GOVERNMENT OFFICE OF VIETNAM ---	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom – Happiness ---
No. 155/VBHN-VPQH	*Hanoi, September 09, 2025*

LAW

ON INTELLECTUAL PROPERTY

Law on Intellectual Property No. 50/2005/QH11 dated November 29, 2005 of the National Assembly, which comes into force from July 01, 2006, is amended by:

1. Law No. 36/2009/QH12 dated June 19, 2009 of the National Assembly on amendments to some articles of the Law on Intellectual Property, which comes into force from January 01, 2010;

2. Law No. 42/2019/QH14 dated June 14, 2019 of the National Assembly on amendments to certain articles of the Law on Insurance Business and Law on Intellectual Property, which comes into force from November 01, 2019;

3. Law No. 07/2022/QH15 dated June 16, 2022 of the National Assembly on amendments to some articles of the Law on Intellectual Property, which comes into force from January 01, 2023;

4. Law on Science, Technology and Innovation No. 93/2025/QH15 dated June 27, 2025 of the National Assembly, which comes into force from October 01, 2025;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 dated December 25, 2001 of the Xth National Assembly, the 10th session;

This Law provides regulations on intellectual property.

Part one

GENERAL PROVISIONS

Article 1. Scope

This Law provides for copyright, copyright-related rights of copyright, industrial property rights and rights to plant varieties and the protection of such rights.

Article 2. Regulated entities

This Law shall apply to Vietnamese organizations and individuals and to foreign organizations and individuals satisfying the conditions stipulated in this Law and in any international treaty to which the Socialist Republic of Vietnam is a signatory.

Article 3. Subject matter of intellectual property rights

1. The subject matter of copyright includes literary, artistic and scientific works; The subject matter of copyright-related rights includes performances, audio recordings (phonograms), video recordings (videograms), broadcasts and encrypted program-carrying satellite signals.

2. The subject matter of industrial property rights includes inventions, industrial designs, layout designs of semiconductor integrated circuits, trade secrets, marks, trade names and GIs.

3. The subject matter of rights to plant varieties includes reproductive and harvested materials.

Article 3. Interpretation of terms

For the purposes of this Law, the terms below shall be construed as follows:

1. *Intellectual property rights* means rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and rights to plant varieties.

2. *Copyright* means rights of organizations and individuals to works they have created or own.

3. *Copyright-related rights (hereinafter referred to as "related rights")* means rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

4. *Industrial property rights* means rights of organizations and individuals to inventions, industrial designs, layout designs of semiconductor integrated circuits, trade secrets, marks, trade names, GIs and trade secrets they have created or own, and right to repression of unfair competition.

5. *Rights to plant varieties* means rights of organizations and individuals to new plant varieties they have selected and created or have discovered and developed or are granted ownership.

6. *Intellectual property right holder* means an owner of intellectual property rights or an organization or individual acquiring intellectual property rights through transfer by the owner.

7. *Work* means a creation of the mind in the literary, artistic or scientific domain expressed by whatever mode or in whatever form.

8. *Derivative work* means a work that is created on the basis of one or multiple existing works through translation from one language into another, adaptation, compilation, annotation, selection, modification, musical adaptation, and other adaptations.

9. *Published work, audio recording or video recording* means a work or audio recording or video recording which has been published with the permission of the copyright owner or related right owner in order to distribute it to the public in any form in a reasonable amount of copies.

10. *Reproduction* means the making of one or many copies of the entire or part of a work or audio or video recording by whatever mode or in whatever form.

10a. [7] *Royalty* means an amount of money paid for the creation or transfer of copyrights and related rights to a work, performance, audio or video recording, broadcast, including writers' pays and remunerations.

10b. [8] *Technological measure for right protection* means the use of any technology, equipment or component during normal operation in order to protect copyrights and related rights against certain acts that are performed without permission from the holders of such copyrights and related rights.

10c. [9] *Effective technological measure* means a technological measure for right protection that enables holders of copyrights and related rights to control the use of their works, performances, audio and video recordings, broadcasts and encrypted program-carrying satellite signals via applications that control access, protection procedures or copy control mechanism.

10d. [10] *Right management information (RMI)* means information serving the identification of works, performances, audio and video recordings, broadcasts, encrypted program-carrying satellite signals; authors, performers, holders of copyrights, holders of related rights and conditions for operation and use thereof; numbers of the above-mentioned information. Right management information shall be attached to the copies or appear together with the works, performances, audio and video recordings, broadcasts when they are transmitted to the public.

11. *Broadcasting* means the public transmission of sounds or images or both of them using wireless devices, the reproduction of sounds, images or both of them, the reproduction of sounds and images of a work, performance, audio recording, video recording or broadcast to the public, including satellite transmission, transmission of encoded signals in case the decoding devices are provided for the public or with the consent of the broadcasting organization.

11a. [12] *Communicating to the public* means the public transmission of works; sounds, images of performances; sounds, images or reproduction of sounds, images captured in audio recordings or video recordings by any means other than broadcasting.

12. *Invention* means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws.

12a. [13] *Secret invention* means an invention that has been identified as a state secret by a competent agency or organization in accordance with regulations of law on protection of state secrets.

13. *Industrial design* means the outward appearance of a product or a component for assembly of a complex product, embodied in three dimensional configurations, lines, colours or a combination of such elements and can be seen during the use of the product or complex product.

14. *Semiconductor integrated circuit (IC)* means a product in either finished or semi-finished form in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material in order to perform an electronic function. Integrated circuit is synonymous with IC, chip and micro-electronic circuit.

15. *Layout-design of semiconductor integrated circuit (below referred to as "layout- design")* means a three-dimensional disposition of circuit elements and their interconnections in a semiconductor integrated circuit.

16. *Mark* means any sign used to distinguish goods or services of different organizations or individuals.

17. *Collective mark* means a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark.

18. *Certification mark* means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.

19. ***(annulled)***

20. *Well-known mark* means a mark widely known by consumers throughout the Vietnamese territory.

21. *Trade name* means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area.

A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

22. *Geographical indication* (GI) means the sign that indicates the geographical origin of the product from a specific area, region, territory or country.

22a. [18] *Homonymous geographical indications (GIs)* are those that are spelled or pronounced alike.

23. *Trade secret* means information obtained from activities of financial or intellectual investment, which has not yet been disclosed and which is able to be used in business.

24. *Plant variety* means a population of plants belonging to a single same lowest taxonomic rank, which is morphologically uniform, stable through reproductive cycles and identifiable by the expression of traits determined by its genotype or a combination of genotypes, and distinguishable from any other plant population by the expression of at least one heritable trait.

25. *Protection title* means a document granted by a competent regulatory agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, mark or GI; or rights to a plant variety.

26. *Reproductive material* means a plant or a part thereof capable of growing into a new plant for use in reproduction or cultivation.

27. *Harvested material* means a plant or a part thereof obtained from the cultivation of a reproductive material.

Article 5. [19] *(annulled)*

Article 6. Grounds for the generation and establishment of intellectual property rights

1. Copyright shall arise at the moment a work is created and expressed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered.

2. Related rights shall arise at the moment a performance, audio and video recording, broadcast or encrypted program-carrying satellite signal is fixed or displayed without causing loss or damage to copyright.

3. Industrial property rights shall be established as follows:

a) Industrial property rights to inventions, industrial designs, layout designs and marks shall be established on the basis of decisions on granting protection titles issued by competent regulatory authorities in accordance with registration procedures specified in this Law or on the basis of recognized international registration granted accordance with international treaty to which the Socialist Republic of Vietnam is a signatory.

Industrial property rights to well-known marks shall be established on the basis of their use instead of registration procedures.

Industrial property rights to GIs shall be established on the basis of decisions on granting protection titles issued by competent regulatory authorities in accordance with registration procedures specified in this Law or in accordance with the international treaties to which the Socialist Republic of Vietnam is a signatory;

b) Industrial property rights to a trade name shall be established on the basis of lawful use thereof;

c) Industrial property rights to a trade secret shall be established on the basis of lawfully acquiring the trade secret and maintaining confidentiality thereof;

d) Rights to prevent unfair competition shall be established on the basis of competitive activities in business.

4. Rights to plant varieties shall be established on the basis of decisions to grant plant variety protection titles issued by competent regulatory authorities according to registration procedures specified in this Law.

Article 7. Limitations of intellectual property rights

1. Intellectual property right holders may only exercise their rights within the scope and term of protection provided for in this Law.

2. The exercise of intellectual property rights must neither prejudice the State's interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law. Organizations and individuals exercising intellectual property rights related to the National Flag, National Emblem, National Anthem of the Socialist Republic of Vietnam must not obstruct their use and dissemination.

3. In cases where the achievement of defense, security, people's livelihood objectives and other interests of the State and society specified in this Law needs to be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals under appropriate terms. The limitation on rights to inventions classified as state secrets shall comply with regulations of the Government.

Article 8. The State’s intellectual property policies

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property right holders and public interests; not to protect subject matters of intellectual property that is contrary to social ethics and public order and prejudicial to defense and security.

2. To encourage and promote activities of innovation and utilization of intellectual assets via provision of financial assistance, tax and credit incentives, and other investment incentives and assistance as prescribed by law in order to contribute to socio-economic development and improve the people's material and spiritual life.

3. To provide financial assistance for the receipt of transferred intellectual property rights, creation, use of intellectual property rights servicing the public interest; to encourage Vietnamese and foreign organizations and individuals to provide financial aid for innovative activities and for the protection of intellectual property rights.

4. To prioritize investment in providing training and refresher training for cadres, civil servants, public employees and other relevant entities engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.

5. To mobilize social resources for investment in raising the capacity of the intellectual property right protection system, thereby meeting requirements of socio-economic development and international economic integration.

Article 9. Rights and responsibilities of organizations and individuals in the protection of intellectual property rights

Organizations and individuals have the right to themselves take measures permitted by law to protect their intellectual property rights and are responsible for respecting the intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant laws.

Article 10. Contents of state management of intellectual property

1. Formulating and directing the implementation of strategies and policies on protection of intellectual property rights.

2. Formulating and organizing the implementation of legal documents on intellectual property.

3. Organizing an administrative apparatus for intellectual property; providing training and refresher training in intellectual property for staff.

4. Granting and carrying out other procedures related to Certificates of copyright registration or Certificates of related right registration (hereinafter referred to as “certificates of registration”), protection titles for subject matters of industrial property and plant variety protection titles.

5. Inspecting the compliance with the law on intellectual property; settling complaints and denunciations, and dealing with breaches of the law on intellectual property.

6. Providing information and statistics on intellectual property.

7. Organizing and managing intellectual property assessments.

8. Educating, communicating and disseminating knowledge about intellectual property and the law on intellectual property.

9. Conducting international cooperation on intellectual property.

Article 11. Responsibilities for state management of intellectual property

1. The Government shall negotiate an agreement on state management of intellectual property.

2. The Ministry of Science and Technology shall be responsible to the Government for taking charge and cooperating with the Ministry of Culture, Sports and Tourism, the Ministry of Agriculture and Rural Development in performing state management of intellectual property and industrial property rights.

The Ministry of Culture, Sports and Tourism shall, within their jurisdiction, perform state management of copyrights and related rights.

The Ministry of Agriculture and Rural Development shall, within their jurisdiction, perform state management of rights to plant varieties.

3. Ministries, ministerial authorities and governmental authorities shall, within their jurisdiction, cooperate with the Ministry of Science and Technology, the Ministry of Culture, Sports and Tourism, the Ministry of Agriculture and Rural Development, the provincial People's Committees in performing state management of industrial property.

4. The People's Committees at all levels shall perform state management of intellectual property in their administrative divisions within their jurisdiction.

5. The Government shall provide detailed regulations on the authority, responsibilities for state management of intellectual property of the Ministry of Science and Technology, Ministry of Culture, Sports and Tourism, the Ministry of Agriculture and Rural Development and the People's Committees at all levels.

Article 12. Intellectual property fees and charges

Organizations and individuals shall pay fees and charges when carrying out procedures related to intellectual property rights in accordance with the provisions of this Law and other related laws.

Part two

COPYRIGHT AND RELATED RIGHTS

Chapter I

CONDITIONS FOR PROTECTION OF COPYRIGHTS AND RELATED RIGHTS

Section 1. CONDITIONS FOR PROTECTION OF COPYRIGHTS

Article 12a. Authors and co-authors

1. The author is the person that directly creates the work. In case two or more persons collaborate to create a combined and complete work, they are co-authors.

2. The person who provides support, opinions or documents for another person to create a work is not an author or co-author.

3. The moral rights and economic rights to a work with co-authors must be exercised with the consent of such co-authors, unless the work has a separate part which is detachable for independent use without prejudice to the parts of the work of the co-authors or otherwise prescribed by law.

Article 13. Authors and copyright owners with works that are protected by copyright

1. Organizations and individuals with works which are protected by copyright comprise persons who directly create such works and copyright owners stipulated in articles 37 to 42 inclusive of this Law.

2. Authors and copyright owners stipulated in clause 1 of this Article shall comprise Vietnamese organizations and individuals; foreign organizations and individuals whose works were first published in Vietnam and have not been published in any other country, or were first published in a foreign country and were simultaneously published in Vietnam within 30 days after the date the works were first published in the foreign country; and foreign organizations and individuals whose works are protected in Vietnam pursuant to an international treaty on copyrights to which the Socialist Republic of Vietnam is a signatory.

Article 14. Types of works eligible for copyright protection

1. Literary, artistic and scientific works eligible for copyright protection include:

a) Literary works, scientific works, textbooks, teaching courses and other works expressed in written language or other characters;

b) Lectures, addresses and other speeches;

c) Press works;

d) Musical works;

dd) Stage works;

e) Cinematographic works and works created by a process analogous to cinematography (hereinafter all referred to as “cinematographic works”);

g) Works of fine arts, works of applied arts;

h) Photographic works;

i) Architectural works;

k) Sketches, diagrams, maps and drawings related to topography, architecture or scientific works;

l) Folklore and folk art works;

m) Computer programs and data collections.

2. Derivative works shall only be protected according to the provisions of clause 1 of this Article if such protection is not prejudicial to the copyright on the works used to create such derivative works.

3. Protected works stipulated in clauses 1 and 2 of this Article must be created personally by authors through their intellectual labour and without copying the works of others.

4. The Government shall provide detailed guidelines on the types of works stipulated in clause 1 of this Article.

Article 15. Subject matters outside the category of copyright protection

1. News that are strictly hard news.

2. Legislative documents, administrative documents and other documents related to judicial sector and official translations of such documents.

3. Processes, systems, operational methods, concepts, principles, data.

Section 2. CONDITIONS FOR PROTECTION OF RELATED RIGHTS

Article 16. Organizations and individuals eligible for protection of related rights

1. Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter referred to as “performers”).

2. Organizations and individuals who are holders of related rights specified in Article 44 of this Law.

3. Organizations and individuals who first fix sounds and images of performances or other sounds and images (hereinafter referred to as “producers of audio and video recordings).

4. Organizations which initiate and carry out broadcasting (hereinafter referred to as “broadcasting organizations”).

Article 17. Subject matters of related rights eligible for protection

1. Performances shall be protected if they fall into one of the following categories:

a) Performances are made by Vietnamese citizens in Vietnam or abroad;

b) Performances are made by foreigners in Vietnam;

c) Performances are fixed on audio and video recordings and protected according to the provisions of Article 30 of this Law;

d) They have not been fixed on audio and video recordings but have already been broadcasted and protected according to the provisions of article 31 of this Law;

dd) They are protected according to an international treaty to which the Socialist Republic of Vietnam is a signatory.

2. Audio and video recordings shall be protected if they fall into one of the following categories:

a) Audio and video recordings of producers bearing Vietnamese nationality;

b) Producers' audio and video recordings protected according to an international treaty to which the Socialist Republic of Vietnam is a signatory.

3. Broadcasts and encrypted program-carrying satellite signals shall be protected if they fall into one of the following categories:

a) Broadcasts and encrypted program-carrying satellite signals of broadcasting organizations bearing Vietnamese nationality;

b) Broadcasts and encrypted program-carrying satellite signals of broadcasting organizations protected according to an international treaty to which the Socialist Republic of Vietnam is a signatory.

4. Performances, audio and video recordings, broadcasts and encrypted program-carrying satellite signals shall only be protected according to the provisions of clauses 1, 2 and 3 of this Article on the conditions that they are not prejudicial to copyright.

Chapter II

CONTENTS OF, LIMITATIONS ON AND DURATION OF COPYRIGHT AND RELATED RIGHTS

Section 1. CONTENTS OF, LIMITATIONS ON AND DURATION OF COPYRIGHTS

Article 18. Copyrights

Copyrights in works regulated in this Law shall comprise moral rights and economic rights.

Article 19. Moral rights

Moral rights of authors include:

1. The right to name their works.

Authors are entitled to transfer the right to name their works to other organizations and individuals as prescribed in Clause 1 Article 20 of this Law;

2. The right to have their real names or pseudonyms attached to their works; the right to have their real names or pseudonyms announced when their works are published or used;

3. The right to publish or permit other persons to publish their works;

4. The right to protect the integrity of their works; and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honor and reputation of the author.

Article 20. Economic rights

1. Economic rights of authors include:

a) The right to create derivative works;

b) The right to publicly perform their works, either directly or via audio and video recordings or any technical means, at a location accessible to the public, where the public cannot select the time and part of the works.

c) The right to directly or indirectly reproduce the entire or part of the work using any means or form, except for the cases specified in Point a Clause 3 of this Article;

d) The right to distribute, import for public distribution by sale or other forms of transfer of ownership of the originals or copies of their works captured in tangible mediums, except for the cases specified in Point b Clause 3 of this Article;

dd) The right to broadcast, communicate to the public their works by wireless or wired devices, electronic information networks or other technical means, including making the work available to the public in such a way that they can access it at a place and time of their choosing;

e) The right to lease the original or copies of cinematographic works and computer programs, unless these computer programs are not the main subject matter of the lease.

2. The rights specified in Clause 1 of this Article shall be exclusively exercised by the author or copyright owner, or by another organization or individual under authorization of the author or copyright owner as prescribed by this Law.

When any organization or individual exercises one, several or all of the rights stipulated in Clause 1 of this Article and Clause 3 Article 19 of this Law, such organization or individual must ask for permission from the copyright owner, pay royalties and other material benefits to the copyright owner, except in the cases specified in Clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Article. In case a derivative work is created in a manner that affect the moral rights specified in Clause 4 Article 19 of this Law, the author's written consent must be obtained.

3. The copyright owner does not have the right to prohibit other organizations and individuals from:

a) Reproducing the work only for exercising other rights prescribed by this Law; temporarily reproducing the work following a technological process during the operation of the devices in order to transmit, within a network between third parties via intermediates or legally use the work not for independent economic purposes and the copy that is automatically deleted and cannot be recovered;

b) Subsequent distribution, import for distribution of the original or copy of a work the distribution of which has been carried out or permitted by its copyright owner.

Article 21. Copyright in cinematographic works and theatrical works

1. Copyright in cinematographic works:

a) Screenwriters and directors have the rights specified in Clauses 1, 2 and 4 Article 19 of this Law;

b) Persons who work as cameramen; music composers; art designers; sound, lighting, effect designers, actors and actresses, and persons who perform other creative tasks in the making of cinematographic works shall have the rights stipulated in Clause 2 Article 19 of this Law;

c) Organizations and individuals that invest finance or material and technical facilities in the production of cinematographic works shall be holders of the rights stipulated in Clause 3 Article 19 and Clause 1 Article 20 of this Law, unless otherwise agreed in writing; have the obligations to pay royalties and other material benefits (if any) under contracts to the persons specified in Point a and Point b of this Clause;

d) Organizations and individuals that invest finance or material and technical facilities in the production of cinematographic works may negotiate with the persons mentioned in Point a of this Clause about naming and editing the works;

dd) In case the script or a musical work in a cinematographic work is used independently, the author or copyright owner of the script or musical work will have independent copyright on such script or musical work, unless otherwise agreed in writing.

2. Copyright on theatrical works:

a) Authors of theatrical scripts have the rights specified in Clauses 1, 2 and 4 Article 19 of this Law;

b) Authors of literature works, musical works, theatrical directors, musical conductors, choreographers, stage and costume designers, and persons who perform other creative tasks in the making of theatrical works shall have the rights stipulated in Clause 2 Article 19 of this Law;

c) Organizations and individuals that invest finance or material and technical facilities in the production of theatrical works shall be holders of the rights stipulated in Clause 3 Article 19 and Clause 1 Article 20 of this Law, unless otherwise agreed in writing; have the obligations to pay royalties and other material benefits (if any) under contracts to the persons specified in Point a and Point b of this Clause;

d) Organizations and individuals that invest finance or material and technical facilities in the production of theatrical works may negotiate with the persons mentioned in Point a of this Clause about naming and editing the works;

dd) In case a literature work or musical work in a theatrical work is used independently, the author or copyright owner of the literature work or musical work will have independent copyright on such literature work or musical work, unless otherwise agreed in writing.

Article 22. Copyrights in computer programs and data collections

1. A computer program means a set of instructions expressed in the form of commands, codes, diagrams and other forms, which, when incorporated in a device operated using a computer programming language, can enable the computer or device to perform tasks or achieve specific results. The computer program shall be protected in the same manner as a literature work, whether expressed in source code or machine code.

The author and copyright owner of the computer program is entitled to reach a written mutual agreement on repair and upgrade of the program. The organization or individual having the legal right to use copies of the computer program is allowed to create a backup copy for use in case the former is deleted, damaged or otherwise unusable but cannot be transferred to any other organization or individual.

2. Data collection means a set of data selected or arranged in a creative way and expressed in electronic or other forms.

Copyright protection of a data collection shall not extend to the data itself and must not be prejudicial to the copyright in the data itself.

Article 23. Copyrights in folklore and folk art works

1. Folklore and folk art work means a collective creation based on the traditions of a community or individuals aimed at reflecting the ambitions of such community and expressing in a form appropriate to the cultural and social characteristics, standards and conveying standards and values of such community through imitation or other means. Folklore and folk art works shall comprise:

a) Folk tales, lyrics and riddles;

b) Folk songs and melodies;

c) Folk dances, plays, rites and games;

d) Folk art products including graphics, paintings, sculpture, musical instruments, architectural models and other artistic expressions in any material form.

2. Organizations and individuals using folklore and folk art works must cite the origins of the folklore and folk art works, and must ensure that the authentic value of such folklore and folk art works is preserved.

Article 24. Copyrights in literary, artistic and scientific works

The Government shall issue specific regulations governing the protection of copyrights in the literary, artistic and scientific works stipulated in clause 1 Article 14 of this Law.

Article 25. Copyright exceptions

1. Cases in which a published work may be used without permission or payment of royalties except provision of information about the author’s name and origin of the work:

a) The user makes a copy for non-commercial research and/or private study. This does not apply if the copy is created using a copying device;

b) The user makes a fair dealing with a portion of the work using a copying device for non-commercial research and/or private study;

c) The user makes a fair dealing with the work to use as an illustration in a lecture, printed matter, performance, audio recording or video recording, broadcast for teaching purposes. This may include sharing the work in a local network, provided technical measures are taken to make sure that it is only accessible to the teacher and the learners in that session;

d) The user uses the work in public service activities of regulatory agencies;

dd) The user make a fair dealing with citations of the work without misrepresenting the author's views to use as comments, introductions or illustrations in the user's own work; to write newspaper or periodical articles, use in broadcast programs or documentaries;

c) The user uses the work in library operations not for commercial purposes, including reproducing works being stored in libraries for preservation, provided these copies are marked as archived copies and have restricted access in accordance with regulations of law on library and archiving; makes a fair dealing with a portion of the work using a copying device serving another person's research or study; reproduces or sends the archived work on the inter-library network, provided the number of concurrent readers do not exceed the number of copies held by these libraries, unless otherwise is permitted by the right holder. This does not apply if the work has been digitally released;

g) The user performs a theatrical work, musical work, dance work or another type of artistic performance or promotional activities at a cultural event for non-commercial purposes;

h) The user photographs, telecasts a fine art, architectural, photographic or applied art work displayed at a public place for introduction of such work for non-commercial purposes;

i) The user imports copies of another person's work for personal use, not for commercial purposes;

k) The user reproduces the work by republishing it on newspaper articles or periodical articles, broadcasts or otherwise publicly present the lecture or speech or talk within an appropriate scope for the purpose of news production, unless the author announces he/she holds the copyright;

l) The user takes a photograph, makes an audio or video recording, or broadcasts an event in which the work is heard or seen for the purpose of news production;

m) A person who has visual impairment or any impairment that render him/her unable to read printed text or read the work in a conventional way (hereinafter referred to as "disabled person") and his/her carer who satisfies the conditions specified by the Government uses the work in accordance with Article 25a of this Law.

