

ESTABLISHMENT and MAINTENANCE of an IP CONSULTATION DESK for SMEs in the ROYAL KINGDOM OF CAMBODIA

Report

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1. Background of the project

The Kingdom of Cambodia joined the WTO in 2004. Like all LDC members of the WTO, Cambodia has to comply with all the requirements provided by the TRIPS Agreement by July 31, 2013 (with the only exception of the patenting of pharmaceutical products, for which the deadline is 2016). These deadlines were recently postponed to 2021. However, they are rapidly approaching.

The Kingdom of Cambodia should therefore strengthen the capacity of its institutions in order to promote the effective use and implementation of intellectual property rights not only to comply with its WTO obligations, but also as a development tool for the promotion and protection of innovation and therefore the enhancement of domestic growth.

In this context, the Kingdom of Cambodia has received financing in the amount of US\$ 12.60 million from the Multi Donor Trust Fund (MDTF), contributed by the European Commission, DANIDA and UNIDO. The fund is administered by the World Bank as "trustee" to support the "*Trade Development Support Program (TDSP)*". The development objective of the Program is to support the Royal Government of Cambodia (RGC)'s strategy to promote a Trade Sector Wide Approach (Trade SWAp). Within the context of this larger Program, the Department of Intellectual Property Rights (D/IPR) / the Secretariat of the National Committee for Intellectual Property Rights (NCIPR), and the Ministry of Commerce received funding to implement a specific Project aiming at fostering the use of IP by local SMEs.

The main activities of the Project include:

- One two-day workshop for 10 DIPR officials in the IP advisory service for SMEs and produce a report on the training;
- One two-day workshop for approximately 45 SMEs representatives in the identification and protection of IPRs and produce a report on the training;
- Produce a comprehensive report on how to establish and manage a SME Consultation Desk, with recommendations on capacity building initiatives and incentives for SMEs to protect their IPRs.

Mr. Giulio Zanetti, International Consultant and Director of the Training and Network Department at the International Development Law Organization (IDLO) was selected as the international consultant to carry out the above assignments. The contract commenced on August 5, 2013 and lasted eight working days.

2. The SME Cambodian Context

Cambodia's national economic growth in 2011 totaled 6.9% and small and medium enterprises played a fundamental role in this progress as they are in fact at the heart of Cambodia's economic development. Their impact could be considerably enhanced through an adequate exploitation of their creativity and innovative practices. It is estimated that SMEs represent 99% of the total number of companies in Cambodia and they account for approximately 45% of total employment. SMEs play a fundamental role in providing revenues to low-income and the most vulnerable layers of the society, particularly women.



There are five sectors in which SMEs are particularly active in Cambodia: agriculture (particularly in Battambang and Siem Reap), garments, tourism, food and beverages, and construction. In these sectors, SMEs play a fundamental role in the supply chain by either directly providing services to end users or by supporting larger companies.

It is worth noticing that over 70% of SMEs employ less than 10 employees. This clearly indicates that the SME panorama in Cambodia is dominated by micro or very small enterprises. Such

consideration should be borne in mind when determining strategies and business and legal frameworks to foster their contribution to the national economic growth.

The main challenges that Cambodian SMEs face can be summarized as follow:

- Limited access to finance: this is undoubtedly one of the most significant factors that limits SMEs development. Statistics show that only 8% of SMEs obtain financing from banks and other microfinance institutions. SMEs are often discouraged from taking loans due to the high collateral requirements and high interest rates. On the other hand, banks encounter problems when lending funds to SMEs due to their frequently poor accounting systems and financial records. A weak judiciary makes it even more complicated to enforce such agreements providing for loans.
- Weak legal and regulatory environment: the uncertainties linked to the legal framework entail uncertainties in its interpretation and possible judicial challenges (as there are no specialized commercial courts). This in turn increases compliance costs. By way of example, particular challenges exist in the registration of companies (that is unduly complicated and might take up to 94 days), and in the requirements for licensing, etc.
- Uneven playing field: numerous Cambodian SMEs are not registered and therefore they do not comply with laws and regulations. This provides them with an unfair advantage when competing with duly registered local SMEs.
- Lack of innovation culture: most of Cambodian SMEs innovate on a daily basis but fail to capture the outcomes of their creativity, as they do not possess the necessary awareness and

- practical knowledge of the IP regime that could effectively protect their innovations.
- Lack of institutional support services and activities to help SMEs access the markets, develop business services, upgrade their human and technology assets, improve synergies with other relevant players and effectively use the IP regime.

With the expansion of globalization, SMEs face increasing international competition. Cambodian SMEs therefore need to improve the quality and quantity of their outputs and enhance their efficiency if they want to survive the competition from other ASEAN countries. In this context, it is worth recalling that the 2015 deadline, when companies from ASEAN countries will be able to freely export their products into Cambodia, is rapidly approaching. This is a particular issue of concern for Cambodian SMEs.

