

**THE GOVERNMENT**

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No. 88/2010/ND-CP

**SOCIALIST REPUBLIC OF VIET NAM**

**Independence - Freedom – Happiness**

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*Hanoi, August 16, 2010*

## **DECREES**

**DETAILING AND GUIDING A NUMBER OF ARTICLES OF THE LAW ON  
INTELLECTUAL PROPERTY AND THE LAW AMENDING AND  
SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAW ON INTELLECTUAL  
PROPERTY REGARDING RIGHTS TO PLANT VARIETIES**

### **THE GOVERNMENT**

*Pursuant to the December 25, 2001 Law on Organization of the Government;  
Pursuant to the Law on Intellectual Property and the Law Amending and Supplementing  
a Number of Articles of the Law on Intellectual Property;  
At the proposal of the Minister of Agriculture and Rural Development,*

### **DECREES:**

#### **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1. Scope of regulation**

This Decree details and guides a number of articles of the Law on Intellectual Property and the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property regarding rights to plant varieties, covering responsibilities for state management of rights to plant varieties: order of and procedures for establishing rights to plant varieties; rights and obligations of plant variety protection certificate holders and plant variety breeders; licensing and assignment of rights to protected plant varieties; and representation of rights to plant varieties.

#### **Article 2. Subjects of application This Decree applies to:**

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals defined in Clause 18. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property.

#### **Article 3. Interpretation of terms**

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

1. Applicant means an organization or individual that has the right to file an application for registration of rights to plant varieties under Clause 2. Article 164 of the Law on Intellectual Property;
2. Application submitter means the applicant or a lawful representative of the applicant;
3. Plant variety protection certificate holder means an organization or individual that is granted a plant variety protection certificate;
4. Plant variety breeder means a person who directly selects and breeds or discovers and develops a new plant variety: in case two persons jointly select and breed or discover and develop a new plant variety, they are co-breeders.
5. Plant variety protection agency is the Office for Protection of Plant Varieties at the Ministry of Agriculture and Rural Development;
6. Country having concluded with Vietnam an agreement on the protection of rights to plant varieties means a member country of the International Convention for the Protection of New Plant Varieties (UPOV) or any country which has concluded with Vietnam a bilateral agreement on the protection of rights to plant varieties.
7. Discovery and development of a new plant variety:
  - a/ Discovery of a new plant variety means the selection of natural variants;
  - b/ Development of a new plant variety means the process of propagating and assessing these natural variants.
8. Detailed description of a plant variety (referred to as variety description) means a document expressing the characteristics of a plant variety made under the process of testing the distinctness, uniformity and stability and certified by the plant variety protection agency. A variety description is considered having been already published when it has been made available to the public in such form as scientific report or news report: or an article in newspapers, magazines or other publications;

**Article 4. Responsibilities of ministries and ministerial-level agencies for the protection of rights to plant varieties**

1. The Ministry of Agriculture and Rural Development shall perform the state management of the protection of rights to plant varieties nationwide and have the following responsibilities:

a/ To submit to competent authorities for promulgation or to promulgate according to its competence legal documents on the protection of rights to plant varieties and organize the implementation;

b/ To grant, re-grant, withdraw, invalidate or cancel plant variety protection certificates;

c/ To promulgate a list of protected plant varieties; processes and procedures of technical tests of plant varieties;

d/ To define the organization, functions, tasks and powers of the plant variety protection agency; to designate and manage the operation of organizations and individuals conducting technical tests of plant varieties;

e/ To disseminate and educate about the law on protection of rights to plant varieties;

f/ To examine, inspect and handle administrative violations in the protection of rights to plant varieties;

g/ To undertake international cooperation on the protection of rights to plant varieties;

h/ To manage activities of representing rights to plant varieties; to accredit and expunge rights-to-plant varieties representation service providers; to grant and withdraw- rights-to-plant varieties representation practice certificates;

i/ To provide information and make statistics on the protection of rights to plant varieties;

j/ To issue forms on the protection of rights to plant varieties.

2. The Ministry of Finance shall assume the prime responsibility for. and coordinate with the Ministry of Agriculture and Rural Development in. guiding the collection, management and use of charges and fees for the protection of rights to plant varieties.

3. The Ministry of Science and Technology and other ministries, ministerial-level agencies and government-attached agencies shall, within the scope of their assigned tasks and powers, coordinate with the Ministry of Agriculture and Rural Development in performing the state management of the protection of rights to plant varieties.

#### **Article 5. Responsibilities of provincial-level People's Committees for the protection of rights to plant varieties**

1. To organize the implementation of policies and law on the protection of rights to plant varieties.

2. To disseminate and propagate the law on the protection of rights to plant varieties.

3. To examine, inspect and handle administrative violations in the protection of rights to plant varieties.

4. To direct People's Committees of districts, provincial towns or cities in taking measures of state management of the protection of rights to plant varieties in their localities.