2. The use of a work in the manners specified in Clause 1 of this Article must not contradict the normal use of the work and must not cause unreasonable damage to the lawful interests of the author or copyright owner.

3. Regulations on reproduction specified in Clause 1 of this Article do not apply to architectural works, fine art works, computer programs, collection and compilation of works.

4. The Government of Vietnam shall elaborate this Article.

Article 25a. Copyright exceptions applied to disabled persons

1. The disabled person and his/her carer may reproduce, perform and communicate the work in the form of an accessible copy when he/she has lawful access to the original work or copy thereof. An accessible copy is a copy that is presented in a manner or format that is accessible to disabled persons. It is to be used solely for personal purposes of the disabled person and may include appropriate technical adjustments for the disabled person to access the work.

2. Organizations that satisfy the conditions of the Government are entitled to reproduce, distribute, perform, communicate accessible copies of works when they have lawful access to the original works or copies thereof and operate for non-commercial purposes.

3. Organizations that satisfy the conditions of the Government are entitled to distribute or communicate accessible copies of works to counterparts in accordance with international treaties to which the Socialist Republic of Vietnam is a signatory without permission from the copyright owners.

4. Organizations that satisfy the conditions of the Government are entitled to distribute or communicate accessible copies of works to disabled persons overseas in accordance with international treaties to which the Socialist Republic of Vietnam is a signatory without permission from the copyright owners, provided before the distribution or communication, these organizations do not know or have no reason to know that these accessible copies will be used by any other persons other than disabled persons.

5. Disabled persons, their carers or organizations that satisfy the conditions of the Government are entitled to import accessible copies of works from counterparts in accordance with international treaties to which the Socialist Republic of Vietnam is a signatory in the interest of disabled persons without permission from the copyright owners.

6. The Government of Vietnam shall elaborate this Article.

Article 26. Limitations of copyrights

1. Cases where a published work may be used without permission, but royalties have to be paid and information about the author's name and origin of the work must be provided include:

a) Broadcasting organizations using published works or works that have been fixed on published audio or video recordings with permission of the copyright owners for commercial purposes for broadcasting with sponsorships, advertising or any form of revenue collection are not required to obtain permission but must pay royalties to the copyright owners for the period of use. Levels of royalties and methods of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government.

Broadcasting organizations using published works or works that have been fixed on published audio or video recordings with permission of the copyright owners for commercial purposes for broadcasting without sponsorships, advertising or any form of revenue collection are not required to obtain permission but must pay royalties to the copyright owners for the period of use as prescribed by the Government;

b) In case works have been fixed on published audio or video recordings with permission of the copyright owners for commercial purposes, organizations and individuals can use such recordings in their business operations without permission but must pay royalties to the copyright owners under agreement as soon as the work is used. If no agreement is reached, regulations of the Government shall be complied with. The Government of Vietnam shall elaborate this Point.

2. The use of a work in the manners specified in Clause 1 of this Article must not contradict the normal use of the work and must not cause unreasonable damage to the lawful interests of the author or copyright owner.

3. The use of works in the cases stipulated in clause 1 of this Article shall not apply to cinematographic works.

4. Regulations of the Government shall apply to Vietnamese organizations and individuals that enjoy incentives for developing countries regarding the right to translate works in foreign languages into Vietnamese and the right to reproduce them for non-commercial education and research according to international treaties to which the Socialist Republic of Vietnam is a signatory.

5. Organizations and individuals that wish to use published works of Vietnamese organizations or individuals but fail to find or identify their copyright owners, regulations of the Government shall apply.

Article 27. Duration of copyright

1. The moral rights stipulated in clauses 1, 2 and 4 of Article 19 of this Law shall be protected for an indefinite term.

2. The moral rights stipulated in clause 3 Article 19 and the economic rights stipulated in Article 20 of this Law shall have the following duration of copyright:

a) Copyright in a cinematographic work, photographic work, work of applied art or anonymous work shall expire at the end of the period of seventy five years from the year in which it is first published; copyright in a cinematographic work, photographic work or work of applied art which remains unpublished for twenty five years from the date of fixation shall expire at the end of the period of one hundred years from the date of fixation. Copyright in an anonymous work, when the identity of the author becomes known, shall expire at the end of the period calculated under Point b of this Clause;

b) Copyright in a work not specified at Point a of this Clause shall expire at the end of the period of fifty five years from the year in which the author dies; Copyright in a work of joint authorship/a work of co-authorship shall expire at the end of the period of fifty years from the death of the last co-author;

c) The period of copyright protection specified in points a and b of this clause shall end at 24:00 on December 31 of the year in which the copyright expires.

Article 28. Infringement of copyright

Copyright in a work is infringed by a person who

1. infringes the moral rights stipulated in Article 19 of this Law.

2. infringes the economic rights stipulated in Article 20 of this Law.

3. fails to perform or fully perform the duties specified in Article 25, 25a and 26 of this Law.

4. deliberately destroys or de-activates the effective technological measures implemented by the author or the copyright owner to protect the copyright in his or her work in order to commit the acts specified in this Article and Article 35 of this Law.

5. produces, distributes, imports, offers, sells, promotes, advertises, leases, or stores equipment, products or components for commercial purposes; introduces or provides services, knowing or having reason to believe that the equipment, products or components are manufactured or used for deactivation of effective technological measures for protection of copyright.

6. deliberately deletes, removes or changes RMI without permission from the author or copyright owner, knowing or having reason to believe that such act will encourage, facilitate or conceal copyright infringement as prescribed by law.

7. deliberately distributes, imports copies of the work for distribution, broadcasts, communicates or provides copies of works to the public, knowing or having reason to believe that RMI has been deleted, removed or changed without permission from the copyright owner; knowing or having reasons to believe that such act will encourage, facilitate or conceal copyright infringement as prescribed by law.

8. fails to comply with or fully comply with regulations in order to be exempt from legal liability of intermediary service providers prescribed in Clause 3 Article 198b of this Law.

Section 2. CONTENTS OF, LIMITATIONS ON AND DURATION OF RELATED RIGHTS

Article 29. Performers' rights

1. Performers have the moral rights and economic rights to their performances in accordance with this Law.

If the performer is not the holder of rights to the performance, the performer will have the moral rights specified in Clause 2 of this Article; the holder of rights to the performance will have the economic rights specified in Clause 3 of this Article.

2. Moral rights include:

a) The right to have the name acknowledged when audio recordings or video recordings are released or the performance is broadcasted;

b) The right to have the integrity of the performance imagery protected; to prevent others from modifying, editing or distorting the work in any way that is prejudicial to the honor and reputation of the performer.

3. Economic rights of a person include the exclusive right to exercise or authorize other organizations and individuals to exercise the following rights:

a) The right to fix their live performance in audio or video recordings;

b) The right to directly or indirectly reproduce all or part of their performance which have been fixed in audio or video recordings in any means or forms, except the cases specified in Point a Clause 5 of this Article;

c) The right to broadcast or communicate to the public their unfixed performance in a manner that is accessible to the public, except in cases where such performance is intended for broadcasting;

d) The right to distribute, import for public distribution by sale or other forms of transfer of ownership of the original or copy of the fixation of their performance captured in a tangible medium, except for the cases specified in Point b Clause 5 of this Article;

dd) The right to lease out the original or copy of their performance which has been fixed in audio or video recordings to the public for commercial purposes, even after it has been distributed by the performer or with the permission from the performer;

e) The right to broadcast or communicate to the public the fixation of their performance, including publicly providing the fixation of their performance in the manner that is accessible to the public at a time and location of their choosing.

4. When any organization or individual exercises one, several or all of the rights stipulated in Clause 3 of this Article, such organization or individual must ask for permission from the holder of rights to the performance, pay royalties and other material benefits to the holder of rights to the performance as prescribed by law or under agreement if this is not prescribed by law, except in cases specified in Clause 5 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

5. The holder of rights to the performance does not have the right to prohibit other organizations and individuals from:

a) Reproducing the performance only for exercising other rights prescribed by this Law; temporarily reproducing the work following a technological process during the operation of the devices in order to transmit, within a network between third parties via intermediates or legally use the performance that has been fixed in audio or video recordings not for independent economic purposes and the copy that is automatically deleted and cannot be recovered;

b) Subsequent distribution, import for distribution of the original or copy of the fixation of the performance the distribution of which has been carried out or permitted by the rightholder.

Article 30. Rights of producers of audio and video recordings

1. The producer of an audio or video recording shall have the exclusive right to exercise or authorize others to exercise the following rights:

a) The right to reproduce all or part of their audio or video recording in any means or forms, except the cases specified in Point a Clause 3 of this Article;

b) The right to distribute, import for public distribution by sale or other forms of transfer of ownership of the original or copy of their audio or video recording captured in a tangible medium, except for the cases specified in Point b Clause 3 of this Article;

c) The right to lease out the original or copy of their audio or video recording, even after it has been distributed by the producer or with the permission of the producer;

d) The right to broadcast or communicate to the public their audio or video recording, including publicly providing the audio or video recording in the manner that is accessible to the public at a time and location of their choosing.

2. When any organization or individual exercises one, several or all of the rights stipulated in Clause 1 of this Article, such organization or individual must ask for permission from the holder of rights to the audio or video recording, pay royalties and other material benefits (if any) to the holder of rights to the audio or video recording as prescribed by law or under agreement if this is not prescribed by law, except in cases specified in Clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

3. The holder of rights to the audio or video recording does not have the right to prohibit other organizations and individuals from:

a) Reproducing the audio or video recording only for exercising other rights prescribed by this Law; temporarily reproducing the work following a technological process during the operation of the devices in order to transmit, within a network between third parties via intermediates or legally use the audio or video recording that has been fixed in audio or video recordings not for independent economic purposes and the copy that is automatically deleted and cannot be recovered;

b) Subsequent distribution, import for distribution of the original or copy of the audio or video recording the distribution of which has been carried out or permitted by the rightholder.

Article 31. Rights of broadcasting organizations

1. The broadcasting organization shall have the exclusive right to exercise or authorize others to exercise the following rights:

a) The right to broadcast or re-broadcast their broadcasts;

b) The right to directly or indirectly reproduce the entire or part of the fixation of their broadcast using any means or form, except for the cases specified in Point a Clause 3 of this Article;

c) The right to fix their broadcast;

d) The right to distribute, import for public distribution by sale or other forms of transfer of ownership of the fixation of their broadcast captured in a tangible medium, except for the cases specified in Point b Clause 3 of this Article;

2. When any organization or individual exercises one, several or all of the rights stipulated in Clause 1 of this Article, such organization or individual must ask for permission from the holder of rights to the broadcast, pay royalties and other material benefits to the holder of rights to the broadcast as prescribed by law or under agreement if this is not prescribed by law, except in cases specified in Clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

3. The holder of rights to the broadcast does not have the right to prohibit other organizations and individuals from:

a) Reproducing the broadcast only for exercising other rights prescribed by this Law; temporarily reproducing the work following a technological process during the operation of the devices in order to facilitate the transmission within a network between third parties via intermediates or to legally use the broadcast not for independent economic purposes and the copy that is automatically deleted and cannot be recovered;

b) Subsequent distribution, import for distribution of the fixation of the broadcast the distribution of which has been carried out or permitted by the rightholder.

Article 25. Exceptions to related rights

1. Cases in which a published performance, audio recording, video recording or broadcast may be used without permission or payment of royalties except provision of information about it:

a) A portion of the performance is recorded for non-commercial teaching purposes or news production purposes;

b) A portion of the performance, audio recording, video recording or broadcast is reproduced by the user for non-commercial research and/or private study or is reproduced on behalf of a disabled person for non-commercial research and/or private study;

c) A portion of the performance, audio recording, video recording or broadcast is reasonably reproduced for non-profit private education, unless the performance, audio recording, video recording or broadcast has been published for teaching purposes;

d) It is reasonably cited for news production purposes;

dd) The broadcasting organization creates a temporary copy for broadcasting while entitled to the broadcasting rights.

2. The use of the performance, audio recording, video recording or broadcast mentioned in Clause 1 of this Article must not contradict the normal use of the performance, audio recording,

video recording or broadcast and must not cause unreasonable damage to lawful interests of the performer, the producer of the audio or video recording, or the broadcasting organization.

3. The Government of Vietnam shall elaborate this Article.

Article 33. Limitations of related rights

1. Cases in which a published audio recording or video recording may be used without permission or payment of royalties except provision of information about it:

a) The organization or individual that uses a published audio or video recording for commercial purposes for broadcasting with sponsorships, advertising or any form of revenue collection is not required to obtain permission but must pay royalties to the performer, the producer of the audio or video recording, and the broadcasting organization for the period of use. Levels of royalties and methods of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government.

The organization or individual that uses a published audio or video recording for commercial purposes for broadcasting without sponsorships, advertising or any form of revenue collection is not required to obtain permission but must pay royalties to the performer, the producer of the audio or video recording, and the broadcasting organization for the period of use as prescribed by the Government;

b) The organization or individual that uses a published audio or video recording for commercial purposes is not required to obtain permission but must pay royalties to the performer, the producer of the audio or video recording, and the broadcasting organization for the period of use. If no agreement is reached, regulations of the Government shall be complied with. The Government of Vietnam shall elaborate this Point.

2. The use of the audio recording, video recording mentioned in Clause 1 of this Article must not contradict the normal use of the performance, audio recording, video recording or broadcast and must not cause unreasonable damage to lawful interests of the performer, the producer of the audio or video recording, or the broadcasting organization.

3. Organizations and individuals that wish to use published audio and video recordings of Vietnamese organizations or individuals but fail to find or identify the holders of related rights, regulations of the Government shall apply.

Article 34. Duration of related rights

1. The performer’s rights shall expire at the end of the period of fifty years from the year following the year in which the performance is fixed.

2. The rights of the producer of an audio or video recording shall expire at the end of the period of fifty (50) years from the year following the year of publication, or fifty (50) years from the year following the year in which the unpublished audio or video recording is fixed.

3. The rights of broadcasting organization shall expire at the end of the period of fifty (50) years from the year following the year in which the broadcast is made.

4. c) The period of protection of related rights specified in clauses 1, 2 and 3 of this Article shall end at 24:00 on December 31 of the year in which the related rights expire.

Article 35. Infringement of related rights

Related rights to a work is infringed by a person who

1. infringes performers' rights stipulated in Article 29 of this Law.

2. infringes rights of producers of audio or video recordings stipulated in Article 30 of this Law.

3. infringes rights of broadcasting organizations stipulated in Article 31 of this Law.

4. fails to perform or fully perform the duties specified in Articles 32 and 33 of this Law.

5. deliberately destroys or de-activates the effective technological measures implemented by the holder of related rights to protect their rights to the work in order to commit the acts specified in this Article and Article 28 of this Law.

6. produces, distributes, imports, offers, sells, promotes, advertises, leases, or stores equipment, products or components for commercial purposes; introduces or provides services, knowing or having reason to believe that the equipment, products or components are manufactured or used for deactivation of effective technological measures for protection of related rights.

7. deliberately deletes, removes or changes RMI without permission from the holder of related rights, knowing or having reason to believe that such act will encourage, facilitate or conceal infringement of related rights as prescribed by law.

8. deliberately distributes, imports copies of the work for distribution, broadcasts, communicates or provides performances, copies of the performances that have been fixed or radio or video recordings or broadcasts to the public, knowing or having reason to believe that RMI has been deleted, removed or changed without permission from the holder of related rights; knowing or having reasons to believe that such act will encourage, facilitate or conceal infringement of related rights as prescribed by law.

9. Manufactures, assembles, transforms, distributes, imports, exports, offers, sells or leases out a device or system, knowing or having reasons to believe that such device or system illegally decodes or helps illegally decode encrypted program-carrying satellite signals.

10. deliberately receives or continuously distributes encrypted program-carrying satellite signals after the signals have been decoded without permission from the legal distributor.

11. fails to comply with or fully comply with regulations in order to be exempt from legal liability of intermediary service providers prescribed in Clause 3 Article 198b of this Law.

Chapter III

HOLDERS OF COPYRIGHTS AND HOLDERS OF RELATED RIGHTS

Article 26. Holders of copyrights

Copyright owner is an organization or individual that holds one, several or all of the rights stipulated in Clause 3 Article 19 and Clause 1 Article 20 of this Law.

Article 37. Copyright owners being authors

Authors who use their own time, finance and material or technical facilities to create works shall have the moral rights stipulated in Article 19 and the economic rights stipulated in Article 20 of this Law.

Article 38. Copyright owners being co-authors

1. Co-authors who use their own time, finance and material or technical facilities to jointly create works shall share the moral rights stipulated in Article 19 and the economic rights stipulated in Article 20 of this Law to such work.

2. A co-author prescribed in clause 1 of this Article who has jointly created a work, a separate part of which is detachable for independent use without prejudice to the parts of the work of the other co-authors, shall have the rights to such separate part stipulated in Articles 19 and 20 of this Law.

Article 39. Copyright owners being organizations and individuals who assign tasks to authors or who enter into contracts with authors

1. Any organization which assigns an author belonging to the organization to create a work shall be the holder of the rights stipulated in Article 20 and clause 3 Article 19 of this Law, unless otherwise agreed.

2. Any organization or individual which enters into a contract with the author creating the work shall be the holder of the rights stipulated in Article 20 and clause 3 Article 19 of this Law, unless otherwise agreed.

Article 40. Copyright owners being heirs

Any organization or individual who inherits copyrights in accordance with inheritance laws shall be the holder of the rights stipulated in Article 20 and clause 3 Article 19 of this Law.

Article 41. Copyright owners being transferees of rights

1. Any organization or individual that acquires one, several or all of the rights stipulated in Clause 3 Article 19 and Clause 1 Article 20 of this Law through transfer as agreed in the contract shall be the copyright owner.

2. Organizations and individuals that are managing anonymous works or are assignees of rights to anonymous works shall have rights of holders until their authors or co-authors are identified. When the authors or co-authors are identified, the holders of copyrights on these works, rights and obligations related to copyrights of the managing organizations and individuals or assignees of rights shall be determined in accordance with this Law and relevant laws.

Article 42. The State as holders of copyrights and holders of related rights

1. The State represents the ownership of copyrights and related rights in the following cases:

a) Works, performances, audio recordings, video recordings, broadcasts created as a result of the commissioning, task assignment, bidding by state-funded agencies.

b) Works, performances, audio recordings, video recordings, broadcasts whose copyrights and related rights are transferred to the State by copyright owners, related right holders and co-owners of copyrights and co-owners of related rights;

c) Works, performances, audio recordings, video recordings, broadcasts, during the protection period, the copyright owner, related right owners, copyright co-owners, related right co-owners of which dies without heirs, or the heirs refuse the inheritance or the heirs are not entitled to the inheritance.

2. The State represents the management of copyrights and related rights in the following cases:

b) Works, performances, audio recordings, video recordings, broadcasts whose owners and co-owners of copyrights and related rights are not identifiable according to this Law;

b) Anonymous works, until their authors, co-authors, owners or co-owners of copyrights are identified, except in the cases specified in Clause 2 Article 41 of this Law.

3. Agencies that use state budget for commissioning, task assignment and bidding for the creation of works, performances, audio recordings, video recordings, broadcasts shall represent the State's ownership of their copyrights and related rights in the cases specified in Point a Clause 1 of this Article.

Copyright and related right authorities are the State's representatives in exercising the rights of copyright owners and related right holders in the cases specified in Point b, Point c Clause 1 and Clause 2 of this Article.

4. The Government of Vietnam shall elaborate Clause 1 and Clause 2 of this Article; specifies the rates and methods of payment of royalties in the cases specified in Clause 1 and Clause 2 of this Article.

Article 43. Works, performances, audio recordings, video recordings and broadcasts in the public domain

1. A work will pass into the public domain after the copyrights on it expire according to Clause 2 Article 27 of this Law. A performance, audio recording, video recording or broadcast will pass into the public domain after the related rights to it expire according to Article 34 of this Law.

2. All organizations and individuals shall be entitled to use the works, performances, audio recordings, video recordings and broadcasts stipulated in clause 1 of this Article but must respect the moral rights of the authors and performers stipulated in this Law and relevant laws.

3. The Government of Vietnam shall elaborate the use of works, performances, audio recordings, video recordings and broadcasts in the public domain.

Article 44. Related right holders

1. Related right holders include:

a) Performers who use their time, make a financial investment in or use their material and technical facilities to give performances shall be the holders of rights to such performance, unless otherwise agreed with relevant parties.

b) Producers of audio and video recordings who use their time and make a financial investment in or use their material and technical facilities to produce such audio and video recordings shall be the holders of rights to such recordings, unless otherwise agreed with relevant parties.

c) Broadcasting organizations shall be the holders of rights to their broadcasts, unless otherwise agreed with relevant parties.

2. Related right holders that are organizations that assign tasks to organizations and individuals belonging to such organizations to give performances, produce audio recordings, video recordings or broadcasts shall be the holders of corresponding rights specified in Clause 3 Article 29, Clause 1 Article 30 and Clause 1 Article 31 of this Law, unless otherwise agreed.

3. Related right holders that are organizations and individuals that sign contracts with other organizations and individuals to give performances, produce audio recordings, video recordings or broadcasts shall be the holders of corresponding rights specified in Clause 3 Article 29, Clause 1 Article 30 and Clause 1 Article 31 of this Law, unless otherwise agreed.

4. Any organization or individual that inherits related rights as prescribed in inheritance laws shall be the holder of corresponding rights stipulated in Clause 3 Article 29, Clause 1 Article 30 and Clause 1 Article 31 of this Law.

5. Any organization or individual that acquires one, several or all of the rights through transfer as agreed in the contract shall be the holder of one, several or all of the corresponding rights stipulated in Clause 3 Article 29, Clause 1 Article 30 and Clause 1 Article 31 of this Law.

Article 44a. Principles for determination and division of royalties

1. The co-owners of copyrights and related rights shall reach an agreement on division of royalties in proportion to their investment in or contribution to the whole work, performance, audio recording, video recording or broadcast, and in a manner that is suitable for the way it is used.

2. When an audio or video recording is used according to Clause 1 Article 26 and Clause 1 Article 33 of this Law, royalty shall be divided in a ratio agreed upon by the copyright owner, the performer, holder of related rights to such recording; in case such an agreement cannot be reached, regulations of the Government shall apply.

3. Royalties shall be determined within brackets and schedules on the basis of types, forms, quality, quantity or frequency of use; in a manner that ensure harmony of interests of the creators, users and the public; suitable for socio-economic conditions of the current time and location of use.

Chapter IV

TRANSFER OF COPYRIGHTS AND RELATED RIGHTS

Section 1. CONVEYANCE OF COPYRIGHTS AND RELATED RIGHTS

Article 45. General provisions on assignment of copyrights and related rights

1. Assignment of copyright and related rights means the transfer by copyright owners or related right holders of the ownership of the rights stipulated in clause 3 of Article 19, Article 20, clause 3 Article 29, Article 30 and Article 31 of this Law to other organizations and individuals pursuant to a contract or in accordance with a relevant provision of law.

2. Authors shall not be permitted to assign the moral rights stipulated in Article 19 of this Law, except for the right of publication. Performers shall not be permitted to assign the moral rights stipulated in clause 2 Article 29 of this Law.

3. Where a work, performance, audio or video recording or broadcast is under joint ownership, the assignment thereof must be agreed upon by all co-owners. In a case of joint ownership of a work, performance, audio or video recording or broadcast which is composed of separate parts detachable for independent use, copyright owners or related right holders may assign their copyrights in or related rights to their separate parts to other organizations or individuals.

Article 46. Contracts for assignment of copyright or related rights

1. A contract for the assignment of copyrights or related rights must be made in writing and include the following principal contents:

a) Names and addresses of the assignor and the assignee;

b) Grounds for the assignment;

c) Price and method of payment;

d) Rights and obligations of the parties;

dd) Liability for breach of agreement.

2. The execution, amendment, termination or cancellation of a contract for the assignment of copyrights or related rights must comply with the provisions of the Civil Code.

