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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Twentieth Extraordinary Session**  
**Geneva, April 11, 2003**

EXAMINATION OF THE CONFORMITY OF THE DECREE  
ON THE PROTECTION OF NEW PLANT VARIETIES OF VIET NAM  
WITH THE 1991 ACT OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

Introduction

1. By letter dated February 18, 2003, addressed to the Secretary-General of UPOV, Dr. Bui Ba Bong, Vice Minister, Ministry of Agriculture and Rural Development of the Socialist Republic of Viet Nam (hereinafter referred to as "Viet Nam"), requested the examination of the Decree No. 13/2001/ND-CP on the Protection of New Plant Varieties of Viet Nam (hereinafter referred to as "the Decree"), adopted on April 20, 2001, 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 of the Decree in English provided by the Government of Viet Nam.

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.

Basis for the Protection of New Plant Varieties in Viet Nam

3. The protection of new plant varieties will be governed in Viet Nam by the Decree and its implementing regulations. The Office of the Union was informed, through direct communication from Dr. Bui Ba Bong, that a new Seed Law would be prepared in the near future to which the Decree will be subordinated. Any amendment to the provisions of the Decree could be undertaken in connection with the enactment of the new Seed Law. An analysis of the Decree follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

4. Article 2 of the Decree contains definitions of relevant terms used in the Decree.

5. In the definition of “plant varieties actually originated from protected varieties” (in this context interpreted as “essentially derived varieties”), it should be clearly stated in this definition that the original protected variety should not be itself an originated variety.

6. The definitions of “plant varieties” and “breeder,” although they do not follow exactly the wording used in the 1991 Act, do not conflict with the spirit of the 1991 Act. A more precise drafting is recommended.

7. As regards paragraph 2 of Article 2 of the Decree, the concept “new plant variety,” the word “new” and the words “and has a suitable denomination” should be inserted. The words “and not common knowledge” are not necessary because this notion is already covered by the condition of “distinctness.”

8. As indicated below in paragraph 14, the definition of common knowledge plant varieties would also need some redrafting in order to incorporate the essential elements of Article 7 of the 1991 Act.

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

9. As indicated in Articles 1, 3 and 18 of the Decree, protection of new varieties of plants is provided through the grant of titles of protection issued by the Ministry of Agriculture and Rural Development. The Decree thus complies with Article 2 of the 1991 Act.

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

10. According to paragraph 1 of Article 4 of the Decree, new plant varieties to be protected must belong to the species included in a list of protected plants published by the Ministry of Agriculture and Rural Development. This list has not yet been published. 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 at the date on which it becomes bound by the Convention.

Article 4 of the 1991 Act: National Treatment

11. Paragraph 3 of Article 1 of the Decree provides that nationals and legal entities of the countries having signed agreements, or acceded to international agreements on the protection of new plant varieties to which Viet Nam is party, shall enjoy the rights provided for by the Decree to nationals and legal entities of Viet Nam. Upon the accession of Viet Nam to the 1991 Act, nationals and residents of members of UPOV bound by the said Act will need to receive national treatment in conformity with Article 4 of the 1991 Act.

12. In order to fully comply with Article 4 of the 1991 Act, paragraph 3 of Article 1 of the Decree would need to also make reference to residents of Contracting Parties. Subject to this minor clarification, the Decree enables Viet Nam to conform with Article 4 of the 1991 Act.

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

13. The conditions for protection as set out in Article 4, paragraphs 2 to 5, of the Decree, incorporate the essential elements of Articles 5 to 9 of the 1991 Act.

14. Minor improvements and the inclusion of complementary information are still necessary concerning “Distinctness.” Article 2, paragraph 5 gives the definition of “common knowledge,” being that only varieties protected or applied for protection in countries that have signed agreements with Viet Nam should be regarded as varieties of common knowledge. Article 7 of the 1991 Act states that such varieties protected or applied for protection or having entered in an official register “in any country” should be considered to be varieties of common knowledge. It should also be clarified in the Decree that the application for protection or registration could render the variety in question a matter of common knowledge only if it leads to the granting of protection or to the entering into the official register.

15. Concerning “novelty,” the 1991 Act provides that any sale or “disposal” to others for purposes of “exploitation” of harvested material, as well as propagating material of a variety shall influence novelty of the variety. The term used in the Article 4, paragraph 5, of the Decree “for the purpose of plant variety trading” is not precise enough. Minor modifications to reflect treaty language are required.