## **Chapter II**

### **ORDER OF AND PROCEDURES FOR ESTABLISHING RIGHTS TO PLANT VARIETIES**

#### **Article 6. Registration for the protection of rights to plant varieties selected and bred or discovered and developed with state budget funds**

1. For a plant variety which is selected and bred or discovered and developed with state budget funds, the ownership right to that plant variety shall be assigned by the State to the organization directly selecting and breeding or discovering and developing that plant variety, which shall file an application for registration for the protection of rights to the plant variety and may perform the rights of a protection certificate holder specified in Article 186 of the Law on Intellectual Property.

2. For a plant variety which is selected and bred or discovered and developed with different capital sources, including state budget fund, the organization assigned by the State to use state funds which is directly engaged in the selection and breeding or discovery and development of that plant variety shall be assigned to act as the owner of the state fund portion and file a protection registration application corresponding to the proportion of the state fund.

#### **Article 7. Responsibilities of applicants and representatives of applicants**

1. Application submitters shall ensure the truthfulness of information and documents provided to the plant variety protection agency in the process of registering for the protection of rights to plant varieties:

a/ All submitted documents must be signed by the applicant or his/her representative and affixed with their stamp (for organizations) for certification;

b/ All Vietnamese versions of foreign-language documents must be authentic translations of original documents.

2. Applicants shall take responsibility for all consequences and obligations arisen from transactions between their representatives and the plant variety protection agency.

3. Applicants' representatives shall take responsibility before applicants for all consequences caused by the declaration and supply of untruthful information in their

transactions with the plant variety protection agency. If causing damage, they shall pay compensations.

### **Article 8. Applications for registration for the protection of rights to plant varieties**

1. An application for registration for the protection of rights to a plant variety defined in Article 174 of the Intellectual Property Law shall be made in 2 sets and submitted to the plant variety protection agency.

2. In addition to the documents specified in Clauses 1. 2 and 3. Article 174 of the Law on Intellectual Property, an application of an organization or individual from a country which has concluded with Vietnam an agreement on the protection of rights to plant varieties defined in Clause 18. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property that has no residence address or production or business establishment in Vietnam shall be enclosed with necessary and sufficient papers to certify its/his/ her nationality or headquarters.

3. The application of an organization or individual from a country other than those which have concluded with Vietnam agreements on the protection of rights to plant varieties shall be enclosed with documents evidencing its/his/her lawfully registered residence address or office in another country which has concluded with Vietnam an agreement on the protection of rights to plant varieties.

### **Article 9. Procedures for filing applications claiming the priority right**

To enjoy the priority right, an application submitter whose application satisfies all the conditions for claiming the priority right specified in Clause 1, Article 167 of the Law on Intellectual Property shall carry out the following procedures:

1. Registering his/her claim for the priority right in the protection registration declaration according to a set form;

2. Paying the fee for consideration of claims for the priority right;

3. Within ninety (90) days after submitting an protection registration application, the application submitter shall supply the following documents:

a/ Copy(ies) of previous application(s), which is certified by the agency that has previously received that protection registration application;

b/ Evidence proving that the plant varieties registered in the two applications are the same, including the plant variety description, its photos and other relevant documents (if any);

c/ Lawful copy of the document on the transfer, inheritance or bequeathal of the priority right, if such right is received from others.

## **Article 10. Receipt of protection registration applications**

1. The plant variety protection agency shall receive applications by any of the following modes:

a/ Directly from application submitters:

b/ By post. In case an application is sent by post, the submission date is the sending date shown in the postmark;

c/ Via computer networks.

2. Upon receiving an application, the plant variety protection agency shall stamp the application to certify the submission date, record the serial number of the application in the register of received applications, and return one dossier set to the application submitter.

3. The Ministry of Agriculture and Rural Development shall guide the receipt of applications, modification, supplementation and transfer of the right to file applications and the transfer of applications for registration for the protection of rights to plant varieties.

## **Article 11. Formal examination of applications**

1. Formal examination of an application covers the following contents:

a/ Examination of the application's completeness and validity;

b/ Examination of documents enclosed with the application as prescribed in Article 174 of the Law on Intellectual Property and Articles 6, 7, 8 and 9 of this Decree.

2. An application is invalid in terms of form when it falls in any of the following cases:

a/ It lacks any of the documents specified in Clause 1, Article 174 of the Law on Intellectual Property Law, for applications without priority right claims, or any of the documents specified in Clause 1, Article 174 of the Law on Intellectual Property or has not yet gone through all procedures prescribed in Article 9 of this Decree (for applications with priority right claims):

b/ Documents enclosed with the application are made not according to set forms or information declared in the registration form is insufficient;

c/ Documents specified in Clause 2, Article 174 of the Law on Intellectual Property have not yet been translated into Vietnamese;

d/ Documents enclosed with the application are erased, torn or unreadable faded:

e/ Lacking lawful copies of relevant documents;

f/ The application is filed by a person who is unqualified to file applications. In case the registration right belongs to different organizations and individuals, the consent of all concerned organizations and individuals is required.

