

Decision on Geographical Indications

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LAO PEOPLE'S DEMOCRATIC REPUBLIC
Peace Independence Democracy Unity Prosperity

Ministry of Science and Technology

No. /MOST
Vientiane, , 2012

Decision
on
Geographical Indications

- Based on Law No. XX/NA dated December 20, 2011 on Intellectual Property;
- Based on requirements for interpretation of this Law; and
- Based on the proposal of the Intellectual Property Department;

The Minister of Science and Technology issues the following Decision:

SECTION I
General Provisions

Article 1. Objective.

This Decision implements the Law on Intellectual Property and provides procedures relating to geographical indications in the Lao People's Democratic Republic. It is a purpose of this Decision to provide uniform criteria for use in all proceedings relating to geographical indications, including registration procedures, appeals, suspension and cancellation proceedings, and legal actions for infringement or misuse, dispute settlement, and the enforcement of rights under the Intellectual Property Law throughout the Lao People's Democratic Republic.

Article 2. Definitions.

In addition to definitions defined in Article 3 of the Law on Intellectual Property No. No. 01/NA dated December 20, 2011, for purposes of the Intellectual Property Law and this Decision, the following terms shall have the meanings given below, unless the context otherwise requires:

Applicant means a person, group of persons, or legal entity that has applied to register a geographical indication, or such person's successor in interest, or for purposes of an objection or cancellation, the person, group of persons, or legal entity that has filed the objection or applied for the cancellation, or such person's successor in interest.

Application means a request to register a geographical indication, or for purposes of an objection or cancellation, a request to cancel or modify all or part of a geographical indication registration.

Assign means to transfer all rights in an item of intellectual property to another person.

Assignment means the legal document by which an assignment is made.

Cancellation is a proceeding under which any interested person may request that an geographical indication registration be canceled in whole or in part.

Commercial purpose, as used in the Intellectual Property Law, means that an act is carried out to receive money or any other thing of value or that an act is carried out in connection with an undertaking to increase the value or profitability of the undertaking.

Country of origin means the country or countries, or customs union that is coextensive with or includes the geographical region or location where goods associated with a geographical indication are produced.

Court means,

- 1) for purposes of filing a civil action to enforce intellectual property rights, the Commercial Chamber of a regional People's Court, provincial People's Court, or capital People's Court, where the right holder of the intellectual property rights may file in accordance with the Civil Procedure Law.
- 2) for purposes of appealing any decision related to enforcement of intellectual property rights, the relevant Appeals Court or People's Supreme Court where an appeal has been filed in accordance with the Civil Procedure Law.
- 3) for purposes of filing an administrative appeal from a holding of the Industrial Property Department or one of its units, the Commercial Chamber of the capital People's court.

Department means the Department of Intellectual Property of the Ministry of Science and Technology.

Director General refers to the Director General of the Department of Intellectual Property.

Divide or **division**, in the context of an action with regard to an application, means a procedure by which the applicant converts a single application into two or more applications, each of which relates to a portion of the original application. A **divisional application** is an application that results from such procedure.

The terms **holder, rights holder, and registrant** are used interchangeably to refer to the person who has legal rights to control the use of a geographical indication, or to make an application therefor, regardless of whether such intellectual property has been registered or subject to other legal proceedings before the Department.

Individual means a natural person.

Legal entity or organization means an entity of a type that is legally recognized to transact business in the place of its origin and includes a company, state or governmental entity, association or collective organization, or other legal person.

Trademark refers to a mark for use on goods or in connection with. The term **mark** refers to any type of mark including a trademark, collective mark, or certification mark.

License means, in the context of an action by the owner of intellectual property, permission to another person to carry out one or more of the rights of the owner.

Minister refers to the Minister of Science and Technology.

Objection is a proceeding under which any interested person may raise objections to the registration of a published geographical indication.

Paris Convention means the Paris Convention for the Protection of Industrial Property.

Pending and **pendency** refer to the period between the filing of an application or other proceeding and the registration, abandonment, or other final action thereon.

Power of attorney means a written document by which a principal authorizes one or more person to act on his or her behalf.

Practitioner means an attorney or agent who regularly engages in practice before the Department.

Preponderance of the evidence means that, on the basis of whatever evidence may be available and relevant to establishing a fact or drawing a conclusion, it appears more likely than not that the fact is correct or the conclusion is established by the evidence.

Principal means a person who executes a power of attorney designating one or more persons to act on his or her behalf in connection with an application or other proceedings before the Department. .

Registrant of a geographical indication means the natural person or persons, governmental organization, or legal entity that has obtained a registration for a geographical indication is entitled to exercise control over a registered geographical indication.

Related as used in the Intellectual Property Law means that the use of the same indication in connection with the goods or services of one undertaking would tend to indicate a connection with the goods and services of another undertaking.

Prosecution or **prosecute** in regard to an application refers to all acts intended to lead to registration.

Representation address means the correspondence address for all practitioners authorized in a single power of attorney.

Representative means an attorney or agent who is authorized to represent an applicant or intellectual property owner or other person with regard to one or more proceedings before the Department.

Restrict or **restriction** in the context of an application refers to an action limiting the subject matter of the application.

Revoke means, in connection with a power of attorney, the cancellation by the principal of the authority previously given to a practitioner or other person to act on behalf of the principal.

Article 3. Geographical Indications.

1. Pursuant to Article 18 of the Intellectual Property Law, a geographical indication may be any indication that identifies a good as originating in a particular geographical country or territory, or in a region or locality in that territory. Accordingly, such indication may, for example, consist of a place name, or of a word, symbol, or figurative element that used alone or in combination, indicates a particular geographical place or region, provided that all such indications must satisfy other requirements of the Intellectual Property Law and this Decision. It is not required that an indication be the name of an existing country, region, locality, or territory, provided that the use of the indication is sufficient to identify its geographical origin. Unless an application restricts indications to their presentation in a specific form, it will be presumed that no such restrictions not apply to the indication.

2. Pursuant to Article 18 of the Intellectual Property Law, a geographical indication is subject to protection only where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Such quality, reputation, or characteristic may be based on natural factors including conditions of the soil, air, water, ecology, and other natural conditions or on human factors including skill and the experience of the manufacturers and traditional production methods of that locality.

Article 4. Protection Available; International Agreements.

Protection for any geographical indication shall be available in accordance with the Intellectual Property Law and procedures set forth in this Decision.

In case of any conflict between the provisions of this Decision and those of any treaty or international agreement to which the Lao PDR is a party or has mutually signed, the provisions of the international treaties or agreements shall be implemented.

Article 5. Persons Eligible to Obtain Protection.

1. The persons described in Article 26 of the Intellectual Property Law are eligible to obtain protection for geographical indications, to file an application to register a geographical indication, to receive a registration certificate and to renew the same, to enforce their rights administratively or through the courts, and to undertake any other actions pursuant to the Law on Intellectual Property or this Decision.
2. An applicant without business premises or residence in the Lao PDR shall appoint a representative in the Lao PDR in accordance with the requirements of this Decision.
3. For purposes of Article 26 of the Intellectual Property Law, the term "organization" shall be understood to include a governmental organization or an intergovernmental organization or an agency or office of such organization.

Article 6. Language.

1. Application forms for geographical indications are available in the Lao and English languages. The language requirements of Article 37 of the Intellectual Property Law shall be deemed to have been complied with for purposes of the application where an application is made on one of the relevant forms, provided however that documents that accompany the application form must satisfy the language requirements of the Intellectual Property Law. The Department may apply the same provision to any other standard form.
2. Any material accompanying an application may be filed in either the Lao language or in the English language. Such filing will be sufficient to establish a filing date or date of submission for the application or other materials, provided however, that for any application or document filed or submitted in English, the applicant must, within 90 days of such filing or submission, supply a translation into the Lao language. Such translation must be certified by the translator, or by another person who has personally reviewed the translation, to be a true and correct translation of the translated document.
3. Any other correspondence with the Department and accompanying material shall be in the Lao language or the English language, provided that where correspondence is submitted in the English language, a translation into the Lao language shall be submitted within 90 days of the submission, or not less than 30 days from notification by the Department to supply a Lao translation, whichever period is longer. For correspondence and documents submitted under this paragraph, the Department shall have the authority to grant extensions of time in appropriate circumstances and on such conditions as may be determined by the Department.

5. Where translation would lead to confusion or be unhelpful, the Department may waive the translation with regard to specific portions of a document, such as names of persons, organizations, trade names or trademarks, technical terms, or street names that would not be readily recognizable in translation.

SECTION II

Application Procedures

Article 7. Initial Procedures.

1. Any person who wishes to protect a geographical indication in the Lao PDR, and who is eligible for protection as provided under Article 5 of this Decision, may file an application for registration as provided in this Decision.

2. To be registered, the applicant, the application, and its subject matter must satisfy all requirements of the Intellectual Property Law and of this Decision.

3. The Department will not issue advisory opinions regarding the likelihood that a particular geographical indication or application therefor will satisfy the requirements of the Intellectual Property Law and this Decision, and the Department will not provide legal advice to applicants. However, the Department will perform a search of previously registered trademarks and geographical indications upon request and subject to the payment of the relevant fee. An applicant who wishes to obtain information relevant to the likelihood of being able to obtain a registration is advised to obtain a search prior to filing and to consult an attorney regarding issues relevant to registrability.

4. As provided in Article 28 of the Intellectual Property Law, where more than one application is filed for the same subject matter, the trademark or geographical indication registration, as applicable, shall be awarded on the basis of seniority of rights. Seniority of rights means the earliest claim of entitlement to protection that can be established, whether on the basis of the effective filing date of an application or on another date on which the applicant can establish entitlement to protection, provided an application with seniority otherwise satisfies the requirements for the protection requested.

5. Where more than one application is filed for the same or a similar geographical indication for the same, similar, or related goods, the Department will continue procedures for both applications until it is determined whether the application with seniority will be registered, at which time the Department will issue a refusal to the application without seniority on the basis of the registration of the application with seniority. If procedures for the application without seniority are completed before that time and it appears that such application is otherwise entitled to registration, the Department shall suspend procedures on such application until procedures are completed for the application with the earlier effective filing date. The same procedure shall apply with regard to evaluation of a geographical indication in relation to a mark that is the

subject of a pending application if registration of both would create a likelihood of confusion as to the source of goods or, in the case of a trademark, the source of services.

6. Where the subject matter of an application is the same as a well-known mark or registered trademark, or is otherwise evaluated in relation to a well-known mark or registered trademark, rights shall be determined, as applicable, with reference to whether the mark was well-known at the effective filing date of the application, or where the geographical indication was protected in its country of origin and otherwise entitled to protection in the Lao PDR at the effective filing date of the Lao application.

Article 8. Procedures for Filing an Application; Filing Date.

1. An application is filed by presenting to the Department a copy of the application on the prescribed form, together with any required documents. The Department will conduct an initial review of the papers submitted to determine the nature of the application being submitted, that is, whether it appears to relate to a trademark or geographical indication or other matter, and whether the papers contain all of the documents required for the relevant application.

2. If the Department finds that the papers contain all of the required documents, or that it meets the minimum requirements for obtaining a filing date, as described in this Decision, the Department will provisionally accept the application for filing, issue a filing number, and provide the applicant or the applicant's representative with a filing receipt that shows the name and address of the applicant and applicant's representative if applicable; the nature of the application, that is, whether it is an application to register a trademark or geographical indication; a brief indication to identify the trademark or geographical indication to which the receipt relates; date of submission; and the filing number.