Article 10 of the 1991 Act: Filing of Applications

16. Article 5 of the Decree provides for who is entitled to apply for protection. Articles 6 to 8 of the Decree provide for the procedure from the filing of applications to the grant of protection titles. The Decree 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 10 of the Decree permits a claim for priority based upon an earlier application in another State during the period of 12 months from the date of the earlier application as required by Article 11(1) of the 1991 Act. The Decree gives the applicant the possibility to file a certified copy of the earlier application within 90 days after submitting the second

application, which conforms with Article 11(2) of the 1991 Act. The Decree would need to include the substance of Article 11(3) of the 1991 Act, allowing the applicant claiming the priority of the first application to request that the examination of the variety be deferred by up to two years from the date of expiry of the priority period.

Article 12 of the 1991 Act: Examination of the Application

18. Article 8 of the Decree 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. Paragraph 2 of Article 11 of the Decree provides measures designed to safeguard the interests of the breeder during the period between the filing and the grant of the breeder's right which conforms with Article 13 of the 1991 Act.

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

20. Article 11, paragraph 1 and paragraphs 3 to 7, of the Decree contains the essential provisions of Article 14 of the 1991 Act. According to Article 11, paragraph 1, of the Decree, harvested material is covered by the scope of the protection without any restriction. Article 14(2) of the 1991 Act provides that the harvested material should be covered by the scope of the protection *only* "if the breeder has not had reasonable opportunity to exercise his right in relation to the said propagating material." A clarification should be introduced in Article 11 of the Decree accordingly.

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

21. Article 11, paragraph 7, of the Decree contains provisions on the exceptions to the breeder's right.

22. There is no provision in the Decree to exclude from protection acts done for experimental purposes as provided in Article 15(1) of the 1991 Act. The inclusion of this exception is recommended.

23. Article 11, paragraph 7, section b, allows farmers to "exchange" among themselves harvested materials to be used for next year's planting. The scope of this provision dealing with the farmer's privilege seems to have gone beyond the balance of interests between the breeder and the farmer sought by the optional exception to the breeder's right, as provided in Article 15(2) of the 1991 Act.

24. More precisely, Article 15(2) provides that "each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, *on their own holdings*, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety" [emphasis added]. Minor redrafting to paragraph 7 of Article 11 of the Decree is recommended in order to reduce the

exchange of seed to take into consideration only the particular needs of small and subsistence farmers while safeguarding the rights of breeders.

25. The breeder's exemption as provided in Article 11, paragraph 7, section c, is limited only to cross-breeding, whereas Article 15(1)(iii) of the 1991 Act, indicates that under the breeder's exemption, the breeder's right shall not extend to "acts done for the purpose of breeding other varieties" and, except where the provisions for essentially derived varieties and certain other varieties apply, also to acts contained in the scope of the breeder's right, in respect of those varieties that have resulted from breeding activities. As a consequence, the Decree would need to be modified in order to incorporate the full scope of the breeder's exemption.

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

26. Provisions for the exhaustion of the breeder's right, as provided in Article 16 of the 1991 Act, are missing in the Decree.

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

27. Article 13 of the Decree contains provisions concerning the grant of compulsory licenses by the Ministry of Agriculture and Rural Development for national or public interests. The payment of a variety exploitation fee is foreseen; however, the Decree provides that the applicable fee should be agreed upon by the owner of the protection title and the grantees of the compulsory licenses. Although Article 13 of the Decree incorporates the essential provisions of Article 17 of the 1991 Act, it is recommended to clarify that the exploitation fee should correspond to an "equitable remuneration" for the breeder.

Article 18 of the 1991 Act: Measures Regulating Commerce

28. Reference is made in Article 13, paragraph 1, of the Decree: "The holders of the titles of protection of new plant varieties may exercise the right to exploit the new plant varieties for mass production on Vietnamese territory only when such new plant varieties are recognized as national varieties according to the regulations of the Ministry of Agriculture and Rural Development." Those regulations concerning national varieties should not affect the application of the provisions of the Decree as regards the protection of new varieties of plants. The Decree does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

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

29. Article 9 of the Decree provides that protection lasts for 25 years in the case of woody plants from the date of the granting of a protection title, and 20 years for other plant varieties. These periods of protection comply with the provisions under Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

30. Article 4, paragraph 6, and Article 7, paragraph 3(e), of the Decree contain provisions concerning variety denominations which satisfy some requirements of paragraphs (1)(a), (2), (3) of Article 20 of the 1991 Act.

31. The second sentence of Article 4, paragraph 6, provides that the variety denomination shall, after having been approved by the competent office, be the official variety denomination even after the expiry of the protection period and “nobody” may use it freely. This provision conflicts with the provision of Article 20(7) (obligation to use the denomination) of the 1991 Act. It is proposed to modify Article 4, paragraph 6 of the Decree in order to add that any person who offers for sale or markets propagating material of a protected variety is obliged to use the denomination.

