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Essential Information on Trademark Protection Worldwide

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INDIA

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This guide provides a basic profile of this jurisdiction's trademark law and practice and is not intended to take the place of professional advice given provided by a local trademark attorney.

For more information about particular areas of practice, please see INTA's companion online publications: [International Opposition Guide](#), [Practitioner's Guide to Madrid Agreement and the Madrid Protocol](#), [Global Portal](#).

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I. GENERAL

A. Rights Afforded by Registration

- Registration is not required to establish rights in a trademark; sufficient prior use establishes rights in a trademark; this is a "first to use" jurisdiction.
- Use of an unregistered mark for any goods or services is legal.
- No legislation regarding plain packaging has been enacted in this jurisdiction, and it is not under active consideration. Although there is no plain packaging legislation in the strict sense, the Cigarettes and Other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, require that the total area covered by the pictorial and statutory warnings on the packets of cigarettes and tobacco products be 85 percent.

B. Time Frame for Obtaining Registration

- The approximate time from application to registration (for a regular prosecution, without opposition) is: if there is no opposition, from 8 to 10 months.

C. Advantages of Registration

- The benefits of registering a trademark include the following:
 - it provides prima facie evidence of ownership and validity;
 - it provides regional, national and/or local protection;
 - it allows use of "Registered Trademark" or other suitable terms or abbreviations to demonstrate ownership of the trademark;
 - it helps to deter others from unlawfully using the trademark;
 - it provides a defense to infringement;
 - enforcement of an unregistered trademark is more difficult and more costly than enforcement of a registered trademark;
 - it encourages licensees and provides the opportunity to generate royalties through licensing.

The risk of not registering a trademark is that others may register an identical or similar mark that could impede the ability to use or register the mark in India.

II. PRE-FILING

A. Registrable Trademarks

- The following signs that can be reproduced graphically and are capable of distinguishing the goods or services of one person or entity from another are registrable as a trademark:
 - words;
 - names (As per the Trade Marks Act, personal names cannot be registered. However, in exceptional cases, if strong evidence of prior use is filed, the Registrar may grant registration.);
 - devices;
 - certain three-dimensional shapes;
 - colors (So far it is difficult to register a single color at the Indian Trade Marks Registry; however, color combinations can be registered provided evidence of use is filed to prove acquired distinctiveness.);
 - slogans (It is difficult to obtain registration for slogans; however, the chances of success can improve if sufficient evidence of prior use is filed in support of the application.);
 - sounds;
 - trade dress/get-up;
 - holograms.

For general information about non-traditional marks, see:

Topic Portal: <http://www.inta.org/Advocacy/Pages/Non-traditionalMarks.aspx>

Fact Sheet: <http://www.inta.org/TrademarkBasics/FactSheets/Pages/NontraditionalTrademarksFactSheet.aspx>

For information about protecting trade dress, see: <http://www.inta.org/TradeDress/Pages/TradeDress.aspx>

- The special requirements for the registration of three-dimensional shapes are: The reproduction of the trademark shall consist of a two-dimensional graphic or photographic representation of the mark presented in at least three different views of the trademark (the applicant may further be asked to present the mark in five additional angles of viewing within two months) and a description of the mark. Additionally, if the aforementioned views do not suffice, the applicant may be asked to submit a specimen of the shape along with the application.

As for the overall distinctiveness test for shape marks in Indian practice, the most important criterion to be taken into account is whether the mark in question is sufficiently distinctive to distinguish the goods/services for which it is used in the eyes of the consumers.

- The special requirements for the registration of colors are: It is advisable to file a clear representation of the color combination and robust evidence of use to support the application.
- The special requirements for the registration of sounds are: A reproduction of the same shall be submitted in the MP3 format not exceeding 30 seconds in length, recorded on a medium that allows for easy and clearly audible replaying, accompanied by a graphic representation of its notations.
- There are no special requirements for the registration of trade dress. However, it is advisable to file strong evidence of use in support of acquired distinctiveness.
- There are no special requirements for the registration of holograms.
- Marks registered in black and white or grayscale are construed broadly to protect the mark both as registered and in other color combinations.
- In addition to regular trademark registrations, the following types of trademarks are registrable:
 - collective marks;
 - certification marks;
 - well-known marks (Provisions have been introduced under the new Trade Marks Rules, 2017 to register a mark as a well-known mark.);
 - service marks.
- Retail services are registrable provided that the nature of the retail services is clearly identified.
- The following are not registrable as trademarks:

- marks contrary to moral standards or public order;
- generic terms;
- names, flags or symbols of states, nations, regions or international organizations;
- non-distinctive trademarks, absent a showing of acquired distinctiveness (secondary meaning);
- marks that function principally as surnames;
- marks that function principally as geographic location names (but not geographical indications or appellations of origin).
- Geographical indications (GIs) are protected in this jurisdiction.
- GIs are protected by way of:
 - special laws for the protection of geographical indications or appellations of origin (India enacted a special law, called The Geographical Indications of Goods (Registration and Protection) Act, 1999, for protection of GIs.).
- The following products or categories are subject to GI protection in this jurisdiction: The GI register is classified into 34 classes of goods. The classification is based on the international classification of goods for the purpose of registration of geographical indications.

B. Searching

- While conducting a private pre-filing search is not mandatory, it is recommended in that it can:
 - save the applicant the time, effort and cost entailed in developing, adopting and applying to register a trademark in which someone else has prior rights;
 - disclose additional potentially conflicting trademarks, e.g., prior unregistered rights such as those gained at common law.
- The national office is accessible online at the following URL: <http://www.ipindia.nic.in>.
- The official register can be searched online at the following URL: <https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>.

C. Use

- An applicant benefits from pre-filing use of a trademark.
- The benefits of pre-filing use are:
 - Use may demonstrate acquired distinctiveness (secondary meaning) and help to overcome an objection to an application to register the trademark on the ground of non-distinctiveness. Use of the mark is always advantageous. The first person to use a mark has the right to such mark, even if another party subsequently registers it. In other words, India is a first-to-use jurisdiction and first use of a mark is superior to registration. Prior use of the mark is not a requirement for filing, but where prior use is extensive, it is possible to initiate an action for passing off.
- When a mark is not registered, use of that mark may provide the following benefits:
 - Protection against infringement may be available for marks with substantial and longstanding use that are not registered. As set out above, India is a first-to-use jurisdiction, where use of a mark gives rise to common law rights. Such rights can help establish priority of rights if the mark comes under challenge.
- Famous and/or well-known marks are protected via the following mechanism(s):
 - a determination by the court resulting from an action for infringement;
 - an application for declaration of a mark as well known can be filed at the Trade Marks Registry along with the prescribed fee.

D. International Treaties

- India is a signatory to the following international treaties relating to intellectual property:
 - Paris Convention;
 - Nairobi Treaty;
 - Madrid Agreement;
 - Madrid Protocol;

- Nice Agreement;
- Vienna Agreement.

III. FILING

A. Requirements

- If the applicant is not domiciled in this jurisdiction, a local address for service must be provided.
- Joint applicants are permitted in this jurisdiction.
- Either actual use or intent to use is required for application.
- The following information is required to COMPLETE an application:
 - name and address of applicant;
 - state or country of incorporation;
 - description of trademark;
 - representation of trademark (a depiction of the mark an applicant seeks to register);
 - list of goods/services;
 - power of attorney;
 - statement of use (to be accompanied by an affidavit);
 - dates of first use (dd/mm/yy format);
 - statement of intention to use (if no statement of use);
 - official filing fee;
 - priority claim, where priority of an earlier application is claimed.
- While ALL of the items noted in the list immediately above are required to COMPLETE an application, ONLY THE FOLLOWING ITEMS from that list are required in order to SECURE A FILING DATE:
 - name and address of applicant;
 - state or country of incorporation;
 - representation of trademark (a depiction of the mark an applicant seeks to register);
 - list of goods/services;
 - dates of first use;
 - statement of intention to use;
 - official filing fee;
 - priority claim, where priority of an earlier application is claimed.
- The list of goods and services in this jurisdiction may specify:
 - a list of the specific goods or services of interest, as per the current edition of the Nice Classification.
- The following number of copies of the trademark must be submitted: The online process requires only one copy to be filed, except for three-dimensional marks (where three different views are required) and shape marks (where five different views are required). If the Registrar is not satisfied with any representation of the mark (applicable for all types), he may at any time require another representation satisfactory to him.
- In this jurisdiction, the following types of registrations are available:
 - national;
 - international.
- This jurisdiction is a party to the Madrid Protocol but not the Madrid Agreement and may be designated in international applications.
- This country is not a member of the European Union; a European Union Trade Mark registration (formerly a Community Trade Mark registration) is not effective in this jurisdiction.
- No multinational regional registrations are available in this jurisdiction.
- An international application is subject to the same registrability requirements and examination procedure as a locally filed application. (See the entry for the Madrid System.) An international application in which India is a designated country will go through same line of events with respect to the examination and registrability once it is