In relation to IP, SMEs need assistance at many levels. Some do not even possess basic knowledge about IP and about the nature of their own IP rights. Many fails to properly manage it. Most are not in a position to fight against infringements of their IPRs. In Cambodia, SMEs are extremely diverse in nature and size. They therefore present a variety of diverging needs, also in the IP sector, depending on the nature, scope and size of their operations. Tailor-made IP advice should therefore be provided to take into consideration the different requirements.

In Cambodia SMEs are generally defined on the basis of one or more quantitative criteria such as annual turnover and number of employees. SMEs with less than 10 staff are normally considered "Micro enterprises"; "Small enterprises" employ between 10 and 50 employees and "Medium enterprises" have between 50 and 100 staff.

3. Establishment and Maintenance of an IP Consultation Desk (CD) for SMEs

A. INTRODUCTION

Micro, Small and Medium enterprises represent over 90% of the companies worldwide and they are undoubtedly the driving forces of many national economies particularly in developing countries. Unfortunately, most of them have failed to take full advantage of the potential that the IP regime may offer in terms of enhanced competitiveness and business success. Only a suitable IP system can transform creative ideas into business assets and wealth. Only through the correct use of the IP regime, SMEs can deter potential infringers and enhance their prestige, market value and credibility at national and international level, by creating a stronger corporate identity. This in turn facilitates access to financial resources.

In Cambodia, any national strategy designed to support SMEs should recognize the importance of mainstreaming IP in the national economic growth strategies and it should be conscious of Cambodian development needs.

Capitalizing on the experience of other developing countries, Cambodia should proceed with full awareness of the importance of:

- Embracing a multi-disciplinary approach;
- Engaging all relevant stakeholders;
- Ensuring fairness and equality.

This document sets out the overall objectives, the structure and the functions of the IP Consultation Desk (CD) for Cambodian SMEs. The underlying assumption is that such a structure would be extremely beneficial in the Cambodian context, particularly for the creation of an IP culture in SMEs, encouraging them to make specific use of the IP regime to improve their competitiveness at the national and international level. Through an adequate IP strategy, SMEs could enhance their competitiveness by:

- Developing and (more often) acquiring modern, less polluting technology;
- Fighting against possible infringers;
- Enhancing their capacity to access financing;
- Increasing the market value of the company;
- Avoid useless investments and duplication in R&D;
- Creating a stronger corporate identity.

B. Concept and Advisory Functions

The Cambodian IP Consultation Desk (CD) for SMEs should be a facility that provides guidance to representatives of Cambodian SMEs on how to make a more active and effective use of the IP system, by capitalizing on their own creativity and innovation and/or by acquiring the appropriate creative assets through licensing arrangements with a view to enhancing their competitiveness. It should encourage initiatives to make the national IP system more accessible, affordable, and more responsive to the needs of SMEs. In particular, it should provide, within tight timeframes, free, practical support, advice and information on:

- Identification of IPRs (and advice on their validity – see below)
- Protection of IPRs (at national and international level – see below)
- Management of IPRs (with a special focus on licensing – see below)
- Enforcement of IPRs (at national and international level – see below)

More in general it should support SMEs in establishing sound corporate IPR strategies aiming at maximizing IP assets with a view to achieving their business objectives and targets.

At this stage, it is important to recall that the new SME CD will not be able to provide all types of technical advice and perform all necessary or advisable functions by itself, particularly in the short term. It will be necessary for the CD to work in a **networked** manner, capitalizing on the collective intelligence and experience of its entire internal staff as well as on those of professionals working in other Government institutions, academia and in the private sector. In other words, the new SME CD should have strong capacities to federate around its operations all relevant actors that could contribute to a real success of this new initiative.

IPRs identification

This is undoubtedly the first service that officials of the new SME CD should perform. They should support representatives of local SMEs to identify what innovative practices they employ in their companies and what IP rights they might have, whether already registered or simply used. SME representatives would seldom come with a clear idea of what IPRs they possess. The **identification** of IPRs should be carried out through one-to-one interviews during which the officials of the CD would ask targeted questions to determine not only the rights that are already protected, but also possible rights and de facto practices that could be protected, optimized or at minimum kept secret, through the creation of internal policies.

Once the various IPRs are identified, the SME CD should provide advice on their **validity**, on the basis of the various articles of the Cambodian IP laws, providing for the legal requirements for the validity of IPRs in Cambodia. It is expected that the staff of the SME CD will be in a position to comfortably provide detailed advice on some technical issues (such as trademarks, geographical indications, etc.), while they might have to address more sophisticated questions on other IPRs (such as patents and copyright) to the appropriate government institution.