3. Where the procedures of paragraph 2 have been completed, the applicant or applicant's representative shall present the receipt to the Finance Division under the Cabinet of the Ministry of Science and Technology and pay the applicable fee in accordance with the Presidential Decree on Fees. The Finance Division shall accept the fee and issue a receipt showing payment of the fee, the date and amount paid, and other information sufficient to associate the fee payment with the application and its filing number. It is the responsibility of the applicant to ensure that the proper fees are paid, as no refunds will be made for an applicant where filing procedures are not completed or where the applicant mistakenly pays a fee in an incorrect amount.

4. If the Department finds that some of the minimum elements required for a filing date are missing, the Department will immediately notify the applicant or applicant's representative in writing to supply the missing items. The procedures of paragraph 2 will be suspended until applicant submits the missing items. When such items are submitted, the Department will issue the receipt provided in paragraph 2 as of the date that it receives all of the items that constitute the minimum requirements for a filing date.

If applicant fails to submit the missing items within 90 days, the application will be considered to be abandoned, without prejudice to applicant's right to re-file.

5. Once fees have been paid in accordance with paragraph 3 of this article, the applicant or applicant's representative shall present the fee receipt from the Finance Division to the Department, which shall accord a filing date to the application.

6. To receive a registration, an application that is accorded a filing date and application number must also meet other requirements prescribed by Intellectual Property Law and this Decision. It is the applicant's responsibility to ensure that an application complies with all requirements for protection.

Article 9. Examination for Formal Requirements.

An application that has been received as described in Article 8 of this Decision and for which the fee has been paid shall be examined to determine whether it complies with all formal requirements. For an application to register a geographical indication, the Department shall determine whether the application satisfies formal requirements as set forth in Article 22 of this Decision.

Article 10. Substantive Examination.

1. An application that has satisfied formal requirements shall be subject to substantive examination by the Department to determine whether the application meets the requirements of the Intellectual Property Law. For an application to register a geographical indication submitted by an applicant who is entitled to protection under the Intellectual Property Law, the Department shall conduct a substantive evaluation of the application in accordance with Articles 18 and 25 of the Intellectual Property Law and Section III of this Decision.

2. The Department shall notify the applicant of any conditions, objections, or grounds for refusal of part or all of the rights for which the applicant has applied, or any conditions or restrictions thereon. The applicant will be given an opportunity to respond and, subject to any limitations provided in this Decision, to amend the application or provide supplementary information to respond to the communications from the Department. The Department may require additional information as needed. If the applicant fails to comply with this provision within 60 days from such notification, the application will be deemed to be abandoned, provided however that the Department may extend the time for complying with this provision for good cause shown by the applicant.

3. The time for responding to any communication from the Department is 60 days from the date such communication is sent unless otherwise provided. If an applicant fails to respond satisfactorily to any requirement or ground for refusal within the stated time for action, the Department will take final action on the application 90 days from the date of the requirement or other communication unless the applicant files an appeal within this period.

Article 11. Publication.

1. Where the Department finds that an application complies with the requirements for protection as provided in the Intellectual Property Law and this Decision, the Department shall register the

geographical indication, record the relevant information in the official industrial property gazette, publish the application as provided in Article 44 of the Intellectual Property Law, and issue a registration certificate.

2. Where a publication contains a mistake, an applicant may request republication with corrected information, without additional fee, provided that such request must be filed within two months from the date of the earlier publication.

Article 12. Cancellation; Suspension.

1. Subject to Article 5 of this Decision, any interested party may file an objection or cancellation proceeding against a registered geographical indication as provided in Article 44 of the Intellectual Property Law and in Article 44 of this Decision. Such objection or cancellation proceeding must be brought within period of 5 years from the date of publication in the official industrial property gazette, or such longer time as may be provided under an international agreement to which the Lao PDR is a party.

2. Subject to Article 5 of this Decision, any interested party may file an application to suspend a registered geographical indication as provided in Article 66 of the Intellectual Property Law and Article 45 of this Decision. Such application may be filed at any time after registration.

SECTION III Application Requirements

Article 13. Minimum Requirements for Filing Date.

1. The Department will accept an application for filing as provided in Article 8 of this Decision where the application contains, at a minimum,

- 1) the name, address and nationality of the applicant;
- 2) a statement of the geographical region to which the proposed geographical indication applies;
- 3) a drawing, photograph, specimen, or other image that appears to be a geographical indication; and
- 4) a statement identifying the goods to which the proposed geographical indication applies.

The Department will provide a receipt in such case and will assign a filing date to the application when the fee for such application is paid.

2. While a power of attorney is not one of the minimum requirements for obtaining a filing date, the Department recommends that a power of attorney or copy of the power of attorney be filed when the application is submitted if such power of attorney is available since the applicant risks the possibility of losing rights to the mark if representation is mandatory under Article 26 of the

Intellectual Property Law and the power of attorney is not timely submitted as provided in Section XI of this Decision.

Article 14. Application Fees.

1. Where an application refers to more than one type of goods, a separate filing fee shall be paid for each separate type of goods. No application will be assigned a filing date except upon showing that the fee has been paid for at least one type of goods.

2. Where the application is later found to include more than one type of goods, or more types of goods than those for which the fee has been paid, the Department shall promptly notify the applicant to take one of the following actions:

- 1) Restrict the application to include only the number of types of goods for which the fee has been paid;
- 2) Pay the additional application fee or fees within sixty days of such notice; or
- 3) Divide the application and pay the relevant fees as provided in Article 14 of this Decision.

Where an applicant fails to take such action within the time set by the Department, the application will be considered to be abandoned.

Article 15. Application Requirements.

The application shall include the items enumerated in Article 35 of the Intellectual Property Law and such additional information as is required by the this article. The application shall present the following information in substantially the order shown below:

- 1) Application on the form provided.
- 2) A clear drawing of the geographical indication affixed thereto, as provided in Article 16 of this Decision, together with a receipt for payment of fees.
- 3) A brief description of the geographical indication as described in Article 17 of this Decision.
- 4) If not provided on the application form, the name, nationality and residence, if any, of an applicant who is a natural person, or of all such persons, if more than one; for a governmental entity, the country in which such entity has authority; and for a legal entity, the country of incorporation and place where such entity has a real and effective industrial presence, if any. In each case, the application should include telephone and facsimile numbers and information for electronic communication with the applicant and the applicant's representative; to the extent such items are available.
- 5) A statement of the geographical area or region to which the geographical indication relates as provided in Article 26 of this Decision.
- 6) A statement of the capacity in which applicant makes the application as provided in Article 27 of this Decision.
- 7) A description of the goods in connection with which the geographical indication is used, as described in Article 28 of this Decision.

- 8) A statement describing the basis on which the indication is claimed to be a geographical indication and evidence in support of such statement, as described in Article 29 of this Decision.
- 9) A brief description of the applicable methods of control of the geographical indication as described in Article 30 of this Decision.
- 10) If the goods to which the geographical indication is applied originate in a place other than the Lao PDR, a statement indicating whether the indication is protected in its country of origin and, if known, the date at which such protection began. If protection is based on a registration, the applicant shall furnish a copy of such registration.
- 11) Signature of the applicant or applicant's representative.
- 12) An electronic copy of the documents submitted for filing in a standard format that is accessible by the Department, provided, however, that the Department may waive this requirement where it appears that the applicant is unable to satisfy this requirement. The Department may, from time to time, issue a Notice regarding acceptable electronic format for such documents.

Article 16. Drawing Requirements.

1. The application shall include a clear drawing of the geographical indication. The drawing must show only one geographical indication and should not contain any elements that are not part of the geographical indication to be registered, such as background features, quantities, trademarks, or, unless they are part of the indication, control marks.
2. Where a geographical indication does not include design elements and where no particular font style, size, or color is associated with the indication, the applicant may submit a standard character drawing showing the indication in black and white and if desired or if required by the Department, a statement that the indication is in standard characters.
3. Where color is a feature of the geographical indication, the drawing must indicate the color or colors and where they appear on the mark and state that the color or colors are a feature of the geographical indication.
4. Where a geographical indication has three-dimensional features, the drawing must depict a single rendition of the geographical indication, and the applicant must indicate that the geographical indication is three-dimensional.
5. The drawing as presented in the application must be on non-shiny paper of high quality and must be made by a process that will provide high definition when copied. The drawing must clearly show the geographical indication. Lines must be clean, sharp, and solid and must not be fine or crowded. The drawing presented on the application form must be a minimum of 4 cm by 4 cm and shall not exceed 8 cm by 8 cm.
6. The applicant shall provide an electronic copy of the geographical indication where available.
7. For examination purposes, the Department will accept a drawing that does not satisfy the requirements of paragraph 5 of this article, provided the drawing submitted is sufficiently clear to enable examination. Also for examination purposes, the Department will accept a photograph

or specimen of the geographical indication in place of the drawing referred to in paragraph 1 of this article, provided that it is clear from the photograph or specimen what subject matter the applicant considers to be the geographical indication. For examination purposes, a photograph or specimen should not show material that is not part of the geographical indication, such as other elements on a label or background or environmental features that are not part of the mark.

8. Where a drawing, photograph, or specimen is submitted that does not satisfy the requirements of paragraph 1 of this article, the Department shall require the applicant to submit an amended drawing to remove any elements that are not part of the geographical indication to be registered. If it is unclear whether elements in a drawing, photograph, or specimen are considered part of the geographical indication, the Department will require the applicant to clarify which elements are part of the mark and to submit an amended drawing with such other elements removed.

9. Where a drawing that does not satisfy the requirements of this article is accepted for examination purposes, or where other amendments to the drawing are required, the applicant will be required to submit substitute drawings that satisfy the requirements of this article.

10. No amendment will be permitted that changes the essential nature of the geographical indication.

Article 17. Brief Description of the Geographical Indication.

Unless the geographical indication is in standard characters, the application shall include a brief description of the geographical indication together with the following information:

- 1) If the geographical indication includes figurative elements, a brief statement describing such elements.
- 2) Where the geographical indication includes words, letters, numbers, or symbols with a special appearance, a brief statement identifying that appearance.
- 3) If the geographical indication is in a foreign language or contains foreign characters or words, a statement to that effect and a statement of the meaning of such foreign terms or characters, if any, and a transliteration of words or characters into the Lao language or other rendering from which the pronunciation can be ascertained.
- 4) If color is a feature of the geographical indication, a statement to that effect and the colors of the geographical indication and portions of the geographical indication associated with each color.
- 5) If the geographical indication is three-dimensional, a statement to that effect.

No description is required where the mark is limited to words, letters, numbers, or symbols, or a combination thereof, that are presented in standard characters and for which none of the above features is included in the geographical indication.

SECTION IV Examination Procedures

Article 18. Examination for Formalities.

1. An application for which a fee has been paid and that has been assigned an application number shall be examined to determine whether it contains all of the elements described in Articles 13 through 17 of this Decision, and whether such elements appear to satisfy formal requirements, for example, whether the application is presented on the proper form, whether a drawing is legible, and whether elements of the application are presented in the order required. The formalities examination shall not address the merits of each element or whether such element satisfies substantive requirements to allow registration. An application that is found to satisfy formal requirements shall be accepted for substantive examination.

2. If the application is not complete or does not satisfy the formal requirements as described herein, the Department will notify the applicant of any requirements not satisfied and the period of time in which the applicant must meet the requirements.

