

**LAW**

AMENDMENTS TO SOME ARTICLES OF THE LAW ON INTELLECTUAL PROPERTY

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*The National Assembly of Vietnam promulgates the Law on Amendments to Law on Intellectual Property No. 50/2005/QH11, which is amended by the Law No. 36/2009/QH12 and the Law No. 42/2019/QH14.*

**Article 1. Amendments to some Articles of the Law on Intellectual Property**

1. Amendments to some Clauses of Article 4:

a) Amendments to Clauses 8, 9 and 10; addition of Clauses 10a, 10b, 10c and 10d after Clause 10; amendments to Clause 11 and addition of Clause 11a after Clause 11:

“8. Derivative work means a work that is based on one or multiple works by translation from one language into another, adaptation, editing, notation, selection, modification, arrangement and other types of adaptation.

9. *9. Published work, audio and video recording means a work or audio and 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 shape or 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, audio or video recording by equipment or form.*

10a. 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. 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 from certain acts that are not permitted by the holders of copyrights and related rights.

10c. 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. Right management information (RMI) means information serving identification of works, performances, audio and video recordings, broadcasts, encrypted program-carrying satellite signals; about authors, holders of copyrights and related rights, conditions for use thereof; identification numbers of this 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 sound or image or both sound and image, the reproduction of sound or image, the reproduction or sound and image of a work, performance, audio and 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. Communication to the public means public transmission of works; sounds, images of performances; sounds, images or fixation of sounds, images in audio and video recordings by any means other than broadcasting.";

b) Addition of Clause 12a after Clause 12 and amendments to Clause 13:

"12a. Secret invention means an invention that has been identified as a state secret by a competent 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 configuration, lines, colours or a combination of such elements, and can be seen during the use of the product or complex product."*

c) Amendments to Clause 20:

"20. Well known mark means a mark widely known by the relevant sections of the public throughout the territory of Vietnam.";

d) Amendments to Clause 22 and addition of Clause 22a after Clause 22:

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

22a. Homonymous geographical indications (GI) are those that are spelled or pronounced alike."

2. Amendments to Clause 2 of Article 7:

"2. The exercise of intellectual property rights must not infringe the interests of the State, the public interest or the legitimate rights and interests of other organizations and individuals, and

must not breach 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. Amendments to Clause 2 and Clause 3 of Article 8:

"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 support for the creation, receipt and use of transferred 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. Addition of Article 12a before Article 13 in Section 1 Chapter I of Part Two:

**"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-author must be exercised with the consent of the co-author, unless the work has a separate part which is detachable for independent use without prejudice to the parts of the work of the co-author or otherwise prescribed by law."

5. Amendments to Articles 19, 20 and 21:

**"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, whether directly or via audio and video recordings or any technological devices, at a location that is publicly accessible but 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 transfer of other rights to ownership of the original or copies of their works in tangible forms, 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 the provision of their works to the public in a manner that it can be accessed by the public at their time and location of choice;

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.

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 using the

work without independent economic purposes and the copy 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."

6. Amendments to Clause 1 of Article 22:

"1. Computer program means a set of instructions expressed in the form of commands, codes, diagrams and other forms which, when incorporated in a device run by computer programming languages in a manner that is enables a computer or device to perform a job or achieve a specific result. Computer programs are protected in the same manner as literature works, whether they are source codes or machine codes.

Authors and holders of copyrights on computer programs are entitled to reach written mutual agreements on repair and upgrade of the programs. Organizations and individuals having the legal right to use copies of computer programs are entitled to create backup copies for use in case the former is deleted, damaged or otherwise unusable but cannot be transferred to any other organization or individual."

7. Amendments to Article 25; addition of Article 25a after Article 25; amendments to Article 26:

### **"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 and origin of the works:

a) The user makes a copy for the personal purpose of scientific research or study and of a non-commercial nature. This does not apply if the copy is created using a copying device;

b) The user reasonably reproduces part of the work using a copying device for the personal purpose of scientific research or study and of a non-commercial nature.

c) The user reasonably uses the work to as illustration in a lecture, printed matter, performance, audio 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 state agencies;

dd) The user reasonably cites the work without misrepresenting the author's views to comment, introduce or illustrate in the user's own work, to write a news article or periodical, in a broadcast or documentary;

e) The user uses the work for library operation of a non-commercial nature, including reproducing works being stored in the library for preservation, provided these copies are marked as archived copies and have restricted access in accordance with regulations of law on library and archiving; reasonably reproduces part 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 owner. This does not apply if the work has been digitally released;

g) The user performs a theatrical work, musical work, dance or work of other art forms during a cultural event of a non-commercial nature;

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

i) The user imports copies of another person's work for personal use of a non-commercial nature;

k) The user reproduces the work by publishing on a newspaper or periodical, 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 photographs, 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, communicate the work in the form of an accessible copy when he/she has lawful access to the original work or copy thereof. Accessible copies are copies that are accessible to disabled persons. Accessible copy may only be used for personal purposes of the disabled persons and may have appropriate technical adjustments in order for them to be accessible to disabled persons.

2. Organizations that satisfy the conditions of the Government are entitled to reproduce, distribute, perform, communicate works in the form of accessible copies when they have lawful access to the original work or copy thereof work 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 consent of 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 consent of the copyright owner, provided before the distribution or communication, the organization does not know or has reasons to know that these accessible copies will be used for other subjects other than disabled persons.

5. Disable 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 disable persons without consent of the copyright owners.

6. The Government of Vietnam shall elaborate this Article.

## **Article 26. Limitations of copyrights**

1. When a published work is used without permission but royalties have to be paid, the following information about the author and origin of the work must be provided:

a) Broadcasting organizations that commercially use published works, works that have been fixed in audio or video recordings by their copyright owners as broadcasts with sponsorships, advertisements or charges in whatever form are not required to obtain permission but have to pay royalties to the copyright owners as soon as the works are used. 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 that commercially use published works, works that have been fixed in audio or video recordings by their copyright owners as broadcasts without sponsorships, advertisements or charges in whatever form are not required to obtain permission but have to pay royalties to the copyright owners as soon as the works are used.

b) In case a work that has been fixed in audio or video recordings by its copyright owner is published for commercial purposes, other organizations and individuals may use such recording in business operation without having to obtain permission but royalties have to be paid to the copyright owner 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 teaching or research of a non-commercial nature 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 but fail to find or identify their copyright owners, regulations of the Government shall apply."

8. Amendments to Article 28:

### **"Article 28. Infringement of copyright**

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

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

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

4. Deliberately destroying or de-activating the effective technological measures implemented by 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. Producing, distributing, importing, offering, selling, promoting, advertising, marketing, leasing, or storing a device, product or component for commercial purposes; introducing or providing services knowing or having reason to know that the equipment, product or component is manufactured or used for deactivation of an effective technological measure for protection of copyright.

6. Deliberate deletion, removal or change of RMI without consent of the author, copyright owner knowing or having reason to know that such act will encourage, facilitate or conceal copyright infringement as prescribed by law.

7. Deliberately distributing, importing for distribution, broadcasting, communicating or publicly providing copies of works knowing or having reason to know that RMI has been deleted, removed or changed without consent of the copyright owner; knowing or having reasons to know that such act will encourage, facilitate or conceal copyright infringement as prescribed by law.

