



C(Extr.)/23/2.

ORIGINAL: English

DATE: March 31, 2006

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-Third Extraordinary Session
Geneva, April 7, 2006

**EXAMINATION OF THE CONFORMITY OF THE INTELLECTUAL PROPERTY LAW
OF VIET NAM WITH THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated October 25, 2005, addressed to the Secretary-General of UPOV, His Excellency Mr. Cao Duc Phat, Minister for Agriculture and Rural Development of the Socialist Republic of Viet Nam (hereinafter referred to as "Viet Nam"), requested the examination of the Intellectual Property Law of Viet Nam (hereinafter referred to as the "Law"), in particular its Part Four "Rights for the Plant Variety", which was adopted by the National Assembly on November 29, 2005, for conformity with the 1991 Act of the UPOV Convention (the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a translation, in English, of Articles 1 to 5 of Part One, Part Four and Part Five of the Law, provided by the Government of Viet Nam on March 9, 2006.

2. Viet Nam did not sign the 1991 Act. Under Article 34(2) of the 1991 Act, therefore, it has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

3. The Government of Viet Nam had already started the procedure to become a member of UPOV on February 18, 2003, by a letter of Dr. Bui Ba Bong, Vice Minister, Ministry of Agriculture and Rural Development, in which examination was requested of the Decree No. 13/2001/ND-CP on the Protection of New Plant Varieties of Viet Nam, adopted on April 20, 2001, for conformity with the 1991 Act.

4. The Council, at its twentieth extraordinary session, held in Geneva on April 11, 2003, examined, on the basis of document C(Extr.)/20/3, the conformity of the Decree of 2001 and decided

(a) to advise the Government of Viet Nam that the Decree, in its main provisions, incorporated most of the substance of the 1991 Act, but that it still needed some clarifications and amendments, as provided in document C(Extr.)/20/3, in order to fully conform with the 1991 Act; once the above clarifications and amendments were incorporated in the Decree to the satisfaction of the Office of the Union, Viet Nam may deposit its instrument of accession to the 1991 Act;

(b) to request the Office of the Union to offer its assistance to the Government of Viet Nam in drafting the necessary clarifications and amendments to the Decree, and the preparation of a more accurate translation into one or more of the official languages of the Union.

5. The adoption of the Law makes the Decree of 2001 and the decision of the Council of UPOV of 2003 no longer relevant for the accession procedure. For this reason, and in order to comply with Article 34(3) of the 1991 Act, the Government of Viet Nam had made a new request, as explained in paragraph 1 of this document, in order to ask the advice of the Council of UPOV in respect of the conformity of the Law with the 1991 Act.

Basis for the Protection of New Plant Varieties in Viet Nam

6. The Law will enter into force on July 1, 2006. The protection of new plant varieties in Viet Nam will be governed by the Law and the Implementing Decree on Plant Variety Rights that is currently under preparation (hereinafter referred to as “Draft Decree”). The last version of the Draft Decree is available on request. The Government of Viet Nam informed the Office of the Union that the Draft Decree, once adopted, will also enter into force on July 1, 2006.

7. Article 5(3) of the Law entitled “Application of Laws” provides that “where the provisions of the International Treaties to which the Socialist Republic of Viet Nam is party contravene the provisions of this Law, the former shall be applied”. Article 5(3) of the Law reflects the general legal principle which provides that, in case of conflict between a Treaty and the Law, the Treaty prevails (hereinafter referred to as “general principle in Article 5 of the Law”). The general principle in Article 5 of the Law will remedy any lacunae or minor departures from the substance of the 1991 Act identified in this document.

Article 1 of the 1991 Act: Definitions

8. Paragraph 24 of Article 4 of the Law contains a definition of “plant variety”. The definition incorporates the essential elements of the definition in Article 1(vi) of the 1991 Act.

It is recommended to add in the definition of “plant variety” in the Draft Decree “, irrespective of whether the conditions for the grant of a plant variety rights certificate are fully met”.

9. Paragraph 5 of Article 4 of the Law contains the definition of “Rights to plant varieties”, referring to those who are entitled to protection, incorporating essential elements of the definition of “breeder” under Article 1(iv) of the 1991 Act.

10. Article 164 of the Law concerns the persons entitled to apply for protection in line with the definition of breeder under Article 1(iv) of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

11. Article 1 of the Law refers to its scope which includes rights in plant varieties and the protection of those rights. The Law thus complies with Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

12. Article 158 of the Law provides that new plant varieties to be protected must fall under the list of species issued by the Ministry of Agriculture and Rural Development. It should be noted that, in accordance with Article 3(2)(i) of the 1991 Act, when depositing its instrument of accession, Viet Nam must notify a list of at least 15 genera or species to which it has to apply the 1991 Act.

Article 4 of the 1991 Act: National Treatment

13. Paragraph 2 of Article 157 of the Law, which contains essential provisions concerning national treatment of Article 4 of the 1991 Act, provides as follows: “Organizations, Individuals mentioned in provision 1 of this Article include Vietnamese and organizations and individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Viet Nam; and foreign organizations and individuals which register a permanent residence in Viet Nam or have a business or production establishment of plant variety in Viet Nam”. The Draft Decree clarifies that the notion of “individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Viet Nam” includes both nationals and residents of UPOV members.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

14. Article 158 of the Law makes reference to the conditions for the protection of plant varieties in line with Article 5 of the 1991 Act.

15. Article 159 of the Law contains the provisions concerning novelty in line with Article 6(1) of the 1991 Act. Article 160 of the Law contains the essential provisions on distinctness of Article 7 of the 1991 Act. The Draft Decree further clarifies that the reference to the “plant variety which has had its description published” in Article 160(2)(d) of the Law, should be understood as an element that might be taken into consideration for the

establishment of varieties whose existence is a matter of common knowledge. In relation to the condition of uniformity, Article 161 of the Law incorporates the essential elements of Article 8 of the 1991 Act. Article 162 of the Law contains the condition of stability in line with Article 9 of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

16. Article 166 of the Law contains the principles for submitting the first application form for a plant variety. Articles 174 to 184 of the Law provide for the procedure starting from the filing of the application to the grant of a plant variety protection certificate. The Law contains no provisions which conflict with those of Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

17. Article 167 of the Law provides for the right of priority in line with Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

18. Article 178 of the Law contains provisions relating to the examination of candidate varieties which conform with Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

19. Article 189 of the Law provides measures designed to safeguard the interests of the breeder during the period between the publication of the application and the grant of the plant variety protection certificate which conforms with Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

20. Articles 186, 187 and 191 of the Law contain provisions on the scope of the breeder's right. In the Law, the term "Rights of the protection certificate holder" is used in the sense of the "breeders' rights" in the 1991 Act, while the "rights of the breeder" in Articles 185 and 191 of the Law refer to specific rights of the person who actually bred or discovered and developed a variety, but is not entitled to apply and obtain protection (for instance, a researcher in a public research institute). Article 186 of the Law incorporates the acts in respect of the propagating material which require the permission of the breeder in line with Article 14(1) of the 1991 Act. Article 186(2) of the Law refers to prohibition to use the plant variety in accordance with Article 188 of the Law, but does not specify under which circumstances the acts in respect of the propagating material will apply to the harvested material as provided in Article 14(2) of the 1991 Act.

21. Article 30 of the Draft Decree defines propagating material and harvested material and, in its Chapter 3 "Rights and Obligations of Variety Rights Holder", reproduces the full scope of the breeder's right with a precise provision in line with Article 14(2) of the 1991 Act: "acts in respect of the harvested material, including entire plants and parts of plants, obtained

through the unauthorized use of the propagating material of the protected variety, shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material". For the time being, the omission concerning Article 14(2) of the 1991 Act in the Law can be remedied by the general principle in Article 5 of the Law and the inclusion of that provision in the Draft Decree.

22. Article 187 of the Law contains the provisions concerning essentially derived varieties and certain other varieties corresponding to Article 14(5) of the 1991 Act. The Draft Decree incorporates the examples on how essentially derived varieties may be obtained in line with Article 14(5)(c) of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

23. Paragraph 1 of Article 190 of the Law contains the essential provisions on the exceptions to the breeder's right as required in Article 15 of the 1991 Act.

24. Article 190(1)(c) of the Law provides that "using the variety to create new plant varieties, distinctive from the protected plant varieties" is not considered an infringement of the rights of a protected plant variety. The Draft Decree clarifies the full scope of the breeder's exemption and provides that the rights of the holder shall not extend to "(c) acts done for purpose of breeding other varieties, and except where the provisions of Article 187 of the Law applies, acts referred to in Article 186 of the Law and Article 30 of this Decree in respect of such other varieties".