3. If formal requirements are supplied to the Department within the time provided, the application will be accepted for substantive examination. If formal requirements are not satisfied within 60 days, the applicant will be advised that the application is considered to be abandoned.

Article 19. Search and Substantive Examination.

When an application has been found to satisfy the formal requirements set forth in this Decision, the Department shall conduct a search and substantive examination to determine whether the subject matter of the application meets the requirements for registration as set forth in Article 18 of the Intellectual Property Law and whether registration would be barred pursuant to Article 25 of the Intellectual Property Law, both as more fully set forth in Section V of this Decision. In carrying out its examination, the Department may seek information and guidance from other persons or organizations as needed.

Article 20. Right to Require Additional Information; Refusal Based on False or Misleading Statements.

1. Where serious doubts exist as to the correctness of any information or documents included in or annexed to an application, the Department may notify the applicant or agent to furnish, within a period not exceeding three months from the date of notification, evidence proving the correctness of such data or documentation.

2. At any time during the pendency of an application, the Department may refuse an application for which the Department has good reason to believe contains false or misleading information or for which the Department has good reason to believe the applicant or applicant's representative is making false or misleading statements to the Department. In such case, the Department shall first notify the applicant of the Department's intended action and the grounds therefor and permit the applicant to withdraw or correct such information or statements, subject, however, to any limitations set forth elsewhere in this Decision.

Article 21 Amendment During Examination.

As provided in Article 42 of the Intellectual Property Law, at any time an application is pending with the Department but before the Department has granted registration thereon, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may amend the application without fee, provided that any such amendment shall not introduce new goods to which the application applies or change the essential nature of the geographical indication that is the subject of the application.

2. An application may be amended pursuant to this article to specify that the application refers to a trademark, collective mark, or certification mark, or to change such designation. Where an application is amended to specify that it is a collective or certification mark, the applicant must promptly supply the items required in connection with such applications, including any additional fee that may be due as a result of amending the application to refer to a different form of protection.

Article 22. Application to Relate to One Geographical Indication.

1. An application shall relate to a single geographical indication. Where an application is found by the Department to relate to more than one geographical indication, or to a mark and a geographical indication, the applicant must either restrict the application to a single mark or geographical indication or divide the application into two or more divisional applications as described in Article 23 of this Decision.

2. Notwithstanding paragraph 1, where a single geographical indication may reasonably be represented in more than one form and the differences are sufficiently minor that a reasonable person would recognize the forms as relating to one and the same geographical indication, the Department may accept the application for examination and, if it satisfies all other requirements of the Intellectual Property Law and this Decision, grant a registration on the application in such forms.

Article 23. Division.

1. An application may be divided into one or more divisional applications by filing one or more subsequent applications that make reference to the application being divided. The second or other subsequent application shall be identical to the application on which it is based and shall be accompanied by a statement that the newly filed application is a division of such earlier application, which shall be identified by its application number, applicant, and filing date. Both the newly-filed application (and applications) and the earlier application are then amended to restrict their subject matter to a single trademark or geographical indication. Such amendment may be filed with the divisional application or within 60 days thereafter and is subject to the requirements of Article 15 of this Decision.

2. Each divisional application shall be entitled to the effective filing date of the initial application.

3. Where an application is divided, the applicant shall pay an additional filing fee for each divisional application that is in addition to the application that has been divided.

4. An application may be voluntarily divided as described in this article by the applicant either where the application contains more than one mark or geographical indication or to separate an application that indicates multiple classes into separate applications.

Article 24. Re-Filing to Claim Correct Form of Protection.

1. As provided in Article 42 of the Intellectual Property Law, at any time an application is pending with the Department but before the Department has granted registration thereon, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may re-file the application together with any amendments by paying the application fee and amending the application to refer to the correct form of protection. In particular, this procedure may be used to convert an application to register a geographical indication into an application to register a mark or the reverse.

2. The procedures for re-filing shall be as provided in paragraph 1 of Article 23 of this Decision, *mutatis mutandis*.

3. The applicable fee and procedures for examining the re-filed application shall be that for the form of protection to which the application is converted. For example, a trademark application that is re-filed to claim protection for a geographical indication shall be subject to paying the fee applicable for a geographical indication and shall thereafter be examined in accordance with the Decision on Trademarks and Trade Names.

4. An application that is re-filed and converted as provided in this article shall be entitled to the benefit of the filing date of the earlier-filed application, including any priority or temporary protection date or other effective filing date, if applicable. Note that there is no priority or temporary protection available for an application to protect a geographical indication, and that the period for claiming priority or temporary protection of a mark is six months from filing the original application.

Article 25. Abandonment of Application.

Pursuant to Article 43 of the Intellectual Property Law, the Department shall determine that an application is abandoned as of the times given below:

- 1) Where the application is incomplete,
 - a. If the application deposited with the Department is incomplete so that it does not meet minimum requirements for obtaining a filing date, after the expiration of 90 days;
 - b. If the application has been assigned a filing date and the applicant has been notified that the application is incomplete and given a time in which to make corrections or supply missing items, at the expiration of the period for such action.

- 2) Where the industrial property does not meet the requirements for protection, at the conclusion of the substantive examination and the expiration of any period for response by the applicant where the applicant has not filed a response that will place the application in condition for allowance.
- 3) Where it appears that the applicant is not entitled to apply for registration, after notice to the applicant and the expiration of any period for response that will show that the applicant is in fact entitled to apply.
- 4) Where the applicant fails to pay the required fees for the application within the time provided,
 - a. If the application deposited with the Department has not been assigned a filing date because the filing fee was not paid, after the expiration of 90 days;
 - b. If the fee relates to any other fee that is due in connection with the prosecution of the application before the Department, and remains unpaid sixty days after the Department notifies the applicant to pay such fee, at the expiration of such period.

SECTION V

Substantive Examination

Article 26. Geographical Region

The application shall include a statement identifying the country, region, locality, or other geographical area to which the indication relates. Such geographical region may include one or more countries, or a region or locality within such countries, as defined in the application. To be registrable as a geographical indication, the region must be coextensive with or wholly encompassed by a country that is a member of the Paris Convention or other international agreement to which the Lao PDR is a party and that provides for the protection of geographical indications. For purposes of defining the geographical region to which a geographical indication applies, the term "country" shall be understood to include a customs union that is a party to such an agreement.

Article 27. Applicant's Capacity to File.

1. The application form should include a statement of the applicant's capacity to apply to register the geographical indication.
2. The geographical area to which the indication relates may be defined by the applicant.
3. An application to protect a geographical indication should normally be filed by an applicant that has the authority to exercise control over the production, sale, advertising, or quality of the goods to which the indication applies and thereby to assert some degree of control over the use of the geographical indication within the region where the indication originates. Such an applicant may be a governmental entity for a region that includes the locality with which the geographical indication is located; a non-governmental legal entity that is able to exercise control pursuant to the law of the region; or one or more natural persons who have established a

sufficient degree of control over the production of goods, provided in all cases that the applicant must nevertheless satisfy all requirements for protection.

2. If the applicant is a governmental entity, it is sufficient to state that the applicant is the governmental entity that is entitled to exercise control over use of the geographical indication in the applicable territory. The statement should identify the country or other territory of which the applicant is a governmental entity.

3. If the applicant is a non-governmental legal entity, the application should include a statement identifying the entity and how it is constituted and the nature of its ability to control the use of the geographical indication.

4. If the applicant is one or more natural persons, the application should indicate that fact and state the manner in which applicant is able to exercise control over the use of the geographical indication.

5. Where it appears that an application has been filed by an applicant who is not entitled to file such application, the Department may require the applicant either to correct the name of the applicant to identify the proper party or to secure such authorization from the proper person and shall suspend examination until such requirement is met within the time fixed. If such correction is not made within the time provided, the application shall be refused, without prejudice to the right of the proper owner to file an application for the same subject matter.

Article 28. Description of the Goods.

1. The applicant must specify the goods in connection with which the applicant uses or in good faith intends to use the geographical indication. A specification of goods that refers to “all goods”, or that merely identifies goods in general terms will not be acceptable to specify the goods in respect of which registration is sought. Where the basis for claiming geographical indication significance relates to particular characteristics of the goods, the description should make reference to such characteristics.

2. The description must clearly limit the goods to those produced in the geographical region to which the application pertains.

Article 29 Basis for Claiming Geographical Indication Significance; Evidence.

1. The application shall contain a statement describing the basis on which the indication is claimed to be a geographical indication and evidence in support of such statement. Where an indication identifies a good as originating in a particular geographical country or territory, or a region or locality in that territory, there are three separate grounds on which an applicant may claim that an indication is a geographical indication:

- 1) The goods possess some quality that is attributable to their geographical origin.
- 2) The goods possess some characteristic that is essentially attributable to their geographical origin.

3) The goods possess a reputation that is essentially attributable to their geographical origin.

2. The application shall allege at least one of the grounds set forth in the previous paragraph and shall specifically identify the nature of the quality, characteristic, or reputation that forms the basis for the claim that the indication has significance as a geographical indication. Such statement should be in substantially the following form:

[Geographical indication] as applied to [goods] from [the geographical region or locality] indicates that the [goods] possess

the quality of [description of the quality]

or

the characteristic of [description of the characteristic]

or

the reputation for [description of the reputation].

3. Note that it is not necessary to allege more than one ground, although applicant may allege as many grounds as apply.

4. For each ground alleged, the applicant shall provide evidence to support the allegation.

5. Where a geographical indication is claimed on the basis of a certain characteristic or quality, the applicant should provide evidence to show that the goods possess such characteristic or quality. It is not necessary to show that goods produced in another geographic region lack such quality or characteristic unless the comparison is an essential element of the geographical indication. The nature of the evidence to be provided will depend on the nature of the quality or characteristic claimed.

6. Where a geographical indication is claimed on the basis of a certain characteristic or quality, the applicant should provide evidence to show that the goods possess such a reputation. Reputation may be demonstrated by any reasonable means that establishes that the goods possess the claimed reputation including, in particular, the results of valid survey evidence or sufficient copies of advertising materials touting the characteristics claimed for such goods. Note that advertisements are not evidence that goods possess certain characteristics, but advertisements may be evidence that they possess a reputation for those characteristics.

7. Evidence presented must link the claimed quality, characteristic, or reputation to the geographical origin of the goods. For qualities or characteristics of the goods, the evidence must demonstrate a causal link between the quality or characteristic and the goods. For reputation, it is sufficient to show that the reputation is associated with the geographical indication itself.

8. The Department shall examine the application and any evidence submitted to support the claims made in the application. In carrying out its examination, the Department may, at its option, request that an application, or evidence in support of such application, be reviewed by persons or legal entities, including government agencies, with special expertise in the subject matter that is the basis for the claim that an indication is a geographical indication. The

Department may likewise accept an examination or opinion that has been conducted by a foreign government agency provided such examination or opinion is based on a similar standard of evidence.

Article 30. Applicable Methods of Control.

1. The application must indicate that the applicant is exercising legitimate control over the use of the geographical indication and state how the applicant controls the use of the geographical indication by other persons. Even where the applicant does not itself produce the goods on which the geographical indication is used, the applicant must control the use of the geographical indication by others on the goods they produce by taking steps to ensure that the geographical indication is applied only to goods with the characteristics, quality, or reputation associated with the geographical indication as set forth in the application as described in Article 29 of this Decision.

