



IP System Myanmar

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Introduction



- Situated in South-East Asia
- The largest country in mainland South- East Asia (land area of nearly 677,000 square Kilometers)
- Population of over 60 millions
- Population density of 75 per square kilometre (190 /sq mi)

Economy



- Market oriented economy
- liberalized domestic and external trade

- Laws enacted to be in line with the new economic direction:
 - ✓ Foreign Investment law
 - ✓ Central bank of Myanmar Law
 - ✓ Financial Institution of Myanmar Law
 - ✓ Myanmar Tourism Law

- Tourist attraction Places



Industry

Aim - To increase industrial capabilities of the regions
To offer more job opportunities

- Setting up **eighteen industrial zones**
- expanding industrial zones in various areas
- The private sector has constructed **24,293** new factories;
- **State and private** owned factories **51,980** *at present*.

Main priority - To create a strong, permanent industrial sector owned by the state.



SME Development Plan

Principal Strategies

- **Capacity building**
- **Technology development**
- **Innovation**
- **Financial assistance**

Supportive strategy

- **Business support**
- **Infrastructure development**
- **Favorable taxation regime**

**Central Department of SMEs Development Centre of
Myanmar - 2012**

International Organizations and Myanmar

- ASEAN (1997)
(ASEAN framework agreement on IP Cooperation)
- Member of WIPO (2001) (TRIPs)
- Focal Ministry of WIPO
- New IP system

IP protection in Myanmar

- Legal principal of English Common law System
- No specific law for **IP**
- General laws such as Penal Code and some civil laws ensure for protection of the rights of proprietor of the trademark with effective remedies
- Application of other laws that can be enforceable on Intellectual Property Rights

Relevant Laws Related to IP in Myanmar

- ❖ The Code of Civil Procedure, 1808
- ❖ The Penal Code, 1860
- ❖ The Specific Relief Act, 1877
- ❖ The Sea Customs Act, 1878
- ❖ The Myanmar Merchandise Marks Act, 1889
- ❖ The Code of Criminal Procedure, 1898
- ❖ The Registration Act, 1908
- ❖ The Myanmar Copyright Act, 1914
- ❖ The Land Customs Act; 1924
- ❖ The Myanmar Patents and Designs (Emergency Provisions) Act, 1946

Relevant Laws Related to IP in Myanmar (cont')

- ❖ The Science and Technology Development Law
- ❖ The Computer Science Development Law
- ❖ National Drug Law
- ❖ Traditional Drug Law
- ❖ Electronic Transaction Law

- ❖ **The Television and Video Law**
- ❖ **Motion Picture Law**

IP and Myanmar

- **Existing laws** relating to IP do not cope with the current economic trend and developments in the field of IP
- Need to be **reviewed and redrafted** the existing law in order to ensure compliance with international and inter-governmental obligations of Myanmar.
- **Ministry of Science and Technology** (Focal Ministry of WIPO) and **Office of the Attorney General** work together to set up comprehensive, transparent and also effective protection of IPRs to be in line with the International conventions and agreements including TRIPS.

Trademark System

-
- **Substantive Law** : No statutory law
- **Related Laws**
 - Penal Code (1860)
 - Merchandise Marks Act (1889)
 - Specific Relief Act (1877)
 - Sea Customs Act (1878)
 - Registration Act (1908)
 - Private Industrial Enterprise Law (1990)
 - Control of Money Laundering Law (2002)

Trademark Registration

❖ Registration Act (section 18(f))

➤ Direction No.13 of the Inspection General of Registration

➤ Declaration of Ownership of Trademark

Office of Registration of Deeds under Settlement and Land Records Department

❖ Ministry of Agriculture and Irrigation

Filing Procedure for foreign trademark

Duly **authorized Power** of Attorney to the applicant must be submitted along with the **Declaration**

The Power of Attorney is essentially required for **notarization and legalization** by the Myanmar diplomatic office in its home country

Trademark system in Myanmar

- Registration does not automatically give the exclusive right of use.
- Registration once stays perpetual, no need for renewal.
- Foreign trademarks are also registered under the Registration Act.