More in particular, at least the following IPRs may be considered:

- Trademarks (as crucial tools to increase the marketing capacity of SMEs, and products differentiation, image and prestige);
- Domain names (as important internet business identifiers);
- Patents and Utility Models (as a principal instruments to protect technological advances and improvements);
- Industrial Designs (as a tool to increase the visual appeal of products);
- Copyright and related rights (key in the development of a knowledge-based economy);
- Trade secrets and know-how (to facilitate the adoption and use of technologies);
- Geographical indications (to a lower extent).

IPRs protection (at national, regional and international level)

The advisers working at the SME CD should be able to provide advice on how to obtain protection for the various IPRs at national, regional and international level. In other words, they should possess good working knowledge of articles 5 to 10 of the 2002 Trademarks Law, articles 16 to 40 of the 2003 Patent Law, etc. In this context, it is suggested that the advisers should not only provide information on the overall functioning of the national system to apply for and register IPRs, but also indicate costs, timeframes, possible shortcomings and risks. They could also help in practice SME representatives to fill in the application forms, advising them on the appropriate goods and services coverage in accordance with the Nice Classification, etc.

Considering that Cambodian SMEs are entitled to use some of the regional systems, such as the European Union's Community Trademark System and the Community Design System, advisers would be expected to provide detailed guidance - on procedures, costs, timeframes and strategic considerations - also on these registration systems. They would undoubtedly facilitate SMEs in securing protection for their IPRs in other countries and therefore encourage overall Cambodian exports.

Finally, the SME CD should provide advice on international registration systems, such as the Madrid System for the International Registration of Marks, the Patent Cooperation Treaty and The Hague System for the International Deposit of Industrial Designs. Given that Cambodia is not yet a Contracting Party of these systems, the depth of support that the CD advisers should provide could be more limited.

IPRs management (with a special focus on licensing)

Appropriate and effective IP management is a prerequisite for business success. IPRs are continuously developed; often strategic decisions have to be taken as to how to exploit them

at national level and especially in other countries. In this context, licensing arrangements can play a crucial role as well as a major source of revenues for SMEs. Licensing arrangements are cost-effective ways to enter new markets, by exploiting the know-how, experience and contacts of a local counterpart. However, licensing also entails risks both for the licensor and the licensee. It would be advisable for the SME CD to provide concrete advice on how to draft and negotiate the various clauses of a licensing agreement (i.e.: to license-out or license-in technologies and other IPRs), with special attention to the identification of the license's scope, coverage and objectives, exclusivity v. non-exclusivity clauses, duration, rights on improvements, payment modalities, etc.

In view of the significant potential and importance of Franchising, basic advisory capacities should be strengthened in this area.

IPRs Enforcement (at national and international level)

In this context, the advisory functions of the SME CD could consist of:

- Helping SMEs avoid the necessity to take legal actions, and advising on how to respond to cease-and-desist letters;
- Assisting in preparations for litigation and collection of evidence;
- Facilitating access to appropriate legal advice (out of a roster of highly qualified lawyers that have agreed to provide their services at a discounted rate);
- Supporting SMEs in dialoguing with police, custom officials and other Government institutions in charge of curbing IP violations;
- Supporting SMEs by helping them create a viable and effective system for the management of IPRs on the understanding that an appropriate IP management represents a powerful deterrent to IP infringement.

In addition, to the specific technical advice as described above, the SME CD should support companies developing a full-fledged corporate **IPR strategy** consisting of a disciplined and systematic approach to the entire range of IP assets generated by a business. It should include:

- Generation of IPRs: continuous identification of innovation and IP produced;
- Recording of developments;
- Procedures for handling registered and unregistered IPRs;
- Filing and registration strategies;
- Adoption of precautionary measures (particularly for non-registered IPRs) to reduce risks of leakage and abuse (by internal staff and competitors);

- Creation of a corporate knowledge management system (to institutionalize knowledge and prevent infringements);
- Continuous evaluation of IP portfolio;
- Foster relationships and synergies with other relevant actors, both as potential business partners and as institutional counterparts (e.g.: universities, enforcement entities, etc.)
- Establishment of a licensing strategy;
- Strong enforcement policy.

PROVISION OF ADVICE

The SME CD should provide high quality, tailor-made advice within a very short time frame (possibly within 72 hours). Such advice should be confidential, jargon-free, accessible and specific (for the particular type of business, e.g.: textile, manufacturing, food and beverage, garments, import-expert, etc.).

The following system for the provision of advice could be envisaged:

- First level: Welcome Desk. It would record details of incoming requests and of the persons/companies submitting such requests (also for statistical purposes). It would provide SME representatives with initial orientation, including the contact details of all relevant institutions. The Desk would share the appropriate general brochures and background reading materials (such as documents on the various IPRs, on IP enforcement, an IP glossary, etc.) and, if necessary, arrange for a subsequent meeting with specialized colleagues. Ideally, a diagnostic tool, in the form of an online questionnaire should be developed to facilitate a systematic and homogenous approach in the identification of the issues to be addressed. Inquiries should be submitted:
 - By email;
 - Via phone (with the creation of a hotline service);
 - In person (possibly through the organization of appointments with experts).