2. If there is doubt as to the existence or nature of applicant's exercise of control over the use of the geographical indication, the Department may require an explanation and additional disclosure of facts or the filing of appropriate documents, to support the applicant's statement regarding the exercise of control over the use of the mark.

3. Failure to exercise control over the use of the geographical indication, and in particular, use by the applicant or permitting the use by others of the geographical indication in a manner inconsistent with the indication's status as a geographical indication may result in suspension or cancellation of the registration.

Article 31. Misleading Indications.

1. Pursuant to paragraph 1 of Article 25 of the Intellectual Property Law, the Department shall refuse registration to a geographical indication that is likely to mislead or confuse consumers as to the true source or origin of goods. A determination under this article shall be by preponderance of the evidence.

2. In evaluating an application under this article, the Department shall consider whether the use of words or symbols may convey a false impression of origin. In particular, an indication is likely to mislead or confuse consumers as to the true source or origin of goods where

- 1) The indication is used in connection with goods that do not originate in the place associated with the indication, even if the indication is also used in connection with goods from such place.
- 2) The indication consists of or incorporates any words, terms, graphical elements, or any other element with geographical significance for a country, region, or locality other than the true place of origin of the goods.
- 3) The indication is literally true as to the territory, region or locality in which the goods originate but falsely represents or suggests to the public that the goods originate in another territory.

- 4) The commercial impression of the indication taken as a whole would create a false impression of connection or association with the relevant sector of the public between the goods and a geographical location other than that where they are actually produced.

3. The fact that an indication can be understood in a non-deceptive way is not a bar to refusal of registration under this article. Where an indication is susceptible of more than one understanding, the Department should refuse the registration if it would be reasonable for a purchaser to understand the indication in its deceptive or misleading sense.

4. In case of doubt, or where an indication is susceptible of more than one understanding, the Department shall make an inquiry regarding the nature of the goods, their qualities, characteristics, or origin, as appropriate, to determine whether the indication may be deceptive or misleading.

Article 32. Customary Names for the Goods; Homonymous Indications.

1. An application shall be refused pursuant to Article 25 of the Intellectual Property law, paragraph 2, where the indication sought to be registered has become the customary name for such goods in common language in the Lao PDR as of the effective application date in the Lao PDR.

2. In making its determination under this paragraph, the Department shall consider only common usage and shall exclude usages that appear to be unusual or strained. Likewise, the Department shall disregard minor differences such as differences in pronunciation or spelling that indicate that the term has been adopted from a foreign term.

3. In evaluating whether an indication has become the customary name for such goods in the Lao PDR, the Department shall take official notice of such sources as appear to be appropriate in the circumstances, including in particular, one or more dictionaries or thesauruses, books in common usage, or information from public and widely available sources such as the internet. Such findings are not conclusive, and the Department shall evaluate its findings on the basis of a preponderance of the evidence, that is, that it appears more likely than not that an indication has become the customary name for such goods.

4. For purposes of this article, "common language" includes the Lao language and any foreign language that would commonly be used by potential purchasers in the Lao PDR in connection with the goods to which the indication applies.

Article 33. Customary Names for Grape Varieties; Homonymous Indications.

1. An application shall be refused pursuant to Article 25 of the Intellectual Property law, paragraph 3, where the indication sought to be registered is identical with the customary name of a grape variety existing in the Lao PDR as of the effective application date in the Lao PDR. The Department shall evaluate an application pursuant to this paragraph on the same basis as provided in Article 32 of this Decision, provided however, that the Department shall additionally consider the customary names for grape varieties as used by persons in the horticultural sciences

and by persons who trade in such grape varieties or their products. In determining whether an indication is identical to the customary name of a grape variety, the Department shall disregard minor differences such as those that arise when a foreign term is adopted for local use.

2. An application shall be refused pursuant to Article 25 of the Intellectual Property law, paragraph 6, where the indication sought to be registered is not identical to the customary name of a grape variety but is homonymous with a geographical indication for wine that is protected as of the effective application date in the Lao PDR. The Department shall evaluate an application pursuant to this paragraph on the same basis as provided in paragraph 1 of this article. In determining whether an indication is homonymous with the customary name of a protected variety, the Department shall take into consideration any reasonable manner of pronunciation of an indication and shall disregard minor differences in pronunciation that arise when a foreign term is adopted for local use. For purposes of this paragraph, it is not a defense that an indication could be pronounced differently from that of a protected indication if it would be reasonable to pronounce it in a way that is essentially indistinguishable from that indication to ordinary persons hearing the indication pronounced.

Article 34. Indication Not Protected in Country of Origin.

Where an application relates to a geographical indication of another country, or of a geographical region or location that is outside the Lao PDR, the Department shall review evidence to determine whether the indication is protected as a geographical indication in its country of origin and, pursuant to paragraph 4 of Article 25 of the Intellectual Property Law, shall refuse a geographical indication that is not protected, or that has ceased to be protected, in its country of origin, or that has fallen into disuse in that country. It is the responsibility of the applicant to provide evidence showing that the indication is protected in its country of origin and stating the manner in which the indication is protected, for example, by registration as a geographical indication, or as a trademark or certification mark or through any other means that may be applicable in the country of origin. In applying this article, the Department shall take into account the varied approaches to protection that have been adopted in countries around the world and may request such additional information as it requires making a determination that the indication is or is not protected as a geographical indication in the manner adopted by its country of origin.

Article 35. Indications Likely to Lead to Misunderstanding or Confusion with a Mark.

1. A geographical indication shall be refused registration pursuant to paragraph 5 of Article 25 of the Intellectual Property Law where it is identical with or similar to a protected trademark as provided in accordance with Article 36 of this Decision and the use of the indication in connection with the goods to which it applies is likely to lead to misunderstanding or confusion as to the origin of the said goods as provided in Article 36 of this Decision.

2. For purposes of Article 25 of the Intellectual Property Law, a "protected mark" includes a trademark registered in the Lao PDR and a mark that is well-known in the Lao PDR at the time the geographical indication application is being evaluated.

Article 36. Indications that are Identical or Similar to Protected Marks.

1. For purposes of Article 25 of the Intellectual Property Law, a geographical indication that is the subject of an application shall be considered to be

- 1) **Identical** where it cannot be distinguished in its essential aspects from a registered trademark or well-known mark.
- 2) **Similar** where it resembles a registered trademark or well-known mark as described below in such a way as to give the same overall commercial impression.

2. In determining whether a geographical indication is identical or similar to a registered trademark or well-known mark, the Department shall evaluate the indication and the mark with regard to the overall commercial impression of each, taken as a whole, based on the appearance of each, and taking into account the pronunciation of each and their meaning, if any. In conducting this evaluation, the Department may give more weight to prominent features of an indication or mark and less weight to minor features. For purposes of this article, a well-known mark must have been well-known by the relevant sector of the public in the Lao PDR as of the effective filing date of the application.

3. The similarity or dissimilarity of a geographical indication and a mark is determined on the basis of the commercial impression of each in its entirety. The addition or deletion of minor features or of merely descriptive terms normally is not sufficient to change the commercial impression of a mark, nor is the use of color in a mark, where color is not a feature of the mark that is used for comparison.

4. Geographical indications and marks that include words or symbols are likely to be used in situations in which they are pronounced, for example, in television advertising or by placing an order. For purposes of Article 25 of the Intellectual Property Law, the similarity or dissimilarity of an indication and a mark will be determined on the basis of their pronunciation as well as their appearance. Therefore, indications and marks that are homonymous (that is, with the same pronunciation) will be considered to be identical or similar. The fact that an indication or mark could be pronounced in some other manner will not be sufficient to avoid a refusal where an ordinary person reading the indication would reasonably expect to pronounce it in a way that is identical or similar to the pronunciation of a registered mark or well-known mark.

5. Where an indication includes words or symbols that are equivalent in meaning to a registered or well-known mark, the Department may also judge such indication to be identical or similar to a mark with the same meaning. Where such marks are presented in different languages, the marks will be considered similar or identical if likely purchasers of the goods would be expected to recognize the marks as having the same meaning.

6. For purposes of this Decision, images and words are considered to be interchangeable when both refer to the same object. Likewise, letters, numbers, and symbols, or combinations thereof, will be treated as interchangeable whether presented in such form or rendered phonetically.

Article 37. Likelihood of Misunderstanding or Confusion.

1. Pursuant to paragraph 5 of Article 25 of the Intellectual Property Law, the Department shall refuse registration of a geographical indication that identical with or similar to a protected trademark in accordance with Article 36 of this Decision where use of the indication will lead to misunderstanding or confusion as to the origin of the said goods. For purposes of this article, goods are considered to be identical or similar to each other where such goods are of the same type or same general type.

2. Refusal under this paragraph shall be based on a preponderance of the evidence, that is, a mark will be refused registration where the Department finds it more likely than not that such confusion would occur.

3. For purposes of Article 25 of the Intellectual Property Law, it shall be presumed that the use of a geographical indication will lead to misunderstanding or confusion as to the origin of goods with which the indication is used, and registration shall be refused, when the Department finds that the geographical indication that is the subject of the application is identical or substantially identical to a registered or well-known trademark and is used for the same or substantially the same goods.

4. The Department shall also refuse registration of a geographical indication that is

- 1) Similar to a registered or well-known mark and is used for the same or substantially the same goods, or
- 2) Identical or substantially identical to a registered or well-known mark and is used in relation to goods that are the same, similar, or related to those for which the mark is used, or
- 3) Similar to a registered or well-known mark and is used in relation to goods that are the same, similar, or related to the goods or services for which the mark is used,

and the Department further finds that the use of the indication will lead to misunderstanding or confusion as to the origin of the said goods.

3. In evaluating whether the use of the indication will lead to misunderstanding or confusion or confusion as to the origin of the goods, the Department shall consider the following factors with regard to the indication that is the subject of the application and the earlier registered mark or well-known mark:

- 1) Their similarity or dissimilarity, taking into account the criteria of Article 36 of this Decision. If the marks are not identical or similar for purposes of Article 36 of this Decision, no further inquiry is needed.
- 2) The similarity, dissimilarity, or relatedness of the goods or, in the case of a trademark, the services, to which each applies, taking into account the criteria of paragraph 1 of this article. Even where similarity of the marks has been found under the criteria of Article 36 of this Decision, no further inquiry is normally required for purposes of this article if the goods to which the geographical indication applies are not similar and are not related

to the goods or services associated with the mark in accordance with paragraph 1 of this article.

In general, there is a greater likelihood of confusion when there is greater similarity between the geographical indication and the mark, and when there is greater similarity between the goods or, for trademarks, the services, of each. However, a greater similarity of one may require less similarity in the other to sustain a finding of likelihood of confusion.

3. Where the geographical indication that is the subject of the application is identical or essentially identical to a registered mark, well-known mark, or trade name, and the goods are the same or essentially the same as those associated with the registered mark, well-known mark, or trade name, a likelihood of confusion shall be presumed and registration shall be refused.