32. In addition to the above, it is recommended to include in the Decree complementary provisions on variety denominations in order to satisfy the requirements of paragraphs 1(b), (4), (5), (6) and (8) of Article 20 of the 1991 Act.

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

33. Article 15 of the Decree contains provisions concerning nullity which deviate from the provisions of Article 21 of the 1991 Act. It is recommended to modify Article 15 of the Decree in order to incorporate the essential provisions of Article 21 of the 1991 Act.

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

34. Article 16 of the Decree contains provisions concerning cancellation which deviate from the provisions of Article 22 of the 1991 Act. It is recommended to modify Article 16 of the Decree in order to incorporate the essential provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

35. Article 30(1)(i) of the 1991 Act requires that Contracting Parties should “provide for appropriate legal remedies for the effective enforcement of breeders’ rights.” Articles 20 and 21 of the Decree provide for civil remedies and criminal sanctions. The Decree thus conforms with Article 30(1)(i) of the 1991 Act.

36. 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 18 of the Decree provides that the Ministry of Agriculture and Rural Development shall perform the State management over the protection of new plant varieties. Article 19 of the Decree provides that the People’s Committee of Provinces and Centrally-run Cities shall perform the function of State management over activities of protecting new plant varieties in their respective localities. Article 23 of the Decree further provides that the Ministry of Agriculture and Rural Development shall assume the main responsibility for the implementation of the Decree. The Decree thus conforms with Article 30(1)(ii) of the 1991 Act.

37. 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. Article 7, paragraph 5, and Article 8, paragraph 3.a, of the Decree provide that the competent office shall publish the applications and the intended grants of variety protection in a specialized journal. These provisions satisfy the requirements of Article 30(1)(iii) of the 1991 Act.

*General Conclusion*

38. The Office of the Union therefore suggests that the Council may wish

(a) to advise the Government of Viet Nam that the Decree in its main provisions incorporates most of the substance of the 1991 Act, but it still needs some clarifications and amendments, as provided in this document, in order to fully conform with the 1991 Act; once the above clarifications and amendments are 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 satisfactory translation into one or more of the official languages of the Union.

*39. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.*

[Annex I follows]

ANNEX I

Letter from the Vice Minister, Ministry of Agriculture and Rural Development, Viet Nam,  
to the Secretary-General of UPOV dated February 18, 2003



**MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT  
OF SR VIETNAM**

**The letter to UPOV asking for advice on conformity with the PVP Law  
of SR Vietnam**

*February 18, 2003*

Dr. Kamil Idris  
Secretary-General  
International Union for the Protection of New Varieties of Plants (UPOV)  
34, chemin des Colombettes  
CH-1211 Geneva 20

Dear Dr. Kamil Idris,

I have the honor to inform you that on April 20, 2001, the Vietnam Government adopted the Regulation on New Plant Varieties Protection.

Vietnam intends to adhere to the International Union 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 (Act of 1991).

Pursuant to the provisions of Article 30(2) of the 1991 Act, I would highly appreciate it if the UPOV Council could examine the conformity of the Vietnam Regulation on PVP (enclosure with this letter) with provisions of the 1991 Act .

Accept, Sir, the assurances of my highest consideration.

Faithfully yours,

A handwritten signature in black ink, appearing to read 'Bui Ba Bong'.

Dr. Bui Ba Bong  
Vice Minister,  
Ministry of Agriculture and Rural Development  
2- Ngoc Ha- Ba Dinh- Hanoi- Vietnam

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

DECREE No.13/2001/ND-CP OF APRIL 20, 2001  
ON THE PROTECTION OF NEW PLANT VARIETIES

THE GOVERNMENT

*Pursuant to the Law, on Organization of the Government of September 30, 1992;  
Pursuant to the Civil Code of October 28, 1995;  
At the proposal of the Minister of Agriculture and Rural Development*

DECREES:

CHAPTER 1

GENERAL PROVISION

*Article 1*

*Scope of application*

1. This Decree is promulgated to protect the interests of organizations and individuals that select, create or have the legitimate right to inherit new plant varieties on the Vietnamese territory (including agricultural and forest plant varieties- called new plant varieties in this Decree) to encourage organizations and individuals of all economic -sectors to invest in selecting, creating and using new plant contributing to the agricultural and rural development.
2. This Decree lays down the principles and conditions for being granted the titles of protection of new plant varieties (called the protection titles for short); the order and procedures for granting of the protection titles; interests and obligations of the protection title holders; the nullity and cancellation of the protection titles; the State management and sanctions related to the protection of new plant varieties.
3. New plant varieties owned by, organizations and individuals of the countries which have together with Vietnam signed or acceded to international agreements on the protection of new plant varieties, shall be protected in Vietnam according to the provisions of this Decree, except otherwise provided for in international agreements which the Socialist Republic of Vietnam has signed or acceded to.
4. New plant varieties selected and created by domestic organizations and individuals, which are related to national interests and need to be kept secret, shall be subject to separate regulations of the State.