## 2. Handling of invalid applications:

a/ The plant variety protection agency may reject protection registration applications falling into the cases specified at Point b. Clause 2. Article 176 of the Law on Intellectual Property, and Point f. Clause 1 of this Article and notify in writing the application submitters of the rejection;

b/ For applications falling into the cases specified at Points a. b, c. d and e. Clause I of this Article, the plant variety protection agency shall comply with Points b and c. Clause 3. Article 176 of the Law on Intellectual Property;

c/ The time limit of thirty (30) days defined at Point b. Clause 3. Article 176 of the Law on Intellectual Property shall be determined based on the postmark of the post office at which the notice is received. In case the postmark is unreadable, that time limit is forty-five (45) days, counting from the date the plant variety protection agency sends the notice.

## **Article 12. Content examination of applications**

The content examination of a protection registration application specified in Article 178 of the Intellectual Property Law covers:

1. Examination of the plant variety denomination under Article 13 of this Decree;
2. Examination of the plant variety novelty under Article 14 of this Decree.
3. Examination of the technical test (DUS test) results under Article 19 of this Decree;

## **Article 13. Examination of denominations of plant varieties**

1. The plant variety protection agency shall examine the properness of the proposed denomination of a plant variety to those of plant varieties compared to the same species or a species close to the species of that plant variety which have been recognized by Vietnam or by any country which has concluded with Vietnam an agreement on the protection of rights to plant varieties under Clause 20, Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property.

2. In case the denomination of a plant variety registered for protection is improper, the plant variety protection agency shall send a notice to the application submitter, requesting the change of that denomination in accordance with regulations. Within thirty (30) days

after receiving such notice from the plant variety protection agency, the application submitter shall propose a new denomination in conformity with regulations. Past that time limit, if the application submitter fails to propose an appropriate denomination, the plant variety protection agency may reject the application.

3. If wishing to change the denomination of a plant variety, the application submitter may, before the grant of a protection certificate, request the change of the denomination and concurrently propose a new denomination for the registered plant variety and pay a fee according to regulations.

4. The plant variety protection agency shall notify all information on plant variety denominations to competent authorities of countries which have concluded with Vietnam agreements on the protection of rights to plant varieties.

5. Official denominations of plant varieties are those recognized at the time of issuance of decisions on the grant of protection certificates for those plant varieties.

#### **Article 14. Examination of novelty**

1. Examination of novelty of a plant variety registered for protection covers:

a/ Examination of information in the protection registration declaration:

b/ Considering and responding to feedback and complaints (if any) about the novelty of the plant variety registered for protection after the application is published.

2. The novelty of a plant variety registered for protection shall not be lost if, within one year before the date of submitting the application, reproductive materials of that plant variety have been transferred by the applicant or a person authorized by the applicant for testing or trial production in Vietnam to serve the recognition of that plant variety according to regulations.

#### **Article 15. Forms of technical test**

Technical tests shall be conducted in any of the following forms:

a/ Technical test conducted by a testing

organization or individual designated by the Ministry of Agriculture and Rural Development:

b/ Technical test conducted by the application submitter:

c/ Using available technical test results supplied by the application submitter;



d/ Signing a contract with an organization or individual from a UPOV member country to conduct technical test or purchase available test results.

2. The plant variety protection agency shall base itself on the registration application and practical conditions to select any of the forms of technical tests specified in Clause 1 of this Article.

3. Technical tests conducted in the Vietnamese territory must comply with the DUS testing process promulgated by the Ministry of Agriculture and Rural Development: for the case specified at Point b. Clause 1 of this Article. In case such a process has not been promulgated, these tests may follow the UPOV testing process.

4. For cases defined at Point a. Clause 1 of this Article, if the test results are unsatisfactory, the application submitter may request the organization or individual that has conducted the test or another designated testing organization or individual to conduct a second test and shall pay a fee as required. A request for a second test must be made in writing, clearly stating the reasons for and evidence supporting that request.

5. If the results of the second test show that the reasons and evidence furnished by the applicant are correct, the fee mentioned in Clause 4 of this Article shall be refunded to the application submitter.

#### **Article 16. Conditions on designated testing organizations and individuals**

1. An organization or individual designated to conduct technical tests must meet the following conditions:

a/ Having the functions of testing or researching into and creating plant varieties;

b/ Having a location and land area suitable for carrying out testing experiments according to testing requirements applicable to the plant species designated for testing:

c/ Having special-use equipment or having signed contracts with other organizations and individuals to analyze and assess criteria according to testing requirements applicable to the plant species designated for testing;

d/ Having at least 1 technician who possesses a university degree in a specialized major and a certificate of training in technical tests or has been directly engaged in technical tests for at least 2 years;

e/ Having a collection of sample varieties of widely known plant varieties of the species designated for testing.

2. The Ministry of Agriculture and Rural Development shall guide in detail the conditions on organizations and individuals designated to conduct technical tests.