8. Failure 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."

9. Amendments to Articles 29, 30, 31, 32 and 33:

### **"Article 29. Rights of performers**

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

If the performer does not hold the copyright on the performance, the performer will have the moral rights specified in Clause 2 of this Article; the holder of the copyright on the performance will have the economic rights specified in Clause 3 of this Article.

2. The moral rights include:

- a) The right to have the name acknowledged when performing, when distributing audio and video recording or when the performance is broadcasted;
- b) The right to have the integrity of the imagery of the performance protected; to prevent others from modifying, editing or distorting the work in any way prejudicial to the honor and reputation of the performer.

3. The economic rights include the right to exclusively exercise or to authorize other organizations and individuals to exercise the following rights:

- a) Fix the live performance in audio or video recordings;
- b) Directly or indirectly reproduce all or part of the performance which has been fixed in audio or video recordings in any means or form, except the cases specified in Point a Clause 5 of this Article;
- c) Broadcast or communicate to the public the unfixed performance so that it may be accessed by the public, except where such performance is intended to be broadcast;
- d) Distribute, import for public distribution by sale, or transfer of other rights to ownership of the original or copies of fixation of their performances in tangible forms, except for the cases specified in Point b Clause 5 of this Article;
- d) Leasing out originals or copies of the performance which has been fixed in audio or video recordings to the public, even after it has been distributed by the performer or with the consent of the performer;
- e) Broadcast or communicate to the public the fixation of the performance, including publicly provision of the fixation of the performance so that it may be accessed by the public at a time and location of choice.

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 the copyright on the performance, pay royalties and other material benefits (if any) to the copyright owner as prescribed by law or under agreement if this is not prescribed by law, except in the cases specified in Clause 5 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

5. The holder of rights to a 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 performance following a technological process during the operation of the devices in order to transmit within a network between third parties via intermediates, or legally using the performance which has been fixed in audio or video recordings without independent economic purposes and after which the copy is automatically deleted and cannot be recovered;

b) Subsequent distribution, import for distribution of the original or copies of fixation of the performance the distribution of which has been carried out or permitted by its right owner.

### **Article 30. Rights of producers of audio and video recording**

1. Producers of audio and video recording shall have the exclusive right to exercise, or to authorize others to exercise, the following rights:

a) Directly or indirectly reproduce all or part of the performance on an audio or video recording in any means or form, except the cases specified in Point a Clause 3 of this Article;

b) Distribute, import for public distribution by sale, or transfer of other rights to ownership of the original or copies of audio or video recordings in tangible forms, except for the cases specified in Point b Clause 3 of this Article;

c) Leasing out originals or copies of their audio or video recordings, even after they have been distributed by the producer or with the consent of the producer;

d) Broadcast or communicate to the public their audio or video recordings, including publicly provision of recordings so that it may be accessed by the public at a time and location of choice.

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 the copyright on the audio or video recording, pay royalties and other material benefits (if any) to the copyright owner as prescribed by law or under agreement if this is not prescribed by law, except in the cases specified in Clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

3. The holder of rights to an 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 performance following a technological process during the operation of the devices in order to transmit within a network between third parties via intermediates, or legally using the audio or video recording without independent economic purposes and after which the copy is automatically deleted and cannot be recovered;
- b) Subsequent distribution, import for distribution of the original or copies of the audio or video recording the distribution of which has been carried out or permitted by its right owner.

### **Article 31. Rights of broadcasting organizations**

1. Broadcasting organizations shall have the exclusive right to exercise, or to authorize others to exercise, the following rights:

- a) Broadcast or re-broadcast their broadcasts;
- b) Directly or indirectly reproduce the entire or part of the fixation of their broadcasts using any means or form, except for the cases specified in Point a Clause 3 of this Article;
- c) Fix their broadcasts;
- d) Distribute, import for public distribution by sale, or transfer of other rights to ownership of the fixation of their broadcasts, 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 the copyright on the broadcast, pay royalties and other material benefits (if any) to the copyright owner as prescribed by law or under agreement if this is not prescribed by law, except in the cases specified in Clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

3. The holder of rights to a 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 transmit within a network between third parties via intermediates, or legally using the broadcast without independent economic purposes and the copy 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 its right owner.

### **Article 32. 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) Part of the performance is recorded for teaching purposes or news production of a non-commercial nature;
  - b) Part of the performance, audio recording, video recording or broadcast is reproduced or for the purpose of scientific research or study of a person or on behalf of a disabled person and of a non-commercial nature;
  - c) Part of the performance, audio recording, video recording or broadcast is reasonably reproduced for direct teaching by a person and of a non-commercial nature, unless the performance, audio recording, video recording or broadcast has been published for teaching purposes;
  - d) It is reasonably cited for the purpose of news production;
  - dd) The broadcasting organization creates a temporary copy for broadcasting while it is the broadcasting right.
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 performers, 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 or video recording may be used without permission or payment of royalties except provision of information about it:

a) Organizations and individuals that use a audio or video recording that has been commercially published for broadcasting with sponsorships, advertisements or collection of charges in whatever form are not required to obtain permission but have to pay royalties to the performers, the producer of the audio or video recording, and the broadcasting organization as soon as the recording is used. 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.

Organizations and individuals that use a audio or video recording that has been commercially published for broadcasting without sponsorship, advertisement or collection of charges in whatever are not required to obtain permission but have to pay royalties to the performers, the producer of the audio or video recording, and the broadcasting organization as soon as the recording is used;

b) Organizations and individuals that use an audio or video recording that has been commercially published for business operation are not required to obtain permission but have to pay royalties to the performances, the producer of the audio or video recording, and the broadcasting

organization as soon as the recording is used. If no agreement is reached, involved parties shall comply with regulations of the Government. The Government of Vietnam shall specify the business operation activities mentioned in this point.

2. The use of the audio or 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 performers, the producer of the audio or video recording, or the broadcasting organization.

3. Organizations and individuals that wish to use published audio or video recordings of Vietnamese organizations but fail to find or identify their copyright owners, regulations of the Government shall apply."

10. Amendments to Article 35:

### **"Article 35. Infringement of related rights**

1. Infringement of rights of performers stipulated in Article 29 of this Law.

2. Infringement of rights of producers of audio and video recordings stipulated in Article 30 of this Law.

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

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

5. Deliberately destroying or de-activating the effective technological measures implemented by the related right owner in order to commit the acts specified in this Article and Article 28 of this Law.

6. Producing, distributing, importing, offering, selling, promoting, advertising, marketing, leasing, or storing a device, product or component for commercial purposes; introducing or providing services knowing or having reasons to know that the equipment, product or component is manufactured or used for deactivation of an effective technological measure for protection of related rights.

7. Deliberate deletion, removal or change of RMI without consent of the related right owner knowing or having reasons to know that such act will encourage, facilitate or conceal related right infringement as prescribed by law.

8. Deliberately distributing, importing for distribution, broadcasting, communicating or publicly providing the performance or copy or the fixed performance, audio or video recording, or broadcast knowing or having reasons to know that RMI has been deleted, removed or changed without consent of the related right owner; knowing or having reasons to know that such act will encourage, facilitate or conceal related right infringement as prescribed by law.

9. Manufacturing, assembling, transforming, distributing, importing, exporting, offering, selling or leasing out a device or system knowing or having reasons to know that such device or system illegally decodes or helps illegally decode encrypted program-carrying satellite signals.