*Article 2*

*Interpretation of terms*

In this Decree, the following terms are construed as follows:

1. “Plant variety” is a group of plants of the lowest level in the botanic classification, which should meet the following conditions:
  - a) Being recognized through the manifestation of characteristics dictated by their genotype;
  - b) Being distinguishable from any other group of plants through the manifestation of at least one characteristic mentioned at Point a of this Clause;
  - c) Being stable in the multiplicative process.
2. “New plant variety” means a plant variety, which is distinctive, uniform, stable and not common- knowledge.
3. “Protected new plant variety” means a new plant variety, which is granted the protection title.
4. “Plant varieties actually originated from protected plant varieties” mean plant varieties newly created from the protected plant varieties (original varieties) by some selective creation methods, for example: variation selection (natural or artificial mutations, somatic variations, selection of individual variations from original plants), back-crossing, gene transfer, cell fusion, which basically retain characteristics like the original varieties and differ from the original varieties in one or several characteristics.
5. “Common knowledge plant varieties”, including:
  - a) New plant varieties protected by the State;
  - b) New plant varieties with the applications for protection thereof having been filed and published by the competent bodies on a specialized journal;
  - c) Plant varieties recognized as national varieties;
  - d) Specialty plant varieties of localities, recognized by the provincial/municipal Agriculture and Rural Development Services;
  - e) Varieties mentioned at Points a and b of this Clause, of the countries that have signed agreements with Vietnam on the protection of new plant varieties.
6. “Stock” means whole trees or parts thereof such as seeds, saplings, cuttings, grafts, tissues, cells, budding, tuber, trunk sections used for production of new plants.
7. “Harvested products” are whole trees or any part thereof collected from the cultivation of the stocks of protected varieties.

8. “Breeders of new plant varieties” mean individuals or a group of persons who have used the plant gene source to select, create or transform wild plants into new plant varieties.
9. “Protection title holders” are organizations and individuals that are granted the protection titles or entitled to transfer or inherit the protection titles and have the right to lawfully own new plant varieties.
10. “Examination of distinctiveness, uniformity and stability,” (hereinafter called DUS test means the examination on fields or in laboratories according to the set procedures to determine the distinctiveness, uniformity, and stability, of new plant varieties.
11. “Licensing” means the transfer of the right to use plant varieties to those who need to use them.

### *Article 3*

#### *General principles for the protection of the rights over new plant varieties*

1. The State recognizes and protects the rights over new plant varieties in the form of granting protection titles.
2. All activities of selecting, creating, producing, trading in and using new plant varieties protected by the State shall have to comply with the provisions of this Decree and other relevant legal documents.
3. Titles of protection of new plant varieties shall be granted only once to those entitled to own protection titles after the appraisal of the dossier form and the appraisal of the dossier contents; no re-granting shall be made.
4. Grantees of the titles of protection of plant varieties shall have to pay an appraisal fee and annual fees to maintain the effect of their protection titles.

## CHAPTER II

### CONDITIONS, ORDER AND PROCEDURES FOR GRANTING OF PROTECTION TITLES

#### *Article 4*

#### *Conditions for new plant varieties to be protected*

To be protected, new plant varieties must meet all the following conditions:

1. New plant varieties must belong to the branches and species of plants on the list of protected plants, publicized by the Ministry of Agriculture and Rural Development it.
2. New plant varieties must be distinctive.

A plant variety shall be regarded as being distinctive if it bears one or many, principal characteristics obviously distinctive from plant varieties that are common- knowledge at the time the applications for protection are filed.

3. New plant varieties must be uniform.

A plant variety shall be regarded as being uniform if all of its plants manifest the same principal characteristics excluding disparities within a permitted extent for some specific characteristics during the multiplicative process.

4. New plant varieties must be stable.

A plant varieties shall be regarded as being stable if, when being multiplied by the gamogenetic or clonal method, its principal characteristics still retain the manifestations as initially described, without any changes after each multiplicative crop or at the end of each multiplicative cycle.