Effect of Registration

- Neither **statutory nor conclusive *proof per se*** of the proprietorship of the mark;
- It may constitute **prima facie** and circumstantial evidence in favor of the bona fide proprietor in the criminal or civil proceeding against an infringer;
- Prior use or First-Come-First-Served
- (For proprietorship)

Trademark search

No official search facility in Myanmar although some provisions on search contain in the **Registration Act**.

As local practice, private collectors who have been **keeping records** of trademark cautionary notices in newspapers for many years are conducting searches.

Cautionary Notice

Publication in the **local newspapers**

International marks in **English newspapers**

Contain the name or specimen and particulars of the trademark, the name and address of the owner, covered goods or services as well as a short warning against infringement of the mark

Repeat every two or three years in order to sustain public awareness or up to option of the proprietor whence he assumes necessary

TRADE MARK CAUTION

SHANTHA BIOTECHNICS LIMITED, a Company incorporated in India, of 3rd & 4th Floor, Vasantha Chambers, Fateh Maidan Road, Basheerbagh Hyderabad, 500 004 ANDHRA PRADESH, INDIA, is the Owner of the following Trade Mark:-

SHANVAC

Reg. No. 11129/2011

in respect of "Class 05: Pharmaceutical products, vaccines".

Fraudulent imitation or unauthorised use of the said Trade Mark will be dealt with according to law.

Win Mu Tin

M.A., H.G.P., D.B.L

for **SHANTHA BIOTECHNICS LIMITED**

P. O. Box 60, Yangon

Dated: 12 January 2012

Legal principals

-Infringing Trademark and Pirated Copyright

(Civil Action and Criminal Action)

-Infringing Patent and Industrial Design

(Civil Action)

Legal principals

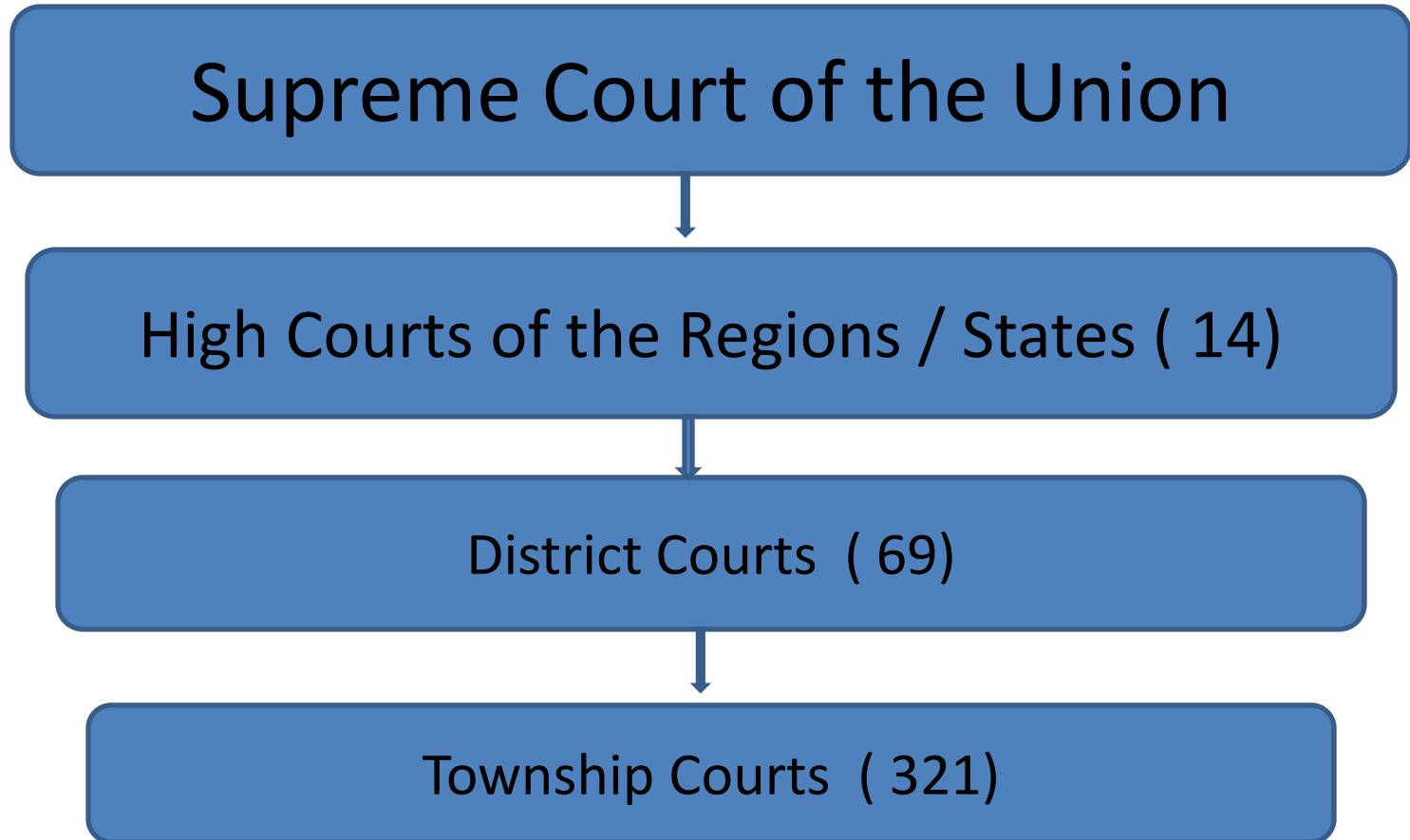
In Myanmar, the rights of the parties setting up rival claims to ownership of a trademark must be determined in accordance with the **principal of common laws**:

It is settled law that in Myanmar there is **no method by which a trade mark may be acquired by user**:

An owner of a trade mark has **no right to prohibit** other persons from the use of such mark in connection with goods of totally different character:

Two marks in issue need not be identical; similarity though slightly **different between them amounts sufficient for infringement**;

Structure and Formation of the Courts



Judicial Measure

- The owner can file a suit at the judicial court for infringement suit and ask for compensation or
 - For injunction under Specific Relief Act
 - Can sue for forgery under Penal Code
- Such as
- Using a false Trade mark (S. 480)
 - Using a false Property mark (S. 481)

Judicial Measure- Criminal

- Offences and Penalties:
 - Guilty of an offence- 3 years imprisonment or a fine or both.
 - Seized and forfeited or disposed of

Trademark registration

Year	Application			Granted		
	Domestic	Foreign	Total	Domestic	Foreign	Total
2005	2446	1330	3776	2446	1330	3776
2006	2637	1518	4155	2637	1518	4155
2007	1747	906	2653	1747	906	2653
2008	2857	1796	4653	2857	1796	4653
2009	3961	1931	5892	3961	1931	5892
2010	3821	2149	5970	3821	2149	5970
2011	4007	2378	6385	4007	2378	6385
2012	4422	4068	8490	4422	4068	8490

Copyright System in Myanmar

The Myanmar Copyright Act (24th February, 1914)

Applies to original literary, dramatic, musical and artistic works first published in Myanmar or, if unpublished, works that were created at a time when the author was a citizen or resident of Myanmar.

Terms of copyright

Life of the author and 50 years after his death

Punishment

copying, distributing, exhibiting, hiring or exhibition a sensor, certificated video tape without the permission of the license holder

Remedies for infringement of copyright

Though the act is still in existence, very few cases have been brought before the Court. Almost all of such disputes are settled by negotiations or conciliations; sometimes with the intervention of certain bodies such as –

- Myanmar Motion Picture Association
- Myanmar Writers and Journalists Association (MWJA)
- Myanmar Printers and Publishers' Association (MPPA)
- Myanmar Music Association (MMA)
- Myanmar Theatrical Association
- Myanmar Traditional Arts and Artisans Association
- Myanmar Photographers Association
- Myanmar Academy of Art and Science
- Myanmar Computer Federation
- Myanmar Publisher and booksellers Association

Myanmar Patents and Design Act

The Myanmar Patents and Design Act was **promulgated** in **1945**; and

It was not brought into force and **repealed** it in **1993**.