10. Deliberately receiving or relaying encrypted program-carrying satellite signals after the signals have been decoded without permission from the legal distributor.

11. Failure 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."

11. Amendments to Article 36:

### **"Article 36. Copyright owners**

Copyright owner means 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."

12. Amendments to Articles 41, 42, 43, 44; addition of Article 44a after Article 44 in Chapter III Part Two:

### **"Article 41. Copyright owners being assignees of rights**

1. Any organization or individual that is contractually assigned one, several or all of the rights stipulated in Clause 3 Article 19 and Clause 1 Article 20 of this Law shall be the copyright owner.

2. Organizations and individuals that are managing anonymous works or are transferees of rights to anonymous works shall have rights of owners 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 transferees of rights shall be determined in accordance with this Law and relevant laws.

### **Article 42. The State as holders of copyrights and 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 ordering, task assignment, bidding by agencies funded by state budgets;

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

c) The copyright owner, related right owner, copyright co-owner, related right co-owner of a work, performance, audio or video recording, or broadcast dies without an heir during the copyright term, or the heir refuses the inheritance.

2. The State represents the right to 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 identities of their authors, co-authors, owners or co-owners of copyrights are determined, except in the cases specified in Clause 2 Article 41 of this Law.

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

State authorities in charge of copyrights and related rights (hereinafter referred to as "copyright authorities") shall exercise the rights of owners of copyright and related rights on behalf of the State 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 its copyright term expires according to Clause 2 Article 27 of this Law. A performance, audio recording, video recording or broadcast will pass into the public domain after its copyright term expires 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 owners**

1. Related right owners include:

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

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

2. Related right owners that are organizations that assign tasks to their organizations and individuals to give performances, produce audio recordings, video recordings or broadcasts are owners 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 owners that are organizations that sign contracts with other organizations and individuals to give performances, produce audio recordings, video recordings or broadcasts are owners 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 in accordance with the law on inheritance shall be the owner of the 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 is assigned one, several or all of the rights under a contract shall be owner 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 or contribution to the 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, owners 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."

13. Amendments to Clause 1 and Clause 2 of Article 47:

"1. Licensing of copyright and related rights means the grant of permission by the copyright holder or related right holder for another organization or individual 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."

14. Amendments to Article 49 and Article 50:

#### **"Article 49. Registration of copyright and related rights**

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

2. The filing of an application for grant of a certificate of registered copyright or a certificate of registered related rights shall not be a compulsory pre-requisite for entitlement to copyright or related rights in accordance with the provisions of this Law.

3. Organizations and individuals who are granted certificates of registered copyright or certificates of registered related rights 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 registered copyright or certificates of registered related rights.

5. The Government of Vietnam shall elaborate the conditions and procedures for issuance of certificates of registered copyright or certificates of registered related rights.

#### **Article 50. Application for registration of copyright and related rights**

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

2. An application for registration of copyright or related rights consists of:

a) The application form.

The declaration form must be written in Vietnamese and contains 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-grant 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, owner of

copyright, owner of related rights, unless they are not physically capable of signing or appending fingerprints.

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

b) Two copies of the work that is the subject of the application for copyright registration, or two copies of the formulated object the subject of the application for related rights registration;

c) Authorization letter if the applicant is an authorized person;

d) Documents proving ownership of artistic freedom or assignment of creativity works, creativity contract, 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 of this Clause must be written in Vietnamese. Documents in other languages must be translated into Vietnamese."

15. Amendments to Article 52:

**"Article 52. Time-limit for granting certificates of registered copyright certificates and registered related rights**

Within 15 working days from the receipt of the valid application, the copyright authority shall grant the certificate of registered copyright or registered related rights to the applicant, or notify the applicant in writing in a case the application is rejected."

16. Amendments to Article 55:

**"Article 55. Re-grant, renewal and invalidation of certificates of registered copyright certificates and certificates of registered related rights**

1. In case the certificate of registered copyright or related rights 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 owner 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 registered copyright or related rights within 12 working days from the receipt of the valid application.

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

2. In case the person to whom the certificate of registered copyright or registered related rights is granted is not the author, owner 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 registered copyright certificate or registered related rights was granted against this Law shall be entitled to request the copyright authority to invalidate the certificate.

4. The competent authority shall issue the decision to invalidate the certificate of registered copyright or related rights within 15 working days from the receipt of any of the following documents:

a) An effective decision 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 registered copyright or related rights;

b) A document of the organization or individual that was granted the certificate of registered copyright or related rights requesting invalidation of the granted certificate.

5. The Government of Vietnam shall elaborate this Article."

17. Renaming of Chapter VI in Part Two:

## **"Chapter VI**

### **COLLECTIVE REPRESENTATION, CONSULTANCY AND SERVICES REGARDING COPYRIGHT AND RELATED RIGHTS."**

18. Amendments to Article 56:

#### **"Article 56. Organizations acting as collective representatives of copyright or related rights**

1. An organization acting as the collective representative of copyright or related rights (hereinafter referred to as "representative organization") is a voluntary, financially autonomous, non-profit organization established pursuant to an agreement between authors, copyright and related right owners and operating pursuant to the law in represent copyrights and related rights, and is subject to state management by the Ministry of Culture, Sports and Tourism regarding collective representation of copyrights and related rights.

2. A representative organization shall have the following activities pursuant to written authorization from authors, copyright holders or related right holders:

a) Manage copyright or related rights; negotiate licensing; and collect and distribute royalties and other material benefits from the permitted exercising of authorized rights;

b) Protect the legitimate rights and interests of its members; organize conciliation in case of disputes.

3. A representative organization shall have the following rights and duties:

a) Be responsible for transparency in management and administration of its operation to 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 its management; specify the scope of authorization, effect of the authorization contract, plan and result 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 its charter and the authorization letter which contains specific the rates or percentages, method and time of royalty distributions; 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 from licensing among the authors, copyright owners and related right owners after deducting the costs mentioned in Point dd of this Clause;

g) Submit annual and irregular reports on its operation to competent authorities; facilitate inspections by competent authorities;

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

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

k) Decide its 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 broadcasts involve rights and interests of multiple representative organizations, one of them may be collectively selected to negotiate the licensing, royalty collection and distribution in accordance with their charters and authorization letters.

5. In case the representative organization fails to find or contact the authorizer 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 beneficiary for 5 more years. If the beneficiary 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 beneficiary or person with relevant rights and obligations is found within the 5-year period, these amounts shall be paid to him/her after deducting the costs of management and search.

6. The Government of Vietnam shall elaborate this Article."

19. Amendments to Clause 1 of Article 60:

"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 date of submission or priority date but is announced on or after such date."

20. Amendments to Clause 1 of Article 72:

"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 trademark that can be graphically presented;"

21. Amendments to Article 73:

a) Amendments to Clause 1:

"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 Internationale;"

b) Addition of Clause 6 and Clause 7 after Clause 5 of Article 73:

“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.”.

22. Amendments to some Points of Clause 2 Article 74:

a) Amendments to Points a, b and c:

"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 filing 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 filing 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;"

b) Amendments to Points dd and e:

"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 application date (or priority date if the application is eligible for priority), even if the application for mark registration is submitted 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;"

c) Amendments to Point h and Point i:

"h) Signs that are identical with 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 the mark registration 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 with 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;"

d) Amendments to Point n; addition of Point o and Point p below after Point n:

"n) Signs that are identical with 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 mark registration application;

o) Any sign that is identical to 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."