forwarded to the Indian Trade Marks Registry after preliminary verification by the WIPO International Bureau. The examination of the international application will be done in the same manner as any local application. The only difference lies in adhering to the timelines as prescribed by the Madrid System for prosecuting international applications. Such timelines will not be applicable to local applications.

- Applications can be filed online at the following URL: <http://ipindiaonline.gov.in/trademarkfiling/online/welcomeForm.aspx>.
- The official file can be accessed online at the following URL: <http://www.ipindia.nic.in>. The Trade Marks Registry has started updating and digitizing its records as part of the drive to improve the functioning of the Registry and to bring about transparency.
- Applications are officially searched as to prior trademarks. Typically, an application is examined within two to three months from the date of its filing, and, consequently, objections on relative and absolute grounds, if any, are raised.

B. Priority

- If an applicant's home country is a signatory to the Paris Convention, the filing date of its home application can be claimed as the filing date in this jurisdiction, provided that its home application was filed within the fixed period of six months preceding the application in this jurisdiction.
- An International Registration can be based on a national application or registration in this jurisdiction (Madrid Protocol).

C. Classification

- This jurisdiction uses the Nice Classification System. For goods of Indian origin, the Registrar shall publish class-wise and an alphabetical index of such goods and services.
- If a trademark is or will be used in more than one class of goods and/or services, one application can cover multiple classes of goods or multiple classes of services, but separate applications are also permitted.
- For a multi-class application, the applicant must pay class fees on a per-class basis.

D. Representation

- An application to register a trademark may be filed directly in this jurisdiction by:
 - a trademark representative/attorney/agent, even if not a citizen of or domiciled in the jurisdiction.

IV. APPLICATION

A. Publication

- The filing particulars of an application are made available to the public.
- The filing particulars are made available to the public:
 - through publication and online.
- The following application details are made available to the public:
 - mark;
 - name of applicant;
 - address of applicant;
 - state or country of incorporation of applicant;
 - application number;
 - application date;
 - goods/services;
 - priority claim information;
 - dates of first use (if provided by the applicant);
 - representation of trademark.

B. Examination

- Applications are examined in respect of:
 - formalities: i.e., for compliance with the filing requirements;
 - classification: i.e., to ensure that the goods or services fall within the class(es) listed in the application;
 - clarity: i.e., that descriptions are clear and understandable;
 - descriptiveness: i.e., to check whether a trademark functions solely to provide information about the goods and services affiliated with the trademark;
 - distinctiveness: i.e., to ensure that trademarks are capable of being represented graphically and of distinguishing the goods or services of one individual or organization from those of other individuals or organizations;
 - deceptiveness: i.e., to check whether a trademark is of such a nature as to deceive the public (for instance, as to the nature, quality or geographic origin of the goods or services);
 - conflict with prior registration, prior-filed application or earlier unregistered rights resulting from an official search;
 - whether the mark contains or comprises any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; comprises or contains scandalous or obscene matter; or its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.
- If the local trademark authority issues a preliminary refusal to register a mark based on an earlier registration owned by another:
 - The existence of a valid coexistence agreement between the applicant and the cited registrant may be accepted as evidence permitting registration of the application; its acceptance is at the discretion of the trademark authority.
 - This jurisdiction does not have disclaimer practice (i.e., a practice whereby the applicant must disclaim any exclusive right to an element of a trademark that is not distinctive). As per the latest Registry practice, disclaimer has been done away with during the prosecution of an application. However, disclaimer can be made at the time of filing of an application.
 - The order of the application process is as follows:
 - examination, publication, registration.