4. Where the geographical indication and mark are found to have some similarity but are not identical or essentially identical, and the goods or services are found to be identical, similar, or related, the Department shall additionally take into account the following factors, as such factors are appropriate to the application, to determine whether there exists a likelihood of confusion:

- 1) Similarity or dissimilarity of the trade channels of the goods associated with the geographical indication and the goods or services associated with the mark, including whether such goods are normally sold together or purchased in the same places, or otherwise encountered by the same persons. The use of similar channels of distribution increases the likelihood of confusion with similar or related goods sold under a similar mark.
- 2) Conditions under which the goods are encountered and the degree of care normally exercised in making a purchase. Less similarity is required to find a likelihood of confusion where it is likely that consumers will exercise a lower degree of care in making a purchase, while a likelihood of confusion may not exist for an indication that is similar to a mark used for similar goods that require special knowledge to purchase.
- 3) Fame of the earlier mark as determined by its length of use, advertising and promotion, revenues from sales, large number of different types of goods or services in connection with which the mark is used, or the like. The greater the fame of a mark, the likelier that purchasers will assume a relationship between the same or a similar indication with a more famous mark.
- 4) Number and nature of similar indications or marks for the same or similar goods. Where a large number of unrelated persons use the same or essentially the same indication or mark for the same or closely related goods or services, it indicates that the mark itself is weak, and confusion or misunderstanding will exist only when the Department finds that both the indication and mark and their associated goods or services are identical, or nearly identical, to those of the registered or well-known trademark. This situation arises with some frequency in connection with the use of descriptive or geographical terms.
- 5) Nature and extent of any actual confusion, taking into account evidence, if available, of the number of instances of actual confusion relative to the number of opportunities for confusion
- 6) Length of time during and conditions under which the indication and mark have been concurrently used without evidence of actual confusion. Co-existence of the indication

and the mark the same market for a reasonable time may negate a finding that confusion or misunderstanding will occur.

- 7) Intent of the later user. Generally, the intent of the applicant is not an element to be considered in evaluating whether misunderstanding or confusion will occur except where there is evidence that the applicant has adopted or is attempting to register a geographical indication in order to create confusion or an association with the registered or well-known mark. Evidence of such intent can be inferred from facts showing the applicant's knowledge of the earlier mark, or where the applicant acknowledged an intent to adopt and use a similar mark, or advertises or promotes his or her goods in a way that strongly shows an intent to mislead consumers, for example, by copying other trade dress of the registered or well-known mark. This factor should be considered to prevent the misuse of applications for geographical indications to evade requirements of the Intellectual Property Law, this Decisions, and the Decision on Trademarks and Trade Names

Article 38. Well-Known Marks.

For purposes of the Intellectual Property Law and this Decision, the relevant sector means that part of the public that would be expected to have knowledge of a mark and includes persons who have knowledge of a mark as a result of advertising or marketing. Such persons shall include, but are not necessarily limited to:

- 1) Actual and/or potential consumers of the type of goods and/or services to which the mark applies;
- 2) Persons involved in channels of distribution of the type of goods and/or services to which the mark applies; and
- 3) Business circles dealing with the type of goods and/or services to which the mark applies.

Recognition of a well-known mark in the Lao PDR does not require that the goods or services associated with the mark be sold or distributed in the Lao PDR.

Article 39. Public Order.

Registration of a geographical indication may be refused where its publication would be contrary to public order (*ordre public*) and morality as used in international agreements to which the Lao PDR is a party. In particular, registration may be refused to any indication that consists of, comprises, or includes material that is scandalous or obscene or otherwise offensive, where it includes disparaging material, or where publication of the geographical indication would constitute a violation of national law.

SECTION VI Rights and Obligations

Article 40. Right and Duty to Control.

1. The registrant shall have the right and duty to exercise control over the use of the geographical indication and in particular to prevent the use of the registered geographical indication on or in connection with goods

- 1) that do not originate in the relevant geographical location or in any way that indicates or suggests that the good originates in a geographical area other than its true place of origin or
- 2) in a manner that misleads the public as to the geographical origin of the good.

2. In exercising control over the use of the geographical indication, the registrant must restrict the use of the geographical indication to goods from the relevant region. In addition, the registrant may establish additional requirements relating to the quality or characteristics of goods authorized to bear the geographical indication, or to their manner of production. While the registrant is free to identify a geographical region to which the indication will apply, and to establish its own additional criteria for use of the geographical indication, such requirements shall be applied without discrimination to all producers in the relevant geographical region who are able to satisfy the criteria established.

3. The registrant's right to exercise control over the use of the geographical indication applies to goods regardless of their ownership or subsequent transfer of ownership. Any act contrary to the provisions of this article constitutes a misuse of the geographical indication.

4. Notwithstanding Article 56 of this Decision, the registrant shall not transfer any rights in the geographical indication or license its use in a manner that would authorize the use of the indication in a manner contrary to paragraph 1 of this article.

5. To give effect to these requirements, the registrant shall maintain a current correspondence address with the Department. Such correspondence address may be the correspondence address of the registrant, or of registrant's representative in the Lao PDR, or if registrant is a governmental entity, an official address related to such entity.

6. Pursuant to Article 66 of the Intellectual Property Law and the procedures set forth in Article 45 of this Decision, the Ministry may suspend the exploitation in the Lao PDR of a geographical indication where a registrant fails to exercise control as provided in this article.

Article 41. Scope of Rights; Limitations.

1. The registration of a geographical indication gives the registrant the rights set forth in Article 59 of the Intellectual Property Law. Those rights shall be defined with reference to the geographical indication and to the goods to which it applies and, except as otherwise provided in paragraphs 2 and 3 of this article, shall extend to all rights provided in Article 59 of the Intellectual Property Law.

2. The registrant's right to prevent the sale, advertising, importation, or export of goods bearing the registered geographical indication shall not extend to control the subsequent resale, re-import, or re-export of goods, or the advertising of such goods, lawfully bearing the registered

geographical indication and where the registered geographical indication is used in accordance with the registrant's exercise of control over the use of the indication.

3. The registrant's right to prevent the acts mentioned in paragraph 1 of Article 59 of the Intellectual Property Law shall not extend to prevent the fair use of descriptive terms except as set forth in paragraph 2 of Article 59 of the Intellectual Property Law, in particular, with respect to wines and spirits.

4. The rights described in this Article shall not prejudice any existing prior rights, and in particular shall not be used to prevent the continued use of a geographical indication or of a mark that consists of, incorporates, or is similar to the registered geographical indication by a party who adopted and used the earlier geographical indication or mark in good faith for five consecutive years before the effective filing date of the registered geographical indication.

SECTION VII

Term and Post-Grant Procedures

Article 42. Term.

As provided in Article 53 of the Intellectual Property Law, the term of protection for a geographical indication begins upon registration and continues in effect without limitation as to time and without the necessity of a renewal or payment of additional fees. Notwithstanding this provision, rights of exploitation may be suspended pursuant to Article 66 of the Intellectual Property Law, or may the registration may be cancelled as set forth in Article 44 of the Intellectual Property Law, or may otherwise terminate as set forth in Article 45 of the Intellectual Property Law.

Article 43. Amendment after Registration.

After registration, a geographical indication registration may be amended to delete some of the goods to which the registration applies, or to restrict the description of such goods, provided such amendment does not change the essential nature of the geographical indication. Amendment after registration is subject to payment of the appropriate fee as set forth in the Presidential Decree on Fees.

Article 44. Objection and Cancellation Requirements.

1. Article 45 of the Intellectual Property Law fixes the times at which rights terminate, to the extent that such events apply, but the grounds for termination of rights to industrial property shall be solely as defined in the relevant Decisions. For purposes of paragraph 4 of Article 45 of the Intellectual Property Law, commercial exploitation shall include importation and sale.

2. Pursuant to Article 44 of the Intellectual Property Law, at any time within five years from the date of publication of a registered geographical indication, any interested party who satisfies the

requirements of Article 5 of this Decision may object to the registration of the geographical indication or request its modification or cancellation. For purposes of Article 44 of the Intellectual Property Law, a request to modify the registration shall be referred to as an objection, and a request to cancel the registration in its entirety shall be referred to as a cancellation.

3. An objection or cancellation request may be brought by filing an application to modify or cancel the registration and paying the fee therefor. The application shall indicate whether the application requests modification or cancellation and the relief sought. The application must be signed by the party or parties bringing the action or by their representative and shall include the following elements:

- 1) Name and address of the party or parties filing the objection or cancellation request and, if available, the telephone number and email address of each. If the application is filed by more than one party jointly and the parties are not represented, the application should designate one person and address for correspondence.
- 2) If the parties are represented, the name and address of the representative and, if available, the telephone number and email address of the representative.
- 3) A power of attorney if applicable.
- 4) The geographical indication that is the subject of the action.
- 5) A brief statement of the grounds on which the action is filed, specifically pointing out the basis for the objection or cancellation of the registration and the relief sought, as set forth in paragraphs 3 and 4 of this article.
- 6) A statement of the party's interest in the objection or cancellation.
- 7) A summary of the evidence supporting the ground identified.
- 8) Reasonable evidence supporting the grounds alleged in item 5 of this paragraph.

4. An objection must include an allegation that registration of the geographical indication interferes with, or reasonably can be expected to interfere with, the exercise of the rights of the objecting party as they existed on or before the effective filing date of the application to register the geographical indication.

5. An application for cancellation of a geographical indication must include an allegation that the geographical indication failed to meet one or more requirements for protection under Articles 18, 25, or 26 of the Intellectual Property Law as further implemented by this Decision at the time the geographical indication was registered or that it has ceased to meet one or more of such requirements for protection.

6. An application for cancellation of a geographical indication may also be based on an allegation that the registration is invalid because the application was granted on the basis of false or misleading information supplied by the applicant or the applicant's representative.

7. Formal requirements shall not form the basis for a complaint to object or to invalidate and cancel a geographical indications registration. In particular, it shall not be a ground for invalidation that the application related to more than one indication or type of goods.

8. An action to cancel or suspend a registration may be filed with the court or with the Department. Procedures for an action to object or cancel a registration filed with the Department shall be as provided in Articles 46 and 47 of this Decision.

8. Any party who puts into issue the validity of geographical indication registration, whether in a special cancellation action or objection or as part of a defense to a charge of infringement, shall notify the Department of such claim and, if the registration is suspended or cancelled in whole or in part, shall deliver to the Department a copy of the relevant Court decision.

Article 45. Suspension of Exploitation.

1. Any interested person who is eligible for protection as provided in Article 5 of this Decision may file an action to suspend exploitation as provided in Article 66 of the Intellectual Property Law. Such action may be brought by a natural person or persons, legal entity, or organization, including a governmental organization.

2. An action to suspend exploitation may be brought by filing an application to suspend exploitation and paying the fee therefor. The application shall be signed by the party or parties bringing the action or by their representative and shall include the following elements:

- 1) Name and address of the party or parties filing the action and, if available, the telephone number and email address of each. If the action is filed by more than one party jointly and the parties are not represented, the application should designate one person and address for correspondence.
- 2) If the parties are represented, the name and address of the representative and, if available, the telephone number and email address of the representative.
- 3) A power of attorney if applicable.
- 4) The geographical indication that is the subject of the action.
- 5) A brief statement of the grounds on which the action is filed, specifically pointing out the manner in which the registrant is failing to perform under the requirements of the registration as set forth in paragraph 3 of this article.
- 6) A statement of the party's interest in the application to suspend exploitation.
- 7) A summary of the evidence supporting the ground identified.
- 8) Reasonable evidence supporting the grounds alleged in item 5 of this paragraph.