However, it should be recalled that the new SME CD will achieve its full potential only if it puts in place strategies and systems to proactively approach SMEs either through site visits to their headquarters and one-to-one coaching or through targeted and sectorial outreach initiatives (see Section 3B below).

- Second level: One-to-one Basic Advice. Staff of the SME CD would analyze the content of the specific request as submitted through the diagnostic questionnaire and would provide preliminary advice, proposing possible solutions, options and alternatives. It should also provide information concerning the costs and likelihood of success of the various alternatives and possible courses of action. Advice could include: how to

protect trademarks and inventions, how to file applications, how to carry out novelty/availability searches for trademarks (while prior art searches for patents would fall under the third level), etc. On this occasion, additional reading materials, specific to the particular issues to be addressed, and capacity development tools may be shared with the SME representative in question.

- Third level: One-to-one Advanced Advice. Specialized staff of the SME CD would provide high-level advice to solve concrete and complex issues, as well as to enhance companies' IP management approaches. Alternatively, they would address the requests to the appropriate Government authority (e.g.: the Ministry of Industry, Mines and Energy for more sophisticated matters relating to patents, utility models, and industrial designs, and Ministry of Culture for complex issues referring to copyright). By way of example, prior art searches would be carried out by officials of MIME. In addition, the CD may also support the requesting SME in more complex processes such as "IP Audit", "IP Valuation" and "IP Due Diligence" (see below for explanation), as well as how to deal with warning letters and other enforcement issues. There may be occasions where this result can only be achieved by arranging access to external assistance, including private sector professionals. (See comment below about databanks of experts).

The above model clearly shows that the new SME CD should be conceived and structured as a modern organization, acting as a centralized point of contact for all IP-related matters while capitalizing on the collective expertise of other players and actors, including the private sector and academia, to provide top quality advice and support to Cambodian SMEs.

Given the highly technical nature and multiple dimensions of advice to be provided, it is recommended to develop a comprehensive **SME Adviser Manual** containing all relevant information that the professionals that in the near future will work for the SME CD might have to provide to customers of the Desk. This would represent a fundamental tool to: 1) ensure that all advisers are in a position to provide support and technical advice in a variety of IP-related topics, 2) ensure quality and coherence of the advice rendered, and 3) institutionalize the knowledge relating to issues of direct interest for SMEs.

QUALITY AND EVALUATION

The services provided by the SME CD should be of the **highest qualitative level**. This implies that its personnel should not only possess good knowledge of the various areas in which advice needs to be provided to SMEs, but it also displays high level of professional ethos, commitment and deontology, which are necessary to ensure quality performance and accountability.

To ensure constant improvement in the quality of the services rendered, it would be important to set up an **evaluation** mechanism to foster transparency and accountability. This mechanism would imply the identification of precise outcomes, outputs, activities and performance indicators to assess achievement of results. In other words, a rigorous Results-Based Management (RBM) approach should be applied to this entire initiative

In this context, it is worth recalling that the SME CD's services should also be:

- Client-oriented (i.e.: based on the real needs of the beneficiaries);
- Coherent and consistent;
- Tailor-made for the specific needs of each type of SMEs.

It should also be recalled that managers of SMEs are responsible for all corporate functions, including R&D, production, marketing, sale, finances and human resources. This means that there is great pressure on their time and resources and therefore services provided by the CD should be 100% tailor-made to their needs and, as mentioned above, respond to the highest level of quality. In this context, it is useful to remember that bad reputation following even just one negative experience is very difficult to overcome in the fast-moving and results-driven business and economic environment.

C. OUTREACH FUNCTIONS

In addition to the advisory tasks, the new SME CD will have to carry out fundamental outreach functions to make Cambodian SMEs aware of their innovation potential, their IP rights and of the high value-added services of the newly created Desk.

Bearing in mind the above considerations relating to the nature of SMEs in Cambodia, it is recommended that the delivery of support services by the SME CD should be conceived with a view to minimizing the time that SME representatives have to take off work. Hence, the importance of well-crafted business guides, brochures, web-based services and self-learning packages that could be provided to all relevant stakeholders and consulted at their own convenience.

Publications, brochures and explanatory guides should be developed and made available on at least following topics:

- The various types of IPRs and their relevance for SMEs;
- National, regional and international registration systems (including procedures, costs and timeframes);
- Who is who in the IP protection and enforcement world in Cambodia (a brochure containing contact details of all relevant national actors involved in IPR development, protection and enforcement);
- Identification of IP assets within a company;
- Avoiding infringement by searching for prior art and other prior IPRs;
- How to deal with infringements in Cambodia and abroad (with a section on ADR mechanisms).

The SME CD should also publish and electronically distribute a monthly (or quarterly) Newsletter reporting the latest developments of particular interest to SME owners.

Another key outreach function of the SME CD would be the organization and management of capacity building activities and awareness raising initiatives.