C. Prosecution

- Accelerated examination may be requested. As per the Trade Marks Rules, 2017, in addition to the examination, other steps, such as publication of the application and the opposition thereto, if any, till final disposal of the application, shall also be dealt with expeditiously, subject to such guidelines as may be published by the Registrar in the Trade Marks Journal.
- A reason for acceleration is required. The following are considered acceptable reasons: The Trade Marks Act, 1999 does not lay down any specific grounds. A genuine need for acceleration would have to be shown on a case-to-case basis.
- A fee for acceleration is required.
- The following rights are established by a pending application:
 - the filing date of the application establishes a home filing date for purposes of priority;
 - the pending application can be cited in official examination against a subsequent (later-filed) conflicting application;
 - the pending application can be used in a third-party opposition proceeding against a subsequent (later-filed) conflicting application.

D. Opposition

- Opposition is available.
- Opposition is conducted pre-grant.
- The following can be grounds for opposition:
 - proprietary rights, such as an earlier conflicting registration;
 - the mark is descriptive, i.e., it consists of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose or value of goods or of rendering of services or other characteristics of goods or services;
 - the mark is not distinctive;

- the mark is misleading, deceptive or disparaging;
- breach of copyright;
- rights under Article 6bis of the Paris Convention (notorious or well-known mark);
- rights under Article 6septies of the Paris Convention (registration in the name of the agent or other representative of the proprietor of the mark);
- rights under Article 8 of the Paris Convention (trade names);
- registered design rights;
- rights in a personal name (grounds as specified in the Emblems and Names (Prevention of Improper Use) Act, 1950);
- rights in a company name (grounds as specified in the Emblems and Names (Prevention of Improper Use) Act, 1950);
- unauthorized use of specially protected emblems or national insignia (grounds as specified in the Emblems and Names (Prevention of Improper Use) Act, 1950);
- the mark is generic, i.e., the mark consists exclusively of signs or indications that have become customary in the current language or in the bona fide and established practices of the trade;
- the mark is against public policy or principles of morality.
- An application is published for opposition purposes after formal examination of the application.
 - The opposition period begins on the following date: the date on which the Trade Marks Journal is made available to the public.
 - The opposition period ends on the following date: An opposition may be filed within 120 days (4 months) from the date the Trade Marks Journal was made available to the public. This deadline is final and non-extendable.
 - Anyone may initiate an opposition.
 - Oppositions can be filed online.

E. Proof of Use

- Proof of use is required prior to the issuance of a registration or the issuance of a notice of allowance/acceptance. If use is claimed by the applicant, proof of use is required at the time of filing of the application, as per the Trade Marks Rules, 2017.
- Acceptable proof of use documents are:
 - declaration from proprietor;
 - specimens or samples of the trademark as used;
 - sales figures;
 - details of goods/services for which the trademark has been used;
 - documents showing the territory in which the trademark has been used;
 - documents showing use by licensee.

As per Rule 25(2), the proprietor is required to file an affidavit/declaration stating use of the mark along with supporting documents. Therefore, while no specific documents are listed under the Rules, it will help establish use of the mark to file annual sales figures, details of goods/services for which the trademark has been used, documents showing the territory in which the trademark has been used, copies of publicity material or extracts, pamphlets, brochure, etc., bearing the subject mark that is/was available in India showing clearly the date and year of publication and any other information and documents showing the use of the mark in India.

V. ASSIGNMENT, LICENSING, AND OTHER CHANGES TO TRADEMARK RECORDS

A. Assignment

- An application can be assigned.
- A registration can be assigned. There are regulations concerning partial assignment of registrations, so an Indian trademark attorney should be consulted in such a case.
- An assignment of an application can be made for a portion of the territory covered by the application.