Myanmar Patents and Design Act

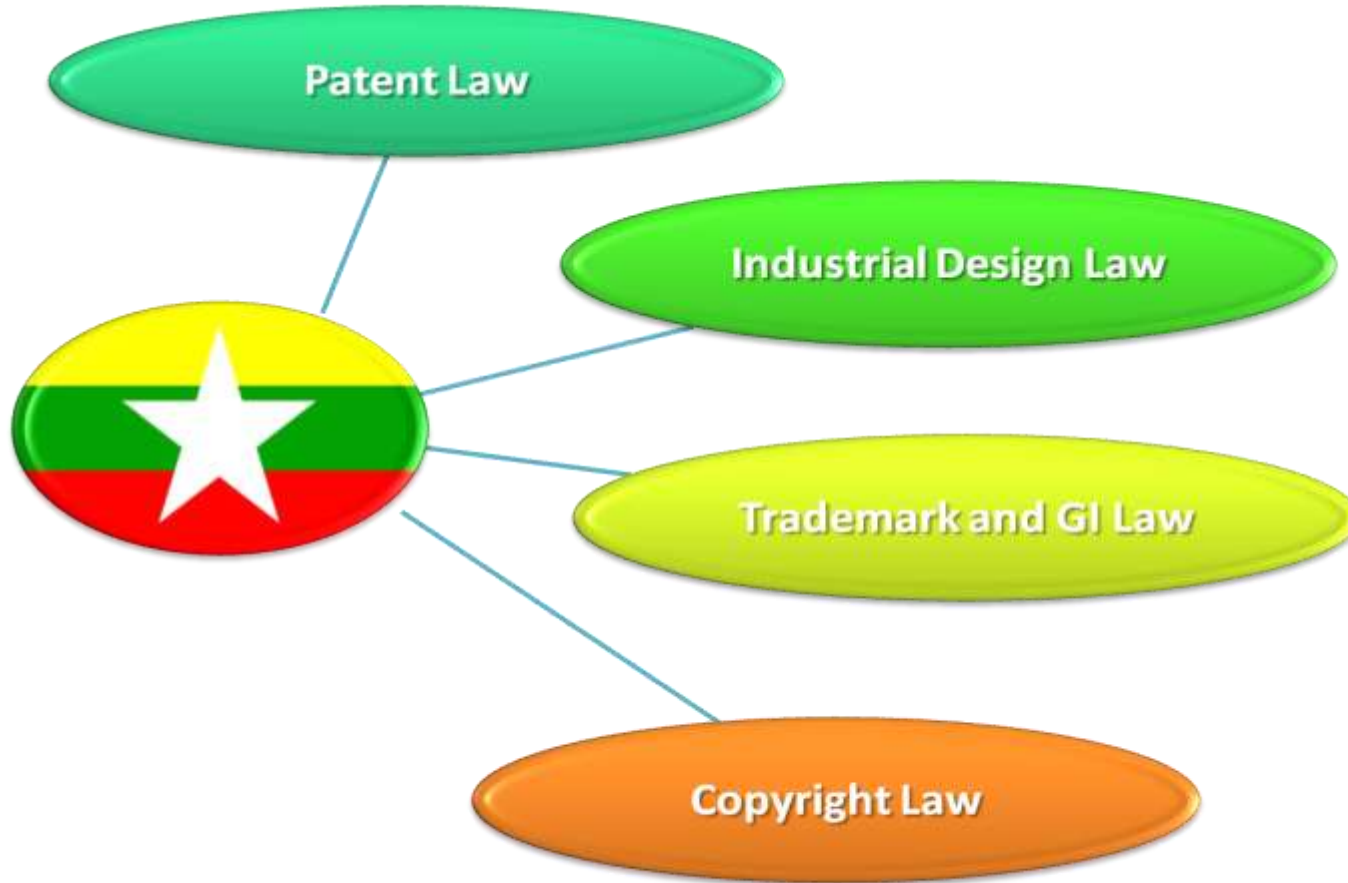
- **Patent and Design Protection**

Substantive Law : Nil

Related Laws

- Specific Relief Act (1877)
- Merchandise Marks Act (1889)
- Patent and Design (Emergency Provisions) Act (1946)
- Science and Technology Development Law (1994)

Draft New IP Laws



Discussion Meetings (2004 – 2006)