Capacity building should aim not only at addressing the immediate issues of concern of a given firm, but also at building its long-term capacity to avoid or solve similar problems in the future. In this context, the SME CD could establish and organize:

- Self-learning packages and online training materials;
- Face-to-face hands-on workshops on a variety of topics including: general IP for SMEs, IPRs in practice, IP asset management, IPRs licensing, IP litigation, etc. These events should take place not only in Phnom Penh but also in all main provinces. The experience of other countries indicates that this kind of outreach activity should be

followed by a series of one-to-one meetings between experts/advisers of the SME CD and individual representatives of SMEs interested in developing their IP assets.

- Training for enforcement authorities, including judges, prosecutors, police and custom officials.
- Site visits that officials and experts of the SME CD could render to SMEs in Phnom Penh and in the provinces with a view to providing tailor-made advice on how to better exploit their IP assets and potential.

Each event should be evaluated in terms of participants' satisfaction, quality of interventions, materials provided, perceived increase of practical knowledge, etc. In this regard, it is suggested to adopt the "Kirkpatrick model" for training evaluation, adapting it to the local context.

The **awareness raising** initiatives could include:

- Campaigns on the importance of IP for business success (through all media, including specialized press, promotional materials, TV and radio advertisement);
- Seminars and conference for large audiences;
- Promotional materials capturing the positive experience of local SMEs that through an effective use of their IP resources succeeded to enhance their business success;
- IP side-events in trade fairs and in sectorial events dedicated to SMEs.

The SME CD could also create the following **tools** to better serve its beneficiaries and ensure a high and flexible level of services:

- A self-assessment tool: to be filled in by representatives of local SMEs with a view to determining by themselves the level of awareness and protection of their IP assets, identifying strengths and weaknesses in their IP approaches.
- A SME CD databank: it could be divided in the following sections:
 - o Contact information relating to:
 - SMEs operating in Cambodia, whether or not registered;
 - SMEs representatives that have approached the CD;
 - Government institutions relevant to SMEs, including relating to IP enforcement;
 - Universities, chambers of commerce, research centers;
 - Potential business partners;
 - o Top quality external experts that may render their services at a discounted rate or that may be invited as presenters at conferences and workshops;

- Number and type of requests, and advice provided, including materials distributed (for statistical and knowledge management purposes).
- Documents and templates: model forms and templates could be provided electronically or in paper form, with explanatory notes to facilitate their use. These could include forms for filing patents, trademarks, etc. in Cambodia and abroad; forms to submitting claims to tribunals and start litigation; notifications to authorities; model forms to notify custom administrations; samples of confidentiality and non-disclosure agreements, etc.

Finally, a new **web site** is in the process of being created for the National Committee on IPRs. The SME CD should prominently feature on the first page of the portal. In this context, the following suggestions and best practices may be considered:

- On the top/center of the site, a banner should provide captivating pictures, linked to recent stories and developments. This part of the web site should be updated on a weekly basis.
- On the left column a number of buttons should provide for the following (static) resources:
 - Laws and regulations relating to SMEs.
 - Laws and regulations relating to IP.
 - Recent developments in jurisprudence on IP, SMEs or both.
 - Interesting articles and research studies.
 - Sample contracts.
 - Relevant statistics.
 - Success stories of SMEs using IP.
 - Archived issues of the Newsletters.
 - All awareness raising brochures created by the SME CD.
 - Contact details of all relevant Government institutions.
- On the right column, other buttons could take the users to more dynamic and possibly interactive parts of the site, such as:
 - Hyperlinks to SME Helpdesks sites of other countries.
 - Hyperlinks to WIPO SME Division's web site, providing easy access to all relevant publications (NB: selected publications should be translated into Khmer for the benefit of Cambodian SMEs).
 - A blog, discussion forum or wiki space to exchange views and share experiences and best practices from the bottom up.

- A calendar of events (conferences, workshops, trainings, e-learning course, webinars, etc. relating to IP, to SMEs or both).
 - Self-assessment tools (to establish one's needs and level of IP compliance).
 - A special button would enable users to send requests for support to identify business partners in Cambodia and abroad.
 - A facility to ask questions should be provided. This could be done either through a blog section on the site, or by sending emails to a specific address. The second option may seem more appropriate given the institutional nature of the site.
- At the bottom of the site, the following features should be displayed:
- RSS feeds.
 - Links to the Facebook and Twitter accounts.
 - Contact details of physical persons (possibly with a photo) in charge of taking incoming calls and ensure follow up.
 - Employment opportunities.
 - Site map.
 - Legal notices.

It is suggested to adopt Google Analytics or other similar devices to monitor the traffic and use of each component of the new web site, with a view to improving its functionalities and measuring impact.