## **Article 17, Conditions on technical tests conducted by application submitters**

1. Application submitters may themselves conduct technical tests of plant varieties registered for protection in the Vietnamese territory if they fully meet the following conditions:

a/ Having a location and land area suitable for carrying out testing experiments according to testing requirements applicable to the plant species to be tested;

b/ Having special-use equipment or having signed contracts with other organizations and individuals to analyze and assess criteria according to testing requirements applicable to the plant species to be tested;

c/ Having appropriate control varieties to be cultivated together with to-be-tested varieties in testing experiments;

d/ Having signed contracts with at least 1 technician who possesses a university degree in a specialized major and a certificate of training in technical test or has been directly engaged in technical tests for at least 2 years.

2. The Ministry of Agriculture and Rural Development shall guide in detail conditions for application submitters to conduct tests by themselves and the field inspection of testing experiments conducted by application submitters.

## **Article 18. Submission of sample varieties**

1. The plant variety protection agency shall request application submitters in cases subject to testing specified at Point a. Clause 1. Article 15 of this Decree to submit sample varieties to agencies conducting technical tests at least twenty (20) days before a crop season.

2. Application submitters in cases specified at Points b. c and d. Clause 1. Article 15 of this Decree are not required to submit sample varieties to the agencies conducting technical tests but are required to submit them to the sample variety-keeping agency under Clause 3 of this Article.

3. Sample varieties of registered varieties mentioned in Clause 2 of this Article shall be kept as follows:

a/ Sample varieties in seeds shall be kept at a sample variety-keeping agency designated by the Ministry of Agriculture and Rural Development;

b/ Application submitters shall keep sample varieties of asexual plant species by themselves and clearly indicate the keeping place in their protection registration applications.

4. Upon receiving a sample variety, the agency conducting technical tests or the variety-keeping agency shall check the quality of that sample variety and issue a written certification if it satisfies set requirements. If the sample variety fails to satisfy set requirements, the agency conducting technical tests or the variety-keeping agency may request the application submitter to supply the sample variety again.

5. Within twenty (20) days after receiving a sample variety, the sample variety-receiving agency shall test its quality and notify the test results to the application submitter. If the sample variety is not up to standards set for the testing process, the sample variety-receiving agency shall request the application submitters to supply the sample variety again. Within thirty (30) days after receiving the request, the application submitter shall supply a sample variety up to standards.

6. The sample variety-keeping agency shall ensure the safety of sample varieties. When properly requested by application submitters, the sample variety-keeping agency shall keep secret information on kept sample varieties.

7. The Ministry of Agriculture and Rural Development shall guide in detail the time limits for submission, management and use of sample varieties.

#### **Article 19. Appraisal of technical test results**

1. Reports on technical test results, including plant variety descriptions, shall be made according to a set form.

2. Within forty-five (45) days after the technical test completes, the agency conducting technical tests or the application submitters defined at Point b. Clause 1, Article 15 of this Decree shall send reports on technical test results to the plant variety protection agency.

3. The plant variety protection agency shall appraise technical test results under Clause 3, Article 178 of the Law on Intellectual Property. When necessary, the Ministry of Agriculture and Rural Development shall set up a specialized council to appraise technical test results. The time of appraisal must not exceed sixty (60) days after such a specialized council is set up.

#### **Article 20. Grant of plant variety protection certificates**

1. The Minister of Agriculture and Rural Development shall decide to grant plant variety protection certificates to plant varieties registered for protection which satisfy the conditions prescribed in Articles 159, 161 and 162 of the Law on Intellectual Property Law and Clauses 19 and 20, Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property. A decision on the grant of a protection certificate must be published in the Agriculture and Rural Development Ministry's plant variety magazine within thirty (30) days after its signing.

2. Past the time limit of thirty (30) days after a decision on the grant of a plant variety protection certificate is published in the plant variety magazine, if receiving no written objection or complaint about the grant of the protection certificate, the plant variety protection agency shall grant a plant variety protection certificate to the application submitter and record it in the national register of protected plant varieties.

3. Within thirty (30) days after a decision on the grant of a plant variety protection certificate is published in the plant variety magazine, if the plant variety protection agency receives written objections or complaints about the grant of the plant variety protection certificate, it shall handle them under Article 184 of the Law on Intellectual Property.

4. For a plant variety protection certificate, only one (01) original is granted.

5. Application submitters shall pay fees and charges for the grant of plant variety protection certificates according to regulations. The holder of a protection certificate which is torn, damaged or lost or changes hand may apply for re-grant or renewal thereof and shall pay a fee according to regulations.

6. The Ministry of Agriculture and Rural Development shall guide in detail procedures for the grant and re-grant of plant variety protection certificates.