- ▶ 1st draft - 12 Oct 2004
- ▶ 2nd draft - 28 Nov 2004
- ▶ 3rd draft - 30 Dec 2004
- ▶ 4th draft - 19 Jan 2005
- ▶ 5th – 7th draft - 30 Jan 2005 to 11 March 2005

Total Meetings – 35 times

- ▶ Seeking Legislative Advice on Draft IP Laws
- ▶ Establishment of IP Office

Discussion Meetings (2012 – 2013)

Legislative advice by IP experts from WIPO, and JPO

- Meeting on draft Trademark Law – (6 -8) May, 2013
- Meeting on draft Industrial Design Law – (15-17) May, 2013
- Meeting on draft Patent Law – (3-5) June, 2013
- Meeting on draft Copyright Law – (17-21) June, 2013
- Meeting on the Establishment of
a National IP Office – (20-22) May, 2013
- Meeting on the enforcement related
provisions on draft IP Laws – (2-4) Oct, 2013

New Registration System for Patent

- Filing of Patent Application
- Formal Examination
- Publication
- Opposition
- Substantive Examination
- Decision
- Record grant or refusal
- Issue of Patent Certificate

New Registration System for Trademark

- Step 1 - Filing of Application
- Step 2 - Formalities Examination
- Step 3 - Publication
- Step 4 - Opposition/Examination
- Step 5 - Successful Registration/ Rejection

Classification system – Nice classificatin

New Registration System for Copyright

Step(1) Filing the application

Step(2) Registration

Step(3) Issue of Certificate

Current Stage of NEW IP LAWS

The drafting processes has been well in proper steps with assistance of the WIPO and JPO and other international organizations concerned.

New laws would be in compliance with current international legal norms and principles in every aspect while keeping its own characteristics of Myanmar Legal system.

IP laws are now finalization stage and under the process for legislation.