23. Amendments to the first paragraph of Article 75:

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

24. Amendments to Article 79:

**"Article 79. General conditions for geographical indications to be eligible for protection**

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

a) The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication.

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

2. Homonymous geographical indications that satisfy the conditions specified in Clause 1 of this Article will be protected if they are used in a manner that does not cause confusion to consumers about their geographical origins and fair treatment of their manufacturers is ensured."

25. Amendments to Article 86; addition of Article 86a after Article 86:

**"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 expense;

b) Organizations or individuals who have supplied funds and material facilities to authors in the form of job assignment or hiring, organizations and individuals assigned to manage genetic resources or traditional knowledge about genetic resources under contracts for access to genetic resources and benefit-sharing, unless otherwise agreed by the parties involved or in the cases specified in Article 86a of this Law.

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 assign 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. Right to register inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget**

1. Regarding inventions, industrial designs and layout designs that are results of science and technology missions wholly funded by state budget, the rights to register them shall be automatically assigned to the presiding organizations without compensation, except for the cases specified in Clause 3 of this Article.

2. Regarding inventions, industrial designs and layout designs that are results of science and technology missions partially funded by state budget and other sources, part of the right to register them in proportion to the ratio of state funding shall be automatically assigned to the presiding organizations without compensation, except for the cases specified in Clause 3 of this Article.

3. Right to register inventions, industrial designs and layout designs that are results of science and technology missions in the field of national defense and security:

a) In case the science and technology mission is wholly funded by state budget, the State shall have the right to register inventions, industrial designs and layout designs thereof;

b) In case the science and technology mission is funded by multiple sources including state budget, the State shall have part of the right to register inventions, industrial designs and layout designs thereof in proportion to the ratio of state funding;

c) The representative of state ownership shall exercise the right to register specified in Point a and Point b of this Clause.

4. The Government of Vietnam shall elaborate this Article."

26. Amendments to Article 88:

**"Article 88. Right to register geographical indications**

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

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

27. Addition of Article 89a after Article 89:

**"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 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."

28. Amendments to Clause 2 of Article 92:

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

29. Addition of Clause 8 and Clause 9 after Clause 7 of Article 93:

"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 on 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.

30. Amendments to Article 95 and Article 96:

**"Article 95. Termination of validity of protection titles**

1. The validity of 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 registered mark 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 the licensee of the owner without justifiable reason for five (5) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (3) months before the request for termination;
- dd) The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;
- e) The owner of a certificate of registered certification mark 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 decisive to reputation, quality or special characteristics of products bearing a geographical indication 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 a person permitted by the mark owner causes users to misunderstand 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 geographical indication 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, the validity of such protection title shall, upon the expiration of such time-limit, automatically terminate 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, the validity of such protection title shall, upon the expiration of such time-limit, automatically terminate 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 State administrative body for industrial property rights shall consider terminating the validity of such protection title.

4. Organizations and individuals shall have the right to request the industrial property right authorities to terminate the validity of 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 validity 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 validity of the protection title, or issue a notification of refusal to invalidate.

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

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

In case the industrial property right authority issues the decision to invalidate the protection title according to regulations of Article 3 of this Article, the validity of 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 also apply to termination of validity 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 invention is directly created from a genetic resource or traditional knowledge about a genetic resource but the registration application 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 rule in the following cases:

a) The applicant does not have the right and is not authorized 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 industrial property registration application expands the scope of subject matter 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 having ordinary skill in the art;

dd) The invention is granted a protection title that exceeds the scope disclosed in the initial description of the applicant;

e) The applicant is not the first party to file the patent according to the first-to-file rule 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 issuance date of the protection title.

4. Organizations and individuals shall have the right to request 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 time limit for requesting invalidation of a protection title shall be its entire duration, unless the request is made against the protection title of a mark because of the reasons specified in Clause 2 of this Article, in which case the time limit shall be 05 years from the issuance date of the protection title or from the effective date of international registration of the mark in Vietnam.

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

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

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

31. Amendments to Clause 1 and Clause 2 of Article 97:

"1. The owner of a protection title, the organization or individual exercising the right to register geographical indications 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 charge are paid:

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

b) Revisions to the description of particular characteristics, quality or geographical area bearing a geographical indication; 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, the organization or individual exercising the right to register geographical indications, 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 fees and charges."

32. Addition of Point dd1 after Point dd Clause 1 Article 100:

"dd1) Documents describing 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;".

33. Amendments to Article 103:

### **"Article 103. Requirements on applications for registration of industrial designs**

1. Documents identifying an industrial design which needs to be protected in the application 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 that needs protecting in order that it can be understood by persons having ordinary skill in the art.

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

34. Amendments to Clause 2 of Article 105:

“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.”.

35. Addition of Point e after Point dd Clause 1 of Article 106:

"e) For homonymous geographical indications, documents describing the use conditions and presentation of the geographical indications in order to ensure their distinctiveness.”.

36. Addition of Clause 3 after Clause 2 of Article 108:

“3. Applications for registration of secret inventions shall comply with regulations of the Government of Vietnam.”.

37. Amendments to Point dd and addition of Point e after Point dd Clause 2 of Article 109:

"dd) The applicant fails to fully pay the fee or charge as per regulations;

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

38. Amendments to the title and some Clauses of Article 110:

a) Amendments to the title of Article 110:

**"Article 110. Disclosure of mark registration applications, publication of industrial property registration”;**

b) Addition of Clause 1a before Clause 1:

“1a. 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.”;

c) Amendments to Clause 3:

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

39. Amendments to Article 112; addition of Article 112a after Article 112:

**"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 competent State administrative body for industrial property rights 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 geographical indication 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."

40. Addition of Clause 3 and Clause 4 after Clause 2 of Article 114:

"3. Industrial property right authorities may use the results of appraisal 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 appraisal of invention registration applications prescribed in Clause 3 of this Article."

41. Amendments to Clause 2 of Article 116:

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

42. Amendments to Article 117:

a) Amendments to Clause 1 and addition of Clause 1a after Clause 1:



“1. The grant of a protection title as the result of an application for registration of an invention, industrial design, mark or geographical indication 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 a case stipulated in Clause 3 Article 90 of this Law but fails to have 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 matter mentioned in the application.

1a. 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 scope of protection requested exceeds that disclosed in the initial description of the applicant;
- b) The invention is not fully and clearly disclosed in the description to the extent that such invention may be realized by persons having ordinary skill in the art;
- c) The invention is directly created from a genetic resource or traditional knowledge about a genetic resource but the registration application 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."

b) Amendments to Clause 3:

"3. Where an application for registration of industrial property falls 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 appraisal result which includes the intention 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 appraisal process if the applicant requests the suspension of the process, and request termination or invalidation of the mark registration certificate 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 mark registration certificate, the industrial property right authority shall carry on the appraisal process;

c) Suspend the appraisal 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 registration of the subject matter of industrial property or mark registration for malicious intent. On the basis of the court's judgment, the industrial property right authority shall carry on the appraisal 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."

43. Amendments to Article 118:

**"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 appraisal 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 appraisal 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 appraisal result, the industrial property application shall undergo re-appraisal of the matters against which the objection is made."