Section 2. LICENSING OF COPYRIGHTS AND RELATED RIGHTS

Article 47. General provisions on licensing of copyrights and related rights

1. Licensing of copyrights or related rights means the grant of permission by the copyright owners or related right holders for other organizations or individuals to use, for a definite term, one, several or all of the rights stipulated in Clause 1 and Clause 3 Article 19, Clause 1 Article 20, Clause 3 Article 29, Clause 1 Article 30 and Clause 1 Article 31 of this Law.

2. Authors shall not be permitted to license the moral rights stipulated in Clause 2 and Clause 4 Article 19 of this Law. Performers shall not be permitted to license the moral rights specified in Clause 2 Article 29 of this Law.

3. Where a work, performance, audio or video recording or broadcast is under joint ownership, the licensing thereof must be agreed upon by all co-owners. In a case of joint ownership of a work, performance, audio or video recording or broadcast which is composed of separate parts detachable for independent use, copyright owners or related right holders may grant licensing of their copyrights in or related rights to their separate parts to other organizations or individuals.

4. Any organization or individual acquiring copyrights or related rights through licensing may license such rights to another organization or individual after obtaining permission from the copyright owner or related right holder.

Article 48. Contracts for licensing of copyrights or related rights

1. A contract for the licensing of copyrights or related rights must be made in writing and include the following principal contents:

a) Names and addresses of the licensor and the licensee;

b) Grounds for the licence;

c) Scope of the licence;

d) Price and method of payment;

dd) Rights and obligations of the parties;

e) Liability for breach of agreement.

2. The execution, amendment, termination or cancellation of a contract for the licensing of copyrights or related rights must comply with the provisions of the Civil Code.

Chapter V

CERTIFICATES OF COPYRIGHT REGISTRATION AND RELATED RIGHT REGISTRATION

Article 49. Registration of copyrights and related rights

1. Registration of copyrights or related rights means the filing of an application by an author, copyright owner or related right holder with the competent regulatory authority in order to record information on the author, the work, the copyright owner and the related right holder.

2. The filing of an application for grant of a certificate of registration shall not be a compulsory prerequisite for entitlement to copyrights or related rights in accordance with the provisions of this Law.

3. Organizations and individuals who have been granted certificates of registration shall not bear the burden of proving such copyright or related rights in a dispute, unless proven otherwise.

4. Applicants shall pay fees and charges when applying for grant, re-grant, renewal or invalidation of certificates of registration.

5. The Government of Vietnam shall elaborate the conditions and procedures for issuance of certificates of registration.

Article 49. Applications for registration

1. Authors, owners of copyright and related rights may directly submit applications for registration or authorize other organizations or individuals to submit them, whether in person, by post or via the National Public Service Portal to copyright and related right authorities.

2. An application for registration shall include:

a) The declaration form for registration of copyright or related rights.

The declaration form must be written in Vietnamese and contain information about the applicant, the author, the owner(s) of copyright or related rights; completion time; summarized content of the work, performance, audio recording, video recording or broadcast; the name of the author, copyright owner, the work used for creation of the derivative work if the work to be registered is a derivative work; time, location and form of publication; information about re-issue or

replacement (if any); commitment to take responsibility for information provided in the declaration form. The declaration must bear the signature or fingerprints of the author, copyright owner, related right holder, unless they are not physically capable of signing or appending fingerprints.

The Minister of Culture, Sports and Tourism shall prescribed the declaration form for registration of copyright or related rights;

b) Two copies of the work to be registered for copyright, or two copies of the fixation of the subject matter to be registered for related rights;

c) Power of attorney if the applicant is an authorized person;

d) Documents proving ownership of rights through self-creation or assignment of creative works, execution of creative contracts, inheritance of rights, transfer of rights;

dd) Written consent of the co-authors in the case of a work under joint authorship;

e) Written consent of the co-owners if the copyright or related rights are jointly owned.

3. The documents stipulated in Points c, d, dd and e clause 2 of this Article must be written in Vietnamese. Documents in other languages must be translated into Vietnamese.

Article 51. Authority to issue certificates of registration

1. The copyright and related right authorities shall have the right to issue certificates of registration.

2. The regulatory authorities competent to issue certificates of registration shall have the right to re-issue, replace or cancel such certificates.

3. (***annulled***)

4. The Ministry of Culture, Sports and Tourism shall prescribe the form of certificates of registration.

Article 52. Time limit for issuance of certificates of registration

Within 15 working days from the receipt of a valid application, the copyright and related right authority shall issue a certificate of registration to the applicant, or notify the applicant in writing in the case where the application is rejected.

Article 53. Validity of certificates of registration

1. Certificates of registration shall be valid throughout the entire territory of Vietnam.

2. Any certificate of registration which was granted by the copyright and related right authorities before the effective date of this Law shall continue to remain valid.

Article 54. Official recording and publication of registered copyright and registered related rights

1. Certificates of registration shall be officially recorded in the National Register of Copyright and Related Rights.

2. Decisions on issuance, re-issuance, replacement or invalidation of certificates of registration shall be published in the Official Gazette on copyright and related rights.

Article 55. Reissuance, replacement and invalidation of certificates of registration

1. In case the certificate of registration is lost or damaged, the competent authority specified in Clause 2 Article 51 of this Law shall reissue it within 07 working days from the receipt of the valid application. In case of change in the holder of copyright or related rights, information about the work, author, copyright owner; information about the subject matter of related rights, owner of related rights, the competent authority specified in Clause 2 Article 51 of this Law shall replace the certificate of registration within 12 working days from the receipt of the valid application.

In case the application is rejected, the copyright and related right authority shall issue a written notice and provide explanation for the rejection.

2. In case the person to whom the certificate of registration is granted is not the author, holder of copyright or related rights or the registered work, audio recording, video recording or broadcast is ineligible for protection, the competent authority specified in Clause 2 Article 51 of this Law shall invalidate the certificate.

3. Any organization or individual that discovers that a certificate of registration was granted against this Law shall be entitled to request the copyright and related right authority to invalidate the certificate.

4. The competent authority shall issue the decision to invalidate the certificate of registration within 15 working days from the receipt of any of the following documents:

a) An effective ruling or judgment of the court, or decision of an authority having the power to take actions against intellectual property rights infringement stipulated in Article 200 of this Law on invalidation of the certificate of registration;

b) A written request by the organization or individual that was granted the certificate of registration for invalidation of the issued certificate.

5. The Government of Vietnam shall elaborate this Article.

Chapter VI

COLLECTIVE RIGHTS MANAGEMENT ORGANIZATIONS (CMOs), COPYRIGHT AND RELATED RIGHT CONSULTING FIRMS OR SERVICE PROVIDERS

Article 56. CMOs

1. A CMO is a voluntary, self-financed, non-profit entity established pursuant to an agreement between authors, copyright owner and related right holders and operating under legal regulations to manage assigned copyrights and related rights and is subject to state management by the Ministry of Culture, Sports and Tourism regarding collective rights management.

2. CMOs shall perform the following activities based on written authorization from authors, copyright owners and related right holders:

a) Managing copyright and related rights, negotiating licenses, collecting and redistributing royalties and other financial benefits from the permitted exercising of authorized rights;

b) Protecting members' legitimate rights and interests and facilitating dispute resolution through mediation.

3. CMOs have the following rights and obligations:

a) Ensure transparency in their management and administration towards competent authorities; the authorizing authors, copyright owners, related right owners (hereinafter referred to as "authorizers"), and users;

b) Compile a list of authorizers; a list of works, performances, audio recordings, video recordings and broadcasts under their management; specify the scope of authorization, effect of the authorization contracts, plans and results of royalty collection and distribution;

c) Formulate a royalty schedule and decide methods of payment; submit them to the Minister of Culture, Sports and Tourism for approval. The Minister of Culture, Sports and Tourism shall approve the royalty schedule and methods of payment on the basis of the principles specified in Clause 3 Article 44a of this Law;

d) Collect and distribute royalties in accordance with regulations in their charters and the power of attorney containing specific the rates or percentages, methods and time of royalty distributions of the authorizers; ensure transparency as prescribed by law.

The collection and distribution of royalties from corresponding foreign counterparts or international organizations shall comply with regulations of law on foreign exchange management;

dd) Retain part of the collected royalties to cover its operating costs on the basis of agreement with the authorizers. The retained amount shall be adjusted on the basis of agreement with the authorizers and can be a percentage of the collected amount;

e) Distribute royalties obtained from licensing the use to the authors, copyright owners and related right holders after deducting the costs mentioned in Point dd of this Clause;

g) Submit annual and irregular reports on the collective rights management to competent authorities; facilitate inspections by competent authorities;

h) Carry out activities with the aim of supporting culture development, encouragement of creativity and other social activities;

b) Seek cooperation, enter into reciprocal agreements with counterparts of international organizations and national organizations on protection of copyright and related rights;

k) Decide their organizational structure; make sure the authorizers are entitled to self-nominate, nominate candidates to its managerial positions.

4. In case a work, audio recording, video recording or broadcast involves rights and interests of multiple authorized CMOs, one of them may be collectively selected to negotiate the licensing, royalty collection and distribution in accordance with regulations in their charters and power of attorney.

5. In case a CMO fails to find or contact the authorizer or authorized co-author or authorized co-owner of copyright or authorized co-holder of related rights to distribute royalties after 5 years, these amounts shall be transferred to a competent authority for management after deducting the costs of management and search in accordance with this Law and relevant laws.

After receiving these amounts, the competent authority shall continue to find the authorizer or authorized co-author or authorized co-owner of copyright or authorized co-holder of related rights for 5 more years. If the authorizer or authorized co-author or authorized co-owner of copyright or authorized co-holder of related rights or person with relevant rights and obligations cannot be found or contacted after this 5-year period, these amounts shall be used for creativity encouragement, promotion and strengthening of copyright and related right protection. In case the authorizer or authorized co-author or authorized co-owner of copyright or authorized co-holder of related rights or person with relevant rights and obligations is found within the 5-year period, these amounts shall be paid to such person after deducting the costs of management and search.

6. The Government of Vietnam shall elaborate this Article.

Article 57. Copyright and related right consulting firms or service providers

1. Copyright and related right consulting firms or service providers shall be established and operate under the provisions of law.

2. Copyright and related right consulting firms or service providers shall perform the following activities based on the request from authors, copyright owners and related right holders:

a) Provide consultancy on issues related to the law on copyright and related rights;

b) Carry out, on behalf of and pursuant to authorization from the authors, copyright owners and related right holders, procedures for filing applications for registration of copyright and related rights;

c) Participate under authorization in other legal relationships on copyright, related rights and protection of legitimate rights and interests of authors, copyright owners and related right holders.

Part three

INDUSTRIAL PROPERTY RIGHTS

Chapter VII

CONDITIONS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

Section 1. CONDITIONS FOR PROTECTION OF INVENTIONS

Article 58. General conditions for inventions eligible for protection

1. An invention shall be eligible for protection in the form of the grant of an invention patent when it satisfies the following conditions:

a) It is novel;

b) It is of an inventive step;

c) It is susceptible of industrial application.

2. Unless an invention is common knowledge, it shall be protected in the form of the grant of a utility solution patent when it satisfies the following conditions:

a) It is novel;

b) It is susceptible of industrial application.

Article 59. Subject matters ineligible for protection as inventions

The following subject matters are ineligible for protection as inventions:

1. Scientific discoveries or theories, mathematical methods;

2. Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games and doing business; computer programs.

3. Presentations of information.

4. Solutions of aesthetic characteristics only.

5. Plant varieties, animal breeds.

6. Processes of plant or animal production which are principally of a biological nature, other than microbiological processes;

7. Human and animal disease prevention methods, diagnostic and treatment methods.

Article 60. Novelty of inventions

1. An invention is considered novel if it is not one of the following cases:

a) It is publicly disclosed by use or by means of a written description or any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the invention registration application.

b) It is disclosed in another invention registration application which has an earlier filing date or priority date but is announced on or after such date.

2. An invention shall be considered not to have been publicly disclosed if it is known only to a limited number of people who are obliged to keep the invention confidential.

3. An invention shall not be deemed to have lost its novelty if it is publicly disclosed by a person entitled to file for a patent as prescribed in Article 86 of this Law, or by a person who has obtained information about the invention directly or indirectly from that person, provided that the patent application is filed in Vietnam within twelve months from the date of disclosure.

4. The provisions in Clause 3 of this Article also apply to inventions disclosed in applications for industrial property registration or industrial property protection titles disclosed by the industrial property authorities for industrial property in cases where the disclosure does not comply with legal regulations or the applications are filed by persons without the right to file the applications.

Article 61. Inventive step of inventions

1. An invention shall be deemed inventive if, based on technical solutions already publicly disclosed by use or by means of a written description or any other form either inside or outside Vietnam prior to the filing date or the priority date as applicable of the application for registration of the invention, the invention constitutes inventive progress and cannot be easily created by a person with average knowledge in the art.

2. Technical solution is that an invention disclosed in accordance with Clause 3 and 4, Article 60 of this Law is not used as a basis for evaluation of the inventive step of that invention.

Article 62. Industrial applicability

An invention shall be deemed to have industrial applicability if it is possible to carry out mass manufacture or production of products or to repeatedly apply the process described in the invention and obtain consistent results.

Section 2. CONDITIONS FOR PROTECTION OF INDUSTRIAL DESIGNS

Article 63. General conditions for industrial designs to be eligible for protection

An industrial design shall be eligible for protection when it satisfies the following conditions:

1. It is novel;

2. It is of a creative nature;

3. It is susceptible of industrial application.

Article 64. Subject matters ineligible for protection as industrial designs

The following subject matters are ineligible for protection as industrial designs:

1. Outward appearance of a product which is necessarily due to the technical features of the product.

2. Outward appearance of civil or industrial construction works.

3. Shape of a product which is invisible during the use of the product.

Article 65. Novelty of industrial designs

1. An industrial design shall be deemed to have novelty if it significantly differs from other industrial designs which have been publicly disclosed by use or by means of written descriptions or in any other form either inside or outside Vietnam prior to the filing date or the priority date, as applicable, of the application for registration of the industrial design.

2. Two industrial designs shall not be deemed to be significantly different from each other if they are only different in features of appearance which are not easily noticeable and memorable and which cannot be used to distinguish such industrial designs overall.

3. An industrial design shall be deemed to be not yet publicly disclosed if it is known only to a limited number of people who are obliged to keep the industrial design confidential.

4. An industrial design shall not lose its novelty if it is published in the following cases, provided that the application for registration of the industrial design is filed within six (6) months from the date of disclosure:

a) It is published by another person without permission from the person having the right to register it as defined in Article 86 of this Law;

b) It is published in the form of a scientific presentation by the person having the right to register it as defined in Article 86 of this Law;

c) It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in Article 86 of this Law.

Article 66. Creativity of industrial designs

An industrial design shall be deemed to be creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the application for registration of the industrial design, the industrial design cannot be easily created by a person with average knowledge in the corresponding field.

Article 67. Industrial applicability of industrial designs

An industrial design shall be deemed to be susceptible of industrial application if it can be used as a model for mass manufacture of products with the outward appearance embodying such industrial design by industrial or handicraft methods.

Section 3. CONDITIONS FOR PROTECTION OF LAYOUT DESIGNS

Article 68 General conditions for layout designs to be eligible for protection

A layout design shall be eligible for protection when it satisfies the following conditions:

1. It is original.

2. It is commercially novel.

Article 69. Subject matters ineligible for protection as layout designs

The following subject matters shall be ineligible for protection as layout designs:

1. Principles, processes, systems and methods operated by semiconductor integrated circuits.

2. Information or software contained in semiconductor integrated circuits.

Article 70. Originality of layout designs

1. A layout design shall be deemed to be original if it satisfies the following conditions:

a) It is the result of its author's creative labour;

b) It was not widely known among creators of layout designs or manufacturers of semiconductor integrated circuits at the time of its creation.

2. A layout design which is a combination of elements and common interconnections shall be deemed to be original only if such combination, taken overall, is original pursuant to the provisions of clause 1 of this article.

Article 71. Commercial novelty of layout designs

1. A layout design shall be deemed to be commercially novel if it has not yet been commercially exploited anywhere in the world prior to the filing date of the application for registration.

2. A layout design shall not lose its commercial novelty if the application for registration of the layout design is filed within two years from the date it was commercially exploited for the first time anywhere in the world by the person who has the right to register it as defined in article 86 of this Law or by his/her authorized person.

3. Commercial exploitation of a layout design as stipulated in clause 2 of this article means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of such layout design, or of a commodity containing such semiconductor integrated circuit.

Section 4. CONDITIONS FOR PROTECTION OF MARKS

Article 72. General conditions for marks to be eligible for protection

A mark shall be eligible for protection when it satisfies the following conditions:

1. It is a visible sign in the form of letters, words, drawings, images, holograms, or a combination thereof, represented in one or more colours or sound marks that can be graphically presented;

2. It is capable of distinguishing goods or services of the mark owner from those of other subjects.

Article 73. Signs ineligible for protection as marks

The following signs shall be ineligible for protection as marks:

1. Any sign that is identical or confusingly similar to the national flags, national emblems, national anthems of the Socialist Republic of Vietnam and other countries, or the International;

2. Signs identical with or confusingly similar to emblems, flags, armorial bearings, abbreviated names or full names of regulatory authorities, political organizations, socio-political organizations, socio- politico-professional organizations, social organizations or socio-professional organizations or with international organizations, unless permitted by such bodies or organizations.

3. Signs identical with or confusingly similar to real names, aliases, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries.

4. Signs identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by such organizations.

5. Signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services;

6. Any sign that has the inherent shape of the product or a shape that is the result of the technical properties of the product;

7. Any sign that contains a copy of the work, unless it is permitted by the work owner.

Article 74. Distinctiveness of marks

1. A mark shall be deemed to be distinctive if it consists of one or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into the cases stipulated in clause 2 of this article.

2. A mark shall be deemed to be indistinctive if it is a sign falling into one of the following categories:

a) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such sign has been widely used and recognized as a mark before the filling of the application;

b) Conventional signs or symbols, pictures or common names in any language of goods or services that are normal shapes of the goods or part of the goods, normal shapes of the packaging or containers of the goods which have been regularly used and widely recognized before the filling of the application;

c) Signs indicating time, place and method of production; category, quantity, quality, properties, ingredients, use, value or other characteristics descriptive of goods or services, or signs that significantly increase the value of the goods, except where such sign has acquired distinctiveness by use before the filing of the application;

d) Signs describing the legal status and business domain of business entities;

dd) Signs indicating the geographical origin of goods or services, except where such sign has been widely used and recognized as a mark before the filing of the application, or registered as a collective mark or certification mark as stipulated in this Law;

e) Signs that are identical or confusingly similar to marks of other organizations and individuals whose identical or similar goods and services are eligible for protection on the basis of the earlier filling date or priority date, as applicable, of the application for mark registration, even if the application for mark registration is filed under an international treaty to which the Socialist Republic of Vietnam is a signatory, unless the mark registration certificate is terminated according to Point d Clause 1 Article 95 or invalidated according to Article 96 following the procedures specified in Point b Clause 3 Article 117 of this Law;

g) Signs identical or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;

h) Signs that are identical or confusingly similar to marks of other organizations and individuals whose identical or similar goods and services are eligible for protection and the mark registration of which has been terminated for no more than three years, except in cases where the mark registration certificate is terminated according to Point d Clause 1 Article 95 following the procedures specified in Point b Clause 3 Article 117 of this Law;

i) Signs that are identical or confusingly similar to another person's mark recognized as a well-known mark before the filing date of the goods or services that are identical or similar to the goods or services bearing the well-known mark, or the filing date of dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration was aimed at taking advantage of the reputation of the well-known mark;

k) Signs identical or similar to another person's trade name currently in use if the use of such sign may cause confusion to consumers as to the origin of goods or services;

l) Signs identical or similar to a protected GI (GI) if the use of such sign may mislead consumers as to the geographical origin of goods;

m) Signs identical with, containing or being translated or transcribed from protected GIs for wines or spirits if such sign has been registered for use with respect to wines and spirits not originating from the geographical areas bearing such GIs;

n) Signs that are identical or insignificantly different from another person's industrial design which has been protected on the basis of an application for registration of an industrial design with a filing date or priority date earlier than that of the application for mark registration;

o) Any sign that is identical or confusingly similar to the name of a plant variety that has been protected in Vietnam if such sign is registered for a plant variety of the same or similar species, or for products obtained from such plant variety;

p) Any sign that is identical or confusingly similar to the name, image of a character or imagery in another person's copyrighted work and which has been well known before the filing date, unless it is permitted by the work owner.

Article 75. Criteria for evaluation of whether or not a mark is well known

Whether a mark is well known shall be decided according to some or all of the following criteria: [89]

1. The number of relevant consumers who were aware of the mark by purchase, sale or use of goods or services bearing the mark, or from advertising;

2. The territorial area in which goods or services bearing the mark are circulated;

3. Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods sold or services provided;

4. Duration of continuous use of the mark;

5. Wide reputation of goods or services bearing the mark;

6. Number of countries protecting the mark;

7. Number of countries recognizing the mark as a well-known mark;

8. Assignment price, licensing price, or investment capital contribution value of the mark.

Section 5. CONDITIONS FOR PROTECTION OF TRADE NAMES

Article 76. General conditions for trade names to be eligible for protection

A trade name shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business domain and area.

Article 77. Subject matters ineligible for protection as trade names

Names of regulatory authorities, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations and other entities not involved in business operations shall not be protected as trade names.

Article 78. Distinctiveness of trade names

A trade name shall be deemed to be distinctive when it satisfies the following conditions:

1. It consists of a proper name, except where the proper name was widely known by use.

2. It is not identical or confusingly similar to a trade name already used by another person in the same business domain and area.

3. It is not identical or confusingly similar to another person's mark or a GI which was protected before the date of use of such trade name.

Section 6. CONDITIONS FOR PROTECTION OF GIS (GIs)

Article 79. General conditions for GIs to be eligible for protection

1. A GI shall be eligible for protection when it satisfies the following conditions:

a) The product bearing the GI originates from the area, administrative division, territory or country corresponding to such GI.

b) The product bearing the GI has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, administrative division, territory or country corresponding to such GI.

2. Homonymous GIs that satisfy the conditions specified in Clause 1 of this Article will be protected if they are actually used in a manner that does not mislead consumers about geographical origins of the products bearing the GIs and ensures fair treatment among their manufacturers.

Article 80. Subject matters ineligible for protection as GIs

The following subject matters shall be ineligible for protection as GIs:

1. Names and indications that have become common name of goods widely accepted by consumers in Vietnam;

2. GIs of foreign countries where they are not, or no longer, protected or used.

3. Any GI that is identical or similar to a protected mark or a pending mark with the earlier filling date or priority date of the application for registration, the use of which may mislead consumers as to commercial origin of goods;

4. GIs which mislead consumers as to the true geographical origins of products bearing such GIs.

Article 81. Reputation, quality and characteristics of products bearing GIs

1. Reputation of products bearing a GI shall be determined on the basis of the trust of consumers in such products to the extent such products are widely known to and selected by consumers.

2. Quality and characteristics of products bearing a GI shall be determined by one or more qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical means or by experts with appropriate testing methods.

Article 82. Geographical conditions relevant to GIs

1. Geographical conditions relevant to a GI means natural and human factors that determine the reputation, quality and characteristics of products bearing such GI.

2. Natural factors shall include climatic, hydrological, geological, topographical and ecological factors and other natural conditions.

3. Human factors shall include skills and expertise of producers, and traditional production processes of administrative divisions.

Article 83. Geographical areas bearing GIs

Geographical areas bearing GIs must have their boundaries accurately determined by words and by maps.

Section 7. CONDITIONS FOR PROTECTION OF TRADE SECRETS

Article 84. General conditions for trade secrets to be eligible for protection

A trade secret shall be eligible for protection when it satisfies the following conditions:

1. It is neither common knowledge nor easily obtainable.

2. When used in business activities, the trade secret will create for its holder advantages over those who do not hold or use it.

3. The owner of the trade secret maintains its secrecy by necessary means so that the secret will not be disclosed nor be easily accessible.