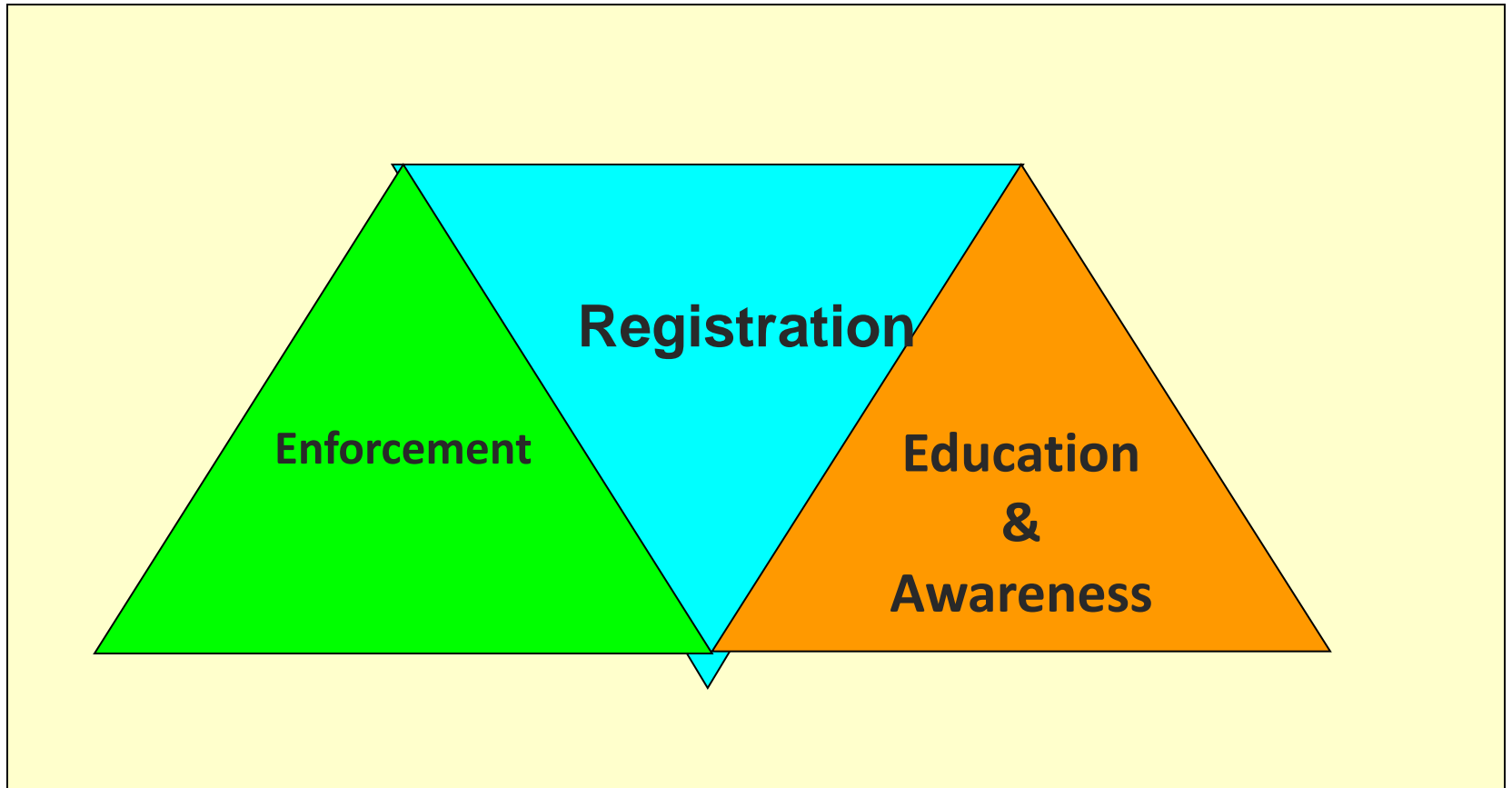
IP Awareness activities

- ❖ Meetings for draft IP laws (Local and International)
- ❖ Seeking Legislative Advice on Draft IP Laws
- ❖ Establishment of IP Office
- ❖ Seminars and work shops
(WIPO, WTO, ASEAN, JPO, JETRO, KOICA, EU, USPTO, UNDP., etc)
- ❖ Public Talk
- ❖ Articles
- ❖ Translation of books published by WIPO
- ❖ Celebration of world IP day