- An assignment of a registration can be made for a portion of the territory covered by the registration.
- An assignment of an application can be for some or all of the goods or services listed in the application.
- An assignment of a registration can be for some or all of the goods or services listed in the registration.
- Goodwill need not be included in an assignment of an application.
- Goodwill need not be included in an assignment of a registration. The assignment deed, however, must categorically state whether the assignment is with or without goodwill.
- An assignment document for an application requires:
 - name of assignor;
 - address of assignor;
 - citizenship of assignor;
 - name of assignee;
 - address of assignee;
 - citizenship of assignee;
 - details of the trademark being assigned;
 - goods and services being assigned (where the assignment is only for some of the goods/services covered under the trademark(s));
 - territory being assigned (In cases where an assignment is restricted to a certain territory, the extent of the same must be clearly outlined.);
 - effective date of the assignment;
 - signature by assignor;
 - signature by assignee;
 - consideration (either actual or nominal) (Receipt of consideration must be acknowledged by the assignor.).
- An assignment document for a registration requires:
 - name of assignor;
 - address of assignor;
 - citizenship of assignor;
 - name of assignee;
 - address of assignee;
 - citizenship of assignee;
 - details of the trademark being assigned;
 - goods and services being assigned (Where the assignment is only for some of the goods/services covered under the trademark(s), the goods and services being assigned must be set out clearly.);
 - territory being assigned (In cases where an assignment is restricted to a certain territory, the extent of the same must be clearly defined.);
 - effective date of the assignment;
 - signature by assignor;
 - signature by assignee;
 - consideration (either actual or nominal) (Consideration paid must be acknowledged by the assignor.).
- Legal verification of a written assignment document for an application is not required. However, if the document is not original, then a certified copy would be required.
- Legal verification of a written assignment document for a registration is not required. However, if the document is not original, then a certified copy would be required.
- An assignment of an application must be recorded to be effective. In order to prove title to a mark in any legal proceeding, it is imperative to record the assignment at the Trade Marks Registry.
- An assignment of a registration must be recorded to be effective. In order to prove title to a mark in any legal proceeding, it is imperative to record the assignment at the Trade Marks Registry.

B. Licensing

- An application can be licensed. Such a license, however, cannot be recorded at the Trade Marks Registry. Only a license in respect of a registered trademark can be recorded. The licensor should, however, exercise control over the quality of the products made and sold by the licensee.
- A registration can be licensed. The licensor should, however, exercise control over the quality of the products made and sold by the licensee.
- In this jurisdiction, recordation of a registered trademark user (as opposed to recordation of a licensee) is the sole means of registering the rights of another to use the mark.
- A license of an application can be made for a portion of the territory covered by the application.
- A license of a registration can be made for a portion of the territory covered by the registration.
- A license of an application can be for some or all of the goods or services listed in the application.
- A license of a registration can be for some or all of the goods or services listed in the registration.
- A license of an application can be exclusive (only one licensee, with the owner excluded).
- A license of an application can be sole (only one licensee and the owner).
- A license of an application can be non-exclusive (multiple licensees and the owner).
- A license of a registration can be exclusive (only one licensee, with the owner excluded).
- A license of a registration can be sole (only one licensee and the owner).
- A license of a registration can be non-exclusive (multiple licensees and the owner).
- Use by a related company of a mark that is the subject of an application must be licensed.
- Use by a related company of a registered mark must be licensed.
- A license of an application can be made with a time limitation.
- A license of a registration can be made with or without a time limitation.
- A license document for an application requires:
 - name of licensor;
 - address of licensor;
 - citizenship of licensor;
 - name of licensee;
 - address of licensee;
 - citizenship of licensee;
 - details of the trademark to be licensed;
 - goods and services being licensed;
 - commencement date of the license;
 - term of the license;
 - territory of the license;
 - quality control provisions;
 - signature by licensor;
 - signature by licensee;
 - express permission to sublicense, if appropriate (the precise relationship between the licensor and the licensee; conditions/restrictions proposed vis-à-vis the characteristics of the goods or services or the mode or place of the permitted user, such as quality control measures; clear acknowledgement of the proprietorship of the mark by the licensee and that the mark is being used by it only in its capacity as a licensee; terms of royalty and other remuneration payable to the proprietor for the permitted use of the mark; termination clause).
- A license document for a registration requires:
 - name of licensor;
 - address of licensor;