5. New plant varieties must be commercially new.

A plant varieties shall be regarded as being commercially new if at the time the application for its protection is filed, the stock or harvested product of such plant variety had not yet been sold or distributed for the purposes of plant variety trading by the person entitled to file such application or by a legally authorized person one year before the date the application is filed on the Vietnamese territory, and six years before the date the application is filed outside the Vietnamese territory for groups of woody and vine plants, and four years for other groups of plants.

6. New plant varieties must bear appropriate appellations, easily distinguishable from those of other plant varieties of the same species, which are widely known. The appellations of new plant varieties shall after being approved in writing by the competent bodies, be the official appellations, even after the expiry of the protection duration and nobody may use them freely.

The following way of appellation shall not be accepted by the State:

- a) Consisting of only numerals;
- b) Violating social ethics;
- c) Easily causing misunderstanding of the characteristics and properties of the species or the breeder's biography;
- d) Being identical or confusingly similar to protected trademarks, origin appellations of products; being identical or similar to harvested products of such plant varieties.

*Article 5*

*Subjects entitled to request the granting of protection titles*

1. Organizations selecting and creating new plant varieties with the source of State budget capital or their own sources of capital shall be entitled to file applications for protection titles.

For individuals (breeders) performing the task of selecting and creating new plant varieties assigned by particular organizations, such organizations shall be entitled to file applications for protection titles.

2. Breeders selecting and creating new plant varieties with their own efforts and financial sources shall be entitled to file applications for protection titles.

3. For new plant varieties selected and created under cooperation contracts between the parties, the right to file applications shall be agreed upon by the parties to the contracts; where the party entitled to file an application is not specified in the contract, the party that hires persons to create new plant varieties shall be entitled to file an application.

4. Where more than one organization or individual file applications for protection titles related to the same new plant variety, the organization or individual that is the first to file the dossiers shall be accepted and considered for the granting of the protection title for the new plant varieties according to the provisions of this Decree.

5. Where the subjects stated in Item 4 of this Article file their applications on the same day, the application of the organization or individual that is the first to select and create the new plant variety at issue shall be accepted and considered for the granting of a protection title. Where it is impossible to identify which organization or individual is the first to create the new plant varieties, the competent body may refuse to accept their applications. The above organizations and individuals may agree with one another on together filing a sole application and being co-holders of the granted protection title.

*Article 6*

*Dossiers of application for protection titles*

1. The applicant for a protection title shall submit a dossier consisting of:

- a) An application for a protection title;
- b) Documents describing the variety according to the set form together with its photos;

The dossier must be in Vietnamese; where a foreign organization or individual applies for a protection title, the Vietnamese-language dossier must be enclosed with an English-language version.

2. Organizations or individuals applying for protection titles shall have to directly submit or authorize other organizations or individuals to represent them in submitting their dossiers to the competent bodies.

3. Foreign organizations or individuals that have lawful representatives in Vietnam and apply for protection titles may directly submit or authorize other organizations or individuals having the legal person status to represent them in submitting their dossiers to the competent bodies.

Where foreign organizations or individuals have no lawful representatives in Vietnam and wish to apply for protection titles, they shall have to submit their dossiers and carry out related procedures through representation service organizations having the legal person status to represent them in submitting their dossiers.

4. Where dossiers of application for protection titles are compliant with the provisions of Clause 1 of this Article, the competent bodies shall have to certify the date of submission and clearly inscribe the applications' number signs.

#### *Article 7*

##### *Appraisal of the form of the dossiers of application for protection titles*

1. Within 15 days after the date on which the dossiers are submitted, the competent bodies shall have to complete the appraisal of the dossier form, determine the dates of submission of valid dossiers and the priority dates. If detecting that the dossiers are incomplete or imperfect, they shall have to notify the dossier submitters thereof. Within 30 days after the date of receipt of such notice, the dossier submitters shall have to come and give explanations or revise and make additions to their dossiers. Where revised or supplemented dossiers remain inappropriate or no revision or supplement is made, the competent bodies may decline to consider them.

2. The date of submission of valid dossier is determined as the date on which the dossier no longer contains any error or the date on which the dossier is completed by the submitter and accepted by the competent body.