#### **Article 21. Invalidation and restoration of validity of plant variety protection certificates**

1. In case a plant variety protection certificate is invalidated under Point a. Clause 1, Article 170 of the Law on Intellectual Property, the plant variety protection agency shall effect the invalidation as follows:

a/ Within thirty (30) days after receiving any third party's written request for invalidation of a plant variety protection certificate, the plant variety protection agency shall complete the verification of information in the written request and notify the plant variety protection certificate holder of the verification results. A request for invalidation of a plant variety protection certificate must be made in writing and enclosed with evidence proving that the plant variety no longer satisfies the uniformity and stability requirements as it did by time of granting, and a charge for the second test must be paid (for cases defined at Point c. Clause 1 of this Article).

b/ Past thirty (30) days after receiving a notice from the plant variety protection agency on feedbacks as prescribed at Point a. Clause 1 of this Article, if the plant variety protection certificate holder still fails to file a written objection, the Ministry of Agriculture and Rural Development shall issue a decision to invalidate that plant variety protection certificate. The time of invalidation is the date of signing a decision to invalidate the certificate and shall be published in the specialized plant variety magazine.

c/ If the plant variety protection certificate holder files a written objection, the plant variety protection agency shall request it/him/her to carry out procedures for a second test as specified at Clause 4. Article 15 of this Decree. If the results of the second test conducted by a testing agency defined at Point a, Clause 1, Article 15 of this Decree show that the plant variety in question no longer satisfies the uniformity or stability requirement as it did by the time the certificate is granted, the plant variety protection agency shall carry out invalidation procedures specified at Point b of this Clause and refund the testing charge to the party requesting invalidation of the protection certificate.

2. For cases defined at Point a. Clause 1, Article 170 of the Law on Intellectual Property, the Ministry of Agriculture and Rural Development shall, basing itself on the results of the second test, decide to restore or not to restore the validity of plant variety protection certificates.

### **Article 22. The national register**

1. Protection plant varieties shall be recorded in the national register.
2. The plant variety protection agency shall compile and keep the national register of protected plant varieties. All information on plant variety protection certificates and their changes occurred in the validity durations of plant variety protection certificates shall be recorded in the national register of protected plant varieties.
3. All organizations and individuals may request the plant variety protection agency to provide information in the national register of protected plant varieties and must pay fees and charges according to regulations.

## **Chapter III**

### **RIGHTS AND OBLIGATIONS OF PROTECTION CERTIFICATE HOLDERS**

#### **Article 23. Expansion of rights of plant variety protection certificate holders**

Methods of impacting a protected plant variety (original variety) to create a new plant variety with characteristics different from those of the original variety specified at Point 1, Clause 23, Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property include: transgenesis, back-breeding, selection of natural, artificial or somatogenic variants or selection of varied individuals from a population of the original variety.

#### **Article 24. Obligations of plant variety protection certificate holders**

According to Clause 1. Article 191 of the Law on Intellectual Property, a protection certificate holder has the following obligations:

1. To pay a remuneration to the plant variety breeder by any of the following modes:

a/ Under an agreement between them:

b/ If no agreement is reached, the remuneration paid to the breeder is 35% of the amount indicated in the contract on the assignment or transfer of rights to the plant variety, after paying all taxes, according to regulations. In case the protection certificate holder uses the protected plant variety for production or trading purposes, it/he/she shall pay to the breeder 10% of the obtained benefits, except for cases in which the protection certificate holder is the transferee;

c/ For a plant variety selected and bred or discovered and developed with state budget funds, the protection certificate holder shall pay a remuneration to the breeder according to an internal regulation. If the internal regulation contains no provision on payment of remuneration. Point b. Clause 1 of this Article shall apply;

d/ For a plant variety selected by co-breeders, the remuneration level specified in Clause 1 of this Article is the level paid to all co-breeders. Co-breeders shall reach an agreement on the sharing of the remuneration amount paid by the protection certificate holder;

e/ The obligations to pay remuneration to plant variety breeders will exist throughout the term of protection of the plant varieties, except cases in which the protection plant varieties are transferred.

2. To pay a fee for maintaining the validity of the plant variety protection certificate to the plant variety protection agency within three (3) months after the grant of the protection certificate, for the first year of validity, or within the first month of the subsequent year of validity.

3. To preserve the protected plant variety and supply information, documents and reproductive materials of the protected plant variety at the request of the plant variety protection agency: and to maintain the stability of the protected plant variety according to its characteristics described at the time of granting the plant variety protection certificate.

## **Chapter IV**

### **LICENSING AND ASSIGNMENT OF RIGHTS TO PROTECTED PLANT VARIETIES**

#### **Article 25. Contents of contracts on the licensing or assignment of rights to protected plant varieties**

1. A contract on the licensing of a protected plant variety has the following details:

a/ Full names and addresses of the licensor and licensee;

b/ Licensing grounds;

- c/ The licensing scope, covering limitations on use rights and territorial limitations;
  - d/ The licensing duration;
  - e/ The licensing price;
  - f/ Rights and obligations of the licensor and licensee;
  - g/ Liabilities for breaches of the contract.
2. A contract on the assignment of rights to a protected plant variety has the following details:
- a/ Full names and addresses of the assigner and the assignee;
  - b/ Grounds for the assignment;
  - c/ Contents of the assignment of rights to the plant variety;
  - d/ The assignment price and mode of payment;
  - e/ Rights and obligations of the assignor and assignee;
  - f/ Liabilities for breaches of the contract.