- citizenship of licensor;
- name of licensee;
- address of licensee;
- citizenship of licensee;
- details of the trademark to be licensed;
- goods and services being licensed;
- commencement date of the license;
- term of the license;
- if the license has no limitation of time, a statement so indicating;
- territory of the license;
- quality control provisions;
- simple signature by licensor (see below for execution requirements);
- simple signature by licensee (see below for execution requirements).
- Legal verification of a written agreement to license an application is not required. In cases where the document is not original, a certified copy must be furnished.
- Recordation of a license of an application is not permitted.
- A license of a registration need not be recorded, but recordation could help in enforcement, to demonstrate use of the mark.
- The license for a renewed registration need not be re-recorded.
- Legal verification of a written agreement to license a registration is not required. In cases where the document is not original, a certified copy must be furnished.

C. Other Changes to Trademark Records

- The requirements for the recordal of name changes, mergers, and other important corporate updates on trademark records are as follows:
 - power of attorney, without further formalities;
 - deed of assignment, without further formalities;
 - certificate of proof of change of name, without further formalities;
 - certificate of merger, without further formalities.
- The requirements regarding the recordal of updated addresses on trademark records are as follows:
 - power of attorney;
 - document evidencing change of address.
- Recording a lien against trademark records is not possible.

VI. REGISTRATION

A. Requirements

- A fee is not required for issuance of the registration.
- The following documentation is required for issuance of the registration:
 - none.

B. Rights

- The following rights are established by registration:
 - the exclusive right to use the registered trademark;
 - the right to sue for infringement against confusingly similar third-party trademark use;
 - the right to license third parties to use the trademark;
 - the right to apply for seizure by customs authorities of counterfeit goods being imported into this jurisdiction.

Please note: Oppositions and cancellation actions can be filed irrespective of whether the mark is registered.

- The Roman alphabet is not used to represent the official language(s) of this jurisdiction.

- Registration of a mark in the Roman alphabet is sufficient to protect the transliterated version of that mark; the transliterated version need not be registered separately.
- A trademark becomes incontestable, that is, the validity of the registration cannot be challenged, at the following time:
 - never. A trademark registration is prima facie proof of ownership; however, the same can be challenged by a third party at any stage on various grounds.
- The territorial limit of registration is: India.

C. Term

- The initial term of a registration is:
 - 10 years.
- The beginning of the term of a registration is calculated from:
 - the application date. Although mired in controversy in the case of priority applications, the Trade Marks Act, 1999 provides that the 10-year term of registration will run from the date of priority.

D. Marking Requirements

- Marking is not compulsory for registered trademarks, but is advisable because: it gives proper notice to other parties and deters them from copying/using similar marks. The registration number or the ® symbol for registered marks and the letters "TM" for unregistered marks should be marked on or associated with the goods. However, it is a punishable offense to misrepresent that a mark is registered.
- Any marking should be in the form(s) mentioned below. Please consult a local trademark attorney in case of doubt.
 - TM;
 - ®.
- The use of ® is legally recognized.
- The legal consequences of false or misleading marking are: imprisonment for a term that may extend to three years, or a fine, or both.

VII. POST-REGISTRATION

A. Use Requirements

- Attack on the ground of non-use is available.
- To avoid being attacked on the ground of non-use, a trademark must be used within the following period of time: five years and three months from the "sealing date." Under Indian law, upon registration, the date of application (filing) of a trademark is deemed to be the date of registration. Accordingly, the period of time is to be calculated not from the registration date but from the date on which the trademark is entered on the Registry's records as a "registered trademark," that is, the sealing date.
- To satisfy the use requirement, the amount of use:
 - can be minimal.
- Use of the trademark must occur in:
 - this jurisdiction. However, if a trademark is affixed on goods meant solely for export, it is considered use of the trademark in India.
- The consequences of a trademark's not being used are as follows: It can be canceled if a third party brings an action for cancellation on the ground of non-use. It will not be "struck off" the Register suo moto.
- Periodic statements of use or other mandatory filings by the trademark owner setting forth use of the trademark are not required.
- An action for non-use of a trademark can be brought by: any "aggrieved person," that is, a person whose position will be prejudiced on account of the mark's remaining on the Register.
- Non-use can be excused under the following circumstances:
 - import restrictions;
 - other government policies;