3. Within 90 days after the date the applicants for protection titles submit valid dossiers, the competent bodies shall have to complete the step 1- appraisal of the following contents:

a) Whether or not the dossier submitters are eligible as prescribed in Article 5 of this Decree;

b) Whether or not the new plant varieties belong to the branches and species on the list of those protected by the State as prescribed in Clause 1 of Article 4;

c) Whether or not the new plant varieties fall into the categories specified in Clauses 3 and 4, Article 1 of this Decree;

d) Whether or not the new plant varieties meet the condition on commercial newness as prescribed in Clause 5, Article 4 of this Decree;

e) Whether or not the appellations of the new plant varieties comply with Clause 6, Article 4 of this Decree. If the appellations of the new plant varieties do not comply therewith, the

competent bodies shall have to notify the dossier submitters thereof. The dossier submitters shall have to give new appellations and submit them to the competent bodies within 15 days after receipt of the latter's notices. If the varieties' new appellations still fail to comply, the competent bodies may decline to consider such dossiers.

4. In the process of appraising the dossier content, the competent bodies may request the dossier submitters to correct errors related to the content and form of their dossiers. If the dossier submitters do not come to supplement and/or revise them, the competent bodies may reject such dossiers.

5. In case where the competent bodies accept the dossiers in writing, after conducting the step 1- appraisal, they shall publish the notices thereof on a specialized journal and inform such to the applicants for the latter to come and carry out the procedures for the step 2 appraisal.

### *Article 8*

#### *Appraisal of the contents of dossiers of application for protection titles*

1. Within 15 days after receipt of the notices proscribed in Clause 5, Article 7 of this Decree, the dossier submitters shall have to submit their variety sample to the DUS tested agency.

2. DUS test shall be conducted according to test guidelines applicable to each new plant species, which are issued by Ministry of Agriculture and rural development. The competent bodies shall conduct the step 2-appraisal of the distinctiveness, uniformity and stability of the new plant varieties on the basis of the DUS test results of the test agency.

3. After the step 2-appraisal results are made available, the competent bodies shall have to:

a) Publish on a specialized journal their intention to grant the protection titles if the new plant varieties comply with the provision of Clause 2,3 and 4, Article 4 of this Decree;

b) Within 30 days after the competent bodies publish of a specialized journal notices of their intention to grant the protection titles, if there are no opinions against such notices, they shall complete the procedures for granting the protection titles; if there are opinions against such notices, within 30 days after receiving such opinions, the competent bodies shall have to consider them and make conclusions;

c) Reject the applications and notify the dossier submitters, publish on specialized journal the notices that the dossiers are, after undergoing the step 2-appraisal, not compliant with the provisions of Clause 2,3 and 4, Article 4 of this Decree.

4. If disagreeing with the rejection of their applications, within 30 days after receiving the application- rejecting notices, the dossier submitters may lodge written complaints with the Ministry of Agriculture and Rural Development.

5. For varieties eligible for being granted the protection titles, the Ministry of Agriculture and Rural Development shall sign decisions to grant the protection title holders. The Ministry

of Agriculture and Rural Development may grant copies of the protection titles to their holders if the latter can give plausible reasons thereof.

*Article 9*

*Term of protection of new plant varieties*

Term of protection is 20 years for new plant varieties, 25 years for woody plants, as from the date of granting of the protection titles.

Term of protection of new plant varieties shall be counted from the date of granting of the protection titles to the end of the date of expiry of the effective terms of the protection titles or to the date of termination of the effect thereof.

*Article 10*

*Priority right*

1. The applications for the titles of protection of new plant varieties may request the enjoyment of priority right if they file, within 12 months after filing first application in the countries which have, together with Vietnam, signed or acceded to international agreements on the protection of new plant varieties, second application for the protection of the same plant varieties on Vietnam's territory.

2. Within 90 days after submitting the second dossiers, organizations and individuals that wish to enjoy the priority right shall have to submit to the competent bodies the copies of dossiers of the first applications with certification by the bodies that received them, samples and other evidences to prove that the new plant varieties are the same in the two applications.

3. The applications for the protection titles enjoying the priority right shall have the corresponding priority date being the date of filing of the first valid applications

CHAPTER III

INTEREST AND OBLIGATIONS  
OF PROTECTION TITLE HOLDERS AND BREEDERS OF NEW PLANT VARIETIES

*Article 11*

*Rights of protection title holders*

1. The holders of the titles of protection of new plant varieties may permit or not permit the use of the stocks of the protected varieties, harvested products from the cultivation of the stocks of the protected varieties in the following activities:

a) Production or multiplication for the business purpose;