25. Article 190(1)(d) of the Law provides that "production households may use the harvested products of the protected variety for propagation and cultivation in the next season in their own fields", corresponding to Article 15(2) of the 1991 Act. The Draft Decree further clarifies, as required in Article 15(2) of the 1991 Act, that "the Government will issue a decision to implement the exception under Article 190(1)(d) of the Law within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the variety right".

26. For the time being, with the reference to the general principle in Article 5 of the Law and the additional clarifications provided in the Draft Decree (see paragraphs 24 and 25 above), the Law complies with Article 15 of the 1991 Act.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

27. Article 190(2) of the Law contains provisions on the exhaustion of the breeder's right in line with Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

28. Articles 195 to 197 of the Law contain provisions concerning the grant of compulsory licenses by the state administrative authority. The reason of public interest to grant a compulsory license provided under Article 195(1)(a) conforms with the requirement under Article 17(1) of the 1991 Act. Reasons provided under Article 195(1)(b) and (c) of the Law would only be acceptable if, in light of the circumstances of the case, the decision falls within

the notion of public interest. The Draft Decree clarifies that cases of compulsory licenses in Article 195(1) of the Law are stipulated only for reasons of public interest.

29. Article 197 of the Law provides that the protection certificate holder should be entitled to receive an “adequate compensation”. This provision complies with the requirement under Article 17(2) of the 1991 Act to take necessary measures to ensure that the breeder receives “equitable” remuneration.

30. For the time being, with the reference to the general principle in Article 5 of the Law, and the clarification provided in the Draft Decree, the Law complies with the requirements under Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

31. The Law does not seem to contain provisions in conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder’s Right

32. Article 169(2) of the Law provides that the protection certificate will take effect from the date of grant for a period of twenty-five years for trees and grapes and twenty years for other plant varieties in conformity with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

33. Article 163 of the Law contains provisions concerning variety denominations which correspond to essential elements of paragraphs (2), (4), (5), (7) and (8) of Article 20 of the 1991 Act. The Draft Decree further clarifies relevant matters on variety denominations, in particular, concerning the procedure for registration of the denomination as provided in Article 20(3) and incorporates all the elements of Article 20(2) of the 1991 Act, adding that “further guidance on variety denominations and, in particular, the list of classes for variety denomination purposes will be issued by the Ministry of Agriculture and Rural Development”. For the time being, the missing elements of Article 20(2), (3) and (6) of the 1991 Act can be remedied by the general principle in Article 5 of the Law and the clarifications in the Draft Decree.

Article 21 of the 1991 Act: Nullity of the Breeder’s Right

34. Article 171 of the Law contains essential provisions concerning nullity as required in Article 21 of the 1991 Act. In Article 171(1)(a) of the Law, reference to “the application form” should be understood as “plant variety protection certificate”.

Article 22 of the 1991 Act: Cancellation of the Breeder’s Right

35. Article 170(1) of the Law contains provisions concerning cancellation in line with Article 22 of the 1991 Act.

36. Article 170(5) of the Law refers to cases of reinstatement after the cancellation of the variety protection certificate. In order to avoid abusive practices, the Draft Decree requires that the breeder should provide satisfactory reasons and evidence to justify the reinstatement of the plant variety right certificate. In particular, the breeder should succeed in proving that the plant variety has met the requirements of uniformity and stability during the duration of the variety rights certificate.

Article 30 of the 1991 Act: Implementation of the Convention

37. Article 30(1)(i) of the 1991 Act requires that Contracting Parties should “provide for appropriate legal remedies for the effective enforcement of the breeder’s right”. Part Five of the Law contains relevant provisions on the enforcement of plant breeders’ rights, including the available civil, administrative and criminal mechanisms and remedies. The Government of Viet Nam is currently drafting a general Decree to implement relevant provisions on enforcement of the Law. This Draft Decree on Enforcement will also apply to plant variety protection. The Draft Decree on Enforcement incorporates provisions for non-compliance or misuse of variety denominations and, in order to identify infringements concerning the protected variety, makes an appropriate reference to the full scope of the breeder’s right in relation to propagating and harvested material of the protected variety. The Law complies with Article 30(1)(i) of the 1991 Act.

38. Article 30(1)(ii) of the 1991 Act requires that Contracting Parties should “maintain an authority entrusted with the task of granting breeders’ rights ...”. Article 183 of the Law provides that the “State management office of the rights over plant varieties” shall issue the decision for granting the plant variety certificate. The Draft Decree on Plant Variety Rights provides that “the State management agency for rights of new varieties of plants” referred to in the Law shall be the Plant Variety Protection Office in the Department of Crop Production of the Ministry of Agriculture and Rural Development. The Law thus complies with Article 30(1)(ii) of the 1991 Act.

39. Article 30(1)(iii) of the 1991 Act requires that Contracting Parties should publish information concerning applications and grants of breeders’ rights and proposed and approved denominations. Articles 173 and 177 of the Law contain provisions concerning publication in conformity with Article 30(1)(iii) of the 1991 Act.

General Conclusion

40. The Law, in its main provisions, incorporates the substance of the 1991 Act. The deviations from strict conformity referred to in paragraphs 21, 24, 25, 28 and 33 of this document will be remedied, for the time being, by the general principle in Article 5 of the Law and the clarifications and complimentary provisions in the Draft Decree on Plant Variety Rights once adopted and in force. However, it is recommended that the Law of Viet Nam be amended and supplemented at the first opportunity so as to avoid recourse to the general principle in Article 5 of the Law.

41. *The Council is invited to:*

(a) *take note of the information given above;*

(b) *take a positive decision on the conformity of the Intellectual Property Law of Viet Nam with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants. However, the Law still requires some additional provisions and clarifications, as provided in this document, in order to fully incorporate the provisions of the 1991 Act. For the time being, those missing provisions and clarifications will be remedied by the general principle in Article 5 of the Law and the incorporation of those provisions in the Decree on Plant Variety Rights. Once the Law and the Decree enter into force, Viet Nam may deposit its instrument of accession to the 1991 Act;*

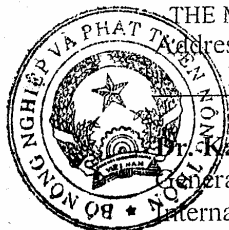
(c) *request the Office of the Union to offer its assistance to the Government of Viet Nam to incorporate the amendments suggested in paragraph 40 of this document at the first opportunity so as to avoid recourse to the general principle in Article 5 of the Law;*

(d) *authorize the Secretary-General to inform the Government of Viet Nam of that decision.*

[Annexes follow]

ANNEX I

Letter from the Minister, Ministry of Agriculture and Rural Development, Viet Nam,
to the Secretary-General of UPOV



BỘ NÔNG NGHIỆP VÀ PHÁT TRIỂN NÔNG THÔN
NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT OF S.R. VIETNAM
Address: 2 Ngoc Ha
Hanoi - Vietnam
Tel: (84-4) 8459671
Fax: (84-4) 8454319/7342844

Hanoi 25 October 2005

Dr. Kamil Idris
General Secretary
International Union for the Protection
of new varieties of plants (UPOV)
34, Chemin des Colombettes
CH-1211 Geneva 20

Dear Secretary-General Idris,

I have the honour to inform you that the National Assembly of the Socialist Republic of Vietnam is going to adopt the Intellectual Property Law (IPL), including provisions on protection of new plant varieties.

As you know, the Government of the Socialist Republic of Vietnam decided to adhere to the International Convention for the Protection of New Varieties of Plants (UPOV Convention of December 2, 1961, revised at Geneva on November 10, 1972 on October 23, 1978 and on March 19, 1991- UPOV Convention). To facilitate the engagement to the UPOV, I therefore, would like to ask your favourable assistance to examine the conformity of our IPL with UPOV Convention provisions, pursuant to the provision of item 3 of Article 34 of the Convention.

Thank you and look forward to co-operating with you,

With best regards,

Yours sincerely,



Cao Duc Phat
Minister

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

THE NATIONAL ASSEMBLY THE SOCIALIST REPUBLIC OF VIETNAM
Law No. 50/2005/QH11 Independence – Freedom - Happiness

**THE NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF
VIETNAM**

LEGISLATURE XI, SESSION 8

(From 18 October to 29 November 2005)

INTELLECTUAL PROPERTY LAW

Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Section of the 10th National Assembly dated 25 December, 2001;

This Law stipulates intellectual property rights.