44. Addition of Article 119a after Article 119 in Section 3 of Chapter VIII:

**"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 that do not have 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 verification, the complainant shall pay the verification fee.

5. The time limit for settling a complaint shall comply with regulations of law on complaining. In case verification 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 verification, 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 verification 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."

45. Amendments to Article 121:

a) Amendments to Clause 1:

"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.";

b) Amendments to Clause 4:

"4. The State is the owner of geographical indications of Vietnam.

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

The Government of Vietnam shall elaborate the exercising of the right to manage geographical indications."

46. Amendments to Clause 2 of Article 123:

"2. Organizations and individuals who are granted the right to use geographical indications, or organizations which are granted the right to manage geographical indications 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 geographical indications as prescribed in Point b Clause 1 of this Article."

47. Amendments to Point b Clause 5 of Article 124:

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

48. Amendments to Point b Clause 2 of Article 125:

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

49. Amendments to Article 128:

### **"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 competent licensing body 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."

50. Amendments to Point d Clause 1 of Article 130:

"d) Possessing, using domain names identical with or confusingly similar to protected trade names or marks of others, or geographical indications without having the right to use for profits or malicious intents."

51. Addition of Article 131a after Article 131 in Section 1, Chapter IX of Part Three:

**"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 deducted from 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 shall elaborate this Article."

52. Addition of Article 133a after Article 133:

**"Article 133a. Rights of the State to inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget**

1. The state ownership representative shall publicly announce within 90 days the assignment of the right to register inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget to organizations and individuals in need in the following cases:

a) The organization presiding the science and technology mission fails to fulfill its obligation to notify as prescribed in Clause 1 Article 136a of this Law;

b) The organization presiding the science and technology mission sends a document to the state ownership representative stating that it does not wish to register such right;

c) The organization presiding the science and technology mission does not submit the application for registration of the invention, industrial design or layout design by the deadline specified in Clause 2 Article 136a of this Law.

2. In case the right to registration cannot be assign to another organization or individual as prescribed in Clause 1 of this Article, the state ownership representative shall make an announcement on the website of the agency managing the science and technology mission, specifying that the invention, industrial design or layout design is the results of a science and technology mission funded by state budget.

3. Competent authorities may permit other organizations and individuals to inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget without the consent of the holders of the exclusive right to use them in the following cases:

a) The right holder fails to effectively use within a reasonable period of time the invention, industrial design or layout design that is the result of a science and technology mission at least 30% investment in which is funded by the State;

b) The use of such invention, industrial design or layout design is for public and non-commercial purposes or in service of national defense and security, disease prevention, treatment, assurance of nutrition of people or other urgent needs of society.

4. The competent authorities that allow other organizations and individuals to use inventions, industrial designs and layout designs as prescribed in Clause 3 of this Article shall pay compensation for the persons having the exclusive rights to use them as follows:

a) Regarding inventions, industrial designs and layout designs that are results of science and technology missions wholly funded by state budget, the organizations and individuals permitted to use them do not have to pay compensation;

b) Regarding inventions, industrial designs and layout designs that are results of science and technology missions that are partially funded by state budget, the organizations and individuals permitted to use them do not have to pay compensation for the part of right to use in proportion to state funding and shall pay compensation for the part of right to use in proportion to the remaining funding. The compensation amount paid to the holders of exclusive right to use shall be determined in accordance with Point d Clause 1 Article 146 of this Law.

5. The Government shall elaborate this Article."

53. Amendments to Article 135:

**"Article 135. Obligation to pay remuneration to authors of inventions, industrial designs and layout designs**

1. Except in the cases specified in Clause 2 of this Article, owners of inventions, industrial designs and layout designs shall pay remuneration to their authors under agreement. In case there is no agreement, the remuneration shall be determined as follows:

a) 10% of the pre-tax profit earned by the owner from the use of the invention, industrial design or layout design;

b) 15% the total amount received by the owner in each payment for licensing of the invention, industrial design or layout design before tax is paid.

2. Regarding inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget, the owners shall pay remunerations to their authors as follows:

a) 10% - 15% of the pre-tax profit earned by the owner from the use of the invention, industrial design or layout design;

b) 15% - 20% of the total amount received by the owner in each payment for licensing of the invention, industrial design or layout design before tax is paid.

3. In case where an invention, industrial design or layout design has co-authors, the remuneration provided for in Clause 1 and Clause 2 of this Article shall be applicable to the co-authors. The co-authors shall reach an agreement on the division 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 term of protection of such inventions, industrial designs and layout designs."

54. Addition of Article 136a after Article 136:

**"Article 136a. Obligations of presiding organizations to inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget**

1. Notify the state ownership representative shall publicly announce within 30 days from the date of creation of the invention, industrial design or layout design that is the results of a science and technology mission funded by state budget.

2. Submit the application for establishments of rights to the invention, industrial design or layout design that is the results of a science and technology mission funded by state budget within 06 months from the day on which the notification is sent to the state ownership representative.

3. Pay remuneration to authors of inventions, industrial designs and layout designs in accordance with Article 135 of this Law.

4. Regarding a science and technology mission up to 30% investment in which is funded by the State, the post-tax profit obtained from the use, transfer of the right to use, transfer of rights, contribution of the invention, industrial design or layout design as capital in proportion to the state funding ratio after remuneration is paid to the author shall be used in accordance with the presiding organization's regulations on financial management.

5. Regarding a science and technology mission over 30% investment in which is funded by the State, the post-tax profit obtained from the use, transfer of the right to use, transfer of rights, contribution of the invention, industrial design or layout design as capital after remuneration is paid to the author shall be distributed as follows:

a) Up to 10% shall be paid to the broker (if any) under the brokerage contract;

b) In case the science and technology mission is wholly funded by state budget, at least 50% of the remaining profit shall be used for investment in science and technology activities; the remaining profit shall be used in accordance with the presiding organization's regulations on financial management;

c) In case the science and technology mission is funded by multiple sources, the remaining profit shall be distributed among the parties in proportion to their contributions to the mission. The profit that is proportional to the state investment shall be used by the presiding organization in accordance with Point b of this Clause.

6. Presiding organizations that are granted protection titles for registered inventions, industrial designs and layout designs in accordance with Clause 1 and Clause 2 Article 86a of this Law shall exercise their industrial property rights as per regulations, implement protective measures,



and submit annual reports to agencies managing science and technology missions on the exercising of rights, implementation of protective measures and distribution of profit.

7. The Government shall elaborate this Article."

55. Addition of Clause 6 after Clause 5 of Article 139:

"6. Rights to inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget may only be transferred to organizations that are established in accordance with Vietnam's law, individuals that are Vietnamese citizens and have permanent residences in Vietnam. Transferees of these rights shall fulfill corresponding obligations of presiding organizations in accordance with this Law."

56. Addition of Point dd after Point d Clause 1 of Article 145:

"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."

57. Amendments to some Points of Clause 1 Article 146:

a) Amendments to Point b):

"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 semi-conducting technology, licensing shall be only for public and non-commercial purposes or for dealing with anti-competitive practices prohibited by the law on competition;"

b) Amendments to Point d and addition of Point dd after Point d:

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."

58. Amendments to Clause 1 of Article 147:

"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 Point a and Point dd Clause 1 Article 145 of this Law."

59. Amendments to Clause 1 of Article 153:

"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."

