, the newly appointed member shall serve for the remainder of the term of the previously appointed members.

Section 35

Where a member vacates his office at the expiration of his term but a replacement has not been made, such member who is vacating his office shall serve during this interim period until a new member is appointed.

Section 36

A quorum for meeting of the Board shall consist of no less than one half of the total number of the members. If the Chairman is not present in the meeting or is not able to perform his duty, the Board shall elect one of its members to preside.

A decision at the meeting shall be taken by the majority vote. Each member shall have one vote. In case of a tie, the presiding Chairman shall have an additional casting vote.

Section 37

The Board shall have power to appoint sub-committees to consider or perform any acts as assigned by the Board. Section 36 shall then apply mutatis mutandis to meetings of the sub-committees.

Section 38

In the performance of its duties, the Board or sub-committees shall have power to issue written orders requesting any relevant persons to give statements or submit any documents or things necessary for its consideration, however, in accordance with the Regulations prescribed by the Board.

CHAPTER 7

Penalties

Section 39

Whoever commits the acts under Section 27 shall be liable for a fine of not exceeding two hundred thousand Baht.

Section 40

Whoever commits the acts under Section 28 paragraph two shall be liable for a fine of

not exceeding two hundred thousand Baht.

Section 41

Whoever does not give statements or submit documents or things to the Board or sub-committees pursuant to Section 38 shall be liable for a fine of not exceeding five thousand Baht.

Section 42

Where an offender to be punished under this Act is a juristic person, the managing director, manager or representative of such juristic person shall also be liable for the penalties prescribed for the offence unless such individual can prove that it has no knowledge or does not consent to commit the offence.

Section 43

For the offences under this Act, the Director General shall have power to fix the fine. Once the alleged offender has paid the fine, the case shall be deemed settled pursuant to the Criminal Procedural Code.

SCHEDULE OF FEES

Application for a geographical indication

1,000 Baht

Opposition against application for a geographical indication

1,000 Baht

Appeal against the Registrar's order or decision

1,000 Baht

Amendment of geographical indication registration

200 Baht

Cancellation of geographical indication registration

200 Baht

Other applications

200 Baht