D. OTHER FUNCTIONS

The SME CD should also carry out **advocacy** functions, with the aim of promoting the legal and commercial interests of SMEs. By way of example, it is known that SMEs find the costs associated with IP protection and enforcement simply out of reach. In this context, the SME CD could advocate the following solutions:

- Free advice from the CD;
- Reduction or elimination of filing fees for IPRs;
- At least postponement of payment of fees and reimbursement in case of refusal or withdrawal of the application;
- Free prior art search;
- Reduction in maintenance fees;
- Reduction of fees for litigation support;
- Tax incentives for SMEs active in R&D;
- Creation of a databank containing technologies, divided by sector, in the public domain.

The SME CD should also carry out important **networking** functions both in order to improve and maximize the impact of its own operations, and to provide local SMEs with valuable contacts to enhance their outputs. In particular, the SME CD could:

- Provide a forum for creation of synergies between national (but also foreign) SMEs and exchange of inputs;
- Provide support for the creation of partnerships, within all relevant actors. These networks should encompass primarily chambers of commerce, but also technological centers, development agencies, incubators, universities, etc.
- Provide support on how to identify possible business partners in Cambodia and abroad (in this context, databases of potential partners in the various industries should be developed – see above). This could also be useful to identify possible financing sources of patent protection abroad, product development, etc.
- Developing access routes for SMEs to access customs, police and justice systems;
- Provide support to find the right lawyer and/or accountant for the unfolding of the business and IP strategy.

In addition, there are other, more sophisticated and **advanced services** that the SME CD could envisage offering, particularly at a later stage. In this context, the following facilities may be recalled:

- IP Audit: it is an assessment of all IPRs, registered and non-registered, owned by a given company. It includes an analysis of their legal status and an assessment of the procedures used to protect such IP assets.
- IP Valuation: it provides estimates of the commercial value of each IPR in the company's portfolio.
- IP Risk Assessment: it identifies all possible risks linked with the adoption and use of the various IPRs.
- IP Due Diligence: it is a very broad independent assessment of the entire IP portfolio, including an analysis of ownership, fees, infringements, licenses, litigations, etc.
- Technology Watch: it provides updates on any new relevant technological development in a given field.
- Infringement Watch: it supports companies to monitor infringements of IPRs at national level and it provides early warnings.
- Market Assessment: this service would assess the market potential for a given product and would support in the development of a corresponding business plan.
- IP Marketplace: it is an online facility that enables sellers and buyers of IPRs to meet online and reach mutually beneficial agreements, including licensing arrangements.
- Business Intelligence Watch: it provides for a granular analysis of the marketplace, by examining the behavior of competitors and partners.
- Counterfeit Investigations: it is aimed at coordinating investigation efforts to collect evidence in infringement cases.
- Prior Art Searches: it supports SME representatives to identify and evaluate prior art with a view to avoiding duplications, possible infringements and to determining whether or not they can patent a given invention.
- Inventions' evaluation: it would provide an assessment of patents from the point of view of their market prospects and patentability.
- Marketing services: through this service the SME CD would provide support in marketing promising products and processes.
- Mediation Services: it offers a roster of accredited mediators to solve possible disputes, in accordance with predefined rules.
- Representation in Civil and Criminal cases: this service could support SME representatives in case of litigation. Often it is carried out through the service of accredited private sector lawyers.

- Funding schemes: this service would aim at supporting reliable SMEs that are active and successful in R&D and intend to patent abroad. In fact, evidence shows that SMEs that develop their own technologies tend to achieve higher operating results.

As already mentioned, the above services may not be rendered by the SME CD, particularly at an early stage. However, it would be important for the CD to take leadership in providing effective coordination of at least some of these different services for the benefit of the requesting SMEs at least in the middle term.

E) GOVERNANCE ISSUES

In other countries, successful SME CDs are conceived and established as a “one-stop-shop” for SMEs. In other words, all support functions relating to SMEs, including IP, are unified in one unique institution providing 360-degree support to SMEs. However, given the particular configuration of the IP institutional scenario in Cambodia, it is suggested that the to-be-created SME CD be hosted and managed by the Department of IPRs of the Ministry of Commerce. Since the Department also acts as Secretariat of the National Committee for IPRs, it is assumed that it would be in a position to ensure maximum participation of all other relevant national actors and institutions.

The headquarters of the new SME CD would undoubtedly be in Phnom Penh. Given the number and type of active SMEs nation-wide, it is suggested that branch offices should be established, at a later stage, also in Siem Reap and in Battambang.

In terms of **timeline** for the implementation of this new initiative, in line with the well-known principle “start small and grow bigger later”, it is suggested that the SME CD grows gradually in terms of services rendered, quantity of dedicated staff, materials shared on the website, and provincial branch offices. As tested in other countries, it would be advisable to start first with a **one-year pilot**. After a thorough assessment of the pilot phase, analyzing strengths and weaknesses, and examining the need for modifications or improvements, the full-fledged SME CD could be launched.