#### **Article 26. Assignment of rights to protected plant varieties**

1. After finalizing a contract on the assignment of rights to a plant variety in accordance with law, the assignor shall submit a dossier of registration for the assignment contract to the plant variety protection agency and pay a fee according to regulations.
2. A dossier of registration for a contract on the assignment of rights to a plant variety comprises:
  - a/ Two registration declaration forms, made according to a set form;
  - b/ Two original or lawful copies of the contract. Contracts must be made in Vietnamese or translated into Vietnamese, bearing the signatures of involved parties on each page or a seal on every two adjoining pages;
  - c/ The original or a lawful copy of the protection certificate;
  - d/ The written consent of co-owners, for plant varieties under joint ownership;
  - e/ Charge and fee payment documents;

f/ For plant varieties created with state budget funds, documents evidencing the compliance with Clause 1. Article 27 of this Decree are required.

3. The plant variety protection agency shall examine the registration dossier within thirty (30) days after the receiving the application in order to determine its validity.

4. In case the registration dossier is valid and flawless, the Minister of Agriculture and Rural Development shall decide to re-grant a plant variety protection certificate, recognizing the assignee as a new owner, record the assignment of the ownership rights to the plant variety protection certificate in the national register of protected plant varieties and publish such assignment in the specialized plant variety magazine;

5. In case the registration dossier is invalid or flawed, the plant variety protection agency shall notify in writing these flaws to the dossier submitter and set a time limit of thirty (30) days from the date of signing this notice for the dossier submitter to correct these flaws. Past this time limit, if the dossier submitter fails to correct these flaws, the examination of the registration dossier shall terminate.

**Article 27. Licensing or assignment of rights to plant varieties created and bred or discovered and developed with state budget funds**

1. The assignment of rights to a plant variety created or discovered and developed with state budget funds complies with the Law on Technology Transfer and guiding documents.

2. The management and use of after-tax proceeds from the licensing or assignment of rights to plant varieties created and bred or discovered and developed with state budget funds comply with following regulations:

a/ Protection certificate holders shall specify and publicize the level of remuneration paid to breeders of plant varieties in internal regulations; in case no internal regulation has been promulgated. Point b. Clause 1. Article 24 of this Decree shall be applied; a half of the remainder will be invested in scientific research and technological development while the other half will be deposited in welfare and reward funds of the unit or section directly creating protection plant varieties;

b/ For plant varieties created or discovered and developed with different capital sources, including state budget funds, the management and use of the proceeds corresponding to the state capital portion comply with Point a. Clause 2 of this Article.

**Article 28. Competence to decide on the compulsory licensing of rights to use plant varieties**

1. The Ministry of Agriculture and Rural Development shall decide on the compulsory licensing of protected plant varieties of agricultural, forest and aquatic species.



2. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with the Ministry of Health in. deciding on the compulsory licensing of protected plant varieties used for medicinal purposes.

**Article 29. Cases of compulsory licensing of protected plant varieties to meet urgent social needs**

1. Compulsory licensing of protected plant varieties to meet urgent social needs prescribed at Point a. Clause 1, Article 195 of the Law on Intellectual Property applies to cases of dealing with emergency circumstances such as natural disaster, epidemic, war and widespread environmental pollution.

2. The Ministry of Agriculture and Rural Development shall publicly announce the needs for plant varieties, denominations of plant varieties, use purposes and quantity of varieties needed, licensing scope and duration and time limit for submission of registration dossiers.

**Article 30. Principles of determining compensation levels for compulsory licensing of protected plant varieties**

The compensation level for a compulsory licensing shall be determined on the following principles:

1. The agreement between the licensor and licensee;

2. In case no agreement is reached, the compensation level shall be determined based on:

a/ The value of the latest contract for licensing of the same variety to another subject, corresponding to the licensing duration and the quantity of the compulsorily licensed variety:

b/ The profit generated by the plant variety protection certificate holder from the use of that plant variety, corresponding to the quantity of the licensed variety and the licensing duration:

c/ In case neither of the grounds specified at Points a and b of this Clause is available, the compensation level shall be determined based on actual expenses for creating that plant variety.

3. The Ministry of Agriculture and Rural Development shall request an organization or assume the prime responsibility for. and coordinate with concerned ministries and branches in. setting up councils to evaluate compensation levels for cases defined in Clause 2 of this Article on a case-by-case basis.

**Article 31. Procedures for compulsory licensing of protected plant varieties under decisions**

1. Organizations and individuals that wish to use plant varieties shall file their dossiers of registration for compulsory licensing of plant varieties under decisions as specified at Point a. Clause 1. Article 195 of the Law on Intellectual Property. Organizations and individuals that fail to reach agreement on the licensing of plant varieties or meet with obstacles in competition may file dossiers of registration for compulsory licensing of plant varieties under Points b and c. Clause 1. Article 195 of the Law on Intellectual Property.

2. A dossier for licensing of a plant variety comprises:

a/ Two written requests for compulsory licensing of a plant variety, made according to a set form, clearly stating the scope and duration of the compulsory licensing;

b/ The certificate of registration for plant variety production and trading;

c/ Requests evidencing the licensee's financial capability to pay compensation to the licensor according to regulations;

d/ Documents evidencing the request for compulsory licensing of the plant variety is supported by sound grounds as prescribed by law. for cases defined at Points b and c. Clause 1, Article 195 of the Law on Intellectual Property;

e/ A power of attorney, for cases of filing dossiers through a representative;

f/ Fee payment document.