- b) Processing of varieties for the business purpose;
  - c) Sale offers;
  - d) Sale of other forms of business;
  - e) Export;
  - f) Import;
  - g) Storing for conducting activities specified at Points a, b, c, d, e and f of this Clause.
2. During the time from the date they file valid applications to the date they are granted titles of protection of new plant varieties, the protection title holders may request other organizations and/or individuals to pay compensation for damage caused by their acts related to the protected plant varieties' stocks and harvested products according to the provisions of Clause 1 of this Article, which are not yet permitted by the protection title holders.
3. The protection title holders' rights over the activities specified in Clauses 1 and 2 of this Article shall also apply in the following cases:
- a) New plant varieties actually originated from the protected varieties which themselves are not actually originated from another protected variety;
  - b) New plant varieties, which are not obviously distinctive from protected varieties;
  - c) New plant varieties the multiplication of which requires the repeated use of protected varieties.
4. The protection title holders may themselves exploit or transfer the right to exploit new plant varieties to other organizations and/or individuals. Contracts for transfer of the right to exploit new plant varieties shall be made in writing and registered with competent bodies.
5. The protection title holders may inherit and transfer the right to own the protection titles according to law provisions.
6. The protection title holders may request the competent bodies to handle acts of infringing upon their rights and request the infringers to pay compensation for damage.
7. The holders of the titles of protection of varieties may not enjoy the right to protection of their varieties in the following cases:
- a) Varieties used for personal purposes and not for commercial purposes;
  - b) Farmers who cultivate stocks of the protected varieties use the harvested products as strains for subsequent crops at their farms or for exchange among farming households;
  - c) Varieties used for cross-breeding to create other new plant varieties, except cases where such varieties are actually originated from the protected varieties

*Article 12*

*Obligations of the protection title holders*

The protection title holders shall have the following obligations:

1. To personally preserve or authorize other persons to preserve the stocks of the protected varieties and supply such stocks at the requests of the competent bodies for custody at the gene bank, for use as standard samples for cultivation to enable the inspection of the distinctiveness, uniformity and stability of the protected varieties;
2. The protection title holders being Vietnamese organizations and individuals shall have to pay remuneration to the breeders stated in Article 5 of this Decree. If there is no other agreement between the breeders and the protection title holders, the minimum remuneration level shall not be lower than 20% of the profits carried by the protection title holders from the exploitation of the new plant varieties each year; or 30% of the total payment the protection title holders receive from each sale of license or from the compensation for the granting of non-voluntary licenses;
3. To pay fees when submitting the dossiers of application for the appraisal of the forms and contents of the dossiers of application for protection titles and pay annual fees as from the year they are granted the protection titles so as to maintain the effect of such protection titles;
4. Vietnamese organizations and individuals may transfer the right to own the titles of protection of new plant varieties to foreign organizations and individuals when so permitted by the Ministry of Agriculture and Rural Development.

*Article 13*

*Restrictions on the rights of the protection title holders*

1. The holders of the titles of protection of new plant varieties may exercise the right to exploit the new plant varieties for mass production on Vietnamese territory only when such new plant varieties are recognized as national varieties according to the regulations of the Ministry of Agriculture and Rural Development.
2. In the national interests or public interests, the competent bodies may issue decisions to grant non-voluntary licenses to exploit the protected new plant varieties. The granting of non-voluntary licenses shall be effected only under the conditions specified in Article 802 of the Civil Code.

The Ministry of Agriculture and Rural Development is the State body competent to consider and issue decisions to grant non-voluntary licenses to exploit the protected plant varieties.

Organizations and individuals that are granted non-voluntary licenses shall have to pay a variety exploitation fee to the protection title holders at a rate agreed upon by themselves according to law provisions.

Within 30 days after receiving the decisions to grant non-voluntary licenses, if the protection title holders disagree with such decisions, they may lodge complaints with the competent State bodies according to the provisions of the Law on Complaints and Denunciations.

#### *Article 14*

##### *Rights and obligations of the breeders of new plant varieties*

1. The breeders of new plant varieties, who are specified in Clauses 1, 2 and 4, Article 5 of this Decree, shall have the following rights:
  - a) To have their names inscribed in the titles of protection of new plant varieties and in the national register of new plant varieties;
  - b) To receive remuneration from the protection title holders according to the provisions of Clause 3, Article 12 of this Decree;
  - c) To request the competent bodies to handle or initiate lawsuits against the infringement upon their rights specified at Points a and b, Clause 1 of this Article.
2. The breeders of new plant varieties shall have the duty to help the protection title holders to perform the obligation of preserving the stocks of the protected new plant varieties.

#### CHAPTER IV

##### NULLITY AND CANCELLATION OF PROTECTION TITLES

#### *Article 15*

##### *Nullity of protection titles*

1. The protection titles shall be null when one of the following violations is committed:
  - a) The protection title holders fail to perform the obligations specified in Article 12 of this Decree;
  - b) The plant varieties fail to ensure their uniformity or stability as at the time the protection titles are granted.
2. Any third part may send written requests to the competent bodies to consider the nullity of the effect of the protection titles for the reasons specified in Clause 1 of this Article.
3. The protection titles shall resume their effect after their holders have performed all obligations specified in Article 12 or regained their uniformity or stability as at the time there are granted.