PART ONE

GENERAL PROVISIONS

[Extract from Part One: Articles 1 to 5 only]

Article 1 Scope of regulation

This Law stipulates copyright, copyright - related rights; industrial property rights; rights in plant varieties and for the protection of these rights.

Article 2 Applicable subjects

This Law applies to Vietnamese organizations and individuals, foreign organizations and individuals that satisfy the requirements stipulated in this Law and international treaties to which the Socialist Republic of Vietnam is party.

Article 3 Objects of intellectual property rights

1. Objects of copyright include literary, artistic and scientific works; objects of copyright - related rights include performances, sound recordings, video recordings; broadcasting programs; satellite signals carrying encrypted program.
2. Objects of industrial property rights include inventions; industrial designs; layout-designs of semi-conductor integrated circuits; business secrets; trademarks; trade names and geographical indications.
3. Objects of rights to plant varieties are plant varieties and its propagating materials.

Article 4 Interpretation of terminologies

In this Law, the following terminologies shall be understood as follows:

1. *Intellectual property rights* are the rights of organizations, individuals to their intellectual property, including copyrights and copyright - related rights, industrial property rights and rights to plant varieties.
2. *Copyrights* are the rights of organizations, individuals to works created or owned by them.
3. *Copyright - related rights* (hereinafter referred to as related rights) are the rights of organizations, individuals to performances, phonograms, broadcasting programs, satellite signals carrying encrypted program.
4. *Industrial property rights* are the rights of organizations, individuals to inventions; industrial designs; layout-designs of semi-conductor integrated circuits; trademarks; trade names, geographical indications, business secrets created or owned by them and rights to repression of unfair competition.
5. *Rights to plant varieties* are the rights of organizations, individuals to the new plant varieties which are created or discovered and developed by and fall under the ownership right of such organization or individuals.
6. *Intellectual property right holder* is the owner of the intellectual property right or an organization, individual that is assigned the right by the owner.
7. *Work* is every production created in the literary, artistic and scientific domain, whatever may be the mode or form of its expression.
8. *Derivative work* is a work translated from one language to another, adapted, modified, transformed, compiled, annotated and selected work.
9. *Published work, phonogram* is a work or a phonogram already released with consent of copyright owner, related right owner for the purpose of being disseminated to the public with a reasonable amount of copies.
10. To *reproduce* means the making of one or more copies of a work or a phonogram in whatever mode or form, including permanent or provisional backup of the work in electronic form.
11. *Broadcasting* means the transmission by wire or wireless means, including through the satellite, of sounds or images and sounds of a work, a performance, a phonogram or a broadcasting program to the public for its reception at a place or at a time select by them.
12. *Invention* is a technical solution, in form of a product or a process, to resolve a specific problem by utilizing laws of nature.
13. *Industrial design* is appearance of a product expressed in shapes, lines, dimensions, colors or any combination thereof.
14. *Semiconductor integrated circuit* is a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of semiconductor

material and which is intended to perform an electronic function. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".

15. *Layout-design of a semiconductor integrated circuit* (hereinafter referred to as "layout-design") is a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.
16. *Trademark* is any sign used to distinguish goods or services of different organizations and individuals.
17. *Collective mark* is a mark used to distinguish goods or services of members from those of non-members of an organization that is the owner of the mark.
18. *Certification mark* is a mark licensed by its owner to other organizations, individuals to use for their goods or services in order to certify characteristics in respect of origin, materials, raw materials and methods of goods production or methods of services supply, quality, accuracy, safety or other characteristics of such goods or services.
19. *Associated marks* are marks that are registered by the same owner, identical or similar to each other and are used for identical or similar or inter-related goods and services.
20. *Well-known mark* is a mark widely known throughout territory of Vietnam.
21. *Trade name* is a designation of an organization or individual used in business to distinguish the business entity bearing such designation from other business entities acting in the same field and area of business.

The area of business stipulated in this paragraph shall be the geographical area where business entity has business partners, clients or reputation.
22. *Geographical indication* is a sign used to indicate a product originating from a specific area, locality, region or country.
23. *Business secret* is information obtained from financial, intellectual investment which is undisclosed and susceptible to application in business.
24. *Plant variety* is a plant grouping within a single botanical taxon of the lowest known rank, uniform of morphological, stability in the propagation circle, which can be distinguished by the phenotype expressed by a genotype or the combination of genotypes and distinguished from other plant grouping in at least one genetic phenotype.
25. *Protection title* is a document granted by a State authority to an organization, individual to establish industrial property rights to inventions, industrial designs, layout designs, marks, geographical indications; and rights to plant varieties.

Article 5 Application of laws

1. Where there are intellectual property related civil issues not being stipulated in this Law, the provisions of Civil Code shall be applied.
2. Where there is any difference between provisions on intellectual property rights of this Law and those of other laws, the former shall be applied.

3. Where the provisions of the international treaties to which the Socialist Republic of Vietnam is party contravene the provisions of this Law, the former shall be applied.

PART FOUR

RIGHTS FOR THE PLANT VARIETY

Chapter XI

CONDITIONS FOR PROTECTION OF PLANT VARIETIES

Article 157 Organization or Individual who can be protected the rights for plant variety

1. Organization or Individual who can be protected rights for plant variety are Organizations, Individuals which bred or discovered and developed the plant variety or invested in the task to breed or discover and develop the plant variety or the person to who was transferred the rights over the pant varieties.
2. Organizations, Individuals mentioned in the Provision 1 of this Article include Vietnamese and organizations and individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Vietnam; and foreign organizations and individuals which register a permanent residence in Vietnam or have a business or production establishment of plant variety in Vietnam.

Article 158 General conditions for plant varieties over which rights are protected

The plant variety over which rights are to be protected is a variety which is bred or discovered and developed, belonging to the List of species able to be protected by State issued by the Ministry of Agriculture and Rural Development, that variety is new, distinct, uniform, stable and has a proper denomination.

Article 159 Novelty of the plant variety

The variety shall be deemed to have novelty if the propagating or harvested material of the variety has not been sold or distributed in other ways for the purpose of exploitation by or with the consent of the holder of the registration right as referred to in Article 164 of this Law in the territory of Vietnam more than one year before the date of the application form is submitted; or outside Vietnam more than six years before the date of application form is submitted for trees or grape and 4 years for other species.

Article 160 Distinctness of the plant variety

1. The variety shall be deemed to have distinctiveness if it is clearly distinguishable in one or more major characteristics from any other variety whose existence is common knowledge at the time of filing or on the priority date, as the case may be.
2. The common knowledge varieties as stipulated in paragraph 1 mean the varieties of one of the following cases:

- a) Propagating materials or harvested products of such variety have been widely used in the market of any country in the world at the time of filing of the registration application;
- b) The variety has been protected or registered into the List of plant species in any country;
- c) The plant variety is still the subject of an application for protection or for the List of plant species in any country provided that application form was not refused.
- d) The plant variety which has had its description published.

Article 161 Uniformity of the plant variety

The variety shall be deemed to have uniformity in the propagation if there is the same expression of the relevant phenotype unless the variation is permitted for certain characteristic in its propagation process.

Article 162 Stability of the plant variety

The variety shall be deemed to be stable if the relevant phenotypic characteristics of that variety retain the same expression as originally described, and remain unchanged after each propagation crop or propagation cycle, as the case may be.

Article 163 Denomination of plant variety

- 1. The registrant must propose an appropriate name for the plant variety which name must be the same as the denomination registered in any country upon filing of a protection registration application
- 2. The variety shall be deemed to be properly denominated if it is distinguishable from all other varieties of common knowledge in the same species or similar species.
- 3. The denominations of plant varieties shall not be considered proper in the following cases:
 - a) Consisting of numerals only, except where such numerals relate to the particularity or the establishment of such plant variety;
 - b) Violating social morality;
 - c) Being liable to misrepresent the feature or characteristics of that variety
 - d) Easy to misunderstand about Breeder's identification.
 - d') Being identical or confusingly similar to a trade mark, trade name or geographical indication already protected before the date of filing of a registration application for protection of such plant variety;
 - e) Being identical or similar to the name of harvested products of such varieties.
 - g) Affecting prior rights of any other organization or individual.
- 4. Any organization or individual that offers for sale or brings to the market propagating materials of the plant variety must use the name of the plant variety as the name in the Protection Certificate even after the expiry of the protection period stated.

5. When the name of a plant variety is combined with a trademark, a trade name or an indication similar to the name of plant variety already registered for sale or offer in the market, such name must be easily distinctive.