Article 85. Subject matters ineligible for protection as trade secrets

The following confidential information shall be ineligible for protection as trade secrets:

1. Personal identification secrets;

2. State management secrets;

3. National defense and security secrets.

4. Other confidential information unrelated to business.

Chapter VIII

ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS AS TO INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GIs

Section 1. REGISTRATION OF INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GIs

Article 86. Right to register inventions, industrial designs and layout designs

1. The following organizations and individuals shall have the right to register inventions, industrial designs and layout designs:

a) Authors who have created inventions, industrial designs or layout designs by their own labor and at their own expenses;

b) Organizations or individuals investing funds and material resources for authors in the form of task assignment or contract work; organizations or individuals assigned to manage genetic resources providing genetic resources and traditional knowledge about genetic resources under access and benefit-sharing agreements, except in cases where the parties have other agreements.

2. Where multiple organizations and individuals have jointly created or invested in the creation of an invention, industrial design or layout design, such organizations and individuals shall all have the registration right which may only be exercised with the consensus of all.

3. An organization or individual that has the registration right as stipulated in this article may transfer such right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, even where a registration application has already been filed.

Article 86a. [95] *(annulled)*

Article 87. Right to register marks

1. Organizations and individuals may register marks to be used for goods they produce or services they provide.

2. Organizations and individuals that conduct lawful commercial activities may register marks for products that they are marketing but are produced by others, provided that the producers neither use such marks for their products nor object to such registration.

3. Lawfully established collective organizations may register collective marks to be used by their members under regulations on use of collective marks. For signs indicating geographical origins of goods or services, organizations that have registration rights are collective organizations of organizations or individuals engaged in production or trading in such administrative divisions. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration must be permitted by competent regulatory authorities.

4. Organizations with the function of controlling and certifying the quality, properties, origin or other relevant criteria of goods or services may register certification marks, provided that they are not engaged in the production or trading of these goods or services. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration thereof must be permitted by competent regulatory authorities.

5. Two or more organizations or individuals may jointly register a mark in order to become its co-owners if they satisfy the following conditions:

a) This mark is used in the name of all co-owners or used for goods or services which are produced or traded with the participation of all co-owners;

b) The use of this mark does not mislead consumers as to the origin of goods or services.

6. Persons having the registration right defined in Clauses 1, 2, 3, 4 and 5 of this Article, including those having filed registration applications, may transfer the registration right to other organizations or individuals in the form of written contracts, bequest or inheritance under law, provided that the transferees satisfy the relevant conditions for the persons having the registration right.

7. For a mark protected in a country being a signatory to an international treaty which prohibits the representative or agent of a mark owner to register such mark and to which the Socialist Republic of Vietnam is also a signatory, this representative or agent is not permitted to register the mark without the consent of the mark owner, except in cases of justified reasons.

Article 88. Right to register GIs

1. The State has the right to register GIs of Vietnam. The State permits organizations and individuals producing products bearing GIs, collective organizations representing such organizations or individuals, and administrative bodies of administrative divisions to which such GIs pertain, to exercise the right to register GIs. Organizations and individuals that exercise the right to register GIs shall not become owners of such GIs.

2. Foreign organizations and individuals that are holders of rights to GIs under the law of the countries of origin shall have the right to register such GIs in Vietnam

Article 89. Methods of filing an application for registration of establishment of industrial property rights

1. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.

2. Foreign individuals not permanently residing in Vietnam and foreign organizations and individuals without production or business establishments in Vietnam shall file applications for

registration of establishment of industrial property rights through their lawful representatives in Vietnam.

3. Applications for registration of establishment of industrial property rights may be submitted physically to industrial property right authorities or electronically via online systems.

Article 89a. Security control regarding inventions before applying for registration overseas

1. Inventions in technical fields that affect national defense and security, created in Vietnam and the registration of which is the right of a Vietnamese citizen who resides in Vietnam or an organization established under Vietnam's Law may only be filed for invention registration overseas if the application for invention registration has been filed in Vietnam in order to undergo security control.

2. The Government of Vietnam shall elaborate clause 1 of this Article.

Article 90. The first-to-file principle

1. In case many applications are filed for registration of the identical inventions or similar inventions, or for registration of industrial designs identical with or insignificantly different from one another, the protection title may only be granted to the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

2. In case there are many applications filed by different persons for registration of identical or confusingly similar marks for identical or similar products or services, or in case there are many applications filed by the same person for registration of identical marks for identical products or services, the protection title may only be granted for the mark in the valid application with the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection title.

3. In case multiple applications for registration specified in Clauses 1 and 2 of this Article satisfy the conditions for the grant of a protection title and have the same earliest priority or filing date, the protection title may only be granted for the subject matter of a single application out of these applications under an agreement of all applicants. Without such agreement, all relevant subject matter of these applications will be refused for the grant of a protection title.

Article 91. Priority principle

1. An applicant for registration of an invention, industrial design or mark may claim priority on the basis of the first application for registration of protection of the same subject matter if the following conditions are fully satisfied:

a) The first application was filed in Vietnam or in a country being a signatory to an international treaty containing regulations on priority rights of which the Socialist Republic of Vietnam is also a signatory, or in a country which has agreed with Vietnam to apply such provisions;

b) The applicant is a citizen of Vietnam or of a country defined in point a of this clause, who resides or has a production or business establishment in Vietnam or in a country defined in point a of this clause;

c) The claim for the priority right is clearly stated in the application and a copy of the first application certified by the receiving agency is enclosed;

d) The application is filed within the time limit provided for in an international treaty to which Vietnam is a signatory.

2. In an application for registration of an invention, industrial design or mark, the applicant may claim the priority right on the basis of multiple different applications with the earlier filling date, provided that the similarity between the contents of the applications with the earlier filling date and the present application is indicated.

3. Application for industrial property registration which enjoys priority right shall bear the priority date being the filing date of the first application.

Article 92. Protection titles

1. A protection title shall recognize the owner of the invention, industrial design, layout design or mark (hereinafter all referred to as "protection title owner"); the author of the invention, industrial design or layout design; and the subject matter, scope and term of protection.

2. A protection title of a GI shall record the organization managing such GI, the protected GI, the peculiar characteristics of products bearing such GI, and the peculiar characteristics of geographical conditions and geographical areas bearing such GI.

3. Protections title shall include an invention patent, utility solution patent, industrial design patent, certificate of registration of layout design of semiconductor integrated circuits, certificate of mark registration and certificate of GI registration.

Article 93. Validity of protection titles

1. Protection titles shall be valid throughout the entire territory of Vietnam.

2. An invention patent shall be valid from the grant date until the end of twenty (20) years after the filing date.

3. A utility solution patent shall be valid from the grant date until the end of ten (10) years after the filing date.

4. An industrial design patent shall be valid from the grant date until the end of five (5) years after the filing date and may be renewed for two consecutive terms, each of five (5) years.

5. A certificate of registration of layout design of semiconductor integrated circuits shall be valid from the grant date until the earliest date among the following:

a) The end of ten (10) years after the filing date;

b) The end of ten (10) years after the date the layout design was first commercially exploited anywhere in the world by a person with the registration right or his or her authorized person;

c) The end of fifteen (15) years after the date of creation of the layout design.

6. A certificate of mark registration shall be valid from the grant date until the end of ten (10) years after the filing date and may be renewed for many consecutive terms, each of ten (10) years.

7. A certificate of GI registration shall have indefinite validity starting from the grant date.

8. International mark registration with Vietnam designation under Madrid Agreement and Madrid Protocol for the international registration of marks is effective from the day on which the industrial property right authority issues a decision to grant protection to such internationally registered mark, or on the day succeeding the ending date of the 12-month period from day the international office issues the notification that such internationally registered mark designates Vietnam, whichever comes first. The effective period of international mark registration shall comply with Madrid Agreement and Madrid Protocol.

9. International registration of industrial design with Vietnam designation under the Hague Agreement Concerning the International Deposit of Industrial Designs is effective from the day on which the industrial property right authority issues a decision to grant protection to such internationally registered industrial design, or from the day succeeding the ending date of the 12-month period from day the international office announces registration of such industrial design, whichever comes first. The effective period of international mark registration shall comply with Hague Agreement.

Article 94. Maintenance and extension of validity of protection titles

1. In order to maintain the validity of an invention patent or a utility solution patent, the owner must pay a validity maintenance fee or charge.

2. In order to have the validity of an industrial design patent or a certificate of registered mark extended, the owner must pay a validity extension fee or charge.

3. Fee or charge rates and procedures for maintaining or extending validity of protection titles shall be stipulated by the Government.

Article 95. Termination of protection titles

1. A protection title shall be wholly or partially terminated in the following cases:

a) The owner fails to pay the stipulated validity maintenance or extension fee or charge;

b) The owner declares relinquishment of the industrial property rights;

c) The owner no longer exists, or the owner of a certificate of mark registration is no longer engaged in business activities and does not have a lawful heir;

d) The mark has not been used by its owner or his/her authorized person without justifiable reason for five (5) consecutive years prior to a request for termination, except where use is commenced or resumed at least three (3) months before the request for termination;

dd) The owner of a certificate of collective mark registration fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;

e) The owner of a certificate of certification mark registration violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;

g) The geographical conditions that create the reputation, quality or special characteristics of products bearing a GI have changed resulting in the loss of such reputation, quality or characteristics of products.

h) The use of the protected mark for goods and services by the mark owner or his/her authorized person causes users to be misled about the nature, quality or geographical origin of such goods or services;

i) The protected mark has become a common name of the goods or service registered for the mark;

k) The foreign GI is no longer protected in its country of origin.

2. In case the owner of an invention patent or utility solution patent fails to pay the validity maintenance fee or charge within the stipulated time limit, such protection title shall, upon the expiration of such time limit, be automatically terminated as from the first day of the next year, for which the validity maintenance fee or charge has not been paid.

In case the owner of the protection title of a mark or industrial design fails to pay the validity maintenance fee or charge within the stipulated time limit, such protection title shall, upon the expiration of such time limit, be automatically terminated as from the first day of next validity period, for which the validity maintenance fee or charge has not been paid.

The industrial property right authority shall record such termination in the National Register of Industrial Property and publish it in the Official Gazette of Industrial Property.

3. In case the owner of a protection title declares relinquishment of the industrial property right as stipulated in Point b Clause 1 of this Article, the industrial property right authority shall consider terminating such protection title.

4. Organizations and individuals may request the industrial property right authorities to terminate the protection titles in the cases specified in Points c, d, dd, e, g, h, i and k Clause 1 of this Article, provided fees and charges are fully paid.

5. In consideration of the request for termination of a protection title in the cases specified in Clause 3 and Clause 4 of this Article, and opinions of the parties involved, the industrial property right authority shall issue a decision to wholly or partially terminate the protection title, or issue a notification of refusal to terminate the protection title.

6. In the cases specified in Points c, d, dd, e, g, h and i Clause 1 of this Article, the protection title shall be terminated from the day on which the industrial property right authority issues a decision to terminate the protection title.

In the cases specified in Point k Clause 1 of this Article, the protection title shall be terminated from the day on which the GI is no longer protected in its country of origin.

In case the industrial property right authority issues the decision to terminate the protection title according to regulations of Article 3 of this Article, the protection title shall be terminated from the day on which the industrial property right authority receives the written declaration from the protection title holder.

7. Regulations of Clauses 1, 2, 3, 4, 5 and 6 of this Article shall also apply to the termination of international registration of marks and industrial designs.

Article 96. Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:

a) The application is filed for malicious intent;

b) The application is filed against regulations on security control regarding inventions prescribed in Article 89a of this Law;

c) The application for invention registration for invention that is directly created from a genetic resource or traditional knowledge about a genetic resource does not disclose or accurately disclose the origin of the genetic resource or traditional knowledge about the genetic resource.

2. A protection title will be entirely or partially invalidated if the entire or part of the protection title fails to comply with regulations of this Law on registration, conditions for protection, revisions to application, disclosure of inventions, first-to-file principles in the following cases:

a) The applicant does not have the right and is not assigned by the person who has the right to register the invention, industrial design, layout design or mark;

b) The subject matter of industrial property fails to satisfy the protection conditions specified in Article 8 and Chapter VII of this Law;

c) The revision to the application for industrial property registration expands the scope of subject matters that have been disclosed or mentioned in the application or changes the nature of the subject matter mentioned in the application;

d) The invention is not fully and clearly disclosed to the extent that such invention may be realized by persons with average knowledge in the art.

dd) The invention is granted a protection title beyond the scope disclosed in the initial description of the application for invention registration;

e) The applicant is not the first party to file the application for registration according to the first-to-file principles prescribed in Article 90 of this Law.

3. In case a protection title is be entirely or partially invalidated as prescribed in Clause 1 and Clause 2 of this Article, the entire or part of the protection title will not have effect from the grant date of the protection title.

4. Organizations and individuals may request the industrial property right authorities to invalidate protection titles in the cases specified in Clause 1 and clause 2 of this Article, provided fees and charges are fully paid.

The statute of limitations for requesting invalidation of a protection title shall be its entire term of protection, except in the case where the request for invalidation of the protection title of a mark is made for the reasons specified in Clause 2 of this Article, in which case the statute of limitations shall be 05 years from the grant date of the protection title or from the effective date of international registration of the mark in Vietnam.

5. In consideration of the request for invalidation of the protection title and opinions of the parties involved, the industrial property right authority shall issue a decision on invalidation of the protection title or issue a notification of refusal to invalidate.

6. Regulations of Clauses 1, 2, 3, 4 and 5 of this Article shall also apply to the invalidation of international registration of marks and industrial designs.

7. The Minister of Science and Technology of Vietnam shall elaborate Clause 1 and Clause 2 of this Article.

Article 97. Amendments to protection titles

1. The owner of a protection title, the organization or individual exercising the right to register GIs prescribed in Article 88 of this Law may request industrial property right authority to make the following revisions to the protection title, provided that the prescribed fees and charges are paid:

a) Changes, rectification of errors that are relevant to the name and nationality of the author, name and address of the protection title holder or the organization that manages the GI;

b) Revisions to the description of particular characteristics, quality or geographical area bearing a GI; amendments to the regulations on use of collective marks or the regulations on use of a certification mark.

2. At the request of the owner of a protection title or the organization or individual exercising the right to register GIs, the industrial property right authority must correct errors caused by its fault in such protection title, in which case the requesting party shall not pay any fee or charge.

3. The owner of a protection title may request the industrial property right authority to narrow the scope of industrial property rights. In such a case, the corresponding industrial property registration application shall be re-examined in terms of its content and the requesting party shall pay a fee for substantive examination.

Article 98. National Register of Industrial Property

1. The National Register of Industrial Property means the document recording the establishment, change and transfer of industrial property rights to inventions, industrial designs, layout designs, marks and GIs pursuant to this Law.

2. Decisions on grant of protection titles, principal contents of protection titles and decisions on amendment to, termination or invalidation of protection titles, and decisions on registration of industrial property right transfer contracts shall be recorded in the National Register of Industrial Property.

3. The National Register of Industrial Property shall be compiled and kept by the industrial property right authority.

Article 99. Publication of decisions relating to protection titles

Decisions on the grant, termination, invalidation of or amendment to protection titles for industrial property rights shall be published by the industrial property right authority in the Official Gazette of Industrial Property within sixty (60) days as from the date of issuance of such decision.

Section 2. APPLICATIONS FOR INDUSTRIAL PROPERTY REGISTRATION

Article 100. General requirements applicable to applications for industrial property registration

1. An application for industrial property registration shall contain the following documents:

a) Declaration for registration, made on the stipulated form;

b) Documents, samples and information identifying the subject matter of industrial property registering for protection specified in Articles 102 to 106 inclusive of this Law;

c) Power of attorney, if the application is filed through a representative;

d) Documentary evidence of the registration right, if such right is acquired by the applicant from another person;

dd) Documentary evidence of the priority right, if such right is claimed;

dd1) Description of the origin of the genetic resource or traditional knowledge about the genetic resource, applicable to inventions that are directly derived from the genetic resource or traditional knowledge about the genetic resource;

e) Receipt for payment of fees and charges.

2. The application for industrial property registration and source documents of transactions between an applicant and the industrial property right authority shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the industrial property right authority:

a) Power of attorney;

b) Documentary evidence of the registration right;

c) Documentary evidence of the priority right;

d) Other documents supporting the application.

3. Documentary evidence of the priority right in an application for industrial property registration shall include:

a) A copy of the first application(s) certified by the receiving agency;

b) Deed of assignment of priority right if such right is acquired from another person.

Article 101. Requirements on the uniformity of an application for registration of industrial property

1. Each application for industrial property registration shall request the grant of only one protection title for a single subject matter of industrial property, except for the cases specified in clauses 2, 3 and 4 of this article.

2. Each application for registration may request the grant of one invention patent or one utility solution patent for a group of inventions that are technically linked to form a single common inventive idea.

3. Each application for registration may request the grant of one industrial design patent for several industrial designs in the following cases:

a) Industrial designs of a set of products consisting of numerous items expressing a single common inventive idea and used together or for a common purpose;

b) An industrial design accompanied by one or more variants of such industrial design which express a single common inventive idea and which are not significantly different from such industrial design.

4. Each application for registration may request the grant of one certificate of mark registration for one mark to be used for one or more different goods or services.

Article 102. Requirements on applications for invention registration

1. Documents identifying the invention registered for protection in an application for invention registration shall include a description of the invention and an abstract of the invention. The invention description shall contain the description and the scope of protection of the invention.

2. The description of an invention must satisfy the following conditions:

a) Fully and clearly disclose the nature of the invention to the extent that such invention may be realized by a person with average knowledge in the art;

b) Briefly explain accompanying drawings, if it is required to further clarify the nature of the invention;

c) Clarify the novelty, inventive step and industrial applicability of the invention.

3. The scope of protection of an invention shall be expressed in the form of a combination of technical specifications which are necessary and sufficient to identify the scope of the rights to such invention, compatible with the description of invention and drawings.

4. An abstract of an invention must disclose principal features of the nature of such invention.

Article 103. Requirements on applications for industrial design registration

1. Documents identifying the industrial design registered for protection in an application for industrial design registration shall include a set of photos or drawings of such industrial design and their descriptions.

2. The photos or drawings shall fully present the design characteristics of the industrial design registered for protection to the extent that such industrial design may be realized by a person with average knowledge in the art.

3. The description shall enumerate the photos or drawings in the set and design characteristics of the industrial design.

Article 104. Requirements on applications for layout design registration

Documents, samples and information identifying the layout design registered for protection in an application for registration of a layout design shall include:

1. Drawings and photos of the layout design.

2. Information on the functions and structure of semiconductor ICs produced under the layout design.

3. Samples of semiconductor ICs produced under the layout design, if such layout design has been commercially exploited.

Article 105. Requirements on applications for mark registration

1. Documents, samples and information identifying the mark registered for protection in an application for mark registration shall include:

a) A sample of the mark and a list of goods or services bearing the mark;

b) Regulations on use of collective marks or regulations on use of certification marks.

2. The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in a foreign language, such words or phrases must be translated into Vietnamese; where the mark is a sound, the sample must be a sound file and graphic representation of the sound.

3. Goods or services listed in an application for mark registration must be classified into appropriate groups in accordance with the Classification List under the Nice Agreement on International Classification of Goods and Services for the purpose of mark registration, and published by the industrial property right authority.

4. The regulations on use of collective marks shall contain the following principal contents:

a) Name, address, grounds of establishment and operation of the collective organization being the mark owner;

b) Criteria for becoming a member of the collective organization;

c) List of organizations and individuals permitted to use the mark;

d) Conditions for use of the mark;

dd) Measures for dealing with breaches of regulations on use of the mark.

5. Regulations on use of certification marks shall contain the following principal contents:

a) The organization or individual being the mark owner;

b) Conditions for using the mark;

c) Characteristics of goods or services certified by the mark;

d) Methods of evaluating characteristics of goods or services and methods of controlling the use of the mark;

dd) Expenses to be paid by the mark user for certification and protection of the mark, if any.

Article 106. Requirements on applications for GI registration

1. Documents, samples and information identifying the GI registered for protection in an application for GI registration shall include:

a) The name or sign being the GI;

b) The product bearing the GI;

c) Description of peculiar characteristics and quality, or reputation of the product bearing the GI and particular elements of natural conditions that create the peculiar characteristics and quality, or reputation of the product (hereinafter referred to as “the description of peculiar characteristics”);

d) Map of the geographical area corresponding to the GI;

dd) Documentary evidence confirming that the GI is under protection in the country of origin if it is a foreign GI;

e) For homonymous GIs, description of the use conditions and presentation of the GI in order to ensure their distinctiveness.

2. The description of peculiar characteristics must contain the following principal contents:

a) Description of the relevant product including raw materials, and physical, chemical, microbiological and perceptible properties of the product;

b) Method of identification of the geographical area corresponding to the GI;

c) Evidence proving that the product originates from such geographical area within the meaning stipulated in article 79 of this Law;

d) Description of local and stable methods of production and processing;

dd) Information on relationship between the peculiar characteristics and quality, or reputation of the product and the geographical conditions as stipulated in article 79 of this Law;

e) Information on the mechanism of self-control of the peculiar characteristics or quality of the product.

Article 107. Authorization of representation in procedures related to industrial property rights

1. Authorization for carrying out procedures related to the establishment, maintenance, extension, amendment, termination and invalidation of protection titles must be made in writing in the form of a power of attorney.

2. A power of attorney must contain the following principal contents:

a) Full names and addresses of the principal and the authorized party;

b) Scope of authorization;

c) Valid term of authorization;

d) Date of making the power of attorney;

dd) Signature and seal (if any) of the principal.

3. A power of attorney without any valid term shall be considered valid indefinitely, and it shall only be terminated when the principal declares termination of the authorization contract.

Section 3. PROCEDURES FOR PROCESSING APPLICATIONS FOR INDUSTRIAL PROPERTY REGISTRATION AND FOR GRANTING PROTECTION TITLES

Article 108. Receipt of applications for industrial property registration, and filing dates

1. An application for registration of industrial property shall only be received by an industrial property right authority if the application consists of at least the following documents and information:

a) A declaration for registration of an invention, industrial design, layout design, mark or GI, which includes sufficient information to identify the applicant as well as the sample of the mark and the list of goods or services bearing the mark;

b) Description, including the scope of protection, in the case of an application for invention registration; a set of photos and drawings and a description in the case of an application for industrial design registration; and a description of peculiar characteristics of a product bearing a GI in the case of an application for GI registration;

c) Receipt for payment of filing fee or charge.

2. The filing date shall be the date on which the application is received by the industrial property right authority, or the international filing date in the case of an application filed pursuant to an international treaty.

3. Applications for secret invention registration shall comply with regulations of the Government of Vietnam.

Article 109. Formal examination of applications for industrial property registration<0}

1. An application for industrial property registration shall be subject to formal examination for evaluation of their validity.

2. An application for industrial property registration shall be considered invalid in the following cases:

a) It does not fulfil the formal requirements;

b) The subject matter stated in the application is ineligible for protection;

c) The applicant does not have the registration right, including where the registration right belongs to more than one organizations or individuals but one or more of them do not agree to the filing;

d) The application is filed in contravention of regulations on the filing method stipulated in article 89 of this Law;

dd) The applicant fails to fully pay the fee or charge as prescribed;

e) The application is filed against regulations on security control regarding inventions prescribed in Article 89a of this Law

3. For an application for industrial property registration falling into the cases stipulated in clause 2 of this article, the industrial property right authority shall carry out the following procedures:

a) Issue a notice of intended refusal to accept the invalid application, clearly stating reasons and setting a time limit for the applicant to correct errors or to object to such intended refusal;

b) Issue a notice of refusal to accept the application as valid if the applicant fails to correct errors, improperly corrects errors or fails to make a justifiable objection to such intended refusal stipulated in point a of this clause;

c) Issue a notice of refusal to grant a certificate of registration of layout design of semiconductor ICs in case of an application for layout design registration;

d) Carry out procedures specified in clause 4 of this article if the applicant properly corrects errors or makes a justifiable objection to the intended refusal to accept the application as valid stipulated in point a of this clause.

4. For an application for industrial property registration not falling into the cases stipulated in clause 2 of this article, or falling into the case stipulated in point d clause 3 of this article, the industrial property right authority shall issue a notice of accepting the application as valid or carry out procedures for granting a protection title and recording it in the National Register of Industrial Property according to the provisions of article 118 of this Law, applicable to applications for layout design registration.

5. Applications for mark registration rejected according to the provisions of clause 3 of this article shall be deemed not to have been filed, except where they serve as grounds for claims for priority right.

Article 110. Disclosure of applications for mark registration, publication of applications for industrial property registration

1a. [120] Any application for mark registration that has not been accepted by the industrial property right authority shall be disclosed as soon as it is received.

1. Applications for industrial property registration which were accepted as valid by the industrial property right authorities shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this article.