60. Amendments to Article 154:

**"Article 154. Conditions for provision of industrial property representation services**

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 practising 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."

61. Amendments to Clause 2 and addition of Clause 2a after Clause 2 of Article 155:

"2. An individual that satisfies the following conditions will be granted the industrial property representation service practising 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, geographical indications, 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. 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 practising certificate in the domain of marks, geographical indications, 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."

62. Amendments to Clause 2 of Article 156:

"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 practising certificate, remove the representative's name from the National Register of Industrial Property, and make an announcement on the Official Gazette of Industrial Property.

63. Amendments to Clause 2 of Article 157:

"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."

64. Amendments to Article 158:

**"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.

65. Amendments to some Points and Clauses of Article 163:

a) Amendments to Clause 1:

"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.";

b) Amendments to Point a of Clause 3:

"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;"

c) Amendments to Point c of Clause 3:

"c) They may easily mislead as to features or characteristics, value of such variety;"

d) Addition of Clause 6 after Clause 5:

"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.".

66. Amendments to Article 164 and Article 165:

#### **"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 and individuals who fund breeders to select and breed or discover and develop the plant variety by job assignment or hiring, unless otherwise agreed or it is the case specified in Clause 3 and Clause 4 of this Article;

c) Organizations and individuals to whom are transferred, or who inherit the right to register for protection of the plant variety.

3. Regarding plant varieties the creation, discovery and development of which are results of science and technology missions wholly funded by state budget, the right to register them shall be automatically assigned to the presiding organizations without compensation.

4. Regarding plant varieties the creation, discovery and development of which are results of science and technology missions partially funded by state budget, the part of the right to register them which is in proportion to the ratio of state funding shall be automatically assigned to the presiding organizations without compensation.

### **Article 165. Representatives of plant variety rights**

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 organizations providing plant variety right representation services.

2. An organization that satisfies the following conditions may provide plant variety right representation services in the name of an organization providing plant variety right representation services:

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 practising 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 State body competent to establish and enforce plant variety rights; deliver on time to the represented parties plant variety protection certificates 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) An organization providing plant variety right representation services 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 practice certificate;

b/ He/she is working in an organization providing plant variety right representation services.

6. An individual will be granted the plant variety right representation service practice 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 practising certificates."

67. Addition of Clause 6 after Clause 5 of Article 170:

"6. The Government shall elaborate the procedures for suspension, restoration and invalidation of plant variety protection certificates."

68. Amendments to Point a Clause 1 of Article 171:

"a) The application for registration for protection of the plant variety was filed by a person does not have the registration right;"

69. Addition of Clause 3 after Clause 2 of Article 172:

"3. The Government shall elaborate the procedures for revision and reissuance of plant variety protection certificates."

70. Amendments to Point d Clause 3 of Article 176:

"d) 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."

71. Amendments to Clause 2 of Article 180:

"2. As from the time an applicant withdraws the application, all further procedures related to such application shall cease."

72. Amendments to Article 183:

### **"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."

73. Amendments to Clause 2 of Article 189:

"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."

74. Amendments to Article 191; addition of Article 191a and Article 191b after Article 191 in Section 2 Chapter XIV of Part Four:

**"Article 191. Obligations of plant variety protection certificate holders**

1. Except in the cases specified in Clause 2 of this Article, the plant variety protection certificate holder shall pay remuneration to the plant variety breeder under agreement. In case there is no agreement, the remuneration shall be determined as follows:

- a) 10% of pre-tax profit earned by the plant variety protection certificate holder from the use of the protected plant variety for production or business;
- 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 Point a and Point b of this Clause.

2. If the plant variety is the result of a science and technology mission funded by state budget, the plant variety protection certificate holder shall pay remunerations to the breeder as follows:

- a) 10% - 15% of pre-tax profit earned by the plant variety protection certificate holder from the use of the protected plant variety for production or business;
- b) 15% - 20% 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) 20% - 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 Point a and Point b of this Clause.

3. In case where the plant variety has co-breeders, the remuneration provided for in Clause 1 and Clause 2 of this Article shall be applicable to the co-breeders. The co-breeders shall reach an agreement on the division of the remuneration paid by the plant variety protection certificate holder.

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. Obligations of presiding organizations to plant varieties selected and bred or discovered and developed as results of science and technology missions wholly funded by state budget**

1. Submit the application for registration of plant variety rights within 12 months from the day on which commissioning of the science and technology mission is completed.

2. Pay remuneration to the plant variety breeder in accordance with Article 191 of this Article.

3. Regarding a science and technology mission up to 30% investment in which is funded by the State, the post-tax profit obtained from the use, transfer of the right to use, transfer of rights, contribution of the plant variety as capital in proportion to the state funding ratio after remuneration is paid to the breeder shall be used in accordance with the presiding organization's regulations on financial management.

4. Regarding a science and technology mission over 30% investment in which is funded by the State, the post-tax profit obtained from the use, transfer of the right to use, transfer of rights, contribution of the plant variety which is selected and bred or discovered and developed as the results of the science and technology mission funded by state budget after remuneration is paid to the breeder shall be distributed as follows:

a) In case the science and technology mission is wholly funded by state budget, at least 50% of the remaining profit shall be used for investment in science and technology activities; the remaining profit shall be used in accordance with the presiding organization's regulations on financial management;

b) In case the science and technology mission is funded by multiple sources, the remaining profit shall be distributed among the parties in proportion to their contributions to the mission. The profit that is proportional to the state investment shall be used by the presiding organization in accordance with Point a of this Clause.

5. Presiding organizations that are granted plant variety protection certificates in accordance with Clause 3 and Clause 4 Article 164 of this Law shall exercise their rights to the plant varieties as per regulations, implement protective measures, and submit annual reports to agencies managing science and technology missions on the exercising of rights, implementation of protective measures and distribution of profit.

6. The Government shall elaborate this Article."

**Article 191b. Rights of the State to plant varieties selected and bred or discovered and developed as results of science and technology missions funded by state budget**

1. The state ownership representative shall publicly announce within 90 days the delegation of the right to register plant varieties selected and bred or discovered and developed as results of science and technology missions funded by state budget to organizations and individuals in need in the following cases:

- a) The presiding organization mission fails to fulfill its obligations as prescribed in Clause 1 Article 191a of this Law;
- b) The presiding organization sends a document to the state ownership representative stating that it does not wish to register.

2. In case the right to registration cannot be assign to another organization or individual as prescribed in Clause 1 of this Article, the state ownership representative shall make an announcement on the website of the agency managing the science and technology mission, Specifying that the plant varieties selected and bred or discovered and developed are the results of a science and technology mission funded by state budget.

3. Competent authorities may permit other organizations and individuals to plant variety selected and bred or discovered and developed that is the results of a science and technology mission funded by state budget without the consent of the holder of the exclusive right to use them in the following cases:

- a) The right holder fails to effectively use within a reasonable period of time the plant variety selected and bred or discovered and developed that is the results of a science and technology mission at least 30% investment in which is funded by the State;
- b) The use of such plant variety is for public and non-commercial purposes or in service of national defense and security, disease prevention, treatment, assurance of nutrition of people or other urgent needs of society.