Chapter XII

ESTABLISHING THE RIGHTS FOR PLANT VARIETY

Section 1. Establishing the rights for a plant variety

Article 164 Registration of the rights over plant varieties

1. To obtain protection of the rights over for a new plant variety, organizations and individuals must submit the registration for protection to the State administrative authority for plant variety rights.
2. The organizations and individuals holding the right to register the protection of plant variety (to be referred to as **registrant**) include:
 - a) Breeder who directly bred or discovered and developed the variety by their expenses by way of his/her own efforts and expenses.
 - b) Organizations or individuals which invested for the breeder to breed or discover and develop the plant variety by contract unless otherwise agreed.
 - c) Organizations and individuals transferred or inherited the right of registration for Plant variety protection
3. For the plant variety which is bred or discovered and developed by way of using the State's budget or the finance of the project under the State management, the rights over such plant variety will belong to the State. The Government shall make specific provisions for the registration of the right over the plant variety as referred to in this Article.

Article 165 Submission of the application form for rights over a plant variety.

1. Vietnamese organizations or individuals or foreign organizations or individuals with a permanent address of residence in Vietnam or with a plant variety business or production establishment in Vietnam may file an application for registration of rights over a plant variety (hereinafter referred to as an **application for protection**) either directly or through its legal representative agency in Vietnam.
2. Foreign organizations and individuals without a permanent address of residence in Vietnam or not having a plant variety business and production establishment in Vietnam may file an application for protection through a lawful representative in Vietnam.

Article 166 The principles for submitting the first application form for plant variety

1. In case more than one independent person submits an application for protection on different days, the plant variety protection certificate will be given to the applicant who obtains the earliest valid registration.

2. In case there are many application forms for protection certificate of the same variety submitted in the same day, the plant variety protection certificate will be given to the registrant who is agreed by all the others. If all the registrants could not agree, a plant variety protection certificate will be given by the State management authority of rights over plant varieties to the first breeder who bred or discovered and developed the variety.

Article 167 Priority principle for the application form.

1. The registrant may request priority rights in case an application form was submitted within 12 months from the date on which the application form of the same variety has been submitted in a country which and the Socialist Republic of Vietnam both enter into an agreement on plant variety protection. The filing date of the first application shall not be included in this time limit.
2. In order to claim priority, the registrant must specify that claim in the registration application for protection. Within no more than 3 months from submitting the application for protection, the registrant must produce copies of documents as certified by the competent office and samples or other evidence proving that the variety in both application forms is the same and must pay the fees. The registrant must be allowed to supply the information or necessary materials to the State management office of the rights over plant varieties for examination according to the stipulations in Articles 176 and 178 of this Law after 2 years from the date when the priority ends, or in proper time, depending on the species of the plant variety stated in the application, after the first application form is refused or rejected.
3. If the registration application for protection is entitled to the right of priority, the priority date shall be the date when the first application form was submitted.
4. Within the time limit referred to in clause 1 of this Article, the filing of another application or the publication or use of the plant variety being subject of the first application shall not be regarded as a basis for refusing the registration application for protection which is entitled to priority.

Article 168 Plant variety Protection Certificate and National Registration Book of protected plant varieties

1. The contents of a Protection certificate include the name of the variety and species; name of the right holder (hereinafter referred to as the Certificate Holder) and Breeder's name as well as the duration of protection of the right over the plant variety.
2. The state management office of the rights over plant varieties will record the contents of the protection certificate into the National Registration Book for protected plant varieties which is established and kept by the State management office of the plant variety.

Article 169 The effectiveness of the plant variety protection certificate

1. The Plant variety protection certificate will apply in the whole territory of Vietnam.

2. The plant variety protection certificate will take effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.
3. The plant variety protection certificate may be cancelled or nullified in accordance with Articles 170 and 171 of this Law.

Article 170 Cancellation and reinstatement of the effectiveness of plant variety protection certificate

1. The plant variety protection certificate may be cancelled in one of the following cases:
 - a) The uniformity and stability of the protected variety no longer meets the requirements as at the time of granting the certificate;
 - b) Certificate Holder does not pay the annual fees in accordance with the regulations;
 - c) Certificate Holder does not supply the necessary documents and propagating materials for maintaining as prescribed.
 - d) Certificate Holder does not change the name of the plant variety as requested by the State management office of the rights over plant varieties;
2. For the case stipulated in subparagraph a, c and d paragraph 1 of this Article, the State management office of the rights over plant varieties shall issue a decision for cancellation of the plant variety protection certificate.
3. For the case stipulated in paragraph 1.b of this Article, upon the expiry date of the time limit for payment of annual fee, the State management office of the plant variety shall issue a decision on cancellation of the plant variety protection certificate from the first date of the next effective year in which the annual fees is not paid.
4. For the cases stipulated in clause 1(a) of this Article, any organization and individual shall have the right to request the State management authority of the rights over plant varieties for cancellation the effectiveness of the plant variety protection certificate.

Based on the results of the application to request the cancellation of the plant variety protection certificate and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision to cancel the certificate or to refuse the cancellation of the protection certificate.

5. For the cases stipulated in paragraph 1 this Article, the State management office of the rights over plant varieties shall promulgate the cancellation in a specialized bulletin and specify the reasons for such cancellation and at the same time shall serve a notice to the certificate holder. Within 30 days from the date of publication, the certificate holder has the right to submit a request to the State management office of the rights over plant varieties to explain the reasons why the plant variety protection certificate is cancelled and must pay the fee in order to reinstate the plant variety protection certificate. Within 90 days from the date of filing the request for reinstatement, the variety protection owner must solve the reasons for which the certificate was cancelled, with regard to the cases stipulated in subparagraphs b, c and d paragraph 1 of this Article. The State management office of the rights over plant varieties shall then

consider reinstating the validity of the protection certificate and making it public in the specialized bulletin.

For the cases stipulated in paragraph 1.a of this Article, the effectiveness of the plant variety protection certificate shall be reinstated if the holder succeeds in proving that the plant variety has met the requirements as to the uniformity and stability and has been so certified by the State management office of the rights over plant varieties.

Article 171 Nullity of the effectiveness for plant variety protection certificate.

1. The effectiveness of the plant variety protection certificate will be nullified in the following circumstances:
 - a) The application form belongs to an applicant who does not have the right to file, except where the right over a plant variety has been assigned to the owner of the plant variety;
 - b) The protected variety did not meet the conditions for novelty or distinctness at the time of granting the plant variety protection certificate.
 - c) The protected variety did not meet the conditions for uniformity or stability if the plant variety protection certificate is granted on the basis of technical test results which were supplied by the registrant.
2. Any organization or individual can request the state administrative authority of the rights over plant varieties to nullify the plant variety protection certificate during the effectiveness of the plant variety protection certificate.

Based on the results of examining the requirement of the nullity and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision on refusal to annul or shall issue a decision on the nullity the effectiveness of the plant variety protection certificate or to refuse such nullification.

3. In case of the plant variety protection certificate is nullified, all the transactions arising on the basis of the plant variety right are null and void. Such null and void transactions shall be dealt with in accordance with the Civil Law.

Article 172 Amendment or re-issue of the plant variety protection certificate

1. The owner of a protection Certificate has the right to request the State management office of the rights over plant varieties to change or rectify any error relating to the name and address of the holder of the protection certificate, provided that prescribed fees and charges must be paid. If such errors are made by the State management office of the rights over plant varieties, this office must rectify such errors and the holder of the protection certificate shall be liable for payment of any fees and charges.
2. The holder of a protection certificate may request the State management office of the rights over plant varieties to re-issue such plant variety protection certificate it is lost or damaged provided that prescribed fees and charges must be paid.

Article 173 Publishing the decisions related to the protection certificate.

All the decisions related to the grant, re-issue, cancellation, nullity, amendment the variety protection certificate shall be published by the State management office of the rights over plant varieties in a specialized bulletin within 60 days from date when the decision is issued.

**Section 2. Application form and the procedures for processing
registration applications for protection**

Article 174 Registration applications for protection

1. The application for registering the rights for new plant variety protection must include:
 - a) A registration form using the prescribed form;
 - b) Photos and technical questionnaires using the prescribed form;
 - c) Authorization paper if the application form is filed through a representative;
 - d) The documents which demonstrate the registration right if the registrant is a person to whom the right for registering has been transferred;
 - d') Documents to prove the priority in case of claiming for priority.
 - e) The receipt of the fees.
2. A registration application for protection and any transaction documents between the registrant and the State management office of the rights over plant varieties must be made in Vietnamese, except for the following documents which may be made in another language but must be translated into Vietnamese at the request of the State management office of the rights over plant varieties:
 - a) The power of attorney;
 - b) Documents evidencing the registration right;
 - c) Documents evidencing the priority;
 - d) Other documents
3. The documents proving the right of priority for registration of the application form for protection include:
 - a) The copy of the application form or the first application form certified by the authorized organization.
 - b) The paper of transfer or inheritance of the right for priority if the right is transferred from another person.