2. Applications for registration of inventions shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.

3. Applications for registration of industrial designs, marks, GIs shall be disclosed within 2 months from the day on which they are accepted as valid. An application for industrial design registration may be published at a later time at the request of the applicant but must not later than 07 months from the filling date.

4. Applications for layout design registration of shall be published by mode of permitting direct access at industrial property right authorities, provided that reproduction shall not be permitted. Access to confidential information in an application shall only be permitted to competent

authorities and parties involved in the process of carrying out procedures for invalidating protection titles or the process of carrying out procedures for dealing with infringement of rights.

Principal information on an application for layout design registration and the protection title for a layout design shall be published within two months as from the date of grant of such protection title.

Article 111. Confidentiality of applications for registration of inventions and industrial designs prior to publication thereof

1. Before applications for registration of inventions and industrial designs are published in the Official Gazette of Industrial Property, the industrial property right authorities must keep information therein confidential.

2. Officials of the industrial property right authorities who disclose information in applications for registration of inventions and industrial designs shall be disciplined; if the information disclosed causes loss and damage to applicants, such employees must pay compensation therefor in accordance with law.

Article 112. Third party opinions on the grant of protection titles

As from the date an application for registration of industrial property is published in the Official Gazette of Industrial Property up until prior to the date of issuance of a decision on grant of a protection title, any third party shall have the right to express an opinion to the industrial property right authority on the grant or refusal to grant a protection title for such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

The written opinion shall be considered one of the reference sources during the processing of the application for industrial property registration.

Article 112a. Objections to applications for registration of industrial property

1. Before the date of issuance of the protection title, within the following time limits, any third party is entitled to raise objections against the issuance of the protection title:

a) 9 months from the publication date of the invention registration application;

b) 4 months from the publication date of the industrial design registration application;

c) 5 months from the publication date of the mark registration application;

d) 3 months from the publication date of the GI registration application.

2. The objections mentioned in Clause 1 of this Article must be made into written documents enclosed with supporting documents or source of information; fees and charges must be paid.

3. Industrial property right authorities shall process the objections prescribed in Clause 2 of this Article following the procedures established by the Ministry of Science and Technology.

Article 113. Request for substantive examination of applications for registration of inventions

1. Within forty two (42) months after the filing date or the priority date, as applicable, an applicant or any third party may request the industrial property right authority to substantively examine an application for registration of an invention, provided that the substantive examination fee is paid.

2. The time limit for making a request for substantive examination of an application for registration of an invention involving a request for a utility solution patent shall be thirty six (36) months from the filing date or the priority date, as applicable.

3. Where no request for substantive examination is filed within the time limit specified in clauses 1 and 2 of this article, the application for registration of the invention shall be deemed to have been withdrawn at the expiry of such time limit.

Article 114. Substantive examination of applications for registration of industrial property

1. The following applications for registration of industrial property shall be substantively examined for evaluation of the eligibility for grant of protection titles for the subject matters stated in such applications under protection conditions and for determination of the respective scope of protection:

a) Applications for registration of inventions which have already been accepted as valid and involve requests for substantive examination filed according to regulations;

b) Applications for registration of industrial designs, marks and GIs which have been accepted as valid.

2. Applications for registration of layout designs shall not be substantively examined.

3. Industrial property right authorities may use the results of the substantive examination of applications for registration of inventions that are identical to inventions requesting protection provided by foreign patent authorities during the patentability evaluation process

4. The Minister of Science and Technology shall elaborate the use of results of the substantive examination of invention registration applications prescribed in Clause 3 of this Article.

Article 115. Amendment, supplementation, division and conversion of applications for registration of industrial property

1. An applicant shall have the following rights before the industrial property right authority issues a notification of refusing or accepting the grant of a protection title:

a) Right to amend or supplement the application;

b) Right to divide the application;

c) Right to request the recording of changes in name or address of the applicant;

d) Right to request the recording of change of the applicant as a result of the application assignment under a contract, bequest or inheritance, or under a decision of a competent agency;

dd) Right to convert an application for registration of an invention involving a request for an invention patent into an application for registration of an invention involving a request for a utility solution patent, and vice versa.

2. The applicants for completion of the procedures stipulated in clause 1 of this article must pay fees and charges.

3. Any amendment or supplementation of an application for registration of industrial property must not expand the scope of the subject matter already disclosed or stated in such application, and must not change the nature of the subject matter registered for industrial property stated in the application and must ensure the uniformity of the application.

4. In a case of division of an application, the filing date of the divided application shall be deemed to be the filing date of the original application.

Article 116. Withdrawal of applications for registration of industrial property

1. Before the industrial property right authority accepts or refuses the grant of a protection title, the applicant shall have the right to make a written declaration on the withdrawal of the application for registration of industrial property in his or her own name or through an industrial property representation service organization, provided that a power of attorney clearly states authorization for withdrawal of the application.

2. As from the time an applicant declares withdrawal of the application, all further procedures related to such application shall cease.

3. All applications for registration of inventions or industrial designs which have been withdrawn or are deemed to have been withdrawn before their publication and all applications for registration of marks which have been withdrawn shall be deemed not to have been filed, except where they serve as grounds for claims for priority right.

Article 117. Refusal to grant protection titles

1. The grant of a protection title as the result of an application for registration of an invention, industrial design, mark or GI shall be rejected in the following cases:

a) There are grounds to affirm that the subject matter stated in the application does not fully satisfy the conditions for protection;

b) There are grounds to affirm that the applicant does not have the right to register industrial property, or the applicant registers the mark for malicious intent;

c) The application satisfies the conditions for the grant of a protection title but does not have the earliest filing date or priority date as in the case stipulated in Clause 1 and Clause 2 Article 90 of this Law;

d) The application falls into the cases stipulated in Clause 3 Article 90 of this Law without the consensus of all applicants;

dd) The revision to the application expands the scope of subject matter that have been disclosed or mentioned in the application or changes the nature of the subject matters mentioned in the application.

1a. [128] In addition to the cases specified in Clause 1 of this Article, the grant of a protection title as the result of an application for registration of an invention shall be rejected in the following cases:

a) The invention is granted a protection title beyond the scope disclosed in the initial description of the application for invention registration

b) The invention is not fully and clearly disclosed in the description to the extent that such invention may be realized by persons having average knowledge in the art;

c) The application for invention registration for invention that is directly created from a genetic resource or traditional knowledge about a genetic resource does not disclose or accurately disclose the origin of the genetic resource or traditional knowledge about the genetic resource.

d) The application is filed against regulations on security control regarding inventions prescribed in Article 89a of this Law.

2. The grant of a protection title for an application for registration of a layout design which does not fulfil the formal requirements stipulated in article 109 of this Law shall be refused.

3. For an application for industrial property registration falling into the cases stipulated in clauses 1, 1a and 2 of this article, the industrial property right authority shall carry out the following procedures:

a) Notify the result of the substantive examination which includes the intension to reject the grant of a protection title, the reasons therefor and the time limit for the applicant to make an objection to such intended rejection;

b) Suspend the substantive examination process if the applicant requests the suspension of the process, and request termination or invalidation of the certificate of mark registration in the cases specified in Point e and Point h Clause 2 Article 74 of this Law. On the basis of the result of termination or invalidation of the certificate of mark registration, the industrial property right authority shall carry on the examination process;

c) Suspend the examination process in case of receipt of a copy of the notice from a competent court that it has accepted a third party's petition for lawsuit against the right to registration of the subject matter of industrial property or registration of a mark for malicious intent. On the basis of the court's judgment, the industrial property right authority shall carry on the examination process;

d) Reject the grant of protection title if the applicant makes no objection or makes unjustifiable objection to such intended rejection mentioned in Point a of this Clause.

4. **(annulled)**

Article 118. Grant of protection titles, entry into the register

1. If it is not any of the cases in which the grant of protection title is rejected as prescribed in Clauses 1, 1a, 2 and d Clause 3 Article 117 of this Law, or the applicant raises justified objection against the intended rejection prescribed in Point a Clause 3 Article 117 of this Law, the industrial property right authority shall perform the following tasks:

a) Notify the substantive examination result which includes the intension to entirely or partially grant the protection title and impose a deadline for the applicant to pay fees and charges or raise objection against the substantive examination result;

b) Issue a decision to grant the protection title and enter it into the National Register of Industrial Property if the applicant has fully paid the fees and charges.

2. Where an objection is made against the substantive examination result, the application for industrial property registration shall undergo re-examination of the matters against which the objection is made.

Article 119. Time limit for processing applications for registration of industrial property

1. An industrial property registration application will have its form examined within one month from the filing date.

2. An industrial property registration application shall be substantively examined within the following time limits:

a) For an invention, eighteen months from the date of its publication if a request for substantive examination is filed before the date of application publication, or from the date of receipt of a

request for substantive examination if such request is filed after the date of application publication;

b) For a mark, nine months from the date of application publication;

c) For an industrial design, seven months from the date of application publication:

d) For a GI, six months from the date of application publication.

3. The time limit for re-examination of an industrial property registration application is equal to two-thirds of the time limit for the initial examination and may, in complicated cases, be prolonged but must not exceed the lime limit for the initial examination.

4. The duration for amendment to applications by applicants will not be counted into the time limit specified in Clause 1, 2 or 3 of this Article. The time limit for processing requests for amendment to applications must not exceed one-third of the corresponding time limit specified in Clause 1 or 2 of this Article

Article 119a. Industrial property-related complaints and settlement thereof

1. The applicant, organizations and individuals having rights and interests that are directly relevant to the decision or notice relevant to the processing of the application for grant, maintenance, renewal, revision, termination, invalidation of an industrial property protection title, registration of contract for transfer of industrial property rights issued by a industrial property right authority are entitled to file complaints with the industrial property right authority or initiate a lawsuit at the court in accordance with this Law and relevant laws.

2. Vietnamese organizations and individuals, foreign individuals having permanent residence in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall file complaints directly or via their legal representatives in Vietnam. Foreign individuals not having permanent residence in Vietnam, foreign organizations and individuals not having production or business establishments in Vietnam shall file complaints via their legal representatives in Vietnam.

3. The complaint shall be made into a written document which contains the full name and address of the complainant; number, date of signing, content of the decision or notice complained against; content of the complaint, reasoning and evidence supporting the complaint; proposed rectification or cancellation of the relevant decision or notice. The complaint shall be submitted as a physical document or electronic document via the online filing system.

4. In case the complaint is relevant to the right to register to other contents that need re-examination, the complainant shall pay the re-examination fee.

5. The time limit for settling a complaint shall comply with regulations of law on complaining. In case re-examination by the industrial property right authority is necessary as prescribed in Clause 4 of this Article, or the complainant needs to revise or supplement the complaint documentation,

the time needed for re-examination, revision or supplementation of complaint documentation shall be excluded from the time limit for complaint settlement as prescribed by regulations of law on complaining.

The time limit for re-examination is specified in Clause 3 Article 119 of this Law.

6. Regulations of law on complaining shall apply to complaints and settlement of complaints other than those specified in this Article.

Section 4. INTERNATIONAL APPLICATIONS, INTERNATIONAL PROPOSALS AND PROCESSING OF INTERNATIONAL APPLICATIONS, INTERNATIONAL PROPOSALS

Article 120. International applications and processing of international applications

1. Applications for registration of industrial property filed pursuant to an international treaty of which the Socialist Republic of Vietnam is a member shall be collectively referred to as international applications.

2. International applications and processing thereof shall comply with the relevant treaties.

3. The Government shall guide the implementation of provisions in relevant treaties on international applications, and the procedures for processing thereof in compliance with the principles stipulated in this Chapter.

Article 120a. International proposals and processing of international proposals on GIs

1. Proposals for recognition and protection of GIs in accordance with international treaties to which the Socialist Republic of Vietnam is negotiating, are called international proposals.

2. The announcement of international proposals and handling of third-party opinions, assessment of conditions for protection of GIs in international proposals shall comply with the equivalent provisions specified in this Law for GIs in applications for GI registration submitted to industrial property right authority.

Chapter IX

OWNERS OF INDUSTRIAL PROPERTY RIGHTS, CONTENTS OF INDUSTRIAL PROPERTY RIGHTS, AND LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS

Section 1. OWNERS OF INDUSTRIAL PROPERTY RIGHTS, CONTENTS OF INDUSTRIAL PROPERTY RIGHTS

Article 121. Owners of subject matters of industrial property

1. The owner of an invention or layout design means an organization or individual that is granted a protection title for the respective subject matter of industrial property by a competent authority.

The owner of an industrial design means an organization or individual whose industrial design is granted a protection title by a competent authority or whose internationally registered industrial design is recognized by a competent authority.

The owner of a mark means an organization or individual whose mark is granted a protection title by a competent authority or whose internationally registered mark is recognized by a competent authority or who has a well-known mark.

2. Owner of a trade name means an organization or individual who lawfully uses such trade name in business activities.

3. Owner of a trade secret means an organization or individual who has lawfully acquired such trade secret and kept it secret. A trade secret acquired by an employee or a performer of an assigned task during the performance of the hired job or assigned task shall be owned by the employer or the task assignor, unless otherwise agreed by the parties.

4. The State is the owner of GIs of Vietnam.

The State shall grant the right to use GIs to organizations or individuals who manufacture products bearing such GIs in relevant administrative divisions and put such products on the market. The State shall directly exercise the right to manage GIs or grant that right to organizations representing the interests of all organizations or individuals granted the right to use GIs.

The Government of Vietnam shall elaborate the exercising of the right to manage GIs.

Article 122. Authors of inventions, industrial designs and layout designs and their rights

1. The author of an invention, industrial design or layout design means the person who has personally created such subject matter of industrial property. Where two or more persons have jointly created a subject matter of industrial property, they shall be co-authors of it.

2. Moral rights of authors of inventions, industrial designs and layout designs shall include the following rights:

a) Right to be named as authors in invention patents, utility solution patents, industrial design patents or certificates of registered design of semiconductor ICs; (a) Right to be named as authors in invention patents, utility solution patents, industrial design patents or certificates of registration of layout design of semiconductor ICs;

b) Right to be acknowledged as authors in documents in which inventions, industrial designs or layout designs are published or introduced.

3. Economic rights of authors of inventions, industrial designs and layout designs are the rights to receive remuneration as stipulated in article 135 of this Law.

Article 123. Rights of owners of subject matters of industrial property

1. Owners of subject matters of industrial property shall have the following economic rights:

a) Right to use or authorize others to use subject matters of industrial property according to the provisions of article 124 and Chapter X of this Law;

b) Right to prevent others from using subject matters of industrial property according to the provisions of article 125 of this Law;

c) Right to dispose of subject matters of industrial property according to the provisions of Chapter X of this Law.

2. Organizations and individuals who are granted the right to use GIs, or organizations which are granted the right to manage GIs as prescribed in Clause 4 Article 121 of this Law or under the law of their countries of origin are entitled to prohibit others to use such GIs as prescribed in Point b Clause 1 of this Article.

Article 124. Use of subject matters of industrial property

1. Use of an invention means the performance of the following acts:

a) Manufacturing the protected product;

b) Applying the protected process;

c) Exploiting utilities of the protected product or the product manufactured under the protected process;

d) Circulating, advertising, offering or stocking for circulation the products stipulated in point c of this clause

dd) Importing the products stipulated in point c of this clause.

2. Use of an industrial design means the performance of the following acts:

a) Manufacturing products with an appearance embodying the protected industrial design;

b) Circulating, advertising, offering or stocking for circulation the products stipulated in point a of this clause

c) Importing the products stipulated in point a of this clause.

3. Use of a layout design means the performance of the following acts:

a) Reproducing the layout design; manufacturing semiconductor ICs under the protected layout design;

b) Selling, leasing, advertising, offering or stocking copies of the protected layout design, semiconductor ICs manufactured under the protected layout design or goods containing such semiconductor ICs;

c) Importing copies of the protected layout design, semiconductor ICs manufactured under the protected layout design or goods containing such semiconductor ICs;

4. Use of a trade secret means the performance of the following acts:

a) Applying the trade secret to the manufacture of products, provision of services or trade in goods;

b) Selling, advertising for sale, stocking for sale or importing products manufactured with the application of the trade secret.

5. Use of a mark means the performance of the following acts:

a) Affixing the protected mark on goods, goods packages, business facilities, means of service provision or transaction documents in business activities;

b) Selling, offering goods bearing the protected mark, advertising goods bearing the protected mark for sale, displaying goods bearing the protected mark for sale, storing goods bearing the protected mark for sale, transporting goods bearing the protected mark;

c) Importing goods or services bearing the protected mark.

6. Use of a trade name means the performance of acts for commercial purposes by using the trade name to name oneself in business activities, or expressing the trade name in or on transaction documents, signboards, products, goods, goods packages and means of service provision or advertisement.

7. Use of a GI means the performance of the following acts:

a) Affixing the protected GI in or on goods or goods packages, business facilities, and transaction documents in business activities;

b) Circulating, offering goods bearing the protected GI, advertising goods bearing the protected GI for sale or stocking goods bearing the protected GI for sale;

c) Importing goods bearing the protected GI.

Article 125. Right to prevent others from using subject matters of industrial property

1. Owners of subject matters of industrial property as well as organizations and individuals granted the right to use or the right to manage GIs shall have the right to prevent others from using such subject matters of industrial property unless such use falls into the cases stipulated in clauses 2 and 3 of this article.

2. Owners of subject matters of industrial property as well as organizations and individuals granted the right to use or the right to manage GIs shall not have the right to prevent others from performing the following acts:

a) Using inventions, industrial designs or layout designs in service of their personal needs or for non-commercial purposes, or for purposes of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licences for production, importation or circulation of products;

b) Circulating, importing, using products that are put on the market, including foreign market, by their owners, persons acquiring the right to use these products through transfer, including compulsory transfer of right, holders of the right to prior use of the subject matter of industrial property in advance in accordance with this Law;

c) Using inventions, industrial designs or layout designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the territory of Vietnam;

d) Using inventions or industrial designs by holders of the prior use right according to the provisions of article 134 of this Law;

dd) Using inventions by persons authorized by competent authorities according to the provisions of articles 145 and 146 of this Law;

e) Using layout designs without knowing or having the obligation to know that such layout designs are under protection;

g) Using marks identical or similar to protected GIs where such marks have acquired protection in an honest manner before the date of filing the application for registration of such GI;

h) Using in an honest manner people's names, descriptive marks of type, quantity, quality, utility, value, geographical origin and other properties of goods or services.

3. Owners of trade secrets shall not have the right to prevent others from performing the following acts:

a) Disclosing or using trade secrets acquired without knowing or having the obligation to know that they were unlawfully acquired by others;

b) Disclosing secret data in order to protect the public according to the provisions of clause 1 of article 128 of this Law;

c) Using secret data stipulated in article 128 of this Law for non-commercial purposes;

d) Disclosing or using trade secrets obtained independently;

dd) Disclosing or using trade secrets obtained by analyzing or evaluating lawfully distributed products, unless otherwise agreed upon by analyzers or evaluators and owners of such trade secrets or sellers of such products.

Article 126. Acts of infringement of rights to inventions, industrial designs and layout designs

The following acts shall be regarded as infringements of rights of owners of inventions, industrial designs and layout designs:

1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout designs or any original part thereof within the valid term of a protection title without permission from the owners.

2. Using inventions, industrial designs and layout designs without paying compensation according to the provisions on provisional rights in article 131 of this Law.

Article 127. Acts of infringement of the right to trade secrets

1. The following acts shall be deemed infringements of the right to trade secrets:

a) Accessing or acquiring information pertaining to a trade secret by taking acts against secrecy-keeping measures applied by lawful controllers of such trade secret;

b) Disclosing or using information pertaining to a trade secret without the permission of the owner of such trade secret;

c) Breaching secrecy-keeping contracts or deceiving, inducing, buying off, forcing, seducing or abusing the trust of persons in charge of secrecy-keeping in order to access, acquire or disclose a trade secret;

d) Accessing or acquiring information pertaining to the trade secret of an applicant for a licence for trading in or circulating products by taking acts against secrecy-keeping measures applied by competent authorities;

dd) Using or disclosing trade secrets, while knowing or having the obligation to know that they have been acquired by others engaged in one of the acts stipulated in points a, b, c and d of this clause;

e) Failing to perform the secrecy-keeping obligation stipulated in article 128 of this Law.

2. Lawful controllers of trade secrets defined in clause 1 of this Article include owners of trade secrets, their lawful transferees and managers of trade secrets.

Article 128. Obligation to protect test data

1. Where the law requires applicants for licences for trading in or circulating pharmaceuticals or agro-chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the licensing authority shall be obliged to apply necessary measures so that such data is neither used for unfair commercial practices nor disclosed, except where the disclosure is necessary to protect the public.

2. For pharmaceuticals, from the time of submission of secret data in applications to the competent authority stipulated in Clause 1 of this Article to the expiration of the 5-year period as from the date the applicant is granted a licence, such authority must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, except for the cases stipulated in Point d Clause 3 Article 125 of this Law.

3. In case the licensing authority permits later submission of the application for marketing authorization on the basis of prior marketing authorization of a pharmaceutical or safety and efficacy data of a pharmaceutical granted market authorization serving the marketing authorization process of another pharmaceutical, the competent authority shall publish on its website information about the late submission of the application within 05 months before the proposed pharmaceutical is granted marketing authorization, unless the marketing authorization needs to be granted sooner according to other relevant laws.

4. For agrochemical products, from the time of submission of secret data in applications to the competent authority stipulated in Clause 1 of this Article to the expiration of the 10-year period as from the date the applicant is granted a licence, such authority must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, or on the basis that the submitters of secret data is granted marketing authorization without the consent of the submitters of such data, except for the cases stipulated in Point d Clause 3 Article 125 of this Law, or the licensing is necessary for assurance of defense and security, nutrition for the people or other urgencies of society.

Article 129. Acts of infringement of rights to marks, trade names and GIs

1. The following acts, if performed without the permission of mark owners, shall be deemed to be infringements of the right to a mark:

a) Using signs identical with protected marks for goods or services identical with goods or services on the list registered together with such mark;

b) Using signs identical with protected marks for goods or services similar or related to those goods or services on the list registered together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;

c) Using signs similar to protected marks for goods or services identical with, similar to or related to goods or services on the list registered together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;

d) Using signs identical with, or similar to, well known marks, or signs in the form of translations or transcriptions of well known marks for any goods or services, including those not identical with, dissimilar or unrelated to goods or services on the lists of those bearing well known marks, if such use is likely to cause confusion as to the origin of the goods or services or likely to mislead impressions as to the relationship between users of such signs and well known mark owners.

2. All acts of using commercial indications identical with, or similar to, trade names of others which were used earlier for the same or similar type of goods or services, which cause confusion as to business entities, establishments or activities under such trade names shall be deemed to be infringements of the right to the trade name.

3. The following acts shall be deemed to be infringements of the right to protected GIs:

a) Using protected GIs for products which do not satisfy the criteria of peculiar characteristics and quality of products bearing GIs, although such products originate from geographical areas bearing such GI;

b) Using protected GIs for products similar to products bearing GIs for the purpose of taking advantage of their reputation and popularity;

c) Using any sign identical with, or similar to, a protected GI for products not originating from geographical areas bearing such GI, and therefore misleading consumers into believing such products originate from such geographical areas;

d) Using protected GIs of wines or spirits for wines or spirits not originating from geographical areas bearing such GI, even where the true origin of goods is indicated or GIs are used in the form of translations or transcriptions, or accompanied by such words as "category", "model", "type", "imitation" or the like.

Article 130. Acts of unfair competition

1. The following acts shall be deemed to be acts of unfair competition:

a) Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services;

b) Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;

c) Using marks protected in a country which is a signatory to an international treaty of which the Socialist Republic of Vietnam is also a signatory and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified;

d) Possessing, using domain names identical with or confusingly similar to protected trade names or marks of others, or GIs without having the right to use for profits or malicious intents.

2. Commercial indications stipulated in clause 1 of this article mean signs and information serving as guidelines to trading of goods or services including marks, trade names, business symbols, business slogans, GIs, designs of packages and/or labels of goods.

3. Acts of using commercial indications stipulated in clause 1 of this article include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; and selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.

Article 131. Provisional rights to inventions, industrial designs and layout designs

1. Where an applicant for registration of an invention or industrial design knows that such invention or industrial design is being used by another person for commercial purposes without prior use right, the applicant may notify in writing the user of the filing of the latter's application, clearly specifying the filing date and the date of publication of the application in the Official Gazette of Industrial Property so that the user may either terminate or continue such use.