4. The competent authorities that allow other organizations and individuals to use plant varieties as prescribed in Clause 3 of this Article shall pay compensation for the persons having the exclusive rights to use them as follows:

- a) Regarding plant varieties selected and bred or discovered and developed as results of science and technology missions wholly funded by state budget, the organizations and individuals permitted to use them do not have to pay compensation;
- b) Regarding plant varieties selected and bred or discovered and developed as results of science and technology missions that are partially funded by state budget, the organizations and individuals permitted to use them do not have to pay compensation for the part of right to use in

proportion to state funding and shall pay compensation for the part of right to use in proportion to the remaining funding. The compensation amount paid to the holders of exclusive right to use shall be determined in accordance with Point d Clause 3 Article 195 of this Law.

5. The Government shall elaborate this Article."

75. Amendments to Clause 4 and addition of Clause 5 after Clause 4 of Article 194:

"4. Rights to plant varieties selected and bred or discovered and developed as results of science and technology missions funded by state budget may only be transferred to organizations that are established in accordance with Vietnam's law, individuals that are Vietnamese citizens and have permanent residences in Vietnam. Transferees of these rights shall fulfill corresponding obligations of presiding organizations in accordance with this Law.

5. The Government shall elaborate this Article."

76. Amendments to Article 198:

a) Amendments to Point a and Point b of Clause 1:

"a) Apply Technological measure for right protection, right management information or other technological measures to prevent acts of infringement of its intellectual property rights;

b) 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.";

b) Addition of Clause 1a after Clause 1 and amendments to Clause 2 and Clause 3:

"1a. 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 State body 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."

77. Addition of Article 198a and Article 198b after Article 198:

**"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. The intermediary service providers are 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 providers may caches 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 of Vietnam.

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 matter of related rights in digital forms.

6. The Government shall elaborate this Article."

78. Amendments to Article 201:

b) Amendments to Clause 1 and addition of Clause 1a after Clause 1; amendments to Clause 2 and addition of Clause 2a after Clause 2:

"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. 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, law-practicing organization, organization providing science and technology services that is established and operate in accordance with law and has at least one individual who has the intellectual property assessor's card industrial property practice may carry out intellectual property assessment, except in the cases specified in Clause 2a of this Article.

2a. Foreign law-practicing organizations operating in Vietnam are not allowed to carry out industrial property assessment.";

b) Amendments to Clause 4 and Clause 5 as follows:

"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."

79. Amendments to Articles 212, 213 and 214:

**"Article 212. Acts of infringement of industrial property rights 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 geographical indications, 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 geographical indication 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 geographical indication being used for the same goods and these signs are attached by organizations or individuals that do not have the right to use such geographical indication according to Clause 4 Article 121 of this Law or law of the country of origin of such geographical indication.

4. Pirated goods are copies made without permission from the copyright holder or related right holder.

#### **Article 214. Administrative penalties and remedial measures**

1. Any organization or individual that commits an act of infringement of intellectual property rights defined in Clause 1 Article 211 of this Law shall face penalties and remedial measures in accordance with administrative penalty laws.

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 administrative penalty laws."

80. Amendments to Article 216:

a) Amendments to Clause 2:

"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 be dealt with and to request implementation of provisional emergency 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.";

b) Addition of Clause 5 after Clause 4:

"5. The Government of Vietnam shall elaborate Point b Clause 2 of this Article."

81. Addition of Clause 4 after Clause 3 of Article 218:

"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.

Witham 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."

82. Replacement, removal of the following words and phrases:

a) In Point g Clause 1 Article 14, the phrase “tác phẩm tạo hình” ("plastic art work") is replaced with the phrase “tác phẩm mỹ thuật” ("art work");

b) In Clause 2 Article 16, the phrase “cuộc biểu diễn” ("performance") is replaced with the phrase “quyền liên quan” ("related right") and the phrase “khoản 1” ("Clause 1") is removed;

c) in Clause 3 Article 60, Clause 4 Article 65 and Clause 2 Article 71, the phrase “Điều 86” ("Article 86") is replaced with the phrase “Điều 86, Điều 86a” ("Article 86, Article 86a");

d) In Clause 1 Article 94, the phrase “lệ phí duy trì hiệu lực” ("validity maintenance fee") is replaced with the phrase “phí, lệ phí để duy trì hiệu lực” ("validity maintenance fee/charge");

dd) In Clause 2 Article 94, the phrase “lệ phí duy trì hiệu lực” ("validity extension fee") is replaced with the phrase “phí, lệ phí để duy trì hiệu lực” ("validity extension fee/charge");

e) In Clause 3 Article 94, the phrase “lệ phí” ("fee") is replaced with the phrase “phí, lệ phí” ("fee/charge");

g) In Point c Clause 1 Article 108, the phrase “lệ phí nộp đơn” ("filing fee") is replaced with the phrase “phí, lệ phí” ("fee/charge");

h) In Point a Clause 1 Article 151, the phrase “bảo đảm thực thi” ("enforcement") is replaced with the phrase “bảo vệ” ("protection");

h) In Point b and Point c Clause 1 Article 151, the phrase “thực thi” ("enforcement") is replaced with the phrase “bảo vệ” ("protection");

e) In Article 159 and Clause 2 Article 169, the phrase “cây nho” ("vine") is replaced with the phrase “cây leo thân gỗ” ("woody vine");

h) In Point a Clause 3 Article 176, the phrase “điểm b và” ("subclause (b) and") is removed;

m) In Clause 2 Article 185, the phrase “điểm a khoản 1” ("clause 1(a)") is removed;

n) In Clause 1 Article 203, the phrase “tại Điều 79” ("in article 79") is removed;

o) In Clause 1 Article 209, the phrase “tại khoản 1 Điều 122” ("in clause 1 of article 122") is removed;



p) In Article 210, the phrase "tại Chương VIII, Phần thứ nhất" ("provisions of Chapter VIII, Part One") is removed;

q) In Clause 4 Article 216 and Article 219, the phrase "và Điều 215" ("and article 215") is removed;

83. Clause 19 Article 4, Article 5, Clause 3 Article 51, Clause 4 Article 117, Point b Clause 2 Article 176 and Article 215 are annulled.

## **Article 2. Amendments to some Articles of other relevant laws**

1. Amendments to some Article of the Law on Customs No. 54/2014/QH13, which is amended by the Law No. 71/2014/QH13 and the Law No. 35/2018/QH14:

a) Amendments to the title of Section 8 of Chapter III:

### **"Section 8**

#### **"INSPECTION, SUPERVISION, SUSPENSION OF CUSTOMS PROCEDURES FOR EXPORTS AND EXPORTS RELEVANT TO INTELLECTUAL PROPERTY RIGHTS";**

b) Amendments to Clause 2 of Article 73:

"2. Customs authorities shall decide suspension of customs procedures for exports and imports when the intellectual property right holder or a legally authorized person files a petition, pays a sum or submit guarantee documents of a financial institution to ensure compensation for damage and costs incurred from the unconformable suspension of customs procedures. The customs authority shall preemptively suspend the customs procedures if the customs authority, during customs inspection, supervision and control, has valid grounds to suspect that the exports or imports are intellectual property counterfeit goods."

2. Amendments to some Article of the Law on science And Technology No. 29/2013/QH13, which is amended by the Law No. 28/2018/QH14:

a) Amendments to Article 41:

#### **"Article 41. Right to ownership and right to enjoyment of research and development (R&D) results**

1. Organizations and individuals investing money, material – technical facilities for undertaking of science and technology missions shall be owners of the R&D results, unless otherwise agreed by the parties in the R&D contract.