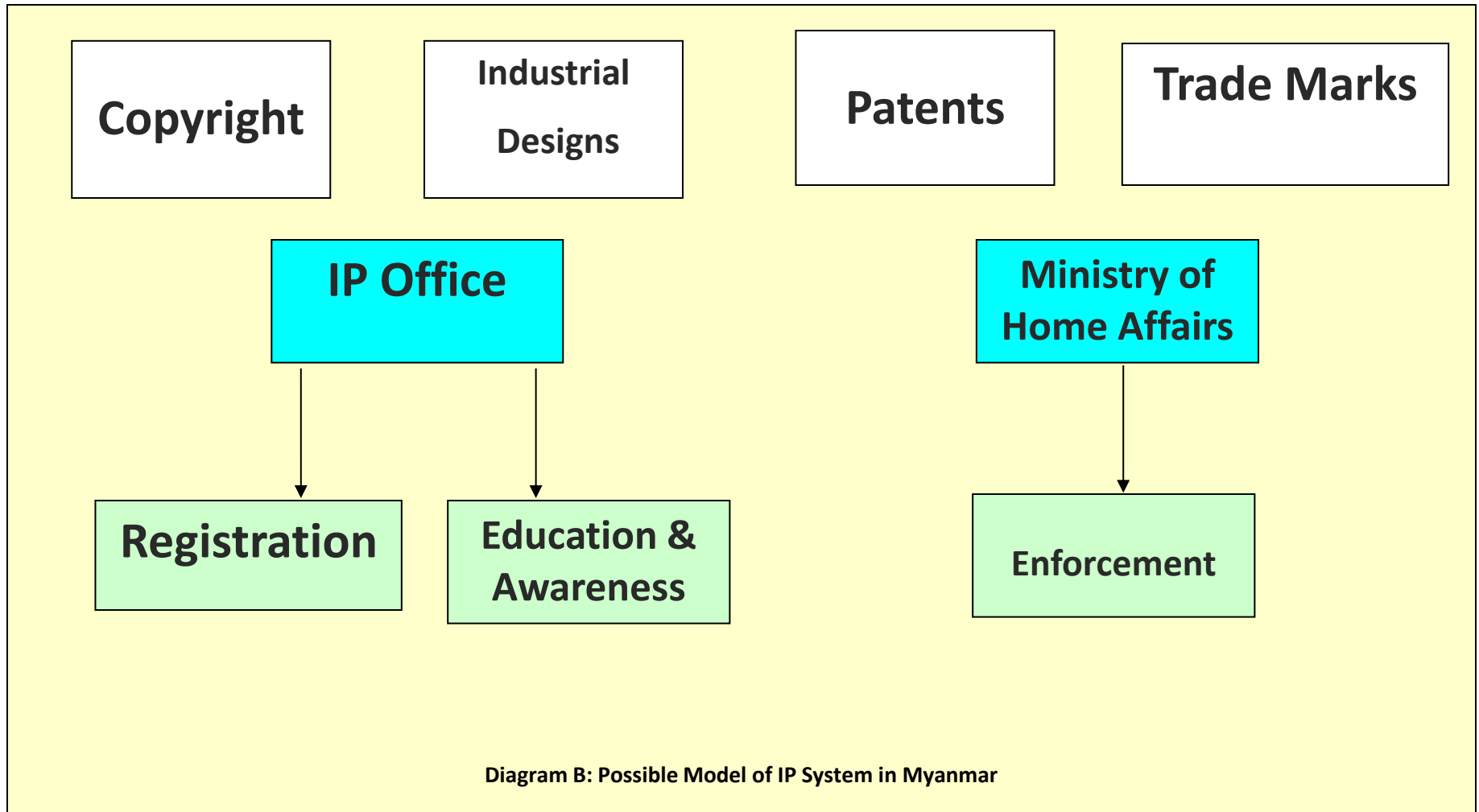
IP Awareness activities

- WIPO National Seminar on Trademark and Franchising (March, 2011)
- WIPO National Seminar on Intellectual Property (May, 2010)
- WIPO National Seminar on the Role of the Copyright System in Promoting the Publishing Industry (1 -3 Sep , 2008)
- National Seminar on Copyright and Related Rights in the Creative Industries (16 -17 May, 2006)
- WIPO National Workshop on the Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (Jun 28-29, 2004).
- National Seminar on Intellectual Property (22-23 Oct, 1997)

IP System (Myanmar)