2. For a layout design which has, before the grant date of the certificate of registration of layout design of semiconductor ICs, been commercially exploited by the person with the registration right or his or her licensee, if such person knows that such layout design is being used by another person for commercial purposes, then he or she may notify in writing the user of his or her registration right so that the user may either terminate or continue such use.

3. Where the person notified of contents stipulated in clauses 1 and 2 of this article continues using such invention, industrial design or layout design, then as soon as an invention patent, utility solution patent, industrial design patent or certificate of registration of layout design of semiconductor ICs is granted, the owner of the subject matter shall have the right to request the user to pay compensation equivalent to the price for transferring the right to use such invention, industrial design or layout design within the corresponding scope and duration of use.

Article 131a. Compensation for invention owners due to delayed marketing authorization of pharmaceuticals

1. When following procedures for maintaining the effect of the invention patent, the patent holder is not required to pay the fee for using the patent for the period of delay in marketing authorization of the pharmaceutical manufactured under the invention patent in Vietnam.

2. It will be considered that the marketing authorization process is delayed if the licensing authority does not issue any written response within 2 years from the date of receipt of the marketing application. The delay begins on the first day after the expiration of the aforementioned 2-year period and ends on the issuance date of the first written response.

3. A delay that is caused by the applicant or reasons outside of control of competent authorities will be excluded from the period of delay specified in Clause 2 of this Article.

4. In case the invention patent holder had paid the fee for using the patent for the period of delay, the paid fee will be offset against the fee for the next period, or refunded.

5. In order to avoid paying the fee mentioned in Clause 1 of this Article, within 12 months from the date of marketing authorization of the pharmaceutical, the invention patent holder shall submit a document issued by the licensing authority to confirm the delay to the industrial property right authority.

6. The Government of Vietnam shall elaborate this Article.

Section 2. LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS

Article 132. Factors limiting industrial property rights

Industrial property rights may be limited pursuant to this Law by the following factors:

1. Right of prior users to inventions or industrial designs.

2. Obligations of owners, including:

a) To pay remuneration to the authors of inventions, industrial designs or layout designs;

b) To use inventions or marks.

3. Transfer of right to use inventions pursuant to decisions of competent authorities.

Article 133. Right to use inventions on behalf of the State

1. Ministries and ministerial agencies shall have the right, on behalf of the State, to use or permit other organizations or individuals to use inventions in domains under their respective management for public and non-commercial purposes, national defense and security, disease prevention, and treatment and nutrition of the people, and to meet other urgent social needs without having to obtain permission of invention owners or their transferees under exclusive

contracts (hereinafter referred to as “holders of the exclusive right to use inventions”) in accordance with articles 145 and 146 of this Law.

2. The use of inventions pursuant to clause 1 of this article shall be limited within the scope of and under the conditions for transfer of right to use provided for in clause 1 of article 146 of this Law, except where such inventions are created by using material and technical facilities and funds from the State Budget.

Article 133a. [144] *(annulled)*

Article 134. Right of prior use of inventions and industrial designs

1. Where a person has, before the publication date of an application for registration of an invention or industrial design, used or prepared necessary conditions for use of an invention or industrial design identical with the protected invention or industrial design stated in such application for registration, but created independently (hereinafter referred to as “the holder of the right to prior use”), then after a protection title is granted, such person shall be entitled to continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission or paying compensation to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs shall not be an infringement of the right of the owner of the invention or industrial design.

2. Holders of the right to prior use of inventions or industrial designs are not permitted to transfer such right to others, except where such right is transferred together with the transfer of a business or production establishment which has used or has prepared to use the invention or industrial design. Holders of the right to prior use are not permitted to expand the use scope and volume unless it is permitted by the owners of the inventions or industrial designs.

Article 135. Obligation to pay remuneration to authors of inventions, industrial designs and layout designs

1. The owner of an invention, industrial design or layout design is obliged to pay remuneration to the author as agreed. If there is no agreement, the remuneration paid to the author shall comply with the following regulations:

a) In the case where the owner uses prescribed subject themselves in production or business activities, the owner shall pay 10% of the pre-tax profit obtained that is corresponding to the value of the invention, industrial design or layout design contributes to the product, service, or production and business activities using that invention, industrial design or layout design;

b) In the case where the owner transfers the right to use these subject matters, the owner shall pay 15% of the total amount that they receives each time a payment is made from the transfer before tax payment.

2. (***annulled***)

3. In the case where an invention, industrial design or layout design has co-authors, the remuneration prescribed in clause 1 of this Article shall be paid for all co-authors. The co-authors shall mutually agree on the distribution of the remuneration paid by the owner.

4. The obligation to pay remuneration to authors of inventions, industrial designs and layout designs shall exist throughout the duration of such inventions, industrial designs and layout designs.

Article 136. Obligation to use inventions and marks

1. Owners of inventions shall be obliged to manufacture protected products or apply protected processes to satisfy the requirements of national defense and security, disease prevention, and treatment and nutrition of the people or to meet other social urgent needs. When the needs stipulated in this clause arise but an invention owner fails to perform such obligation, the competent authority may transfer the right to use such invention to others without permission from the invention owner in accordance with the provisions of articles 145 and 146 of this Law.

2. Mark holders shall use the mark continuously. The mark use under a mark use agreement by a licensee is also considered an act of using the holder's mark. In case the mark is not used continuously for five years or more, the Certificate of mark registration shall be terminated in accordance with Article 95 of this Law.

Article 136a. [151] *(annulled)*

Article 137. Obligation to authorize the use of principal inventions for the purpose of using dependent inventions

1. A dependent invention means an invention created based on another invention (hereinafter referred to as "the principal invention") and may only be used on condition that the principal invention is also used.

2. Where the owner of a dependent invention can prove that his or her invention makes an important technical advance as compared with the principal invention and has great economic significance, he or she may request the owner of the principal invention to transfer the right to use such principal invention at a reasonably commercial price and conditions.

Where the owner of a principal invention fails to satisfy the request of the owner of a dependent invention without justifiable reason, the competent authority concerned may transfer the right to use such invention to the owner of the dependent invention without permission from the owner of the principal invention in accordance with the provisions of articles 145 and 146 of this Law.

Chapter X

TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Section 1. ASSIGNMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 138. General provisions on assignment of industrial property rights

1. Assignment of an industrial property right means the transfer of ownership right by the owner of such industrial property right to another organization or individual.

2. An assignment of an industrial property right must be established in the form of a written contract (hereinafter referred to as “an industrial property right assignment contract”).

Article 139. Restrictions on assignment of industrial property rights

1. Industrial property right owners may only assign their rights within the scope of protection.

2. Rights to GIs shall not be assignable.

3. Rights to trade names may only be assigned together with the transfer of the entire business establishment and business activities under such trade name.

4. The assignment of the rights to marks must not cause confusion as to properties or origins of goods or services bearing such marks.

5. Rights to marks may only be assigned to organizations or individuals that satisfy conditions for holders of the right to register such marks.

6. ***(annulled)***

Article 140. Contents of industrial property right assignment contracts

An industrial property right assignment contract must contain the following principal contents:

1. Full names and addresses of the assignor and of the assignee.

2. Grounds for the assignment;

3. Assignment price;

4. Rights and obligations of the assignor and the assignee.

Section 2. LICENSING OF SUBJECT MATTERS OF INDUSTRIAL PROPERTY

Article 141. General provisions on licensing of subject matters of industrial property

1. Licensing of a subject matter of industrial property means permission by the owner of such subject matter of industrial property for another organization or individual to use the subject matter of industrial property within the scope of the owner's right.

2. The licensing of a subject matter of industrial property must be established in the form of a written contract (hereinafter referred to as “a contract for licensing of subject matter of industrial property”).

Article 142. Restrictions on licensing of subject matters of industrial property

1. The right to use GIs or trade names shall not be licensable.

2. The right to use collective marks must not be licensed to organizations or individuals other than members of the owners of such collective marks.

3. The licensee must not enter into a sub-licence contract with a third party, unless it is so permitted by the licensor.

4. Mark licensees shall be obliged to provide indications on goods and goods packages that such goods have been manufactured under mark use contracts.

5. Invention licensees under exclusive contracts shall be obliged to use such inventions in the same manner as the invention owners according to the provisions of clause 1 of article 136 of this Law.

Article 143. Types of contracts for licensing of subject matters of industrial property

Contracts for licensing of subject matter of industrial property shall be of the following types:

1. Exclusive contract means a contract under which, within the licensing scope and term, the licensee shall have the exclusive right to use the subject matter of industrial property while the licensor may neither enter into any contract for licensing of subject matter of industrial property with any third party nor, without permission from the licensee, use such subject matter of industrial property.

2. Non-exclusive contract means a contract under which, within the licensing scope and term, the licensor shall still have the right to use the subject matter of industrial property and to enter into a non-exclusive contract for licensing of subject matter of industrial property with others.

3. Contract for sub-licence of subject matter of industrial property means a contract under which the licensor is a licensee of the right to use such subject matter of industrial property pursuant to another contract.

Article 144. Contents of contracts for licensing of subject matter of industrial property

1. A contract for licensing of subject matter of industrial property must contain the following principal contents:

a) Names and addresses of the licensor and the licensee;

b) Grounds for licensing;

c) Contract type;

d) Licensing scope including limitations on use right and territorial limitations;

dd) Contract term;

e) Licensing price;

g) Rights and obligations of the licensor and of the licensee.

2. A contract for licensing of subject matter of industrial property must not have provisions which unreasonably restrict the right of the licensee, and in particular the following provisions which do not derive from the rights of the licensor:

a) Prohibiting the licensee from improving the subject matter of industrial property other than marks; compelling the licensee to transfer free of charge to the licensor improvements of the subject matter of industrial property made by the licensee or the right to industrial property registration or industrial property rights to such improvements;

b) Directly or indirectly restricting the licensee from exporting goods produced or services provided under the contract for licensing of subject matter of industrial property to the territories where the licensor neither holds the respective industrial property right nor has the exclusive right to import such goods;

c) Compelling the licensee to buy all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the licensor not for the purpose of ensuring the quality of goods produced or services provided by the licensee;

d) Prohibiting the licensee from complaining about or initiating lawsuits with regard to the validity of the industrial property rights or the licensor's right to license.

3. Any clauses in a contract falling into the cases stipulated in clause 2 of this article shall be automatically invalid.

Section 3. COMPULSORY LICENSING OF INVENTIONS

Article 145. Grounds for compulsory licensing of inventions

1. In the following cases, the right to use an invention may be licensed to another organization or individual pursuant to a decision of the competent authority defined in clause 1 of article 147 of this Law without permission from the holder of the exclusive right to use such invention:

a) Where the use of such invention is for public and non-commercial purposes or in service of national defense and security, disease prevention, and treatment and nutrition of people or other urgent needs of society;

b) Where the holder of the exclusive right to use such invention fails to fulfil the obligations to use such invention stipulated in clause 1 of article 136 and clause 5 of article 142 of this Law upon the expiration of four years as from the date of filing the application for registration of the invention, or the expiration of three years as from the date of granting the invention patent;

c) Where a person who wishes to use the invention fails to reach an agreement with the holder of the exclusive right to use such invention on entry into an invention use contract in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions;

d) Where the holder of the exclusive right to use such invention is considered to be engaging in anti-competitive practices prohibited by the law on competition;

dd) The use of the invention is meant to meet demands for pharmaceuticals serving disease prevention or treatment of other countries that are eligible for import under International Agreements to which the Socialist Republic of Vietnam is a signatory.

2. The holder of the exclusive right to use an invention may request termination of the use right when the grounds for licensing stipulated in clause 1 of this article no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the licensee of the invention.

Article 146. Conditions limiting the right to use inventions compulsorily licensed pursuant to a decision

1. The right to use an invention licensed pursuant to a decision of a competent authority must comply with the following conditions:

a) Such licensed use right is non-exclusive;

b) Such licensed use right is only limited to a scope and duration sufficient to achieve the licensing objectives, except for the case stipulated in Point d Clause 1 Article 145 of this Law. For an invention in semiconducting technology, licensing shall be only for public and non-commercial purposes or for dealing with anti-competitive practices prohibited by the law on competition;

c) The licensee must neither assign nor sub-license such right to others, except where the assignment is effected together with the transfer of the licensee's establishment;

d) The transferee of the right to use the invention shall pay the transferor compensation under agreement. In case an agreement is not reached, regulations of the Government shall apply unless the licensing of the invention is compulsory for import of pharmaceuticals under an international

treaty to which the Socialist Republic of Vietnam is a signatory and the compensation has been paid in the exporting country;

dd) Such licensed use right is largely for the domestic market, except for the case stipulated in Point d and Point dd Clause 1 Article 145 of this Law.

2. Apart from the conditions stipulated in clause 1 of this article, the right to use an invention licensed in any of the cases stipulated in clause 2 of article 137 of this Law must also satisfy the following conditions:

a) The holder of the exclusive right to use the principal invention shall also be licensed to use dependent inventions on reasonable terms;

b) The licensee of the right to use the principal invention must not assign such right, except where the assignment is effected together with all rights to the dependent inventions.

Article 147. Authority and procedures for compulsorily licensing of an invention pursuant to a decision

1. The Ministry of Science and Technology shall issue decisions on licensing of inventions based on a consideration of requests for licensing in the cases stipulated in Points b, c and dd Clause 1 Article 145 of this Law.

Ministries and ministerial agencies shall, after consulting with the Ministry of Science and Technology, issue decisions on licensing of inventions under their management in the cases specified in Points a and Point dd Clause 1 Article 145 of this Law.

2. Decisions on licensing of inventions must set out appropriate use scope and conditions according to the provisions of article 146 of this Law.

3. The regulatory authority having power to decide on licensing of an invention must promptly notify its decision to the holder of the exclusive right to use such invention..

4. A decision on licensing of an invention or on refusal to license an invention may be subject to a complaint or lawsuit in accordance with law.

5. The Government shall provide specific regulations on licensing of inventions pursuant to this article.

Section 4. REGISTRATION OF CONTRACTS FOR TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Article 148. Effect of industrial property right transfer agreement

1. As for industrial property rights granted on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, an industrial property right transfer agreement shall only come into force when it has been registered with industrial property rights authority.

2. As for industrial property rights established on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, contracts for using subject matters of industrial property shall come into force according to the agreement between the parties.

3. Contracts for using subject matters of industrial property specified in Clause 2 of this Article, except for mark use agreements, shall be registered with an industrial property rights authority to be valid for third parties.

4. A contracts for using subject matters of industrial property shall be invalidated if transferor's industrial property rights are invalidated.

Article 149. Application file for registration of a contract for transfer of industrial property rights

An application file for registration of a contract for using subject matter of industrial property or an industrial property right licence contract shall contain:

1. A declaration for registration, made according to the sample form.

2. The original or a valid copy of the contract.

3. The original of the protection title in the case of an industrial property right assignment.

4. The co-owners' written consent, or a written explanation of the reason for disagreement of any co- owner with the right assignment where the industrial property right is under joint ownership.

5. Receipt for payment of fees and charges.

6. A power of attorney, if the application file is filed by a representative..

Article 150. Processing application files for registration of contracts for transfer of industrial property rights

The Government shall provide regulations on the order and procedures for receiving and processing application files for registration of contracts for using subject matters of industrial property and of industrial property right assignment contracts.

Chapter XI

INDUSTRIAL PROPERTY REPRESENTATION

Article 151. Industrial property representation services

1. Industrial property representation services shall comprise:

a) Representing organizations or individuals before competent authorities in the establishment and protection of industrial property rights;

b) Providing consultancy on issues related to procedures for the establishment and protection of industrial property rights;

c) Other services related to procedures for the establishment and protection of industrial property rights.

2. Industrial property representatives shall comprise organizations providing industrial property representation services (hereinafter referred to as "industrial property representation service organizations") and individuals practicing industrial property representation within such organizations (hereinafter referred to as "industrial property agents").

Article 152. Scope of rights of industrial property representatives

1. Industrial property representation service organizations shall only provide services within the scope of authorization and may re-authorize other industrial property representation service organizations when they obtain written consent from the authorizing parties.

2. Industrial property representation service organizations may voluntarily waive their industrial property representation service business after having lawfully transferred all incomplete representation jobs to other industrial property representation service organizations.

3. Industrial property representatives must not perform the following activities:

a) Concurrently represent different parties in dispute over industrial property rights;

b) Withdraw applications for protection titles, declare waiver of protection or withdraw appeals against the establishment of industrial property rights without consent from the authorizing parties;

c) Deceive their clients regarding contracts for industrial property representation services or force their clients to enter into and perform such contracts.

Article 153. Responsibilities of industrial property representatives

1. Industrial property representatives shall have the following responsibilities:

a) Notify customers of amounts, fees and charges relevant to the procedures for establishment and protection of industrial property rights;

b) Protect confidentiality of information and documents related to cases in which they act as representatives;

c) Truthfully and fully inform represented parties of notices and requests from the Industrial property right authorities; deliver on time to the represented parties protection titles and other decisions;

d) Fulfill requests of the Industrial property right authorities in order to protect lawful rights and interests of the represented parties;

dd) Notify Industrial property right authorities of changes in the names, addresses of and other information about the represented parties when necessary.

2. Industrial property representation service organizations shall be civilly liable to the represented parties for representation performed by industrial property agents on behalf of such service organizations.

Article 154. Conditions applicable to industrial property representation service business

1. Enterprises, cooperatives, law-practicing organizations, organizations providing science and technology services shall be established and operate in accordance with law, at least one individual in which has the industrial property representation service practicing certificate, permitted to provide industrial property representation services in the name of an industrial property representative organization, except for the cases specified in Clause 2 of this Article.

2. Foreign law-practicing organizations operating in Vietnam are not allowed to provide industrial property representation services.

Article 155. Conditions applicable to industrial property representation service practices

1. An individual who satisfies the following conditions shall be permitted to practice industrial property representation service:

a) Having an industrial property representation service practicing certificate;

b) Working for one industrial property representation service organization.

2. An individual that satisfies the following conditions will be granted the industrial property representation service practicing certificate, except in the cases specified in Clause 2a of this Article:

a) Being a Vietnamese citizen with full legal capacity;

b) Having a permanent residence in Vietnam;

c) Having a bachelor's degree or equivalent degree if his/her jobs involves marks, GIs, trade names, prevention of unfair competition, business secrets; having a bachelor's degree or equivalent degree in science or technology if his/her job involves inventions, industrial designs or layout designs;

d) Having been engaged personally in the domain of industrial property law for at least five years, or in the examination of assorted industrial property registration applications at national or international industrial property offices for at least five years, or having graduated from a training course on industrial property law recognized by a competent authority;

dd) Not being an official, public employee or employee in the State authority competent to establish and enforce industrial property rights;

e) Having passed the examination on industrial property representation profession organized by the competent body.

2a. [165] A Vietnamese citizen who is a lawyer as prescribed by the Law on Lawyers and have permanent residence in Vietnam will be granted the industrial property representation service practicing certificate in the domain of marks, GIs, trade names, prevention of unfair competition, business secrets if he/she has graduated from the training cause on industrial property recognized by a competent authority.

3. The Government shall provide detailed programs on industrial property law training and on examinations for the industrial property representation profession, and on the grant of industrial property representation service practicing certificates.

Article 156. Recording and deleting names of industrial property representation service organizations; revocation of industrial property representation service practicing certificates

1. Organizations and individuals who satisfy the conditions for industrial property representation service business or practice stipulated in articles 154 and 155 of this Law shall, at their request, be recorded in the National Register of Industrial Property Representatives and published in the Official Gazette of Industrial Property by the industrial property right authority.

2. In case the industrial property representative no longer satisfies the conditions specified in Article 154 and Article 155 of this Law, the industrial property right authority shall revoke the industrial property representation service practicing certificate, delete the representative's name from the National Register of Industrial Property, and make an announcement on the Official Gazette of Industrial Property.

3. Industrial property representation service organizations which breach the provisions of clause 3 of article 152 and article 153 of this Law shall be dealt with in accordance with law.

4. Industrial property agents who make professional mistakes while practicing or who breach the provisions of point c clause 3 of article 152 and point a clause 1 of article 153 of this Law shall, depending on the nature and seriousness of their mistake or breach, be subject to a caution, monetary fine or withdrawal of their industrial property representation service practicing certificate.

Part four

RIGHTS TO PLANT VARIETIES

Chapter XII

CONDITIONS FOR PROTECTION OF RIGHTS TO PLANT VARIETIES

Article 157. Organizations and individuals that have rights to plant varieties protected

1. Organizations and individuals that have rights to plant varieties protected are those that select and breed or discover and develop plant varieties or invest in the selection and breeding or the discovery and development of plant varieties or are transferred rights to plant varieties.

2. The organizations and individuals specified in Clause 1 of this Article include Vietnamese organizations and individuals; foreign organizations and individuals that are citizens of member states of International Union for the Protection of New Varieties of Plants (UPOV) or foreign countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties; foreign individuals having permanent residence in Vietnam or having plant variety production or business establishments in Vietnam; foreign organizations having plant variety production or business establishments in Vietnam; organizations and individuals having permanent residence or plant variety production or business establishments in member states of UPOV.

Article 158. General conditions for plant varieties to be eligible for protection

Plant varieties eligible for protection means plant varieties which have been selected and bred or discovered and developed, and are new, distinct, uniform, stable and designated by proper denominations.

Article 159. Novelty of a plant variety

A plant variety shall be deemed new if reproductive materials or harvested materials of such variety have not yet been sold or otherwise distributed for the purpose of exploitation in the territory of Vietnam by the registration right holder defined in article 164 of this Law or his or her licensee one (1) year before the filing date of the application for registration, or for exploitation outside the territory of Vietnam six (6) years before the filing date of the application for registration for woody trees or woody vines, or four (4) years for other plant varieties.

Article 160. Distinctness of plant varieties

1. A plant variety will be considered distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of filing the application or the priority date, as the case may be.

2. Plant varieties whose existence is a matter of common knowledge defined in Clause 1 of this Article are those falling into one of the following cases:

a) Their reproductive or harvested materials have been widely used in the market of any country at the time of filing of the protection registration application;

b) They have been protected or registered in the list of plant varieties in any country:

c) They are subject matters of protection registration applications or applications for registration in the list of plant varieties in any country, provided that these applications are not rejected.

Article 161. Uniformity of a plant variety

A plant variety shall be deemed uniform if, subject to variation which may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 162. Stability of a plant variety

A plant variety shall be deemed stable if its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

Article 163. Denominations of plant varieties

1. The applicant shall propose a suitable denomination of the plant variety to the plant variety right authority. Such denomination must be identical to a denomination that has been registered for protection in any member state of UPOV or any foreign country that has concluded an agreement on protection of plant varieties with the Socialist Republic of Vietnam.

2. The denomination of a plant variety shall be considered proper if it is distinguishable from those of other plant varieties of common knowledge in the same or similar species.

3. Denominations of plant varieties shall be considered improper in the following cases:

a) They consist of numerals only, except where such numerals are relevant to characteristics or the breeding of such variety, or include the species name of such variety;

b) They violate social ethics:

c) They may easily mislead as to features or characteristics, value of such variety;

d) They may easily cause misleading as to identifications of the breeders;

dd) They are identical or confusingly similar to marks, trade names or GIs protected before the date of publication of protection registration applications of such plant varieties;

e) They affect prior rights of other organizations or individuals.

4. Organizations and individuals that offer for sale or market reproductive materials of plant varieties shall use the denominations of such plant varieties as stated in their protection titles even after the expiration of the term of protection.

5. When denominations of plant varieties are combined with marks, trade names or indications similar to denominations of plant varieties already registered for sale offer or marketed, such denominations must still be distinguishable.

6. In the denomination of the proposed plant variety does not satisfy the requirements specified in Clause 2 and Clause 3 of this Article, the plant variety right authority shall reject it and request the applicant to propose another denomination within 30 days from the date to notice. The plant variety right authority shall record the official denomination of the plant variety from the issuance date of the plant variety protection certificate.

Chapter XIII

ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES

Section 1. ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES

Article 164. Registration of plant variety rights

1. In order to obtain protection of plant variety rights, an organization or individual must file an application for registration for protection with the plant variety right authority.