2. Regarding R&D results funded by state budget:

a) The Minister of Science and Technology shall be the representative of ownership of results of national science and technology missions;

b) Ministers, heads of ministerial-level agencies, governmental agencies, other central authorities, Presidents of the People's Committees of the provinces shall be representatives of ownership of results of ministerial, provincial or intra-organizational science and technology missions they approved;

c) Heads of agencies and organizations other than those mentioned in Point a and Point b of this Clause shall be representatives of ownership of results of science and technology missions they approved.

3. The state ownership representatives prescribed in Clause 2 of this Article are entitled to assign in part or in whole the right to ownership or right to enjoyment of R&D results funded by state budget under decisions of the Government to presiding organizations or other organizations or individuals that wish to use these results, except in the cases specified in Clause 4 of this Article.

4. Regarding inventions, industrial designs, layout designs, plant varieties that are results of science and technology missions funded by state budget, the rights to register them shall be automatically assigned to the presiding organizations without compensation, or to other organizations and individuals in accordance with Law on Intellectual Property. When the protection titles are granted, the presiding organizations shall be the owner of the corresponding inventions, industrial designs, layout designs, plant varieties.

5. The Government shall elaborate regulations on right to ownership and right to enjoyment of R&D results prescribed in this Article.";

b) Amendments to Article 43:

**Article 43. Distribution of profit obtained from the use, transfer of the right to use, transfer of rights, contribution of R&D results funded by state budget**

1. At least 30% of the profit obtained from the use, transfer of the right to use, transfer of rights, contribution of R&D results funded by state budget shall be given to the author. The remaining profit shall be divided among the owner, the presiding authority and the broker in accordance with regulations of the Government, except in the cases specified in Clause 2 of this Article.

2. The distribution of profit obtained from the use, transfer of the right to use, transfer of rights, contribution of copyrighted inventions, industrial designs, layout designs, plant varieties that are results of science and technology missions funded by state budget shall be carried out in accordance with Law on Intellectual Property.".

3. Amendments to Point a Clause 4 Article 105 of the Law No. 15/2017/QH14 on Management and Use of Public Property, which is amended by the Law No. 64/2020/QH14:

"a) Assign the right to enjoyment or right to ownership to the presiding organization in order to utilize or commercialize the R&D results, unless they are inventions, industrial designs, layout designs and plant varieties, in which case right assignment shall comply with regulations of Law on Intellectual Property;"

4. Amendments to some Article of the Law on Prices No. 11/2012/QH13, which is amended by the Law No. 61/2014/QH13 and the Law No. 64/2020/QH14:

a) Addition of Point d after Point c Clause 1 of Article 19:

"d) Works, audio and video recordings in case of limited copyrights, limited related rights according to regulations of Law on Intellectual Property.

b) Amendments to Point c Clause 3 of Article 19:

"c) Specific prices and price brackets shall be imposed on:

- Land, water surface, groundwater, forests owned by the people and represented by the State, and clean water for domestic use;

- Prices for lease, lease purchase of social housing and official residences the costs of which are covered by state budget; prices for sale or lease of state-owned houses;

- Medical examination and treatment services, education and training services at health facilities, educational and training institutions of the State;

- Royalties when using works, audio and video recordings in case of limited copyrights, limited related rights according to regulations of Law on Intellectual Property.";

c) Addition of Point d after Point c Clause 1 of Article 22:

"d) Royalty brackets and royalties when using works, audio and video recordings in case of limited copyrights, limited related rights according to regulations of Law on Intellectual Property.".

### **Article 3. Effect**

1. This Law will take effect from January 1, 2023, except for the cases specified in Clause 2 and Clause 3 of this Article.

2. Regulations on protection of marks that are sound trademarks shall be of full force and effect as of January 14, 2022.

3. Regulations on protection of experimental data used for agrochemical shall be of full force and effect as of January 14, 2024.

#### **Article 4. Transition clauses**

1. Copyright and related rights that are granted protection before this Law takes effect shall continue to be protected in accordance with this Law until the end of their protection terms.
2. Applications for registration of copyright and related rights that have been submitted to competent authorities before this Law takes effect shall continue to be processed in accordance with regulations of law that are effective when they are submitted.
3. Applications for registration of inventions, industrial designs, marks, geographical indications that have been submitted to competent authorities before this Law takes effect shall continue to be processed in accordance with regulations of law that are effective when they are submitted, except in the following cases:
  - a) Regulations of Clause 13 Article 4 of the Law on Intellectual Property, which is amended by Point b Clause 1 Article 1 of this Law, shall apply to applications for registration of industrial designs that are submitted from August 01, 2020 but do not have a decision on issuance or rejection of issuance of protection title before the effective date of this Law;
  - b) Regulations of Point e and Point h Clause 2 Article 74, Point e Clause 1 Article 106, Point b Clause 3 Article 117 of the Law on Intellectual Property, which are amended by Point b and Point c Clause 22, Clause 35 and Point b Clause 42 Article 1 of this Law, shall apply to applications for registration of industrial property do not have a decision on issuance or rejection of issuance of protection title before the effective date of this Law;
  - c) Regulations of Article 89a, which is added by Clause 27 Article 1 of this, shall apply to security control of inventions in applications for registration of that do not have a decision on issuance or rejection of issuance of protection title before the effective date of this Law;
  - d) Regulations of Article 118 of Law on Intellectual Property, which is amended by Clause 43 Article 1 of this Law, shall apply to applications for registration of industrial property do not have a notice of appraisal results before the effective date of this Law;
4. Regulations of Articles 86, 86a, 133a, 135, 136a, 139, 164, 191, 191a, 191b and 194 of the Law on Intellectual Property, which are amended by Clauses 25, 52, 53, 54, 55, 66, 74 and 75 Clause 1 of this Law, shall apply to inventions, industrial designs and layout designs that are results of science and technology missions funded by state budget that are assigned from the effective date of this Law.
5. Rights and obligations to industrial designs that are parts of products used for assembly of complex products under protection titles applied for before August 01, 2020 shall apply regulations of law that are effective before the effective date of this Law.

The basis for invalidation of protection titles shall be applied in accordance with effective laws on grant of these protection titles.

6. Individuals who are granted industrial property representation service practising certificates before the effective date of this law may keep practicing under the granted certificates. Individuals who have passed the examination on industrial property representation profession organized by competent authorities before the effective date of this Law will be granted industrial property representation service practising certificates in accordance with Law on Intellectual Property No. 50/2005/QH11, which is amended by Law No. 36/2009/QH12 and Law No. 42/2019/QH14.

7. Applications for protection of plant variety rights have been submitted to competent authorities before the effective date of this Law shall continue to be processed in accordance with regulations of law that are effective when they are submitted. Individuals who are granted plant variety right representation service practising certificates before the effective date of this Law may keep practicing under the granted certificates.

8. Unsolved lawsuits over infringement of intellectual property rights accepted by competent authorities before the effective date of this Law shall be handled in accordance with provisions of Law on Intellectual Property No. 50/2005/QH11, which is amended by Law No. 36/2009/QH12 and Law No. 42/2019/QH14.

*This Law was passed on June 16, 2022, by the 15<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 3<sup>rd</sup> session.*

**PRESIDENT OF THE NATIONAL ASSEMBLY**

**Vuong Dinh Hue**