Article 175 Receiving the application form; Submission date

1. The registration application for protection will be accepted by the State management office of the rights over plant varieties with all documents stipulated in paragraph 1 Article 174 of this Law.

2. The filing date for application form is the date on which the application form is received by the State management office of the rights over plant varieties.

Article 176 Examining the validity of the application form.

1. Within 15 days from the filing date, the application form will be examined by the State management office of the rights over plant varieties in order to determine the validity of the application.
2. The registration application for protection shall be regarded as invalid when one of the following cases applies:
 - a) The application form does not follow the requirements;
 - b) The variety in the application form does not belong to a species in the List of protected species;
 - c) The registrant does not have the right for filing including when the registration right belongs to several organizations or individuals where one of them does not agree upon the registration.
3. The State management office of the rights over plant varieties will carry out the procedures as follows:
 - a) To announce the refusal of accepting the application form for the cases stipulated in subparagraph b) and c) paragraph 2 of this Article with the reasons for refusing;
 - b) To inform to the registrant to correct the mistakes for the cases stipulated in subparagraph a paragraph 2 of this Article and to inform the time of 30 days from receipt of the notice for the correction to the registrant;
 - c) To inform the refusal of the application form if the registrant does not correct the mistakes or if the registrant does not have a reasonable appeal against the notice referred to in paragraphs 2.b of this Article;
 - d) To announce acceptance of the application form, requesting the registrant to submit sample of the variety to the organization in charge of the technical test and follow the procedures stipulated in Article 178 of this Law if the application form is valid or if the registrant has corrected mistakes or gave a reasonable response to the notice as stipulated in subparagraph b of this paragraph.

Article 177 Publication of the application form for protection

1. If the application form is valid, the State management office of the rights over plant varieties shall publish in the specialized bulletin on plant varieties within 90 days from the date such application is accepted.
2. The contents of publication include: No of application form, date of filing, representative agent (if have), name of registrant, name of owner, variety name, species, the date on which the application form was accepted as valid.

Article 178 Examining the content of the application form for registering of plant variety protection.

1. The State management office of the rights over plant varieties shall examine the contents of the application form which is accepted as valid. The examination includes:
 - a) To examine for novelty and the denomination.
 - b) To examine the results of Technical Test of the variety.
2. Technical Test means the conduct of growing tests in order to determine the distinctness, uniformity and stability of the variety.

The technical test shall be carried out by the competent office or organizations or individuals who have enough capacity for conducting the technical test following the stipulations of the Ministry of Agriculture and Rural Development.

The state administrative authority of the rights over plant varieties may use the results of the previous technical test.
3. The time for examining of the test results shall be 90 days from the date of receiving the technical test results.

Article 179 Modify and supplement the application form

1. The registrant has the following rights before the state administrative authority of the rights over plant varieties decides to grant or not to grant the plant variety protection certificate or decision of the grant:
 - a) To modify or amend the application form without changing the nature of the registration application for protection;
 - b) To request acknowledging the changes of name and address of the registrant.
 - c) To request acknowledging the changes of the registrant due to transfer the application form under a contract or as a result of inheritance or bequest.
2. The person who requests any of the procedures stipulate at paragraph 1 of this Article must be submit fees and annual fee.

Article 180 Withdrawing the application form for registration

1. Before the state administrative authority of the rights over plant varieties decides to grant or refuse to grant the protection certificate, the registrant can withdraw the application form for protection. A request for such withdrawal must be made in writing.
2. From the time which the registrant requests to withdraw the application form for protection, all the next procedures related to the application will be terminated; the fees which have been submitted for the procedures that have not yet been conducted will be refunded following the request from the registrant.

Article 181 Opinion of the third party for granting the plant variety protection certificate

From the date of publication of the registration application for protection of plant variety in the professional bulletin until the time a decision for granting a plant variety protection certificate is made, any third party can send an opinion as about the issue of a plant variety protection certificate to the State management office of the rights over plant varieties. The opinion must be made in writing accompanied by arguments and evidence to support the opinion.

Article 182 Refusal to grant the plant variety protection certificate

An application form for protection shall be refused for the issue of a plant variety protection certificate in case the variety does not meet any conditions stipulated in Articles 176 and 178 of this Law. In case of refusal, the State management office of the rights over plant varieties shall implement the follow procedures:

1. Announce the proposal to refuse the grant of a Protection Certificate stating the reasons and the deadline for the registrant to amend the shortcomings or appeal against the announcement.
2. Announce the refusal of the grant of protection certificate if the registrant has not amended the shortcomings or have not made an appeal against the announcement stipulated in paragraph 1 of this Article.
3. Implement the procedures stipulated in Article 183 of this Law if the registrant has amended the shortcomings or gives a valid opinion to appeal against the proposal to grant stipulated in paragraph 1 of this Article.

Article 183 Granting plant variety the protection certificate

If a registration application for protection is not refused as set out in Article 182 of this Law and if the registrant pays the fee, the State management office of the rights over plant varieties shall issue the decision for granting the plant variety protection certificate and record this into the National Registration Book of Protected Plant Varieties.

2. To grant the protection certificate to the applicant.

Article 184 To complain about the issue or refusal to issue plant variety protection certificates

1. The registrant and any other third party have the right to complain about a decision to grant or the refusal to grant a plant variety protection certificate.
3. Any complaint about decisions to grant or refuse to grant the plant variety protection certificate will be carried out according to the Law on Complaints and Denunciations.

Chapter XIV

CONTENTS AND LIMITATIONS OF RIGHTS FOR THE PLANT VARIETY

Section 1. The contents of rights over plant variety

Article 185 Rights of the Breeder

The Breeder of a plant variety has following rights:

1. Name of the Breeder will be recorded on the plant variety protection certification and in the National Register Book for protected plant varieties and in all the published documents relating to the plant variety;
2. To get compensation as stipulated in paragraph 1(a) Article 191 of this Law;

Article 186 Rights of the Protection Certificate Holder

1. The Holder of a protection certificate has the rights to use or permit other persons to use the following rights over the propagating materials of the protected plant variety:
 - a. Production or multiplication;
 - b. Processing for the purpose of propagation;
 - c. Offering for sale;
 - d. Selling or other marketing;
 - dd. Exporting;
 - e. Importing;
 - g. Stocking for any of the purposes listed in points a, b, c, d, dd and e of this clause.
2. To prohibit other from using the plant variety in accordance with Article 188 of this Law.
3. To pass by inheritance or bequest or transfer the rights over the plant variety in accordance with Chapter XV of this Law.

Article 187 Extension of the rights of the protection certificate holder

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties that originate from the protected plant variety except where such protected plant varieties themselves originate from another protected plant variety;
A plant variety is regarded as originating from a protected plant variety if such plant variety has still retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected variety except for the differences resulting from actions on the protected variety.
2. Plant varieties which are not clearly different from the protected plant variety;
3. Plant varieties, the production of which requires the repeated use of protected plant varieties.

Article 188 Acts which infringe the rights over plant varieties

The following acts shall be considered as infringements upon to the rights of the protection certificate holders:

1. Exploiting or using the rights of the protection certificate holder without his permission.
2. Using a denomination of the variety which is identical or similar to a protected denomination of the plant variety of the same or other similar species.
3. Using the protected plant variety without payment of the compensation amount provided for in Article 189 of this Law.

Article 189 Temporary rights over for the plant varieties

1. The temporary rights over a plant variety are the rights of the registrant for protection of the plant variety which arise from the date of publication of the registration application for protection until the date of grant of a plant variety protection certificate. The registrant will not have the temporary right in case the variety protection certificate is not granted.
2. If the registrant is aware of the fact that another person has been exploiting the plant variety for commercial purposes, the registrant has the right to inform that person in writing of the existence of a registration application for protection of the plant variety lodged by the registrant and must specify the date of submission, the date on which the registration application for protection has been published in order for such another person to terminate the exploitation or continue using it.
3. The user of the variety must pay an amount equivalent to the value of transfer of the right to use such variety within an appropriate scope and using time in case the announcement has been informed as stipulated in Paragraph 2 of this Article and the user continues using.