IP office of Myanmar

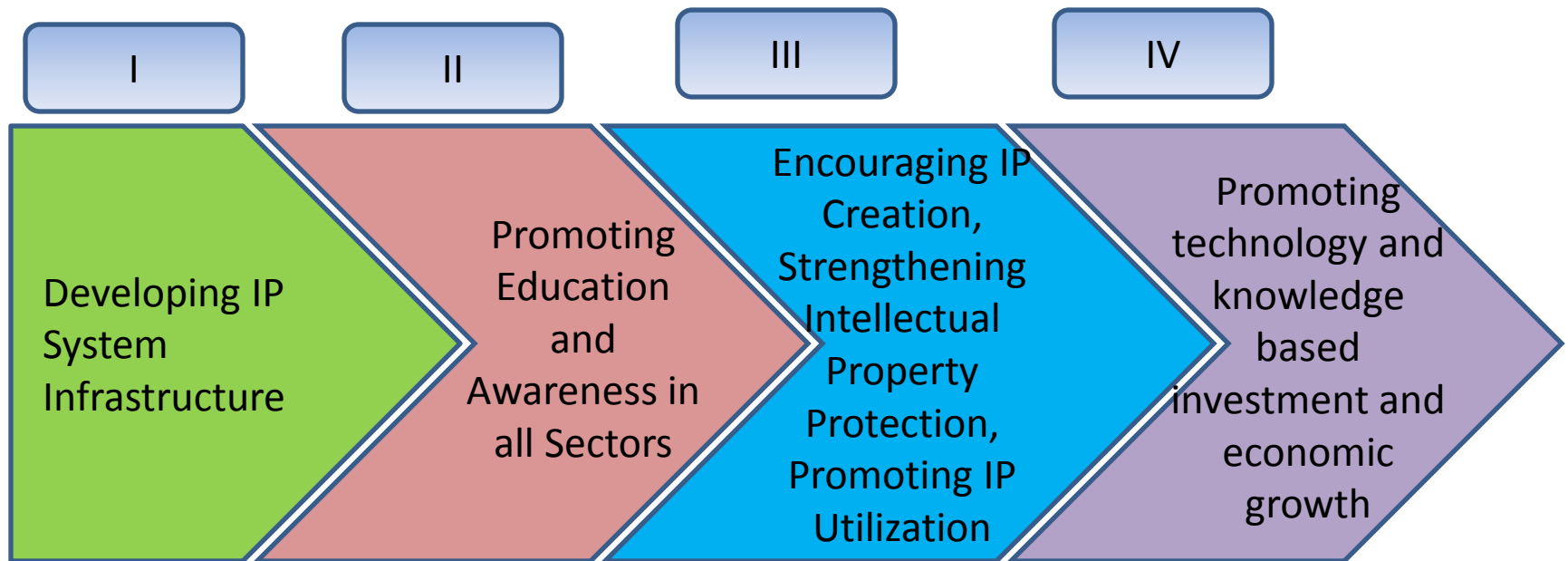


IP Policy and strategy

- IP policy
- National IP strategic plan
(a set of measures formulated and implemented by Government to encourage and facilitate effective creation, development and management of Intellectual property)

**Establishment of proper IP System
for Economic Development of
Myanmar**

National Strategies Program for Establishment of proper IP System for the National Development



I

Developing IP System Infrastructure

IP Laws and Regulations

- Adoption of IPR Laws
- Building up the IPR rules and regulation
- Development of IPR Enforcement

Myanmar IP Office

- Setting up a Single IP Office
- Implementation of the procedures for the establishment of IP Office according to legislation
- Providing infrastructure, building expertise and grow the ecosystem to support the creation, protection and utilization of IP
- **Developing the human resources and promoting the quality of the staff**
- Modernizing the systems of IP administration and information by using IT
- Establishing and promoting activities of the Offices for supporting and consulting IP matters for enterprises

Myanmar IP Development Support team

Technology Information Centre

Patent Attorney Association

Collective Management Organization

Human Resources Development

- **Providing the training programs for the staff assigned in the IPOM**
- **Studying and exchanging experiences with other IP offices in education and training IPR**
- **Implementing the effective and efficient capacity building of the officers**
- **Enhancing the quantity and quality of lawyers and patent attorneys**
- **Improving the skills of examiners in handling applications together with recruit and train new examiners**

II

Promoting Education and Awareness



IPOM

Universities
&
Research
Centre

SME
&
Industries

Copyright
related
Industries

PUBLIC

- Developing education and awareness campaign
- Providing IP management in universities and research centers
- Establishing a digital library for Myanmar Intellectual Property Office (IPOM)
- Organizing the activities such as seminars, workshops, technical talks, etc.
- Providing for the publication (Pamphlets, Leaflets, Videotapes, Articles, etc)
- Providing the e-learning System in IPR

III

Encouraging intellectual property cycle

IP Creation

- Setting up the Science and Technology Development Committee
- Enacting the technology transfer law
- Developing the proper environment for the creation of intellectual property
- Utilizing the Patent Information in Research and Development
- Promoting IP related activities in universities, research institutes
- Competition for creativity in science and technology , literary and artistic works
- Promoting IP used as a tool for business development in SME
- Creating various incentives for researchers

IP Protection

- Developing the procedures to facilitate the applications of IP
- Providing the flexible IPR examination system
- Developing the consulting services for applications of IP Rights
- Establishing reliable IP protection system
- Establishing the IP Court
- Enabling to start up the arbitration and mediation centre
- Enhancing human resources experts in IPR dispute settlement
- Establishing information networks concerning IP infringement

IP Utilization

- Introducing and utilizing the IP management strategy in industries
- Providing guidelines for formulating IP strategy indicators
- Introducing the system for registering the intention to grant a license
- Stimulating SME and venture companies to use IP
- Improving accessibility to IP related information

Conclusion

- Establishment of legal IPRs system
- Comprehensive and effective IP protection to promote foreign investment, creation and innovation, and technology transfer as well as for boosting industrial development.
- Collaboration with international organizations to set up IP regime in Myanmar

Welcome to Myanmar



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