3. The order of and procedures for compulsory licensing of a protected plant variety under Point a. Clause 1. Article 195 of the Law on Intellectual Property:

a/ The plant variety protection agency shall receive a dossier specified in Clause 2 of this Article;

b/ Within fifteen (15) days after receiving the dossier, the Ministry of Agriculture and Rural Development shall issue a decision on compulsory licensing of the plant variety and notify its decision to the licensor and licensee for compliance.

4. The order of and procedures for compulsory licensing of a protected plant variety under Point b or c. Clause 1, Article 195 of the Law on Intellectual Property:

a/ The plant variety protection agency shall receive a dossier specified in Clause 2 of this Article;

b/ Within fifteen (15) days after receiving the dossier, the Ministry of Agriculture and Rural Development shall notify the holder of the exclusive rights to use the plant variety of the request for compulsory licensing of that plant variety;

c/ Within 30 (thirty) days after the date of issuance of the notice, the holder of the exclusive rights to use the plant variety shall make a written reply;

d/ In case the holder of monopolistic rights to use the plant variety rejects the compulsory licensing request, within 15 (fifteen) days, the Ministry of Agriculture and Rural Development shall issue a written reply to the requestor;

e/ The Ministry of Agriculture and Rural Development shall issue a decision on compulsory licensing of the plant variety if the request for compulsory licensing is conformable with regulations and shall notify its decision to the licensor and licensee for compliance;

f/ If the request for compulsory licensing of a plant variety is not supported by sound grounds as specified at Point b and c. Clause 1. Article 195 of the Law on Intellectual Property, it shall issue a written reply clearly stating the reason for refusal.

### **Article 32. Modification, invalidation and cancellation of decisions on compulsory licensing of protected plant varieties**

1. According to Clause 2. Article 197 of the Law on Intellectual Property, holders of the exclusive rights to use plant varieties may request competent agencies defined in Article 29 of this Decree to modify, invalidate or cancel decisions on compulsory licensing of protected plant varieties and shall pay charges and fees according to regulations.

2. A decision on compulsory licensing of a plant variety may be:

a/ Modified upon changes in the conditions which lead to its issuance;

b/ Invalidated when the conditions which lead to its issuance no longer exist;

c/ Cancelled when there are grounds to prove that it has been issued in contravention of law.

3. A dossier of request for modification, invalidation or cancellation of a decision on compulsory licensing of a protected plant variety comprises the following documents:

a/ A written request for modification of the licensing price, the quantity of plant varieties to be licensed, licensing scope and time; or request for invalidation or cancellation of a decision on compulsory licensing of a protected plant variety;

b/ Documents evidencing that the modification, invalidation or cancellation of the compulsory licensing decision is based on grounds specified in Clause 2 of this Article without causing any harm to the licensee;

c/ A power of attorney, for requests filed via a representatives;

d/ Fee payment document.

4. Responsibilities of state agencies competent to decide on compulsory licensing of protected plant varieties:

a/ To receive dossiers specified in Clause 3 of this Article;

b/ Within fifteen (15) days after receiving a valid dossier, to examine and issue a decision to modify, invalidate or cancel the decision on compulsory licensing of a plant variety:

c/ In case the request for modification, invalidation or cancellation of a decision on compulsory licensing of a plant variety is not supported with sound grounds as specified in Article 195 of the Law on Intellectual Property, to issue a written reply clearly the reason for the refusal;

d/ To notify its decision to the licensor and licensee for compliance.

## **Chapter V**

### **REPRESENTATION OF RIGHTS TO PLANT VARIETIES**

#### **Article 33. Rights-to-plant varieties representation services**

Rights-to-plant varieties representation services include:

1. Representing organizations and individuals before competent state agencies with regard to the establishment and exercise of rights to plant varieties:
2. Providing consultancy on matters related to procedures for establishing and exercising rights to plant varieties:
3. Other services related to procedures for establishing and exercising rights to plant varieties.

#### **Article 34. Scope of rights of representatives of rights to plant varieties**

1. Rights-to-plant varieties representation service providers shall provide services within the scope of authorization and may re-authorize other rights-to-plant varieties representation service providers to exercise these rights, if so agreed in writing by the authorizer.
2. Rights-to-plant varieties representation service providers may give up activities of representing rights to plant varieties if they have lawfully transferred incomplete representation activities to other rights-to-plant varieties representation service providers.

3. A rights-to-plant varieties representative are forbidden from taking the following actions:

a/ Acting as the representative concurrently for disputing parties to rights to a plant variety;

b/ Withdrawing the application for a protection certificate, announcing the abandonment of the protection or withdrawing a complaint about the establishment of rights to plant varieties without permission of the authorizer;

c/ Cheating or forcing clients in the signing and performance of contracts on rights-to-plant varieties representation services;

d/ Using or disclosing information concerning protection registration applications not yet published by the plant variety protection agency.