In this context, the pilot phase would require the appointment of five staff of the Department of IPRs as a focal **team** for the setting up and initial operations of the SME CD. Positions could include: a project leader, two technical experts (advisers), one outreach expert and one administrative assistant. Apart from the project leader, other members of the team would work for the SME CD on a part-time basis and therefore their usual tasks and responsibilities within the Department of IPRs should be reduced accordingly. In the following years, the SME CD should have an adequate number of full-time staff.

One of the principal outputs that the team would be expected to produce is an Action Plan for the pilot phase, indicating concrete deliverables, structured outcomes, outputs and activities, accompanied by performance indicators.

It seems evident that the SME CD would have to adopt an extremely **proactive approach** to reach out to the many local SMEs scattered around the country. Simply creating a new institution based in Phnom Penh would not be a guarantee that SMEs would actually take advantage of the new facility. This might nullify the effects of the entire initiative.

Representatives of the SME CD should instead proactively contact SME representatives first in Phnom Penh and then in the various provinces, organizing site visits and one-on-one meetings and providing immediate and tangible solutions, with a view to establishing direct contacts and clearly proving the added value of the new entity. This approach should be complemented by targeted and *ad personam* outreach initiatives.

Following the pilot phase and the official launch of the SME CD, the team would be expected to produce a four-year strategic plan. The strategic plan would be complemented by annual management plans, following a rigorous Result-Based Management approach.

STRUCTURE OF THE SME CD

It is suggested that the SME CD be internally structured as follows, particularly after the pilot phase:

- Permanent Support Unit;
- Technical Advice Unit;
- Outreach Unit.

The tasks of the **Permanent Support Unit** would include the following:

- o To administer and run a dedicated Welcome Desk, including hotline services;
- o To assume overall responsibility for the daily operation of the SME CD;
- o To be the point of contact for incoming requests (telephone, email, etc.)
- o To route incoming requests to competent officials/units and coordinate the follow up;
- o To establish priorities;
- o To maintain a register of received requests and follow up actions (as a basis for continuous improvement).

The tasks of the **Technical Advice Unit** would include the following:

- o To provide advice on IPRs identification;
- o To provide advice on IPRs validity (trademarks, patents, industrial designs, copyright and related rights, geographical indications, domain names, etc.);
- o To provide advice on IP strategy, IP valuation, etc.;
- o To provide advice on protection routes for the above IPRs at national, regional and international level;
- o To provide advice on IPRs management, including licensing, technology transfer, franchising, etc.;
- o To provide advice on IPRs enforcement at national and international level.

The tasks of the **Outreach Unit** would include the following:

- To maintain and update the web site and related information;
- To conceive and implement outreach strategies with external stakeholders;
- To provide advocacy to protect SMEs' interests;
- To organize capacity development and awareness raising activities (including conferences, workshops, e-learning, self-learning packages);
- To produce brochures and other promotional materials.

GOVERNANCE:

The SME CD could be managed as follows:

- Management Committee:
 - Composed of selected representatives of the National Committee on IPRs, and the heads of the various sections of the SME CD;
 - In charge of establishing yearly budget;
 - In charge of maintaining effective and efficient working arrangements particularly with regard to multi-disciplinary inputs;
 - In charge of oversight of the daily management of the SME CD.
- Advisory Committee:
 - Composed of internal and external stakeholders (representing SME Associations, Chambers of Commerce, universities, etc.);
 - In charge of providing general oversight;
 - In charge of maintaining adequate service spectrum;
 - In charge of monitoring quality assurance;
 - In charge of approving major policies;
 - In charge of promoting partnerships with other relevant institutions and actors;
 - In charge of approving the yearly budget and yearly management plan.

In order to promote transparency and accountability of the SME CD, minutes of all meetings of the Management Committee and Advisory Committee and major decisions should be published on the web site.

RESOURCES:

The SME CD could be supported essentially through:

- Core contributions from the central national budget allocated to the Ministry of Commerce;
- Possibly contributions from other relevant ministries, such as the Ministry of Industry, Mines and Energy, Ministry of Culture, etc.;
- Possible budgetary and program support from international bilateral and multilateral development partners;
- In-kind contributions from experts and other branches of the government in terms of professional expertise offered for free or at a discounted rate.