3. An action to suspend exploitation must include an allegation that the registrant is failing to perform under the requirements of the registration. For purposes of Article 66 of the Intellectual Property Law, "failing to perform under the requirements of the registration" means either that the registrant misused the geographical indication as defined in Article 40 of this Decision, permitted its misuse under circumstances in which the registrant knew or reasonably should have known that the geographical indication was being misused, or failed to exercise control over the use of the geographical indication by taking reasonable measures to ensure the proper use of the geographical indication, for example, by establishing criteria for the use of the geographical indication and communicating them to authorized users. Formal requirements shall not form the

basis for a complaint to suspend the exploitation of a geographical indication. Examples of misuse that would constitute grounds for suspension include but are not limited to the following:

- 1) Registrant has misused the geographical indication by using it on or in connection with goods that do not in fact originate in the geographical location to which the registration pertains.
- 2) Registrant has misused the geographical indication by using it on or in connection with goods in a way that indicates or suggests that the good originates in a geographical area other than its true place of origin.
- 3) Registrant has misused the geographical indication by using it on or in connection with goods in a way that misleads the public as to the geographical origin of the good.
- 4) Registrant aided others in the misuse of the geographical indication in one of the ways mentioned in items 1 through 3 of this paragraph.
- 5) Registrant has permitted the misuse of the geographical indication in one of the ways mentioned in items 1 through 3 of this paragraph, and such misuse occurred in circumstances in which the registrant knew or should reasonably have known of such misuse or that such misuse was intended.
- 6) Registrant failed to take reasonable measures to exercise control over the use of the geographical indication by failing to establish criteria for the use of the geographical indication.
- 7) Registrant misused the geographical indication by failing to apply its criteria for use of the certification or by applying such criteria in a discriminatory manner.

3. Procedures for an action to suspend exploitation shall be as provided in Articles 46 and 47 of this Decision.

Article 46. Procedures for Objection, Cancellation, or Suspension of Exploitation.

1. Except as otherwise provided, applications to object to or cancel a registration or to suspend its exploitation shall be subject to the procedures provided in Articles 8, 9, 10, and 25 of this Decision, *mutatis mutandis*.

2. Promptly upon receiving notice that the application has been accepted for filing, the applicant shall serve a copy of the application and any accompanying information on the registrant. Such notice may be served at the correspondence address on file with the Department. If the applicant is unable to serve a copy on the registrant at such address, service shall be attempted at one or more of the following addresses:

- 1) The correspondence address of applicant's representative in the Lao PDR.
- 2) If the registrant is a governmental entity, at an official address associated with such governmental entity.
- 3) At any other address at which the registrant may reasonably be expected to be reached, if such address is known to the applicant.

3. The applicant shall thereafter file with the Department a statement that the application was served on the registrant, together with evidence supporting such statement. If service has been

attempted but is not successful, that applicant shall file a declaration that it has attempted to serve a copy of the application and its accompanying material on the registrant, detailing the means it has employed to effect service, but that after diligent efforts, the applicant has been unable to accomplish such service. Such declaration shall be filed together with supporting evidence.

4. Where the applicant files a declaration that it has unsuccessfully attempted service as provided in paragraph 3 of this article, the Department shall examine the evidence to determine whether it appears that a reasonable effort has been made to serve the registrant. If it finds such efforts to be insufficient, it shall notify the applicant to correct the deficiency within 60 days. If it finds such efforts to have been sufficient, the Department shall notify the registrant at the last correspondence address provided by the registrant that an application has been filed and the nature thereof and require the registrant to provide a response within 60 days. If the Department receives no response within the stated period, it shall publish notice to the registrant and shall proceed as though the applicant had received actual notice.

5. Upon receiving verification that the registrant has been served with a copy of the application and accompanying material, the Department shall examine the application for formalities. For an objection or cancellation, the application shall be examined to determine that it meets the requirements of Article 44 of this Decision. An application for suspension of exploitation shall be examined for formalities to determine that it meets the requirements of Article 45 of this Decision.

6. An application that satisfies relevant formal requirements as described in paragraph 5 of this article shall be subject to a substantive examination by the Department to determine whether the application establishes a *prima facie* basis on which to grant the application. For purposes of this Decision, a *prima facie* basis is established where the application and evidence contained in the application, if not rebutted, would be sufficient to establish all elements required to satisfy Article 44 or 45 of this Decision, as appropriate.

7. If the Department finds that an application establishes a *prima facie* basis for granting the application, it shall notify the applicant and the registrant that the application has established a *prima facie* basis for further review and has been accepted for further consideration in accordance with Article 47 of this Decision. An application that, after substantive examination, fails to establish a *prima facie* basis shall be refused and both parties shall be so notified.

8. The Department will not issue advisory opinions regarding the likelihood that a particular application will be canceled or suspended and will not provide legal advice to applicants regarding the grounds or types of evidence needed to support applications therefor.

Article 47. *Inter Partes* Procedures for Objection, Cancellation, or Suspension of Exploitation.

1. Where an application establishes a *prima facie* basis for granting the relief requested in the application, the Department shall refer the application to a Board established to hear *inter partes* matters.

2. Within 60 days of notification that the application has been found to establish a *prima facie* basis for granting the application, the registrant shall file a response to the application, specifically admitting or denying each element of the application or, if the registrant is without sufficient information on which to evaluate an element, so stating, and submitting such evidence as the registrant believes will rebut the elements of the application. The registrant may, in this filing, present any defenses to the allegations in the application or the requested relief or submit any new information or evidence it believes is relevant to the application.

3. The applicant shall have a single opportunity to rebut any statements or evidence presented by the registrant pursuant to paragraph 2 of this article. Thereafter, the registrant shall have a single opportunity to respond to the rebuttal, provided however, that no new issues of fact or law shall be raised by either party in the course of the rebuttal proceedings.

4. The registrant and applicant shall each file such statements with the Department. Each party shall serve or attempt to serve a copy of all documents on the other party and shall submit evidence of such service or attempted service to the Department.

5. Each submission shall be made within 60 days of service of the previous document, provided, however, that the Department may, upon request and for good cause shown, extend such time by an additional 30 days.

6. When the documents referred to above have been received by the Department, or the time for their submission has expired, the Board will examine the application, response, and rebuttal statements, together with evidence submitted by each party, and render a decision as to whether to grant the application and the relief sought. The Board shall make its determination by preponderance of the evidence and shall be based solely on the information contained in the file.

8. The parties may compromise and settle any such proceeding at any point during the pendency of the application, provided however that such compromise and settlement must be reduced to writing and provided to the Department for review and approval. A compromise and settlement will be approved unless it is found to be contrary to the Intellectual Property Law as it relates to geographical indications, for example, by authorizing the use of the geographical indication on goods that do not originate in the relevant geographical region or by granting a license that would result in misleading consumers as to the true source of goods.

SECTION VIII

Administrative and Judicial Review

Article 48. Policy; Preventing and Correcting Mistakes.

It is the policy of the Ministry to ensure that all actions taken comply with the Intellectual Property Law and other applicable laws, and that the laws are administered in an impartial, consistent, and transparent manner. Accordingly, the Department shall have the authority to

institute procedures and take any administrative action as may be needed to prevent or correct a mistake or as may be helpful in ensuring that actions by the Department are of the highest quality. Such actions may be taken on the authority of the Director General or such person's designee or as a result of quality review that may be instituted by the Department.

Article 49. Administrative Review: How Initiated

1. Any applicant or other person who is a party to a proceeding with the Department and who believes the Department has made an improper requirement or decision in such proceeding may, within 90 days of notification of such requirement or decision, take one of the following actions:

- 1) File a written request for reconsideration of the decision or requirement, without payment of a fee, or
- 2) File a written appeal to the Department and pay the relevant fee therefor.

2. Such request must identify the

- 1) Requirement or decision to be reviewed,
- 2) Legal and factual basis on which the request is based, and
- 3) Action requested by the applicant.

3. The request may also include any arguments or explanations that the applicant or other party believes supports the request for reconsideration or appeal.

Article 50. Request to Stay.

A request for administrative review initiated pursuant to Article 49 of this Decision may include a request to stay the implementation of the decision or requirement that is the subject of the request for reconsideration or of the appeal. Otherwise, such decision or requirement remains in effect until such time as it may be withdrawn by the Department. In *ex parte* matters, a stay shall be freely granted in the interests of justice, taking into account the interests of third parties. In *inter partes* matters, the Department shall additionally consider the interests of other parties to the matter and grant a stay where the interests of justice shall best be served.

Article 51. Reconsideration.

1. Where an applicant, registrant, or other party to an *ex parte* proceeding makes a reasonable showing that there is a reasonable basis on which to review the requirement or decision that is the subject of a request for reconsideration, the Department shall grant the request and reconsider the issue leading to the requirement or decision in view of the information and arguments or explanations offered by the applicant, registrant, or other party to the proceeding. Granting a request for reconsideration does not bind the Department to withdraw a requirement or render a different decision but rather to ensure that it gives the matter a new hearing. Since the Department's only interest in the outcome of its decisions is to ensure that they are correct, a request for reconsideration should not be viewed as an affront to the Department nor to any of its

employees. A request for reconsideration is intended to create an informal mechanism allowing the Department to make corrections quickly.

2. The same principles shall apply in *inter partes* proceedings, provided, however, that in *inter partes* proceedings, the party requesting review must serve a copy of such request and any accompanying materials on the other party or parties to the proceedings. Such other party or parties shall be entitled to be heard on the request and to submit its own documents supporting or opposing such review, following the procedures provided in Article 47, *mutatis mutandis*. The Department shall weigh the interests of the parties in deciding whether to grant a request for reconsideration.

Article 52. Board of Appeals.

A Board of Appeals shall be constituted to resolve administrative appeals relating to the grant, refusal, or any requirement made by the Department in connection with an application or registration or other proceeding. The Board of Appeals shall be independent of any Division within the Department. The Board may have permanent or temporary existence, provided that no person shall take part in deciding an administrative appeal of such person's own decision.

Appeals and other actions provided in this Section are necessary and appropriate to the orderly administration of the Intellectual Property Law. A request made under these procedures is part of the administrative procedure of the Department and is without prejudice to any rights that may arise under the Petitions Law. Appeals, requests for reconsideration, and other actions provided in this Section shall be governed by the procedures set forth in this Decision.

Article 53. Appeal Procedures.

1. An administrative appeal is initiated by filing a written appeal as described in Article 49 of this Decision and paying the fee for such appeal.

2. The appeal must specifically identify the issue that is being appealed, for example, the Department's requirement to remove extraneous material from a drawing, the Department's requirement to disclaim a portion of a trademark, the Department's requirement to provide additional information, or the refusal of the application. The appeal shall identify the date of the decision or requirement being appealed and must comply with the requirements of this Decision regarding correspondence with the Department.

3. The appeal must also point out the legal basis for the appeal, referring specifically to relevant portions of the Intellectual Property Law or this Decision, and may include a statement by the applicant pointing out how the relevant legal basis supports the applicant's appeal.

4. Where the appeal relies in whole or in part on specific facts, the appeal shall identify such facts by reference to the application or previous correspondence with the Department.

5. Department personnel who participated in the decision being appealed may provide a similar statement of the legal and factual basis for the decision for consideration by the Board of

Appeals. The person bringing the appeal shall have a single opportunity to submit a response to such statement, subject to the provisions of paragraphs 2, 3, and 4 of this article.

6. The Board of Appeals shall consider the appeal based on the written record as described in this article and shall render a decision in writing, which shall set forth the Board's decision and the legal and factual reasons therefor. Such decision shall be provided to the person bringing the appeal.