### **Article 35. Responsibilities of representatives of rights to plant varieties**

1. Rights-to-plant varieties representatives shall:

a/ Notify the authorizer of charges and fees related to procedures for establishing and exercising rights to plant varieties: and representation service charges according to the charge tariff registered with the plant variety protection agency;

b/ Keep secret information and documents related to cases in which they act as representatives;

c/ Provide truthful and accurate information regarding notices and requirements of competent state agencies for the establishment and exercise of rights to plant varieties; promptly hand over protection certificates and other decisions to their clients;

d/ Protect the lawful rights and interests of the represented party by timely responding to requirements of competent state agencies regarding the establishment and exercise of rights to plant varieties;

e/ Notify state management agencies competent to establish and exercise rights to plant varieties of all changes in names and addresses of and other information on the represented party and the names, addresses and representative of the representing party.

2. Rights-to-plant varieties representation service providers shall take civil liability for persons performing rights-to-plant varieties representation services under their names.

3. Rights-to-plant varieties representation service providers and individuals registering for rights-to-plant variety representation service practice shall pay fees and charges according to regulations.

### **Article 36. Conditions for issuance of rights-to-plant varieties representation service practice certificates**

1. The Ministry of Agriculture and Rural Development shall issue rights-to-plant varieties representation service practice certificates to individuals satisfying all conditions prescribed at Point 5, Clause 21. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property.

2. Individuals shall be considered having completed a training course on the law on rights to plant varieties, they have a university or postgraduate dissertation or thesis in plant varieties.

3. The Ministry of Agriculture and Rural Development shall specify programs of training on the law on rights to plant varieties and the examination on the profession of representing rights to plant varieties.

### **Article 37. Accreditation and expunction of rights-to-plant varieties representation service providers**

1. Organizations and individuals that satisfy conditions for providing rights-to-plant varieties representation services specified at Points 2. 3. 4 and 5, Clause 21. Article 21 of the Law on Amending and Supplementing a Number of Articles of the Law on Intellectual Property shall be accredited in the national register of rights-to-plant varieties representatives and published in the specialized plant variety magazine.

2. Rights-to-plant varieties representation service providers shall be expunged from the national register of rights-to-plant varieties representatives and published in the specialized plant variety magazine in the following cases:

a/ They give up rights-to-plant varieties representation services;

b/ They no longer satisfy conditions prescribed at Points 2. 3. 4 and 5. Clause 21. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property;

c/They seriously violate provisions of Clause 3. Article 34 and Article 35 of this Decree:

d/ They commit serious mistakes when providing rights-to-plant varieties representation services, causing harms to the interests of the State and society;

e/ They abuse the capacity of rights-to-plant varieties representatives to carry out activities outside the scope of rights-to-plant varieties representation services defined in Clause 1, Article 34 of this Decree.

3. A rights-to-plant varieties representation service provider that has been expunged from the national register of rights-to-plant varieties representative may be considered for re-accreditation only after 3 years from the date of expunction.

4. The Ministry of Agriculture and Rural Development shall guide the accreditation, re-accreditation and expunction of rights-to-plant varieties representation service providers.

### **Article 38. Grant and withdrawal of rights-to-plant varieties representation service practice certificates**

1. Rights-to-plant varieties representation service practice certificates shall be granted to individuals who satisfy all conditions prescribed at Point 5, Clause 21. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property at the request of these individuals after they have paid charges and fees according to regulations.

2. A person with a rights-to-plant varieties representation service practice certificate may have his/her certificate withdrawn in the following cases:

a/ He/she gives up the profession of rights-to-plant varieties representation;

b/ He/she no longer satisfies the conditions prescribed at Point 5. Clause 21. Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property;

c/ He/she commits a serious violation of Clause 3. Article 34 or Article 35 of this Decree;

d/ He/she makes serious mistakes while providing rights-to-plant varieties representation services, causing harms to the interests of the State and society;

e/ He/she abuses the capacity of rights-to-plant varieties representatives to carry out activities outside the scope of rights-to-plant varieties representation services defined in Clause 1. Article 34 of this Decree.

3. The re-grant of a rights-to-plant varieties representation service practice certificate to a person whose certificate has-been withdrawn shall be considered only after three (3) years from the date of withdrawal.

4. The Ministry of Agriculture and Rural Development shall guide the grant and withdrawal of rights-to-plant varieties representation practice certificates.

## **Chapter VI**

### **IMPLEMENTATION PROVISIONS**

#### **Article 39. Transitional provisions**

1. Applications for plant variety protection registration filed with the plant variety protection agency before the effective date of this Decree shall be processed under relevant legal documents on protection of plant varieties effective at the time of filing.

2. Applications for plant variety protection registration filed from the effective date of this Decree comply with this Decree.

**Article 40. Effect**

This Decree takes effect on October 1, 2010, and replaces the Government's Decree No. 104/ 2006/ND-CP of June 22. 2006, detailing and guiding a number of articles of the Law on Intellectual Property regarding plant varieties.

**Article 41. Implementation provisions**

Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of provincial-level People's Committees shall implement this Decree.-

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

**Nguyen Tan Dung**