5. List of Recommendations on capacity building

1. The current project represented an important step forward towards the establishment of a SME CD by creating a strategy and providing initial and very preliminary capacity building to selected stakeholders. However, this is just the beginning of a process that should continue in order to avoid that this initiative remains "another good report on a shelf". A phase II of the project should be conceived and organized to unfold and operationalize the strategy in a sustainable manner to produce tangible and concrete results. This would entail a much more thorough capacity development program for advisers of the SME CD, including real-life clinics, simulations, mentoring systems, etc., as well as numerous sector-specific and targeted interventions to support SMEs around Cambodia. These could include: site visits to SME headquarters to provide immediate and concrete tailor-made advice, awareness raising events followed by free one-to-one advisory sessions, public outreach initiatives, etc. (For more details, please see section 3C).
2. Develop a comprehensive Manual for all advisers rendering their services at the new SME CD. This would represent a fundamental tool to:
 - a. ensure that all advisers, including newly recruited officials, are in a position to provide support and technical advice in a variety of IP-related topics,
 - b. ensure quality and coherence of the advice rendered, and
 - c. institutionalize the knowledge relating to issues of direct interest for SMEs.
3. IP awareness raising and capacity building initiatives should be conceived and programmed in accordance with a comprehensive overall strategy (instead of being ad hoc). These strategies should include marketing plans for the overall IP advisory services for SMEs, as well as for each capacity building initiative.
4. The IP SME CD should establish a calendar of capacity development and awareness raising events for the benefit of internal and external stakeholders.
5. Annual work plans should include actions relating to IP awareness and capacity building initiatives and a specific budget should be allocated.
6. Methodologies should be developed and institutionalized to empower officials of SME CD to carry out in-depth needs assessments with a view to identifying and prioritizing needs and priorities, often very diverging, of the various types of Cambodian SMEs.
7. Full time human resources and adequate budgets should be allocated to the SME CD, particularly after the pilot phase. (For more details on the pilot phase please refer to section 3E).
8. Such staff should be adequately trained in all relevant aspects of SME support service, as well as in training and public speaking techniques.
9. In addition to training the staff of the SME CD, capacity building programs should be conceived and organized for the benefit of:
 - a. SMEs representatives
 - b. Police officials
 - c. Custom officials
 - d. Judges and prosecutors(Please refer to section 3C for more details)

10. Awareness raising, seminars, hand-on workshops should be organized particularly in the following themes:

- a. Registration procedures for the various IPRs
- b. Patent and trademark licensing
- c. IP piracy and counterfeiting (their effects and how to fight against them)
- d. General IP training for SMEs.

(Please refer to section 3C for more details)

11. An ad hoc web site, publications, business guides, newsletter, audio visual materials should be developed. Selected documents and materials produced by WIPO's SME Division should be translated into Khmer and adapted to the local context.

12. Success stories and case studies on effective use of IP by SMEs should be collected, analyzed and made available.

13. Regional seminars should be organized with a view to establishing synergies between SME CDs of various ASEAN countries.

14. Networking opportunities among Cambodian SMEs and between associations of SMEs in various foreign countries should be enhanced.

15. IP-related curricula should be developed and inserted in commerce and business curricula.

16. IP side-events should be organized in trade fairs and in events dedicated to SMEs, particularly sectorial events.

17. The various training programs should be systematically evaluated to assess the impact on the participants, their satisfaction with the subjects and the presentations, the quality of lecturers and presenters, etc. Ideally, the SME CD should establish a system to measure the impact of their training events in the short and medium term (by adapting to the local context the "Kirkpatrick model" for evaluation).

18. The SME CD should enter into formal memorandums of understanding with the various Government institutions handling IP matters (i.e.: the Ministry of Industry, Mines and Energy and the Ministry of Culture) in order to better coordinate all their activities within the context of the operations of the SME CD. This would be particularly important with respect to the provision of advice in the respective areas of expertise and in the organization of training events for the benefit of SMEs. For this purpose, it is suggested to organize at least once per month special meetings of the Management Committee to ensure that the various areas of IP are not taught in isolation, but in a coordinated manner.

19. Similarly, the SME CD should enter into formal memorandums of understanding with all main enforcement agencies with a view not only to performing their respective responsibilities in a more coordinated manner, but also to providing joint training and capacity building to SME representatives.

20. The SME CD should enter into formal memorandums of understanding with local universities in order to cooperate with them on a sustainable and continuous basis at the institutional level, as well as with the most active Research and Development Centers in order to favor the creation of a patent culture among scientists and researchers and the establishment of synergies between them and local SMEs.

21. The SME CD, as part of its outreach and capacity building functions (please see section 3C for more details), should:

- Publish informative books, brochures, and magazines on its activities, including upcoming and past training programs;
- Publish documents, brochures, magazines related to industrial property rights targeting users in foreign countries, with a view to attracting the

protection of foreign IPRs in Cambodia, with consequent inflow of Foreign Direct Investments (FDIs);

- Operate and maintain the services of an Industrial Property Library;
- Maintain the collection of trademarks documentation (in paper and electronic form), with all trademarks applied for and registered at the Department of IPRs; similarly it should provide access to patent information, through the acquisition of the appropriate databanks.
- Publish and distribute a Newsletter.

22. Create a well-functioning and comprehensive website containing a calendar of training events, training materials, evaluation of past training events, and possibly also a section where users may ask questions (see section 3C for more details).
23. Create a cohesive cluster of local experts, specialized in the different areas of IP, who can provide ad hoc technical advice and training to SMEs in their respective areas of expertise.