2. Organizations and individuals having the right to register plant varieties for protection (hereinafter referred to as "applicants") shall include:

a) Breeders who have personally selected and bred or discovered and developed the plant variety by their own efforts and at their own expense;

b) Organizations or individuals providing investments for breeders to breed, discover and develop plant varieties under the form of task assignment or contract work, except in cases where the parties have other agreements;

c) Organizations and individuals to whom are transferred, or who inherit the right to register for protection of the plant variety.

3. ***(annulled)***

4. ***(annulled)***

Article 165. Representatives of plant variety rights

1. 1. Any Vietnamese organization or individual, or foreign organization or individual with a permanent residential address in Vietnam or who has a plant variety production or trading

establishment in Vietnam may file a protection registration application either directly or through an organization providing plant variety right representation services; other organizations and individuals specified in Article 157 of this Article shall file their applications through plant variety right representation service organizations.

2. An organization that satisfies the following conditions may provide plant variety right representation services in the name of a plant variety right representation service organization:

a) It is a Vietnamese law-practicing business, cooperatives or organization, scientific and technological service organization which is lawfully established and operating, except foreign law-practicing organizations practicing in Vietnam:

b) It has at least one individual having the plant variety right representation service practicing certificate.

3. Plant variety right representation services include: representing other organizations and individuals before plant variety right authority; providing counsel on procedures for establishment and protection of plant variety rights; other services relevant to the procedures for establishment and protection of plant variety rights.

4. Representatives of plant variety rights have the obligations to:

a) Notify customers of amounts, fees and charges relevant to the procedures for establishment and protection of plant variety rights;

b) Protect confidentiality of information and documents related to cases in which they act as representatives;

c) Truthfully and fully inform represented parties of notices and requests from the Industrial property right authorities; deliver on time to the represented parties protection titles and other decisions;

d) Fulfill requests of the State authorities competent to establish and protect plant variety rights in order to protect lawful rights and interests of the represented parties;

dd) Notify plant variety right authorities of changes in the names, addresses of and other information about the represented parties; changes of name, address, representative of the representing party;

e) A plant variety right representation service organization shall take civil liabilities for the persons acting as representatives of plant variety rights in the name of the organization.

5. An individual may act as a representative to plant variety rights if the following conditions are satisfied:

a) He/she has a plant variety right representation service practicing certificate;

b) He/she is working in a plant variety right representation service organization.

6. An individual will be granted the plant variety right representation service practicing certificates if the following conditions are satisfied:

a) He/she is a Vietnamese citizen with full legal capacity;

b) He/she has a permanent residence in Vietnam;

c) He/she has a bachelor's degree or an equivalent qualification;

d) He/she has personally conducted legal activities related to plant variety for at least five years, or personally processed applications for registration of plant variety rights in a national or international office for plant variety rights for at least five years, or graduated from a training course on the law on plant variety rights as recognized by a competent authority;

dd) He/she is not an official, public employee or employee currently working in a plant variety right authority;

e) He/she has passed an examination on plant variety right representation organized by a competent authority.

7. The Government shall elaborate the training program on plant variety right-related laws, examinations on plant variety right representation profession, issuance of plant variety right representation service practicing certificates.

Article 166. "First to file" principle applicable to plant varieties

1. Where two or more parties independently file applications for registration for protection on different days for the same plant variety, a plant variety protection certificate shall only be granted to the earliest valid registrant.

2. Where there are a number of applications for registration for protection of the same plant variety filed on the same day, a plant variety protection certificate shall only be granted to the registrant whose name is used for the filing of the sole application as agreed upon by all the other registrants. Where these registrants fail to reach agreement, the plant variety right authority shall consider a grant of a plant variety protection certificate to the party deemed to be the first breeder who selected and bred or discovered and developed such variety.

Article 167. Priority principle applicable to protection registration applications

1. A registrant may claim priority right where an application for registration for protection is filed within twelve (12) months from the date of filing an application for registration for protection for the same plant variety in a country which has concluded an agreement on plant variety protection with the Socialist Republic of Vietnam. The date on which the first filing occurred shall not be included in this time-limit.

2. In order to enjoy priority right, the registrant must express the claim for the priority right in his or her application for registration for protection. Within three (3) months after filing the application, the registrant must produce copies of documents on the first application certified by the competent body and samples or other evidence proving that the variety in both applications was the same, and the registrant must pay a fee. The registrant may supply necessary information, documents or materials to the plant variety right authority for examination according to the provisions of articles 176 and 178 of this Law within two (2) years of expiry of the duration for enjoying the priority right, or within an appropriate duration depending on the species of the plant variety stated in the application after a first application is rejected or withdrawn.

3. Where an application for registration for protection is eligible for priority right, the priority date shall be the first filing date.

4. Within the time-limit stipulated in clause 1 of this article, the filing of another application or the publication or use of the plant variety the subject matter of the first application for registration for protection shall not be deemed a ground for rejecting the application for registration for protection eligible for the priority right.

Article 168. Plant variety protection certificates, and the National Register of Protected Plant Varieties

1. A protection certificate for a plant variety shall state the denomination and species of such variety, the name of the owner of rights to such plant variety (hereinafter referred to as the protection certificate holder), the name of the plant variety breeder and the duration of the term of protection of rights to the plant variety.

2. The plant variety right authority shall record the grant and contents of a protection certificate in the National Register of Protected Plant Varieties, and shall archive such information.

Article 169. Validity of plant variety protection certificates

1. A plant variety protection certificate shall be valid throughout the entire territory of Vietnam.

2. Plant variety protection certificates shall be valid from the grant date up until the expiry of a period of twenty-five (25) years for woody trees and woody vines; and of twenty (20) years for other plant varieties.

3. Plant variety protection certificates may have their validity terminated or they may be invalidated pursuant to the provisions of articles 170 and 171 of this Law.

Article 170. Suspension and restoration of validity of plant variety protection certificates

1. The validity of a plant variety protection certificate may be suspended in the following cases:

a) The protected plant variety no longer satisfies the conditions of uniformity and stability as at the time of grant of the certificate;

b) The protection certificate holder fails to pay the validity maintenance fee according to regulations;

c) The protection certificate holder fails to supply necessary documents and reproductive materials for maintaining and preserving the plant variety according to regulations;

(d) The protection certificate holder fails to change the denomination of the plant variety at the request of the plant variety right authority.

2. In the cases stipulated in points a, c and d clause 1 of this article, the relevant plant variety right authority shall issue a decision on suspension of validity of the plant variety protection certificate.

3. In the case stipulated in point b clause 1 of this article, upon the expiry of the time-limit for payment of the validity maintenance fee, the relevant plant variety right authority shall issue a decision on suspension of validity of the plant variety protection certificate as from the first day of the next valid year for which the validity maintenance fee was not paid.

4. In the case stipulated in point a of clause 1 of this article, any organization or individual may request the plant variety right authority to suspend the validity of the plant variety protection certificate.

Based on the results of considering the application for suspension of a plant variety protection certificate and the opinions of relevant parties, the relevant plant variety right authority shall either issue a decision to suspend the validity of the certificate or shall refuse the application.

5. In the cases stipulated in clause 1 of this article, the relevant plant variety right authority shall publish such suspension in a specialized magazine, clearly stating the reasons therefor, and concurrently send a notice thereon to the certificate holder. Within thirty (30) days from the date of notification, the certificate holder may file a request for application of remedies to the reasons why validity was suspended with the plant variety right authority and pay the fee for restoration of validity of the plant variety protection certificate. Within ninety (90) days after the date of filing the request, the protection certificate holder must remedy the reasons why validity was suspended, applicable to the cases stipulated in points b, c and d of clause 1 of this article. The plant variety right authority shall consider and restore the validity of the protection certificate and publish such restoration in a specialized magazine.

In the case stipulated in point a of clause 1 of this article, the validity of the plant variety protection certificate shall be restored after its holder successfully proves that the plant variety has satisfied the conditions of uniformity and stability and after this has been so certified by the plant variety right authority.

6. The Government shall elaborate the procedures for suspension, restoration and invalidation of plant variety protection certificates.

Article 171. Invalidation of plant variety protection certificates

1. A plant variety protection certificate shall be invalidated in the following cases:

a) The application for registration for protection of the plant variety was filed by a person does not have the registration right;

b) The protected plant variety failed to satisfy the conditions of novelty or distinctness at the time of grant of the plant variety protection certificate;

c) The plant variety failed to satisfy the conditions of uniformity or stability where the plant variety protection certificate was granted on the basis of results of technical tests conducted by the registrant.

2. During the valid term of a plant variety protection certificate, any organization or individual may request the plant variety right authority to invalidate a plant variety protection certificate.

Based on the results of the examination of a request for invalidation of a plant variety protection certificate and opinions of the relevant parties, the plant variety right authority shall either issue a notice of refusal of invalidation or shall issue a decision on invalidation of the plant variety protection certificate.

3. Where a plant variety protection certificate is cancelled, all transactions arising on the basis of the grant of the plant variety protection certificate shall be null and void, and such null and void transactions shall be dealt with in compliance with the Civil Code.

Article 172. Amendment and re-grant of plant variety protection certificates

1. A protection certificate holder may request the State administrative body for rights to plant varieties to amend or correct errors related to the name and address of the holder, on payment of fees and charges. Where such errors were made by the plant variety right authority, such body must correct such errors, and protection certificate holders shall not have to pay fees and charges.

2. A protection certificate holder may request the plant variety right authority to re-grant a plant variety protection certificate when such certificate was lost or damaged, provided that the holder pays fees and charges.

3. The Government shall elaborate the procedures for revision and reissuance of plant variety protection certificates.

Article 173. Publication of decisions related to plant variety protection certificates

Decisions on the grant, re-grant, suspension, cancellation, and amendment of plant variety protection certificates shall be published by the plant variety right authority in a specialized magazine on plant varieties within sixty (60) days after such decisions are issued.

Section 2. APPLICATIONS FOR REGISTRATION FOR PROTECTION, AND PROCESSING THEREOF

Article 174. Applications for registration for protection

1. An application for registration for protection of a plant variety shall contain the following documents:

a) A declaration for registration made on the stipulated sample form;

b) Photos and a technical declaration made on the stipulated sample form;

c) Power of attorney, where the application is filed through a representative;

d) Documents evidencing the registration right where the registrant is a transferee of the registration right;

dd) Documents evidencing the priority right where the application contains a claim for priority right;

e) Receipt for payment of fees and charges.

2.. Applications for registration for protection and source documents of transactions between an applicant for registration and the plant variety right authority shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the State administrative body for rights to plant varieties:

a) Power of attorney;

b) Documents evidencing the registration right;

c) Documents evidencing the priority right;

d) Other documents supporting the application.

3. Documents evidencing the priority right of an application for registration for protection of rights to a plant variety shall comprise:

a) Copies of the first application(s) certified by the receiving agency;

b) Documents on transfer or inheritance of the priority right if such right is acquired from another person.

4. Each application shall be registered only for the protection of one plant variety.

Article 175. Receipt of applications for registration for protection, and filing dates

1. An application for registration for protection shall be received by the relevant plant variety right authority only when the application encloses all the documents stipulated in clause 1 of article 174 of this Law.

2. The filing date of an application shall be the date on which such application is received by the relevant plant variety right authority.

Article 176. Formal examination of applications for registration for protection

1. The plant variety right authority shall conduct a formal examination of an application within fifteen (15) days of receipt of such application, in order to determine the validity of such application.

2. An application for registration for protection shall be deemed invalid in the following cases:

a) It fails to satisfy the formal requirements as stipulated;

b) ***(*annulled)**

e) The plant variety stated in such application does not belong to a plant species on the list of protected plant species;

3. The plant variety right authority shall carry out the following procedures:

a) Notify a refusal to accept the application in the cases stipulated in point c of clause 2 of this article, clearly stating the reasons therefor;

b) Notify the registrant of errors for correction in the case stipulated in point a of clause 2 of this article, setting a time-limit of thirty (30) days after the receipt of the notice for the correction of such errors by the registrant;

c) Notify the refusal to accept the application where the registrant fails to correct errors or where the registrant does not make a reasonable appeal against the notice stipulated in point b of this clause;

Issue a notification of accepted application if the application is valid or has been fully supplemented by the applicant or there is justifiable objection to the notice mentioned in Point b of this Clause, requesting the applicant to send samples of the plant variety to the laboratory for testing within 30 days before the first crop season from the issuance date of the notification of

accepted application, unless the plant variety is tested by the applicant in accordance with Clause 2 Article 178 of this Law.

Article 177. Publication of applications for registration for protection

1. Where an application is accepted as valid, the plant variety right authority shall publish such valid application in a specialized magazine on plant varieties within ninety (90) days from the date of acceptance of the application.

2. The published contents of an application shall include the serial number and filing date of the application, the representative agent (if any), the registrant, the owner, the denomination of the plant variety, the name of the plant species, and the date on which the application was accepted as valid.

Article 178. Substantive examination of contents of applications for registration for protection

1. The plant variety right authority shall conduct a substantive examination of applications already accepted as valid. The examination shall cover:

a) Examination of the novelty and proper denomination of the plant variety;

b) Examination of results of technical tests of the plant variety.

2. Technical tests means experiments conducted to determine the distinctness, uniformity and stability of a plant variety.

The technical test shall be conducted by the competent authority or by an organization or individual capable of testing plant varieties in compliance with regulations of the Ministry of Agriculture and Rural Development.

The plant variety right authority may use previously obtained technical test results.

3. The time-limit for examination of technical test results shall be ninety (90) days from the date of receipt of such technical test results.

Article 179. Amendment and supplementation of applications for registration for protection

1. Before the relevant plant variety right authority notifies a refusal to grant a plant variety protection certificate or notifies its decision on grant of a plant variety protection certificate, the registrant shall have the following rights:

a) To amend or supplement the application without changing the nature of the application;

b) To request the recording of changes of the registrant's name or address;

c) To request the recording of a change of registrant due to assignment of the application pursuant to a contract or as a result of inheritance or bequest.

2. The person requesting the conduct of the procedures stipulated in clause 1 of this article must pay fees and charges.

Article 180. Withdrawal of applications for registration for protection

1. Before the relevant plant variety right authority decides or refuses to grant a plant variety protection certificate, the registrant may withdraw the application. A request for withdrawal of an application must be made in writing.

2. As from the time an applicant withdraws the application, all further procedures related to such application shall cease.

Article 181. Opinions of third parties on the grant of a plant variety protection certificate

As from the date of publication of an application for registration for protection of a plant variety in a specialized magazine on plant varieties up until before a decision on grant of a plant variety protection certificate is issued, any third party shall be permitted to provide an opinion to the plant variety right authority challenging the grant of such plant variety protection certificate. An opinion must be made in writing and accompanied by documents and evidence to support it.

Article 182. Refusal to grant a plant variety protection certificate

An application for registration for protection shall be rejected and the grant of a plant variety protection certificate refused where the relevant plant variety fails to satisfy the conditions stipulated in articles 176 and 178 of this Law. In a case of refusal to grant a plant variety protection certificate, the plant variety right authority shall carry out the following procedures:

1. Notify the intended refusal to grant a plant variety protection certificate, clearly stating the reasons therefor and setting a time-limit for the registrant to correct errors or oppose the intended refusal.

2. Notify the refusal to grant a plant variety protection certificate where the registrant fails to correct errors and makes no opposition to the intended refusal stipulated in clause 1 of this article.

3. Carry out the procedures stipulated in article 183 of this Law where the registrant has corrected errors or made a justifiable opposition to the intended refusal stipulated in clause 1 of this article.

Article 183. Grant of plant variety protection certificates

Where an application for registration for protection is not rejected as provided for in Article 182 of this Law and the applicant pays the fee, the plant variety right authority shall issue a decision

granting a plant variety protection certificate and shall record it in the National Register of Protected Plant Varieties.

The person who applies for registration of plant variety right as prescribed in Article 164 of this Law and is granted a plant variety protection certificate shall be the holder of plant variety right.

Article 184 Complaints about the grant or the refusal to grant a plant variety protection certificate

1. The registrant and any third party shall have the right to lodge a complaint about the decision or the refusal to grant a plant variety protection certificate.

2. The resolution of complaints about a decision or refusal to grant a plant variety protection certificate shall comply with the law on complaints and denunciations.

Chapter XIV

CONTENTS OF AND LIMITATIONS ON RIGHTS TO PLANT VARIETIES

Section 1. CONTENTS OF RIGHTS TO PLANT VARIETIES

Article 185. Rights of breeders of plant varieties

The breeder of a plant variety shall have the following rights:

1. To have his or her name as the breeder recorded in the plant variety protection certificate, the National Register of Protected Plant Varieties, and published documents on the plant variety.

2. To receive remuneration pursuant to the provisions of article 191 of this Law.

Article 186. Rights of protection certificate holders

1. A protection certificate holder has the right to exercise or authorize others to exercise the following rights to reproductive materials of a protected plant variety:

a) To conduct production or propagation;

b) To process them for the purpose of propagation;

c) To offer them for sale;

d) To sell them or conduct other marketing activities:

dd) To export them;

e) To import them:

g) To store them for conducting acts specified at Points a, b, c, d, dd and e of this Clause.

2. Rights of a plant variety protection title holder provided for in Clause 1 of this Article are applicable to materials harvested from the illegal use of reproductive materials of a protected plant variety, unless the protection title holder does not exercise his/her rights to reproductive materials though having art-opportunity to do so.

3. To prevent others from using the plant variety under Article 188 of this Law.

4. To pass by inheritance or bequeath or assign the rights to the plant variety under Chapter XV of this Law.

Article 187. Extension of rights of protection certificate holders

Rights of a protection certificate holder may be extended to the following plant varieties:

1. Plant varieties which originate mainly from the protected plant variety, unless such protected plant variety itself originates from another protected plant variety.

A plant variety is considered originating from a protected plant variety if such plant variety still retains the expression of the essential characteristics resulting from the genotype or combination of genotypes of the protected variety, except differences resulting from impacts on the protected variety:

2. Plant varieties which are not definitely distinct from the protected plant variety;

3. Plant varieties the production of which requires the repeated use of the protected plant variety.

Article 188. Acts constituting an infringement of the right to a plant variety

The following acts shall be deemed an infringement of the rights of a protection certificate holder:

1. Exploiting or using rights of such protection certificate holder without his or her permission.

2. Using a plant variety denomination which is identical or similar to a denomination protected for a plant variety of the same species or a species closely linked to the protected plant variety.

3. Using a protected plant variety without paying remuneration in accordance with article 189 of this Law.

Article 189. Provisional rights to plant varieties

1. Provisional rights to a plant variety means rights of the registrant for protection of such plant variety, which arise from the date of publication of the application for registration for protection until the date of grant of the plant variety protection certificate. Where a plant variety protection

certificate is not granted for such plant variety, the protection registrant shall not [no longer] have these provisional rights.

2. Where the applicant is aware of the fact that the plant variety registered for protection is being used by another person in the manners specified in Article 186 and Article 187 of this Law, as soon as the application is accepted as valid, the applicant may notify in writing such user of the fact that an application for protection of the plant variety has been filed, clearly specifying the filing date and the day the application is accepted as valid, so that the user may either stop using or continue using the plant variety.

3. Where a user who has been notified in accordance with clause 2 of this article continues using the plant variety, the plant variety protection certificate holder shall have the right, upon the grant of the certificate, to demand such plant variety user pay compensation equivalent to the licensing price of such plant variety within the corresponding use scope and duration.

Section 2. LIMITATIONS ON RIGHTS TO PLANT VARIETIES

Article 190. Limitations on rights of plant variety protection certificate holders

1. The following acts are not regarded as infringements of rights to protected plant varieties:

a) Using plant varieties for personal and non-commercial purposes;

b) Using plant varieties for testing purposes;

c) Using plant varieties to create new plant varieties, except the case specified in Article 187 of this Law;

d) Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.

2. Rights to plant varieties are not applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought into the Vietnamese or foreign markets by protection certificate holders or their licensees, except the following acts:

a) Acts relating to further propagation of such plant varieties:

b) Acts relating to export of reproductive materials of such plant varieties to countries where the genera or species of such plant varieties are not protected, unless such materials are exported for consumption purpose.

Article 191. Obligations of plant variety protection certificate holders

1. In the case where the plant variety has multiple co-authors, the remuneration prescribed in clause 1 of this Article shall be paid for all co-authors. The co-authors shall mutually agree on the distribution of the remuneration paid by the owner.

a) 10% of the pre-tax profit that the holder of the plant variety protection certificate obtains from using the protected plant variety by themselves for the production and business of that plant variety;

b) 15% the total amount received by the plant variety protection certificate holder in each payment for licensing of the plant variety before tax is paid;

c) 35% the total amount received by the plant variety protection certificate holder from licensing of the plant variety for the first time before tax is paid, in which case the breeder will not receive remuneration for subsequent licensing and the remuneration specified in Points a and Point b of this Clause.

2. ***(annulled)***

3. In the case where the plant variety has multiple co-authors, the remuneration prescribed in clause 1 of this Article shall be paid for all co-authors. The co-authors shall mutually agree on the distribution of the remuneration paid by the owner.

4. The obligation to pay remuneration exists throughout the term of protection of the plant variety.

5. The fee for maintenance of the plant variety protection certificate shall be paid to the plant variety protection authority within 3 months after the date of issuance of the plant variety protection certificate for the first year and within the first month of the subsequent years.

6. Preserve the protected plant variety; provide information, reproductive materials of the protected plant variety at the request of the plant variety protection authority; maintain the stability of the protected plant variety according to the traits described when the plant variety protection certificate is granted.

Article 191a. [201] ***(annulled)***

Article 191b. [202] ***(annulled)***

Chapter XV

TRANSFER OF RIGHTS TO PLANT VARIETIES

Article 192. Licensing of plant varieties

1. Licensing of a plant variety means permission from the protection certificate holder to another person to conduct one or more acts within the holder's right to use the plant variety.

2. Where the right to use a plant variety is under co-ownership, the licensing of such plant variety to another person must be consented to by all co-owners.

3. The licensing of a plant variety must be effected in the form of a written contract.

4. A plant variety licensing contract must not contain terms which unreasonably restrict the rights of the licensee, particularly restrictions neither deriving from nor aimed at protecting the rights of the licensor to the licensed plant variety.

Article 193. Rights of parties to a licensing contract

1. The licensor shall have the right to permit or not permit the licensee to sub-license to a third party.

2. The licensee shall have the following rights:

a) To license the use right to a third party if so permitted by the licensor;

b) To request the licensor to take necessary and appropriate measures to prevent infringement by a third party causing loss and damage to the licensee;

c) To take necessary measures to prevent a third party's infringements if, within a time-limit of three months from the date of receipt of the request stipulated in point b above, the licensor fails to act as requested.

Article 194. Assignment of rights to plant varieties

1. Assignment of rights to a plant variety means the transfer by the plant variety protection certificate holder of all rights to that plant variety to the assignee. The assignee will become the plant variety protection certificate holder from the date of registration of the assignment contract with a plant variety right authority according to law-prescribed procedures.

2. In case rights to a plant variety are under joint ownership, the assignment of these rights to another person must be agreed upon by all co-owners.

3. The assignment of rights to a plant variety must be effected in the form of written contract.

4. **(annulled)**

5. The Government of Vietnam shall elaborate this Article.

Article 195. Bases and conditions for compulsory licensing of plant varieties

1. In the following cases, the rights to use a plant variety may be licensed to another organization or individual pursuant to a decision of the competent authority defined in clause 1 of article 196 of this Law without permission from the protection certificate holder or his or her exclusive licensee (hereinafter referred to as the holder of the exclusive right to use the plant variety):

a) The use of such plant variety is for the public interest and non-commercial purposes, or in service of national defense and security, food security and nutrition of the people or to meet other urgent social needs;

b) The persons having the need and capacity to use such plant variety fail to reach agreement with the holder of the exclusive right to use such plant variety on the entry into a licensing contract though they have made best efforts within a reasonable period of time to negotiate a satisfactory price and commercial conditions;

c) The holder of the exclusive right to use such plant variety is deemed to have conducted anti-competitive practices prohibited by the law on competition.

2. The holder of the exclusive right to use a plant variety may request termination of the use right when the bases for licensing stipulated in clause 1 of this article cease to exist and are unlikely to recur, provided that termination of such use right will not be prejudicial to the licensee.