7. Where an appeal fails to provide the information required under paragraph 2, the Board of Appeals may summarily dismiss the appeal.

8. At the conclusion of the appeal, an application will be returned to the Department for such further action as may be appropriate, consistent with the holding of the Board of Appeals, unless the person bringing the appeal files an appeal to the Court within the time for filing such appeal as provided under the Civil Procedure Law.

Article 54. Further Appeals.

1. An applicant or other party who is dissatisfied with the Department's decision or requirement following a request for reconsideration may appeal to the Department as set forth above. Filing a request for reconsideration is not a requirement for filing an appeal with the Department.

2. An applicant or other party who is dissatisfied with the holding on the appeal to the Department may appeal to the court within such time as provided under the Civil Procedure Law.

Article 55. Files or Papers that Cannot Be Located.

In the event that the Department cannot, after a reasonable search, locate a file or other paper relating to an application or other proceeding, the Department shall attempt to reconstitute its records through other sources. In such case, the Department may request the applicant or owner to provide a copy of such person's record (if any) of the relevant paper or of correspondence in the relevant file, together with a statement that the copy is a complete and accurate copy of the applicant's or owner's record of all of the correspondence between the Department and the such person for the relevant paper or file, or that the applicant or owner is aware of but does not possess other records of such correspondence with the Department.

SECTION IX Transfer of Rights

Article 56. Transfer of rights; Recordation Required.

1. Pursuant to Article 47 of the Intellectual Property Law, and subject to the requirements of this article, the owner of a registration for a geographical indication may transfer ownership to all or part of the rights to the geographical indication registration. Likewise, an applicant to register a

geographical indication may transfer ownership to all or part of the rights to an application to register a geographical indication

2. Transfer of ownership may be by contract, inheritance, or gift.

3. A document that provides for the transfer of ownership of a legal entity in the Lao PDR may provide for the ownership of a geographical indication application or registration, in which case the ownership of the geographical indication application or registration shall be as set forth in the document providing for such transfer of ownership. In the absence of such provisions, transfer of ownership of a legal entity is presumed to include a transfer of any geographical indication application or registration belonging to such legal entity.

4. A document that provides for the transfer of ownership of land in the Lao PDR may provide for the ownership of a geographical indication application or registration associated with the use of such land, in which case the ownership of the geographical indication application or registration shall be as set forth in the document providing for such transfer of ownership. In the absence of such provisions, transfer of ownership of land is presumed to include a transfer of any geographical indication application or registration belonging associated with the use of such land.

5. Any transfer of ownership shall be recorded with the Department, using the form provided. A transfer of ownership shall not be enforceable against a person who is not party to the transfer until such transfer is recorded unless such person has actual notice of the transfer.

6. Notwithstanding any provision to the contrary, no transfer of rights shall be valid where its effect is to authorize the use of a geographical indication on goods that do not originate in the relevant geographical region, or that otherwise authorize the use of a geographical indication by persons or in a manner contrary to the Intellectual Property Law.

Article 57. Authorization to Use Geographical Indication; Continuing Obligation of Control.

1. As provided in Article 47 of the Intellectual Property Law, and subject to the requirements of this article, the owner of a geographical indications registration has the right to permit another person to exploit all or part of the owner's rights to the geographical indication. This is accomplished through an authorization agreement. An authorization does not constitute a transfer of ownership of the geographical indication.

2. Except as specifically prohibited in this Decision, the rights of the party authorized shall be governed by the terms of the authorization agreement. An authorization agreement concluded outside the Lao PDR shall be enforceable in the Lao PDR only to the extent that it is enforceable in the jurisdiction applicable in the geographical territory where goods entitled to bear the geographical indication are produced.

3. The provisions of paragraphs 3, 4, 5, and 6 of Article 56 shall apply to authorization agreements, *mutatis mutandis*, provided however, that any such license transferred as provided in paragraphs 3 or 4 shall remain subject to the control of the owner of the registration.

4. An authorization agreement may be recorded using the procedures of Article 59 of this Decision.

5. The terms of an authorization agreement shall be as agreed between the parties, subject however, to the requirements that

- 1) No authorization agreement shall provide or purport to provide for use of a geographical indication contrary to the obligation of the owner to exercise control, and
- 2) No authorization agreement shall permit or purport to permit any use of the geographical indication on goods that do not originate in the relevant geographical region, or that otherwise authorize or purport to authorize the use of a geographical indication by persons or in a manner contrary to the Intellectual Property Law.

Any such provision contrary to this paragraph shall be void and unenforceable in the Lao PDR.

6. Unless the authorization agreement otherwise provides, authorization to use a registered geographical indication on or in connection with goods shall be presumed to authorize the following acts:

- 1) The sale or re-sale, advertising, importation, or export of goods bearing the geographical indication in accordance with the authorization, whether by the producer of such goods or by a party that has lawfully acquired such goods, provided that such goods remain in condition consistent with the original exercise of control by the owner of the registration and that such use is not otherwise deceptive or contrary to the Intellectual Property Law.
- 2) The same acts with regard to products made from such goods or services provided using such goods.

7. Unless the authorization agreement otherwise provides, a change of ownership of a legal entity shall not operate so as to transfer an authorization to use a registered geographical indication. An agreement for the transfer of such legal entity that contains terms purporting to transfer such authorization shall not be given legal effect in the Lao PDR unless the transfer of the authorization agreement is authorized or confirmed by the owner of the geographical indication registration. Transfer of ownership of a legal entity shall not affect the validity of any authorization agreement for which such entity is the authorizing party, unless otherwise specifically provided in the authorization agreement.

8. Unless the authorization agreement otherwise provides, a change of ownership of land shall be presumed to include the transfer of an authorization to use a registered geographical indication with respect to goods that, before such transfer, were produced on such land and were authorized to use the geographical indication, provided however, that the owner of the geographical indication registration may refuse to extend the authorization to the transferee of ownership in the land or may make the extension of such authorization subject to a requirement that the

transferee of ownership in the land to execute a new authorization agreement, subject to conditions to be determined by the owner of the geographical indication registration and consistent with the Intellectual Property Law and this Decision.

Article 58. Recordation Procedures.

1. A party wishing to record the transfer of ownership or authorization to use a geographical indication registration or application shall submit an application to record such transfer, together with the recordation fee and a copy of the transfer document, certified to be true and correct. Procedures regarding the application to record a transfer or authorization shall be as provided in Article 8 of this Decision, *mutatis mutandis*. The recordation may be filed by the party making the transfer, the party receiving the transfer, or by a third party with knowledge of the transfer.
2. The Department may require the person presenting a transfer for recordation to submit additional information or documents, or to supply authenticated documents, where needed for clarification or where the Department may reasonably doubt the veracity or authority of any document or indication contained in any communication.
3. Where a single transfer relates to multiple files or applications, a single transfer document may be filed using the procedures of paragraph 4 of Article 5 of this Decision.
4. If the transfer is submitted for recordation by a person other than the owner of record, the Department shall send a written notification of the proposed transfer recordation and of the owner's right to object, to the owner of record at the latest address of record. An objection to the recordation of a transfer may be filed without fee at any time within 60 days of notification
5. If the transfer appears to meet requirements for recordation, the Department shall publish a notice referring to the transfer.

SECTION X Representation

Article 59. Persons Authorized to Appear before the Department.

1. Subject to the provisions of Article 13 of this Decision and paragraph 2 of Article 5 of this Decision, the following persons are authorized to appear before the Department:
 - 1) An applicant, with regard to the applicant's own application;
 - 2) Where more than one person jointly makes application, any one of such persons, subject to appointment by the other joint applicants;
 - 3) An attorney who is authorized to practice law in the Lao PDR;
 - 4) A Practitioner as defined in this Section with regard to the subject matter for which such person is authorized to act;
 - 5) Where the applicant is an organization, the owner or an officer of such organization, or

- an attorney or agent employed by such organization; or
- 6) Where the applicant is a governmental or intergovernmental entity, an employee or officer of such entity who is authorized to take action on its behalf.

2. Notwithstanding the provisions of paragraph 2 of Article 5 of this Decision, an assignee of an application, an applicant, owner or other interested person may act before the Department for purposes of

- (i) The filing of an application for the purposes of receiving a filing date and receiving a filing receipt;
- (ii) The mere payment of any fee and receiving a receipt for such payment.

Article 60. Appointment of Representative.

1. A representative is appointed by a power of attorney. The power of attorney must be signed by the applicant or other principal. Where an application is filed by joint applicants, the power of attorney must normally be signed by all of the joint applicants.

2. Subject to other requirements of this Section, a power of attorney may appoint more than one representative, provided that all such representatives have the same representation address.

Article 61. Power of Attorney.

1. A power of attorney authorizes a representative appointed in accordance with this Decision to act on behalf of the principal. Except where the signature of the applicant or other party to a proceeding is specifically required, an act, with respect to any procedure before the Department, by or in relation to a representative who complies with the requirements set forth herein, shall have the effect of an act by or in relation to the applicant, owner or other interested person who appointed that representative. In the absence of evidence to the contrary, a representative will be presumed to act in accordance with instructions of the principal or in accordance with such principal's wishes.

2. A power of attorney shall specify the nature and scope of the representation. A power of attorney may authorize the representative to represent the principal with regard to one or more matters before the Department, which shall be identified in the power of attorney, or it may relate to all matters before the Department including all existing and future applications or registrations for trademarks or geographical indications of that person, subject to any exception indicated by the appointing person. Likewise, a power of attorney may be given for an indefinite term or limited as to its duration. In all events, the power of attorney may be revoked by the principal at any time, without prejudice to the right of the representative to compensation for services rendered and expenses incurred on behalf of the principal during such representation.

3. The Department will give effect to the terms of a power of attorney except where it would be contrary to law or public policy to do so, for example, where a power of attorney purports to limit the ability of the principal to revoke the power of attorney or where it purports to provide terms of representation that are contrary to this Decision.

4. Where a power of attorney does not state the scope or duration of the representation, the Department will treat the power of attorney as applying solely to the single application or other proceeding in connection with which the power of attorney is originally submitted, and its duration will be treated as terminating when all matters related to such application or other proceeding are concluded and the time for further action thereon has expired.

Article 62. Requirements for Giving Effect to Power of Attorney.

1. To be given effect by the Department, a power of attorney shall be in writing and signed by the principal. Such signature shall be certified by a notary or attorney, at the option of the principal. Legalization is not required except as may be specifically made a requirement by the Department.

Where more than one person is principal, for example, in the case of joint applicants, the power of attorney shall be signed by all of them unless good reason is shown why one or more of such persons has not signed.

Where the principal is a legal entity, the power of attorney shall be signed by the owner of such entity or by an officer or other person with the legal authority to bind the legal entity.

2. Such document shall be identified as a power of attorney and shall

- 1) Give the representative power to act on behalf of the principal and
- 2) Name one or more representatives in accordance with Article 60 of this Decision.

5. Where there is reasonable doubt as to the authenticity of a power of attorney or as to a representative's authority to act, the Department may require such authentication or confirmation as it deems appropriate in the circumstances, including, for example, correspondence from the principal.

Article 63. Appointment of Representative.

Subject to the provisions of Articles 5 and 13 of this Decision, a representative may be

- 1) An attorney or other person authorized to practice before the Department;
- 2) An attorney or agent who is not so authorized but who is an employee of the applicant or assignee of the entire interest in the subject matter of the application; or
- 3) A joint applicant.

