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## Protection of Traditional Knowledge in Thailand

Amid rapidly changing society and advancing sciences and technology, the need to conserve and encourage the use of Thai traditional knowledge is more extensively felt. Indeed, traditional knowledge abounds in such a developing country as Thailand. Use of traditional knowledge for producing goods and services should therefore be promoted to give added value to local communities. This is also in line with section 46 of the constitution which provides: "Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced fashion and persistently as provided by law."

### 1) What is traditional knowledge?

In effect, when we look around, we can see traditional knowledge in such a wide range of goods and services (ranging from dresses, utensils, to food and others) as we have never expected. Such traditional knowledge has significant impacts on livelihood and has been passed on from generation to generation, from past to present.

Traditional knowledge may be classified into 3 categories as follows:

- Traditional Knowledge per se

Traditional knowledge per se signifies knowledge, methods of technology passed on from the past to the present time. It includes the technology or methods by which biological elements, living creatures or derivatives of such things are applied for making some development to goods and services. Illustrations of this type of traditional knowledge are the methods for producing Thai black-herb wine (*krachaidam* wine), making *Aranyik* knives, weaving silk or carving wood.

- Genetic Resources

Genetic resources denote genetic materials possessing actual or potential value (for this purpose, a genetic material means any material of a plant, animal or bacteria or a material of any other origin, contained in a unit that plays an active role in passing on genetics). For example, local herb may be used for producing medicine.

- Expression of Folklore

What is called "expression of folklore" connotes a work created by a group of local residents on the basis of their cultural background and for the benefit of the group.

The work also reflects ideas and expectation of that particular locality and expresses the locality's social and cultural identity as well as norms and values. Expression may be in the form of sounds, imitation or otherwise, as visualised in folk shows, narration of folk stories or legends, or folk costumes.

While many countries, in awareness of the importance of local wisdom, have enacted *sui generis* legislation for protecting traditional knowledge, genetic resources and expression of folklore, a developing country like Thailand is looking for mechanisms for parallel protection. In effect, local intellect might already be afforded protection through existing intellectual property law such as the copyrights law or the trade secrets law. However protection under such legislation may be fraught with difficulty in respect of a term of protection.

## **2) Why should there be the law for protection of traditional knowledge in Thailand?**

At present, 3 pieces of specific legislation are found involved in the protection of traditional knowledge, namely :

### **Plant varieties Protection Act, B.E.2542(1999)**

In essence, this legislation is aimed at:

- Promoting the breeding and developing of plant varieties, with a view to new plant varieties
- Promoting agricultural development
- Encouraging local participation in taking care of, maintaining and exploiting local domestic plant varieties, general domestic plant varieties and wild plant varieties
- Arranging for the sharing of profits derived from using general domestic plant varieties for the breeding of plant varieties or studying or experiments, for commercial purposes.

### **Protection and Promotion of Thai Traditional Medicine Act, B.E.2542 (1999)**

The Act embraces the following:

- Defining "Thai traditional medicine" as meaning a medicinal process related to an examination, diagnosis, therapy, treatment or prevention of diseases, promotion and rehabilitation of health of human-beings or animals, midwifery, Thai massage, Thai medicinal preparation and production, invention of medical devices and instruments, making use of knowledge or recipes passed on from generation to generation
- Defining "Thai medicinal recipe" as a academic theory related to Thai traditional medicine, whether recorded in Thai old books, scriptures, stone scriptures or any other materials or unrecorded but learned and passed on from generation to generation by any means.

**Ancient Buildings, Ancient Articles, Artistic Articles and National Museums Act, B.E.2504 (1961) (as amended by the Act (No.2), B.E.2535 (1992))**

This law has as its main objects the following matters:

- Protecting ancient buildings and ancient articles of both public and private sectors
- Making it mandatory to register ancient buildings and ancient articles
- Protecting tangible items, to the exclusion of intangible things such as the signing or dancing manners

These 3 pieces of legislation appear inadequate for the protection of traditional knowledge other than plant varieties, Thai traditional medicine and ancient buildings or ancient articles. The Department of Intellectual Property has thus taken a leading role in putting forward *sui generis* legislation for protecting it.

Legal Affairs and Appeal Division