3. The right to use a plant variety licensed pursuant to a decision of a competent authority must satisfy the following conditions:

a) Such licensed use right is non-exclusive;

b) Such licensed use right is limited within a scope and duration sufficient to attain the licensing objective, and is largely for the domestic market except for the case stipulated in point c of clause 1 of this article;

c) The licensee must neither assign nor sub-license such right to others, except where the assignment is effected together with the transfer of the licensee's establishment;

d) The licensee must pay adequate compensation to the holder of the exclusive right to use the plant variety, taking into account the economic value of such use right in each specific case and in compliance with the compensation rate bracket promulgated by the Government.

4. The Government shall specify cases of compulsory licensing of plant varieties and the compensation rate bracket stipulated in point d of clause 3 of this article.

Article 196. Authority and procedures for licensing of plant varieties pursuant to compulsory decisions

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing of plant varieties in the domains over which such Ministry exercises State management on the basis of considering licensing requests for the cases stipulated in clause 1 of article 195 of this Law.

Ministries and ministerial equivalent bodies shall, after consulting the opinion of the Ministry of Agriculture and Rural Development, issue decisions on licensing of plant varieties in domains under their respective management for the cases stipulated in clause 1 of article 195 of this Law.

2. Plant variety licensing decisions must set the use scope and conditions in compliance with the provisions of clause 3 of article 195 of this Law.

3. The authority competent to issue a decision licensing a plant variety must promptly notify such decision to the holder of the exclusive right to use the plant variety in question.

4. Decisions on licensing of plant varieties or refusal to license plant varieties may be the subject of complaints lodged or lawsuits instituted in accordance with law.

5. The Government shall provide detailed guidelines on the procedures for compulsory licensing of plant varieties as stipulated in this article.

Article 197. Rights of protection certificate holders in cases of compulsory licensing of plant varieties

A protection certificate holder subject to compulsorily licensing of the plant variety shall have the following rights:

1. To receive compensation corresponding to the economic value of the licensed use right or equivalent to the licensing price under a contract with an equivalent scope and term.

2. To request the plant variety right authority to amend, terminate or invalidate the compulsory licensing when the conditions for such compulsory licensing no longer exist and when such amendment, termination or invalidation will not cause loss and damage to the licensees who derived their right from the compulsory licensing.

Part five

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Chapter XVI

GENERAL PROVISIONS ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Article 198. Right to self-protection

1. An intellectual property right holder shall have the right to apply the following measures to protect the intellectual property rights of such holder:

a) To apply technological measure for right protection, right management information or other technological measures to prevent acts of infringement of its intellectual property rights;

b) To request any organization or individual that commits an act of infringement of the intellectual property rights of the holder to terminate such act, remove the illegal content from

the telecommunications network and the internet, make a public apology or rectification, and pay damages.

c) To request the competent authority to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws;

d) To initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.

1a. [208] Intellectual property right holders may authorize other organizations and individuals to implement the measures specified in Clause 1 of this Article to protect their intellectual property rights.

2. Organizations and individuals that suffer loss and damage caused by acts of infringement of intellectual property rights or who discover acts of infringement of intellectual property rights which cause loss and damage to consumers or society shall have the right to request the competent authority to deal with such acts in accordance with the provisions of this Law and other relevant laws.

Any organization or individual that inherits copyright or rights of performers are entitled to request competent authorities to take actions against infringement of rights specified in Clause 4 Article 19 and Point b Clause 2 Article 29 of this Law.

3. Organizations and individuals that suffer loss and damage or are likely to suffer loss and damage caused by unfair competition shall have the right to request the competent authorities to apply the civil remedies stipulated in Article 202 of this Law.

4. The defendant in a lawsuit over the infringement of intellectual property rights and receive acquittal from the Court is entitled to request the Court to order the plaintiff to reimburse for their reasonable expenses such as the cost of hiring a lawyer or other expenses in accordance with laws.

5. In case an organization or individual abuses the procedures for intellectual property protection and thus causes damage to another organization or individual, the organization and individual suffering damage is entitled to request the Court to force the abuser to pay damages, including reasonable costs of hiring a lawyer. Acts of abusing intellectual property rights protection procedures include acts of intentionally exceeding the scope or objective of this procedure.

Article 198a. Assumption of copyright and related rights

Among civil, administrative, criminal proceedings regarding copyrights and related rights, if not proven otherwise, copyrights and related rights shall be assumed as follows:

1. Individuals and organizations that are conventionally credited as authors, performers, producers of audio and video recordings, broadcasting organizations, producers of

cinematographic works, publishers shall be considered holders of rights to such works, performances, audio recording, video recordings and broadcasts;

2. Being conventionally credited in Clause 1 of this Article means being credited on the original work, the first fixation of the performance, the audio recording, video recording, the broadcast and relevant documents (if any) or on corresponding copies that are lawfully published in case the original work, the first fixation of the performance, the audio recording, video recording, the broadcast and relevant documents no longer exists;

3. The organizations and individuals mentioned in Clause 1 of this Article shall be entitled to corresponding copyright or related rights.

Article 198b. Legal liability of intermediary service providers regarding copyright and related rights

1. Intermediary service providers are enterprises providing technological means for service users to put digital contents on the telecommunications network and the internet; provide online connection for the public to access and use digital contents on the telecommunications network and the internet.

2. Intermediary service providers shall implement technical measures and cooperate with competent authorities and right holders in implementing various measures for protecting copyrights and related rights on the telecommunications network and the internet.

3. An intermediary service provider is not liable for infringement upon copyrights and related rights on the telecommunications network and the internet relevant to the provision or use of their services in the following cases:

a) The intermediary service provider only provides digital contents or access to the digital contents;

b) Intermediary service provider may cache during the transmission of information in an automatic and temporary manner to improve efficiency of information transmission, provided information is only changed due to technological reasons; the conditions for access and use of digital contents are complied with; generally accepted industry practice for updating digital contents is adhered to; lawful use of technology according to generally accepted industry practice in order to obtain data about the use of digital contents is not obstructed; the digital content is removed or inaccessible as soon as it is removed at the initial source or access to the digital content has been blocked at the initial source.

c) Digital contents of service users are archived at their request with the following conditions: it is not to their knowledge that these digital contents infringe copyrights and related rights; actions are promptly taken to remove or block the access to such digital contents knowing that they infringe copyrights and related rights;

d) Other cases prescribed by the Government.

4. Intermediary service providers that are exempt from legal liability as prescribed in Clause 3 of this Article are not required to carry out self-supervision of their services or find evidence of infringements.

5. Digital contents prescribed in this Article are protected works and subject matters of related rights in digital forms.

6. The Government of Vietnam shall elaborate this Article.

Article 199. Remedies when dealing with acts of infringement of intellectual property rights

1. Any organization or individual who commits an act of infringement of the intellectual property rights of another organization or individual shall, depending upon the nature and seriousness of such infringement, be dealt with by the application of civil, administrative or criminal remedies.

2. In necessary cases, the competent authorities may apply provisional urgent measures, measures to control intellectual property related imports and exports, preventive measures and measures to secure enforcement of an administrative penalty in accordance with the provisions of this Law and other relevant laws.

Article 200. Authority for dealing with acts of infringement of intellectual property rights

1. The following bodies shall, within their jurisdiction, deal with acts of infringement of intellectual property rights: courts, inspectorates, market surveillance authorities, customs authorities, police authorities and the People's committees at all levels.

2. The application of civil and criminal remedies shall fall within the authority of courts.

In necessary cases, courts may apply provisional urgent measures stipulated by law.

3. The application of administrative remedies shall fall within the authority of inspectorates, police authorities, market surveillance authorities, customs authorities and the People's committees at all levels. In necessary cases, such bodies may apply preventive measures stipulated by law or measures to secure payment of administrative fines stipulated by law.

4. The application of measures to control intellectual property related imports and exports shall fall within the jurisdiction of customs authorities.

Article 201. Intellectual property assessment

1. Intellectual property assessment means the use by organizations or individuals defined in Clauses 2 and 3 of this Article of their professional knowledge and expertise to assess and make conclusion on matters related to intellectual property rights. Intellectual property assessment shall be carried out in accordance with regulations of law on judicial assessment.

1a. [217] Intellectual property assessment includes:

a) Assessment of copyright and related rights;

b) Assessment of industrial property rights;

c) Assessment of plant variety rights.

2. Any enterprise, cooperative, public service provider or law-practicing organization that is established and operates in accordance with law and has at least one individual who has the intellectual property assessor's card may carry out intellectual property assessment, except in the cases specified in Clause 2a of this Article.

2a. [219] Foreign law-practicing organizations operating in Vietnam are not allowed to carry out industrial property assessment.

3. Individuals who fully satisfy the following conditions may be granted intellectual property assessor’s cards by competent authorities:

a) Being a Vietnamese citizen and having full civil act capacity:

b) Permanently residing in Vietnam;

c) Possessing good ethical qualities;

d) Possessing a university or higher degree in a profession relevant to domains in which an assessor’s card is applied for having conducted professional activities in these domains for five or more years and passed a professional assessment examination.

4. Assessment principles:

a) Conformable with law; following assessment procedures;

b) Truthful, accurate, objective, unbiased, timely;

c) Only giving professional verdicts within the assessment scope;

d) Legally responsible for the assessment verdicts;

dd) Assessment costs shall be determined under agreement between the requesting party and the assessing party.

5. The assessment verdict shall be one of the sources of evidence for competent authorities to settle disputes. An assessment verdict does not include verdict on the infringement of intellectual property rights or settlement of the dispute.

6. The Government shall provide detailed guidelines on activities being intellectual property assessment.

Chapter XVII

APPLICATION OF CIVIL REMEDIES IN DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS

Article 202. Civil remedies

Courts may apply the following civil remedies in dealing with organizations and individuals who have committed acts of infringement of intellectual property rights:

1. Compulsory termination of the infringing acts.

2. Compulsory public apology and rectification.

3. Compulsory performance of civil obligations.

4. Compulsory payment of damages for loss;

5. Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and materials, and facilities used principally for the production or trading of goods which infringed intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right holders.

Article 203. Burden of proof of litigants

1. The plaintiff and the defendant to a lawsuit regarding infringement of intellectual property rights shall bear the burden of proof stipulated in article 79 of the Civil Procedure Code and this article.

2. The plaintiff must prove that the plaintiff is the intellectual property right holder by leading one of the following forms of evidence:

a) Copies of the certificate of registration or protection title; or an extract of the National Register of Copyright and Related Rights, the National Register of Industrial Property or the National Register of Protected Plant Varieties;

b) Necessary evidence proving the basis for establishment of copyright or related rights in the absence of a certificate of registration; necessary evidence proving the right to a trade secret, trade name or well known mark;

c) Copy of the contract for using subject matter of intellectual property where the use right is licensed pursuant to a contract.

3. The plaintiff shall bear the burden of proving acts of infringement of intellectual property rights or acts of unfair competition.

4. In a lawsuit regarding infringement of the right to an invention which is a production process, the defendant shall bear the burden of proving that the product of the defendant was produced by a process other than the protected process in the following cases:

a) The product made by the protected process is new;

b) The product made by the protected process is not new, but the invention owner believes that the product of the defendant is made by the protected process and fails to identify the process used by the defendant in spite of having applied appropriate measures.

5. Where a party to a lawsuit regarding infringement of intellectual property rights can prove that appropriate evidence proving such party's claim is under the control of the other party and is therefore inaccessible, the former party shall have the right to request the court to compel the latter party to produce such evidence.

6. When making a claim for compensation for damages for loss, the plaintiff must prove the plaintiff's actual loss and damage and specify the basis for determining the amount of compensation for damages in accordance with article 205 of this Law.

Article 204. Principles for determining loss and damage caused by an infringement of intellectual property rights

1. Loss and damage caused by acts of infringement of industrial property rights shall comprise:

a) Material loss and damage including property loss, decrease in income and profit, loss of business opportunity, and reasonable expenses for mitigating and remedying the material damage;

b) Spiritual loss and damage including damage to honour, dignity, prestige, reputation and other spiritual loss caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout designs; and to breeders of plant varieties.

2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringement of intellectual property rights.

Article 205. Grounds for determining amount of damages for loss caused by an infringement of intellectual property rights

1. In case the plaintiff can prove that the infringement of intellectual property rights has caused material losses to him/her, he/she is entitled to request the Court to decide the amount of damages according to one of the following grounds:

a) The total financial losses and the profits that the defendant has gained from the infringement of intellectual property rights, if the plaintiff's reduction in profits has not been included in material losses;

b) The transfer price of intellectual property rights if the intellectual property rights were transferred to the defendant by the plaintiff under a contract for using subject matter of intellectual property within the scope of the infringement;

c) Other material losses calculated by the intellectual property right holder in accordance with provisions of lawsoft;

d) In case it is impossible to determine the damages for material losses according to the provisions specified in Points a, b and c of this Clause, the damages shall be determined by the Court based on the level of loss, in which case the damages shall not exceed VND5 million

2. Where the plaintiff proves that the act of infringement of intellectual property rights caused the plaintiff spiritual damage, the plaintiff shall have the right to request the court to decide on the amount of damages depending on the extent of loss, to range from five million (5,000,000) to fifty million (50,000,000) dong.

3. In addition to the amount of damages stipulated in clauses 1 and 2 of this article, an industrial property right holder shall also have the right to request the court to compel the organization or individual who have committed the act of infringement of industrial property rights to pay reasonable costs of engaging a lawyer.

Article 206. Right to request the court to apply provisional urgent measures

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

a) There is a danger of irreparable damage to such intellectual property right holder;

b) Goods suspected of infringement of intellectual property rights or evidence related to the act of infringement of industrial property rights are likely to be dispersed or destroyed unless they are protected in time.

2. A court may make a decision applying provisional urgent measures at the request of an industrial property right holder as stipulated in clause 1 of this article before hearing the party subject to such measures.

Article 207. Provisional urgent measures

1. The following provisional urgent measures may be applied to goods suspected of infringing intellectual property rights or to raw materials and materials, or facilities of production or trading of such goods:

a) Retention;

b) Seizure;

c) Sealing; prohibiting any alteration of the original state; prohibiting any movement;

d) Prohibiting transfer of ownership.

2. Other provisional urgent measures may be applied in accordance with the Civil Procedure Code.

Article 208. Obligations of applicants for provisional urgent measures

1. Applicants for provisional urgent measures shall bear the burden of proving their right provided for in clause 1 of article 206 of this Law by producing the documents and evidence stipulated in clause 2 of article 203 of this Law.

2. An applicant for provisional urgent measures shall be obliged to pay compensation for loss caused to a person subject to such measures in a case where the latter is found not to have infringed industrial property rights. To secure the performance of this obligation, an applicant for provisional urgent measures shall deposit security in one of the following forms:

a) A sum of money equal to twenty (20) per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million (20,000,000) dong where it is impossible to value such goods;

b) A deed of guarantee issued by a bank or other credit institution.

Article 209. Cancellation of application of provisional urgent measures

1. The court shall issue a decision cancelling provisional urgent measures previously applied in the case stipulated in the Civil Procedure Code or in a case where the person subject to such measures proves that such application was not well founded.

2. In a case of cancellation of a provisional urgent measure, the court shall consider refunding the applicant the security stipulated in clause 2 of article 208 of this Law. Where a request for the application of a provisional urgent measure was not well founded thus causing loss to the person subject to such measure, the court shall compel the applicant to pay compensation for such loss.

Article 210. Authority and procedures for application of provisional urgent measures

The authority and procedures for application of provisional urgent measures shall be implemented in accordance with the provisions of the Civil Procedure Code.

Chapter XVIII

DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY APPLICATION OF ADMINISTRATIVE AND CRIMINAL MEASURES; CONTROL OF INTELLECTUAL PROPERTY RELATED IMPORTS AND EXPORTS

Section 1. DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY APPLICATION OF ADMINISTRATIVE AND CRIMINAL MEASURES

Article 211. Infringements of industrial property rights which shall be subject to administrative penalties

1. The following infringements of industrial property rights shall be subject to administrative penalties:

a) Infringing intellectual property rights which cause loss and damage to consumers or society;

b) Producing, importing, transporting or trading in intellectual property counterfeit goods stipulated in article 213 of this Law, or assigning others to do so;

c) Producing, importing, transporting, trading in or storing stamps, labels or other articles bearing a counterfeit mark or GI or assigning others to do so.

2. The Government shall specify acts of infringing upon intellectual property rights which shall be subject to administrative penalties, forms and levels of penalties, and penalty procedures.

3. Organizations and individuals that commit acts of unfair competition in intellectual property shall be subject to administrative penalties under the competition law.

Article 212. Infringements of industrial property rights which shall be subject to criminal prosecution

Individuals, juridical persons that infringe upon intellectual property rights in a manner that constitutes a crime shall be liable for criminal prosecution.

Article 213. Intellectual property counterfeit goods

1. Intellectual property counterfeit goods regulated by this Law comprise goods bearing counterfeit marks, goods bearing counterfeit GIs, and pirated goods prescribed in Clauses 2, 3 and 4 of this Article.

2. Counterfeit mark goods are goods or goods packages bearing a mark or sign or stamp which contains signs that are identical or confusingly similar to a protected mark being used for the same goods without permission from the mark owner.

3. Counterfeit GI goods are goods or goods packages bearing a mark or sign or stamp which contains signs that are identical or confusingly similar to a protected GI being used for the same goods and these signs are attached by organizations or individuals that do not have the right to

use such GI according to Clause 4 Article 121 of this Law or law of the country of origin of such GI.

4. Pirated goods are copies made without permission from the copyright owner or related right holder.

Article 214. Administrative penalties and remedial measures

1. Organizations and individuals that commit acts of infringing upon intellectual property rights defined in Clause 1 Article 211 of this Law shall be subject to penalties and remedial measures as prescribed by the law on handling administrative violations.

2. In addition to the penalties and remedial measures prescribed by administrative penalty laws, an organization or individual that commits an act of infringement of intellectual property rights might also be forced to distribute or use for non-commercial purposes the intellectual property counterfeit goods, the materials and devices primarily used for manufacture or sale of the intellectual property counterfeit goods, provided this does not affect the exercising of rights of the intellectual property right holders and other conditions prescribed by the Government are fulfilled.

3. Penalties, power to impose administrative penalties for infringement of intellectual property rights shall comply with laws on handing administrative violations.

Article 215. [230] ***(annulled)***

Section 2. CONTROL OF INTELLECTUAL PROPERTY RELATED IMPORTS AND EXPORTS

Article 216. Measures to control intellectual property related imports and exports

1. Measures to control intellectual property related imports and exports shall comprise:

a) Suspension of customs procedures for goods suspected of infringing intellectual property rights;

b) Inspection and supervision to detect goods showing signs of infringing intellectual property rights.

2. Suspension of customs procedures for goods suspected of infringing intellectual property rights is measure that will be taken in the following cases:

a) The suspension is requested by the intellectual property right holder in order to collect information and evidence on the goods consignment in question so that the intellectual property right holder may exercise the right to request that the infringement is dealt with and to request implementation of provisional urgent measures or preventive measures to ensure imposition of administrative penalties.

b) The suspension is preemptively imposed by the customs authority in case of suspicion that the exports or imports are intellectual property counterfeit goods during the process of customs inspection, supervision and control.

3. Inspection and supervision to detect goods showing signs of infringing intellectual property rights means a measure taken at the request of an intellectual property right holder in order to collect information for the exercise of the right to request suspension of customs procedures.

4. If any intellectual property counterfeit goods within the meaning of article 213 of this Law are found during the course of application of the measures stipulated in clauses 2 and 3 of this article, the customs authority shall have the right and responsibility to apply administrative remedies to deal with such goods in accordance with article 214 of this Law.

5. The Government of Vietnam shall elaborate point b clause 2 of this Article.

Article 217. Obligations of applicants for measures to control intellectual property related imports and exports

1. An applicant for application of a measure to control intellectual property related imports or exports shall have the following obligations:

a) To prove that the applicant is an intellectual property right holder by producing the documents and evidence stipulated in clause 2 of article 203 of this Law;

b) To supply information sufficient to identify goods suspected of infringing intellectual property rights or to detect goods showing signs of infringing intellectual property rights;

c) To file a written request with the customs authority and to the pay fees and charges stipulated by law;

d) To pay damages and other expenses incurred to persons subject to control measures in a case where the controlled goods are found not to have infringed industrial property rights.

2. In order to secure the performance of the obligation stipulated in point d of clause 1 of this article, an applicant shall deposit security in one of the following forms:

a) A sum of money equal to twenty (20) per cent of the value of the goods consignment subject to the application of the measure of suspension of customs procedures, or at least twenty million (20,000,000) dong where it is impossible to value such goods;

b) A deed of guarantee issued by a bank or other credit institution.

Article 218. Procedures for application of the measure of suspension of customs procedures

1. When the requester for suspension of customs procedures has fulfilled the obligations specified in Article 217 of this Law, the customs authority shall issue the decision on suspension.

The customs authority shall provide the intellectual property right holder with information on name and address of shipper; exporter, consignee or importer; description of goods; quantity of goods; country of origin of goods (as the case may be), within 30 days from the date of issuance of the decision to apply administrative measures to handle mark counterfeiting and pirated goods specified in Clause 4, Article 216 of this Law.

2. The duration of suspension of customs procedures is ten working days after the customs procedure suspension requester receives the customs authority's notice of customs procedures suspension. In case the customs procedure suspension requester has a justifiable reason, this duration may be prolonged but must not exceed twenty working days, provided that the requester deposits a security specified in Clause 2, Article 217 of this Law.

3. Upon the expiration of the duration specified in Clause 2 of this Article, if customs procedure suspension requesters do not institute civil lawsuits and customs authorities decide not to accept the cases for handling of administrative violations of goods consignment exporters or importers according to administrative procedures, customs authorities have the following responsibilities:

a) To continue carrying out customs procedures for goods consignments in question:

b) To compel customs procedure suspension requesters to compensate all the damage caused to goods consignment owners due to their unreasonable requests, and pay expenses for the warehousing and preservation of goods as well as other expenses incurred by customs authorities and other related agencies, organizations and individuals under the customs law:

c) To refund to customs procedure suspension requesters the remaining security amount after the obligation of paying compensations and expenses specified at Point b of this Clause is fulfilled.

4. In case the customs authority preemptively suspends the customs procedures, the customs authority shall promptly notify the intellectual property rights holder, if possible, and the importer or exporter of the suspension.

Within 10 working days from the date of notification, if the intellectual property right holder does not file a civil lawsuit and the customs authority does not issue a decision to accept jurisdiction to handle the case following procedures for imposition of administrative penalties, the customs authority shall carry on the customs procedures for the consignment.

Article 219. Inspection and supervision to detect goods showing signs of infringement of intellectual property rights

Where an intellectual property right holder requests inspection and supervision to detect goods showing signs of infringement of intellectual property rights and the customs authority then finds such a goods consignment, the customs authority shall promptly notify the applicant thereof. If the applicant does not request the suspension of customs procedures with regard to the offending goods consignment and the customs authority does not issue a decision on consideration of application of the administrative penalties stipulated in article 214 of this Law within three

working days from the date of notification, the customs authority must continue carrying out customs procedures for the goods consignment in question.

Part six

IMPLEMENTATION PROVISIONS

Article 220. Transition clauses

1. Copyright and related rights protected under legal documents which took effect before the effective date of this Law continue to be protected under this Law if they remain in the term of protection by that date.

2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, marks, appellations of origin of goods, layout designs or plant varieties, which have been filed with competent agencies before the effective date of this Law, continue to be processed under legal documents effective at the time of their filing.

3. All rights and obligations conferred by protection titles granted under the provisions of law which are effective before the effective date of this Law and procedures for maintenance, renewal, modification, termination, invalidation, licensing, ownership assignment, settlement of disputes relating to these protection titles are governed by this Law, except grounds for invalidation of protection titles which are subject to the provisions of law which are effective at the time of grant of these protection titles. This provision also applies to decisions on registration of appellations of origin of goods issued under the provisions of law which are effective before the effective date of this Law. Industrial property right authority shall carry out procedures for the grant of certificates of GI registration for appellations of origin of goods.

4. Trade secrets and trade names which have been existing and protected under the Government's Decree No. 54/2000/ND-CP of October 3, 2000 on the protection of industrial property rights to trade secrets, GIs, trade names and the protection of the right to repression of industrial property-related unfair competition shall continue to be protected under this Law.

5. From the effective date of this Law, GIs, including those protected under the Decree mentioned in Clause 4 of this Article, may only be protected after they are registered under this Law.

Article 221. Entry into force

This Law comes into force from July 01, 2006.

Article 222. Guidance on implementation

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

CERTIFIED BY

CHAIRPERSON

Le Quang Tung