Article 64. Power of Attorney for Multiple Matters.

Where a power of attorney relates to multiple applications, files, or proceedings, it shall be sufficient to supply one power of attorney that satisfies the requirements of this Section and to submit a copy of such power of attorney with other applications, files, or proceedings, provided that the copy identifies the application number for the file where the original power of attorney is filed.

Article 65. Power of Attorney: When Presented; Effect of Failure to File.

1. A power of attorney, duly signed, shall be presented with the first application or other action to which it pertains.
2. Where an application or other paper is presented by a representative but the power of attorney, or where applicable, a copy thereof, is not submitted with such application or other paper, the Department shall provisionally accept such application or other paper and notify the Representative to provide the power of attorney within 60 days from such notification.
3. Failure to present the power of attorney at such initial action shall not invalidate such filing where representation is not mandatory. Where representation is mandatory, failure to present the power of attorney shall not invalidate such filing provided the applicant or other party provides a power of attorney within the time provided in the Intellectual Property Law and this Decision.
4. If the power of attorney is not provided within 60 days of the notification, the Department shall change the correspondence address to that of the applicant or other principal and notify such person directly that it has 60 days in which to appoint a representative and provide the power of attorney, and the consequences of failing to comply with such requirements, which may include suspending action on the application or other matter or, if representation is mandatory, abandonment of the application or other filing.
5. The Department may refuse to accept further correspondence from the Representative in connection with such application or other proceeding until the power of attorney is submitted.
6. Correspondence from an agent or attorney who presents a new power of attorney with a different representation address is presumed to revoke the previous power of attorney unless the Department is promptly informed otherwise. Where the new power of attorney has the same representation address, the Department will assume that the previous power of attorney remains in effect unless the Department is promptly informed otherwise.

Article 66. Termination of Representation.

1. Representation terminates when a power of attorney is revoked by the principal, when the matter that is the subject of the representation is concluded as provided in the power of attorney or as otherwise provided in this Decision, or when the representative withdraws from the representation and such withdrawal is accepted by the Department as provided herein, whichever is earlier.
2. Where the Department receives a power of attorney appointing a different representative, it shall notify the representative of record unless it appears on the face of the new power of attorney that such notification has already been effected.
3. A representative who withdraws must notify the Department and the principal of such withdrawal. The Department will notify the principal of such withdrawal unless it appears on the face of the communication that such person has already been notified. Such withdrawal shall be

accepted by the Department unless it occurs in an application or other matter on which action is due and insufficient time remains for the principal to take such action or, if representation is mandatory, for the principal to obtain other representation and take such action.

Article 67. Persons Authorized to Act as Representatives Before the Department.

1. Any person who is of good moral character and possesses the knowledge of intellectual property and the education to carry out the duties of representative, and who has an address in the Lao PDR, may be authorized to be a Practitioner and represent others before the Department, subject to other requirements of this article.

2. Any agent or attorney who, as of the effective date of this Decision, has practiced before the Department for at least one year shall be presumed to satisfy the qualifications of paragraph 1 of this article.

Article 68. Registration Required; Practitioner List Published.

1. Any person in the Lao PDR who wishes to act as a representative before the Department shall register as a Practitioner. By registering, such person agrees to carry out his or her duties faithfully and in accordance with the provisions of this Decision and with other Decisions or Notices issued by the Ministry on requirements for carrying out the business of being a representative on intellectual property. An attorney in the Lao PDR is not required to register as a Practitioner but may register and if registered, will be included in the Practitioner List maintained by the Department.

2. By appearing before the Department, an attorney or other person who is not registered as a Practitioner agrees to the same requirements as specified in paragraph 1 of this article.

3. To register, a person shall indicate his or her name and address; representation address if different from such person's address; telephone number or numbers, facsimile and email address, or other contact information as applicable; languages; website if applicable; and areas of practice. Where such person's representations address or other contact information changes, such person shall promptly inform the Department of the current information.

4. The Department shall maintain a list of Practitioners who are authorized to represent applicants or other persons in transacting business with the Department. The Practitioner List shall include such information as provided in paragraph 3 of this article. The Department shall publish such list annually and may provide a copy thereof to any person upon request but shall not recommend or aid in the selection of an attorney or other representative.

5. The provisions of this article shall take effect not later than three months from the effective date of this Decision.

Article 69. Implementation through Instructions and Notices.

Consistent with Article 147 of the Intellectual Property Law, the Department shall issue instructions and notices and take such other actions as may be necessary to carry out the provisions of this Section.

Article 70. Continuing Requirements for Practitioners.

1. The Department may from time to time issue other requirements for Practitioners, including attendance at continuing education provided by the Department.
2. Practitioners who are registered as provided in this Section are under a continuing obligation to act in accordance with the Intellectual Property Law, this Decision, and any other applicable law, decisions, or notices. Any person found to act contrary to this paragraph may be advised to correct such acts and if not promptly corrected, or if repeated, may be subject to sanctions by the Department. Such sanctions may include suspension or removal from the list of registered Practitioners.

SECTION XI Administrative Provisions

Article 71. Competent Authority.

1. The Department of the Department of Intellectual Property in the Ministry of Science and Technology shall be the competent authority for determining whether an application to register a geographical indication meets the legal requirements set forth in the Intellectual Property Law and this Decision and for deciding other matters set forth in this Decision. The Department shall have such other duties as may be provided by Law or Decision.
2. The Department shall maintain the record book on geographical indications. Records defined in this Decision shall be recorded in those record books.
3. The Department shall publish in the official industrial property gazette information as defined in this Decision. An official industrial property gazette may be established separately for each type of intellectual property if necessary.
4. In carrying out its responsibilities, the Department shall have the authority to take such actions as may be required to prevent or correct mistakes on matters within its responsibility, and to ensure the orderly operations of the Department, and to grant extensions of time in appropriate cases, provided all such actions are consistent with the Intellectual Property Law and this Decision and with any international agreement or convention to which the Lao PDR is a party.
5. The Department shall appoint such boards or committees as may be needed to implement the Intellectual Property Law and this Decision.
6. All situations not specifically provided for in this Decision will be decided in accordance with

the merits of each situation by or under the authority of the Director-General, subject to such other requirements as may be imposed and such decision will be communicated to the interested parties in writing. In an extraordinary situation, when justice requires, any requirement of this Decision which is not a requirement of the Intellectual Property Law or other applicable Law may be suspended or waived by the Director-General or the Director-General's designee, on such person's own initiative, or on request of the interested party, subject to such other requirements as may be imposed.

7. The Department may from time to time publish notices and guidelines for applicants and practitioners and for its employees to set or modify policies or further explain requirements of this Decision.

Article 72. Communication with the Department.

1. All business with the Department relating to a geographical indication, an application therefor, or any proceeding before the Department, should be transacted in writing. The action of the Department will be based exclusively on the written record in the Department, and no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

2. All persons are required to conduct their business with the Department with decorum and courtesy. Papers presented in violation of this requirement may be refused entry.

3. Since each file must be complete in itself, a separate copy of every paper to be filed in connection with a file for a geographical indication registration, or with an application therefor, or with any other proceeding, must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The Department may dispose of duplicate copies of correspondence in the file of an application, registration, or other proceeding.

4. Where the same document relates to more than one file, it shall be sufficient to provide a single original that complies with all applicable requirements for such document together with a copy of the original for each file and an indication on such copy of the file with which the original is associated.

5. The Department will correspond with only one person or entity. This person or entity may be the applicant or registrant or other party to a proceeding before the Department, or may be such person's authorized representative. Initial correspondence in any matter is required to include an address for correspondence, which address may be changed at any time. Where more than one address is presented, the Department will choose one of the addresses for correspondence. If the party is represented, the correspondence address will be presumed to be the correspondence address of the representative.

6. Where there is a change of correspondence address or the appointment of a new or substitute representative, the applicant or other party should promptly notify the Department of such change and should include a separate document of notification for each application or

registration to which the information relates.

Article 73. Access to Files.

1. Files and documents relating to applications for registered geographical indications shall be available for public inspection and copying during normal business hours, subject to payment of applicable fees. Where requests for inspection or copying involve a large number of documents or multiple files, the Department may make reasonable provisions, such as requiring an appointment or limiting the number of documents or files available on a single day, as needed to ensure its orderly conduct of business.

3. No files or documents therein shall be altered, destroyed, or removed from the premises of the Department. The Department may bar any person found to be violating this paragraph, or attempting to do so, from future access to documents and files of the Department.

Article 74. Identification of Documents.

1. Each item of correspondence relating to a geographical indication or application therefor, or to any proceeding within the Department, should bear on the top page in a conspicuous location an indication of the nature of the correspondence, for example, geographical indication application, amendment, response to Department communication, appeal, or payment of fees.

2. If the correspondence relates to an application that has already been filed or to a registered geographical indication, the correspondence should also bear the application number or registration number, as applicable; the name of the applicant; and a title of the geographical indication. In addition, unless it is impractical, each page and each item enclosed with the correspondence should bear at least the application number or registration number to which the document refers. For items such as drawings or pictures, such information may be recorded on the reverse side of the item in pencil or on a label.

3. Correspondence relating to an application should ordinarily not be filed prior to receipt of the application number from the Department.

Article 75. Form of Correspondence.

1. Correspondence with the Department relating to geographical indications, or applications therefor, or to any proceeding within the Department, should be made on flat, non-shiny paper that is A4 in size and recorded in dark ink or its equivalent. Correspondence must be legible and subject to photocopying as needed. Bulky items should not be submitted except with the express permission of the Department.

2. Documents and drawings or photographs submitted to the Department should be clear and of suitable quality for publication. Where such items are not of suitable quality for publication, the Department may accept such items for purposes of examination but may require the submission of publication-quality documents, drawings, or photographs prior to final approval of the application.

3. Where needed to illustrate the subject matter of an application, the applicant should provide high-quality drawings in black and white. Photographs, color images, or specimens of the geographical indication will be accepted for examination purposes but the applicant must submit corrected drawings prior to publication. Where photographs are used, the applicant must provide copies that are of sufficient quality so that all details in the photographs are reproducible in the publication and in the printed patent.

4. If items submitted are not legible or are not of sufficient clarity to enable the Department to conduct an examination, the Department shall so notify the applicant and provide an opportunity for the applicant to submit corrected documents. Where such new documents relate to the subject matter of the application, their acceptance will be subject to requirements related to changes in the content of an application.

Article 76. Times for Taking Action; Expiration on Saturday, Sunday or National Holiday.

1. Wherever the Law, this Decision, or communication by the Department specifies a time for taking action or paying a fee, such period shall be calculated as follows:

If the period is stated in days, calendar days are intended, and the period shall be calculated by excluding the first day and including the final day. If the period is stated in months or years, the period shall expire on the same date of the relevant month or year.

2. If the last day of the period is an official holiday, or a day when the Department is not open for business, the period shall be extended until the first following working day.

3. The Director General may provide for an extension of time based on a delay or loss of mail service caused by war, revolution, civil disorder, strike, natural calamity or other like reasons.

4. Except as provided in this Article, the period for filing an application for a patent or registration shall not be extended.

SECTION XII Registration Fees and Service Fees

Article 77.

Article 78.

SECTION XIII Final Provisions

Article 79. Implementation.

Article 80. Effective Date.

This Regulation shall enter into force on the date of its signature.