Section 2. Limitations of rights over plant varieties

Article 190 Limitations to the right of a plant variety protection certificate holder

1. The following acts are not considered as infringements of the rights over a protected plant variety:
 - a. Using the variety privately for non-commercial purposes;
 - b. Using the variety for breeding and for scientific research purpose;
 - c. Using the variety to create new plant varieties distinctive from the protected plant varieties;
 - d. Production households may use the harvested products of the protected variety for propagation and cultivation in the next season in their own field.

2. Rights over a plant variety shall not be extended to the acts related to any materials of the protected variety which have been sold or otherwise taken out of the Vietnamese or overseas market by the breeder or his or her nominee, except for the following acts:
 - a) Relate to the continuous propagation of such a plant variety;
 - b) Relate to the export of propagating materials of such plant variety to a country where the genus or species are not protected except where such materials are exported for consumption purpose only;

Article 191 Obligations of the Holders and Breeder

1. The Holder of the protection certificate has the following obligations:
 - a) To pay compensation to the breeder as agreed between them, in the absence of such agreement, the compensation must be paid following the stipulations of the Law.
 - b) To pay fees for the plant variety protection certificate according to the stipulation.
 - c) To preserve the protected variety and to supply propagating material of the protected variety to the state administrative authority of the rights over plant varieties and to maintain the stability of the protected variety as the stipulations.
2. The Breeder of the variety has the obligation to help the protection certificate holder to maintain the propagating material of protected variety.

Chapter XV

TRANSFER OF THE RIGHTS TO A PLANT VARIETY

Article 192 Transfer the rights to use of the plant variety

1. Licensing for use of a plant variety means the permission of the Holder of the plant variety given to another person to conduct one or some acts of his right to use the plant variety.
2. The licensing for use of a plant variety shall be consented by all holders in case the right falls under co-ownership.
3. The licensing for use of a plant variety shall be conducted in the form of a written contract.
4. A licensing contract for use of a plant variety shall not have such provisions that unreasonably restricts the right of the licensee, particularly those provisions neither deriving from, nor aimed at protecting of, the rights of the licensor to the plant variety.

Article 193 The rights of the parties in licensing contract

1. The licensor shall have the rights to permit or not permit the licensee to assign the license for use to a third party;
2. The licensee shall have the following rights:
 - a) To assign the license for use to a third party if it is agreed by the licensor;

- b) To request to the licensor to carry out necessary measures against any infringements by a third party causing damage to the licensee.
- c) To carry out necessary measures to prevent a third party infringements if within a time limit of 3 months from the date of the request, the licensor fails acts as requested the in accordance with sub paragraph b of this clause.

Article 194 Assignment of the rights for plant variety

- 1. To assign the rights for a plant variety means that the holder of the plant variety transfers all the rights of such plant variety to the assignee. The assignee shall become the owner of the plant variety Protection Certificate from the date for registration of the assignment contract with the state administrative authority of the rights over plant varieties in accordance with the prescribed procedures.
- 2. Where the right of a plant variety is under co-ownership, the assignment of such rights must be consented by all owners.
- 3. The assignment of the ownership rights to a plant variety must be made in a written contract.

Article 195 Bases and conditions for compulsory licensing for use of the plant variety

- 1. In the following cases, the right to use a plant variety shall be licensed to another organization or individuals under a decision of the state competent authority as referred to in Article 196.1 of this Law without having to obtain permission from the protection certificate holder or his nominee (to be referred to as the **holder of the exclusive right to use the pant variety**):
 - a) The use of such plant variety is for the public interest, for non-commercial purpose, to satisfy the needs of national defense, national security, disease prevention, treatment and nutrition for people or to meet other social urgent needs;
 - b) The person having a demand and capacity to use the plant variety fails to reach an agreement with the holder of the exclusive right to use the plant variety upon entering into a licensing contract although best efforts have been made for a reasonable period of time to negotiate the price rate and other commercial conditions.
 - c) The holder of the exclusive right to use the plant variety is regarded as conducting an act of constraint of competition under the competition legislation.
- 2. The holder of the exclusive right to use the plant variety has the right to terminate the right has the right to request for termination of such right of use when the bases of compulsory licensing provided for in clause 1 of this Article cease to exist and are unlikely to recur, provided that such termination shall not prejudicial to the licensee.
- 3. The right to use a plant variety shall be transferred under a decision of a state competent authority in compliance with the following conditions:
 - a) Such right of use is non-exclusive;

- b) Such right of use shall only be limited to such a scope and period sufficient to attain the objectives of the compulsory licensing, and predominantly for the supply of the domestic market, except for the cases referred to in clause 1(c) of this Article;
 - c) The licensee shall not assign such right of use to another person, except with the assignment of his or her business premise, or not grant a sub-license to others;
 - d) The licensee must pay an adequate compensation to the holder of exclusive right to use the plant variety taking into account the economic value of such right of use in each specific case, in compliance with the remuneration frame provided for by the Government;
4. The Government shall make specific provisions for the cases of compulsory licensing of the right to use plant varieties and the compensation frame as referred to in Article 3(d) of this Article.

Article 196 Power and procedures for licensing the right to use plant varieties under compulsory decisions

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing the right to use a plant variety in the fields under the scope of its State administration on the basis of a relevant request in the cases set out in Article 195.1 of this Law.
- Ministries, ministerial-level agencies shall issue decisions to license the right to use plant varieties in the fields under the scope of its State administration on the basis of consultation with the Ministry of Agriculture and Rural Development in the cases referred to in Article 195.1 of this Law
2. A licensing decision must fix the scope and conditions of such use in accordance with Article 195.3 of this Law.
3. The State competent authority that makes a decision on licensing the right to use a plant variety must notify this decision to the holder of the exclusive right to use such plant variety.
4. A decision on licensing the right to use a plant variety or refusal to license the right to use a plant variety may be complained about or subject to a lawsuit in accordance with the law.
5. The Government shall make specific provisions for procedures for licensing of the right to use a plant variety as referred to in this Article.

Article 197 Rights of Protection Certificate holders in case of compulsory licensing

The protection certificate holder being subject of compulsorily licensing of the right to use a plant variety shall have the following rights:

1. To receive an adequate compensation corresponding to the economic value of such right of use or equivalent to the price of contractual licensing of such right with similar scope and term;

2. To request the state administrative authority of the rights over plant varieties to amend, cancel or nullified the validity of the compulsory license when the conditions resulting in such compulsory licensing no longer exist or if such amendment, cancellation or nullity does not cause damages to the compulsory licensee.

PART FIVE
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Chapter XVI

**GENERAL PROVISIONS ON ENFORCEMENT OF
INTELLECTUAL PROPERTY RIGHTS**

Article 198 Right to protection by oneself

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:
 - a) Taking technological measures to prevent infringement of intellectual property rights;
 - b) Requesting organizations, individuals that have committed acts of infringement of intellectual property rights to terminate the infringing acts, apologize, publicly rectify and compensate damages;
 - c) Requesting the competent state agencies to handle acts of infringement of intellectual property rights in accordance with provisions of this Law and other related laws and regulations;
 - d) Initiating a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests;
2. Organizations and individuals that suffer from damage caused by acts of infringement of intellectual property rights or discover acts of infringement of intellectual property rights that cause damage to consumers or the society shall have the right to request State competent agencies to handle such acts of infringement in accordance with the provisions of this Law and other related laws and regulations.
3. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request State competent agencies to impose civil remedies provided for in Article 202 of this Law and administrative remedies provided for in the laws on competition.

Article 199 Remedies against acts of infringement of intellectual property rights

1. Organizations and individuals that have committed acts of infringement of other's intellectual property rights are liable to civil, administrative or criminal remedies, depending on nature and extent of such infringement.
2. In appropriate cases, State competent agencies shall have the right to apply provisional measures, intellectual-property-related control measures with regard to imports and

exports and preventive measures and shall ensure that administrative penalties shall be imposed as provided for in this Law and other related laws and regulations.

Article 200 Authorities in handling the infringement of intellectual property rights

1. Courts, inspectorate, market management agencies, custom offices, police agencies and the People's Committees of all levels, within its duties and authorities, are entitled to handle acts of infringement of intellectual property rights.
2. The application of civil remedies and criminal remedies shall fall within the authorities of the courts. In appropriate cases, the courts are entitled to apply provisional measures in accordance with the laws and regulations.
3. The application of administrative remedies shall fall within the authorities of inspectorate, police agencies, market management agencies, custom offices and the People's Committee of all levels. In appropriate cases, the above-mentioned agencies are entitled to apply preventive measures and ensure that administrative penalties shall be imposed in accordance with the laws and regulations.
4. The application of intellectual property border control measures with regard to imports and exports shall fall within the authorities of custom offices.