*Article 16*

*Cancellation of protection titles*

The protection titles shall be cancelled in the following cases:

1. The plant varieties no longer maintain their inherent characteristics and properties as at the time the protection titles are granted.
2. The holders of the titles of protection of new plant varieties voluntarily request a competent body to cancel the protection titles.
3. When it is detected that the protection title holders are not eligible subjects as prescribed in Article 5 of this Decree.

*Article 17*

*Effect of the nullity and cancellation of protection titles*

1. When the titles of protection of new plant varieties are cancelled, their holders shall have to return the whole or part of the expenses to the license purchasers to exploit the new plant varieties or to the transferees of the right to own such protection titles.
2. The decisions to null or cancel the protection titles ahead of time shall not affect the previous decisions of the Court or the Minister of Agriculture and Rural Development regarding acts of infringing upon the protection title holders' rights.
3. During the time of nullity of the protection titles, their holders shall not enjoy the rights specified in Article 11 of this Decree.
4. If the protection title holders disagree with the decisions to suspend or cancel the effect of their protection titles, they may lodge their complaints thereabout and shall have their complaints settled according to the Law on Complaints and Denunciations.

CHAPTER V

STATE MANAGEMENT ON"ER THE  
PROTECTION OF NEW PLANT VARIETIES

*Article 18*

*Tasks and powers of the Ministry of Agriculture and Rural Development  
in the State management over the protection of new plant varieties*

1. The Ministry of Agriculture and Rural Development shall perform the State management over the protection of new plant varieties and have the responsibility to:

- a) Submit to the competent State bodies for promulgation or promulgate according to its competence legal documents on the protection of new plant varieties;
  - b) Grant or withdraw protection titles;
  - c) Organize the personnel training to meet the requirements of the protection of new plant varieties;
  - d) Supervise, inspect and handle violations of the protection of new plant varieties;
  - e) Settle complaints and denunciations related to the protection of new plant varieties.
2. The Ministry of Agriculture and Rural Development shall assign competent agency to perform the State management over the protection of new plant varieties, with the task of organizing and guiding the compilation, receipt and appraisal of dossiers and submitting them to the Ministry's leadership for granting, nullity, cancellation or withdrawal of the titles of protection of new plant varieties.

#### *Article 19*

##### *Responsibilities of the People's Committees of the provinces and centrally-run cities*

The People's Committees of the provinces and centrally-run cities shall perform the function of State management over activities of protecting new plant varieties in their respective localities and have the following tasks:

1. Organizing the management of new plant varieties within their respective localities under the guidance of the Ministry of Agriculture and Rural Development;
2. Inspecting and handling according to their competence acts of infringing upon the new plant variety copyright in their respective localities.

## CHAPTER VI

### HANDLING OF VIOLATIONS

#### *Article 20*

##### *Handling of violating organizations and individuals*

Organizations and individuals that commit acts of violating the law provisions on the protection of new plant varieties shall, depending on the nature and seriousness of their violations, be sanctioned or examined for penal liability before law; if causing serious damage, they shall have to pay compensation according to law provisions.

*Article 21*

*Handling of persons with positions and powers, who commit acts of violation*

Those who abuse their positions and powers to commit acts of violating the regulations on the protection of new plant varieties, on the granting of protection titles, cover up violators of the legislation on the protection of new plant varieties and commit other acts contrary to the law provisions on the protection of new plant varieties, shall, depending on the nature and seriousness of their violations be disciplined or examined for penal liability according to law provisions.

CHAPTER VII

IMPLEMENTATION PROVISIONS

*Article 22*

*Implementation effect*

This Decree takes effect 15 days after its signing; all previous provisions contrary to this Decree are all annulled.

*Article 23*

*Implementation provisions*

1. The Ministry of Agriculture and Rural Development shall assume the prime responsibility and coordinate with the Ministry of Science, Technology and Environment in guiding the implementation of this Decree.
2. The Ministry of Finance shall have to coordinate with the Ministry of Agriculture and Rural Development in guiding the rates and use of charges and fees for the protection of new plant varieties.
3. The Ministers, the Heads of the ministerial-level agencies, the Heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

*On behalf of the Government*  
*Prime Minister*  
PHAN VAN KHAI

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Fin de l'annexe II et du document/  
Ende der Anlage II und des Dokuments/  
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