Article 201 Inspection, assessment on intellectual property

1. Inspection and assessment on intellectual property means the competent organizations or individuals use their knowledge and expertise in intellectual property to make assessment, conclusion on matters related to intellectual property right infringement cases.
2. State competent agencies shall have the right to call for inspection, assessment on intellectual property in order to handle those cases accepted by these agencies.
3. Intellectual property right holders and other related organizations or individuals shall have the right to request for inspection, assessment on intellectual property in order to protect their legitimate rights and interests.
4. The government shall make specific provisions on inspection and assessment on intellectual property.

Chapter XVII

**DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS
THROUGH CIVIL REMEDIES**

Article 202 Civil remedies

The court shall take the following civil remedies to handle organizations and individuals that have committed acts of infringement of intellectual property rights:

1. Compelling termination of the infringement of intellectual property rights;
2. Compelling public rectification and apology;
3. Compelling the performance of civil obligations;

4. Compelling compensation for damages;

5. Compelling destruction, distribution or use for non-commercial purpose in respect of goods, materials and implements the predominant use of which has been in the creation or trading of intellectual property right infringing goods, provided that such distribution and use does not affect the exploitation of rights by the intellectual property rights holder.

Article 203 Rights and burden of proof of the litigants

1. The plaintiff and defendant in a lawsuit against infringement of intellectual property rights shall have the rights and burden of proof provided for in Article 79 of the Civil Procedures Code and this Article.
2. The plaintiff shall prove that he or she is the intellectual property right holder with one of the following evidences:
 - a) A valid copy of the Copyright Registration Certificate, Related Right Registration Certificate, Protection Title, or an extract from the National Registers of Copyrights and Related Rights, the National Registers of Industrial Designs, layout-designs and National Registers of Protected Plant Varieties;
 - b) Necessary evidence proving basis the establishment of copyrights, related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the rights to business secrets, trade names or well-known marks;
 - c) Copies of licensing contracts for using intellectual property subject matters in case the right to use is licensed under a contract.
3. The plaintiff shall produce evidence of the infringement of intellectual property rights or acts of unfair competition.
4. In a lawsuit against an infringement of the right to a patented invention, which is a production process, the defendant shall prove that his or her products are made by a process other than the protected process:
 - a) The product made by the protected process is new;
 - b) The product made by the protected process is not new, but the owner of the protected process believes that the product of the defendant is made by the protected process and failed identify the process used by the defendant despite that reasonable measures have been taken.
5. In case a party to a lawsuit against an infringement of intellectual property rights has proven that evidence relevant to substantiation of his or her claims lies in the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the later to produce such evidence.
6. In case of a claim for damages, the plaintiff must prove his or her actual damages and specify the basis for his or her claim in accordance with Article 205 of this Law.

Article 204 Principles of determination of damages caused by the infringement of intellectual property rights

1. Damages caused by an infringement comprise:
 - a) Physical damages comprise loss in property, decrease in income and profits, losses in business opportunities, reasonable expenses for prevention and restoration from such damages, reasonable attorney fees and other tangible losses;
 - b) Spiritual damages comprise loss to honor, dignity, prestige, reputation and other spiritual losses caused to the authors of literary, artistic and scientific works; to performers, authors of inventions, industrial designs, lay out designs; and breeders.
2. The level of damage shall be determined on the basis of the actual losses suffered by the intellectual property right holders due to the infringement of his or her intellectual property rights.

Article 205 Bases for determination of damages caused by the infringement of intellectual property rights

1. In case the plaintiff succeeds in proving that an infringement of intellectual property rights has caused physical damages to him or her, he or she shall have the right to request the court to determine the rate of compensation on one of the following bases:
 - a) The total physical damage determined in an amount of money plus the profits gained by the dependant as a result of infringement if reduced profits of the plaintiff have not yet been included in the total physical damage;
 - b) The value of the transfer of the right to use the intellectual property subject matter with the presumption that the defendant has been transferred by the plaintiff with the right to use that intellectual property subject matter under an agreement for using such intellectual property subject matter to the extent equivalent to the act of infringement committed;
 - c) Where it is impossible to determine the rate of compensation in accordance with subparagraphs a) and b) of this paragraph, that rate shall be fixed by the court depending on the loss level but not exceeding VND 500 million.
2. If the plaintiff succeeds in proving that the infringement of intellectual property rights has caused spiritual damage to him or her, he or she shall have the right to request the court to determine the rate of compensation ranging from VND 5 million to VND 50 million, depending on the level of damage.
3. In addition to the damages referred to in clauses 1 and 2 of this Article, an IPR holder may request the court to compel the infringer to pay reasonable costs of hiring attorneys.

Article 206 Right to request the court to apply provisional measures

1. Upon or after initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:

- a) There is a threat of irreparable damage to the intellectual property right holder;
 - b) There is a threat of dispersal or destruction of goods suspected of infringing upon intellectual property rights and relevant evidence if they are not protected in time.
2. The court shall decide to apply provisional measures at the request of the IPR holder as set out in clause 1 of this Article before listening to the opinion of the party liable for such provisional measure.

Article 207 Provisional measures

1. The following provisional measures are shall applicable to goods suspected of infringing upon intellectual property rights or to the materials, raw materials or implements for producing or trading such goods:
 - a. Seizure;
 - b. Attachment;
 - c. Sealing, prohibition of changing status or displacing;
 - d. Prohibition of transferring ownership;
2. Other provisional measures shall be applied in accordance with the Civil Procedure Code.

Article 208 Obligations of the person who requests for the application of provisional measures

1. A person who requests for the application of provisional measures is obliged to prove his or her right to request as provided for in paragraph 2 Article 206 of this Law, including the production of materials and evidence as provided for in paragraph 2 Article 203 of this Law.
2. A person who requests for the application of provisional measures is obliged to pay compensation for the damages to such provisional measure debtor in case such person is found not to infringe the IPRs. To secure the performance of this obligation, the person who requests for the application of provisional measures must deposit a sum of security in one of the following forms:
 - a) Depositing an amount of money equal to 20% of the value of the goods that is subject to the application of provisional measures, or at least 20 million VND if it is impossible to evaluate those goods;
 - b) Submitting a guarantee document issued by a bank or other credit organizations

Article 209 Termination of the application of provisional measures

1. The court shall decide to terminate the application of a provisional measure in any of the cases referred to in paragraph 1 Article 122 of the Civil Procedure Code or in case that the provisional measure debtor succeeds in proving that the application of such provisional measure is unreasonable.
2. In case of termination of the application of a provisional measure, the court shall consider reimbursement to the requesting person of the deposited amount referred to

in paragraph 2 Article 208 of this Law. If the request for the application of provisional measure is unreasonable, causing damage to the provisional measure debtor, the court shall compel the requesting person to compensate the damage.

Article 210 Authorities and procedures for applying provisional measures

The authorities and procedures for applying provisional measures shall comply with the provisions of Chapter VIII of Part One of the Civil Procedure Code.

Chapter XVII

**DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS
THROUGH ADMINISTRATIVE AND CRIMINAL REMEDIES; CONTROL OF
INTELLECTUAL-PROPERTY-RELATED IMPORTS AND EXPORTS**

Section 1.

**Dealing with infringements of intellectual property rights through administrative and
criminal remedies**

Article 211 Acts of IPR infringements liable for administrative remedies

1. The following acts of IPR infringements shall be subject to the administrative remedies:
 - a) Committing an act of infringement of intellectual property rights, which causes loss to consumers or the society;
 - b) Not terminating an act of infringement of intellectual property rights, even if a written notice has been served by the intellectual property right holder;
 - c) Producing, importing, transporting, and trading in intellectual property counterfeit goods referred to in Article 213 of this Law or assigning others to do so;
 - d) Producing, importing and trading in articles bearing a mark or a geographical indication that is identical with or confusingly similar to a protected mark or a protected geographical indication or assigning others to do so;
2. The Government shall make specific provisions for acts of IPR infringements to be liable for administrative remedies, form and level of remedies and procedures for imposing such administrative remedies.
3. Organizations and individuals that have committed acts of unfair competition shall be liable to the administrative remedies provided for in the competition legislation.

Article 212 Acts of IPR infringements liable for criminal remedies

Individuals who have committed acts of infringement of intellectual property rights having factors that constitute a crime shall be liable to the criminal liabilities in accordance with the criminal laws and regulations.

Article 213 Intellectual property counterfeit goods

1. Intellectual property counterfeit goods referred to in this Law include counterfeit mark goods or counterfeit geographical indication goods (hereinafter referred to as counterfeit mark goods) referred to in paragraph 2 of this Article and pirated goods referred to in paragraph 3 of this Article.
2. Counterfeit mark goods are goods or their packaging bearing a mark or a sign which is identical with or substantially indistinguishable from a mark or geographical indication which is protected for such goods without consent of the owner of such mark or the management organization of such geographical indication respectively.
3. Pirated goods are copies made without the consent of the copyrights holder or the related rights holder.

Article 214 Administrative penalties and remedies

1. Organizations and individuals that have committed acts of IPR infringement referred to in Article 211.1 of this Law shall be compelled to terminate the infringement and subject to one of the following main remedies:
 - a) Warning;
 - b) Monetary fine.
2. Depending on nature and level of the infringement, the IPR infringing organizations and individuals are liable to the following complementary remedies:
 - a) Confiscation of intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods;
 - b) Suspension of relevant business activities for a definite term.
3. In addition to the remedies referred to in paragraphs 1 and 2 of this Article, organizations and individuals that have committed IPR infringing acts are liable to the following restoration remedies:
 - a) Compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes and materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods provided that such distribution and use does not affect the exploitation of rights by intellectual property right holder;
 - b) Compelling delivery of the transiting goods out of the territory of Vietnam or re-export of the intellectual property counterfeit goods, implements and materials that are imported mainly for manufacturing or trading such intellectual property counterfeit goods, after having removed infringing elements.
4. The monetary fine rates referred to in subparagraph b of paragraph 1 of this Article shall be at least equal to the value of the discovered infringing goods but must not exceed five times of that value.

The Government shall make detailed provisions for the method of determination of the value of infringing goods.

Article 215 Application of preventative measures

1. In the following cases, organizations and individuals shall have the right to request the competent agency to apply administrative remedies and ensure that administrative penalties shall be imposed in accordance with clause 2 of this Article:
 - a) Acts of infringement of intellectual property rights may cause serious damage to consumers or the society;
 - b) There is a threat of the infringing means being dispersed or the infringer evading his or her liabilities;
 - c) In order to guarantee the implementation of administrative remedies.
2. Administrative preventative measures applicable under administrative procedures to the infringement of intellectual property rights comprise the followings:
 - a) Temporary hold of related individuals;
 - b) Temporary detention of the goods, means and implements used for such infringement;
 - c) Search of related individuals;
 - d) Search of the place where infringing goods, means and implements are stored;
 - d') Other administrative preventative measures in accordance with the laws and regulations.

Section 2. Control of IP-related imports and exports

Article 216 Border control measures of IP-related imports and exports

1. Border control measures of IP-related imports and exports comprise the followings:
 - a) Suspension of customs procedures for suspected intellectual property right infringing goods.
 - b) Supervision to detect goods containing signs of infringement of intellectual property rights.
2. Suspension of customs procedures for suspected intellectual property right infringing goods is a measure taken at the request of the intellectual property right holder for the purpose of collecting information and evidence about the lots of goods which serves as the basis for the intellectual property right holder to exercise the right to request for the handling of the infringement and to request for the application of provisional measures or preventive measures, and to ensure that an administrative penalty is to be imposed.
3. Examination and supervision to detect goods containing signs of infringement of intellectual property rights is a measure taken at the request of the intellectual property right holder for the purpose of collecting information in order to exercise the right to request for the suspension of customs procedures.

4. During the course of application of measures referred to in paragraphs 2 or 3 of this Article, if any goods detected to be intellectual property counterfeit goods in accordance with Article 213 of this Law, the customs offices shall have the right and duty to impose administrative remedies referred to in Article 214 and Article 215 of this Law.

Article 217 Obligations of person who requests for the application of border control measures of IP-related imports and exports

1. A person who requests for the application of border control measure in respect of IP-related imports and exports shall have the following obligations:
 - a. Proving that he or she is the intellectual property right holder by producing the materials and evidence referred to in paragraph 2 Article 203 of this Law.
 - b. Providing information sufficient to identify the suspected intellectual property right infringing goods or to discover infringing goods.
 - c. Lodging an application with the customs office and pay fees and charges prescribed by the laws and regulations.
 - d. Payment of damages and other incurred expenses to the persons being subject to such measure in case the goods subject to that control measure are found not to infringe upon IPRS.
2. To secure the performance of the obligations set out in clause 1(d) of this Article, a person requesting for the application of measure of suspension of customs procedures must deposit a sum of security in one of the following methods:
 - a) Depositing an amount of money equal to 20% of the value of the lots of goods that is subject to the suspension of customs procedures; or at least VND 20 million if it is impossible to evaluate such lots of goods;
 - b) Submitting a guarantee document issued by a bank or other credit organizations.

Article 218 Procedures for the application of suspension of customs procedures

1. When a person who requests for the suspension of customs procedures has properly performed his or her obligations provided for in Article 217 of this Law, the customs office shall issue the decision on suspension of customs procedures with regard to relevant lots of goods.
2. The term of suspension of customs procedures shall be 10 working days from the date of issuing the decision on the suspension of customs procedures. This term may be prolonged up to 20 working days if the person who requests for the suspension of customs procedures has due reasons and having deposited an additional amount of money referred to in paragraph 2 of Article 217 of this Law.
3. At the expiration of the term provided for in paragraph 2 of this Article if the person who requests for the suspension of customs procedures fails to initiate a civil lawsuit and the customs office does not accept the case to handle the importer of the lots of goods under administrative procedures, the customs office shall:

- a) Continue the completion of customs procedures for such lots of goods;
- b) Compel the person who requests for the suspension of customs procedures to compensate all the damages incurred by the owner of the lots of goods due to unreasonable request for the suspension of customs procedures, and to pay expenses for storage and preservation of goods as well as other costs incurred by the customs office and other related organizations and individuals in accordance with the laws and regulations on customs;
- c) Reimburse the person who requests for the suspension of customs procedures the rest of the deposited guarantee amount after having performed obligations and paid all the costs referred to in sub-paragraph b) of this paragraph.

Article 219 Examination and supervision to detect goods containing signs of IPR infringement

When an IPR holder requests for examination and supervision to detect a lot of goods containing signs of IP infringement and when such lot of goods is detected, the customs office shall immediately notify the person who requests for such examination and supervision. Within three working days from the date of such notification, if the person that made the request fails to make a request for suspension of customs procedures with regard to the detected lot of goods and the customs office does not decide to handle the importer of the lots of goods with administrative remedies in accordance with Articles 214 and 215 of this Law, the customs office shall continue the completion of customs procedures for such lots of goods.

PART SIX

PROVISIONS OF IMPLEMENTATION

Article 220 Transitional provisions

1. Any copyright or related right protected under the legal documents applicable before the effective date of this Law shall continue to be protected under this Law if it remains in term of protection on that date.
2. Any applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin, layout-designs, new plant varieties which have been filed with competent authorities before the effective date of this Law shall be handled in accordance with legal instruments at the time of the filing of the application.
3. All rights and obligations conferred by Protection Titles granted under the provisions applicable before the effective date of this Law and procedures for maintenance, renewal, correction, license, assignment, resolution of disputes concerning these protection titles shall be subject to this Law, except for those grounds for invalidation of a Protection Title which shall only be subject to the provisions of legal documents applicable at the time of its grant.

4. Trade secrets and trade names which have been existing and protected under Decree 54/2000/ND-CP dated October 3, 2000 of the Government on the protection of industrial property rights with regard to trade secrets, geographical indications, trade names and the protection of rights against industrial property related unfair competition shall be continued to be protected under this Law.
5. From the effective date of this Law, geographical indications, including those protected under the Decree referred in paragraph 4 of this Article, shall only be protected if they are registered with the state administration authority of industrial property.

Article 221 Effectiveness

This Law shall enter into force as from 1 July 2006.

Article 222 Guidance of implementation

The Government and the Supreme People's Court shall make detailed provisions and provide guidelines for the implementation of this Law.

This Law has been ratified by the Legislature XI of the National Assembly of the Socialist Republic of Vietnam in its 8th session on November 29, 2005.

THE CHAIRMAN OF THE NATIONAL ASSEMBLY

[End of Annex II and of document/
Fin de l'annexe II et du document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]