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~~(Non-official translation)~~

**The ~~second~~forth Draft  
INTELLECTUAL PROPERTY LAW  
OF VIETNAM**

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

~~This Law stipulatesregulates intellectual property rightsIntellectual Property Rights.~~

~~(The non-official translation)~~

~~Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and added to by Resolution 51/2001/QH10 dated 25 December 2001 of the Xth Legislature of the National Assembly at its 10th Session.~~

~~This Law provides for Intellectual Property.~~

**~~Part One~~Chapter I  
GENERAL PROVISIONS**

**Article 1 — Governing scope —**

~~This Law makes provisions for the protection of copyright, related rights, rights to inventions/utility solutions, industrial designs, layout designs of semi-conductor integrated circuits, business secret, plant varieties, trademarks, trade names, geographical indications, innovations and the right against unfair competition.~~

**Article 2 — Applicability —**

- ~~1. — This Law applies to Vietnamese organizations and individuals.~~
- ~~2. — This Law also applies to foreign organizations and individuals which satisfy the required conditions for the entitlement to protection in respect of intellectual property rights under the provisions of Vietnamese laws and international treaties which Vietnam has signed and adhered to; and to other organizations and individuals whose operations relate to the intellectual property sector in Vietnam.~~

**Article 3 — Terms and definitions**

~~In this Law, the following terms shall be construed as follows:~~

- ~~1. — "Intellectual property rights" include:~~

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- ~~(a) — copyright;~~
- ~~(b) — related rights;~~
- ~~(c) — rights to inventions;~~
- ~~(d) — rights to utility solutions;~~
- ~~(dd) — rights to industrial designs;~~
- ~~(e) rights to layout designs of semi-conductor integrated circuits;~~
- ~~(f) rights to business secrets;~~
- ~~(g) rights to plant varieties;~~
- ~~(h) rights to trademarks;~~
- ~~(i) rights to trade names;~~
- ~~(k) — rights to geographical indications;~~
- ~~(l) — rights to innovations;~~
- ~~(m) — the right against unfair competition.~~

~~2. — “Protection title” means a certificate issued by an authorized State authority to an organization or individual to establish the rights to inventions, utility solutions, industrial design, plant varieties, layout designs of semi-conductor integrated circuits, trademarks and geographical indications.~~

~~3. — “Copyright registration certificate”, “Related right certificate” refers to a certificate by an authorized State authority to an organization or individual to certify the registration of the copyright or related rights.~~

~~4. — “IPR holder” means an organization or individual which owns or lawfully uses intellectual property rights (IPRs) as provided for in this Law.~~

#### **~~Article 4 — Principles of protection of intellectual property rights (IPRs)~~**

~~1. — The State acknowledges and protects IPRs of organization and individuals which are established on the basis of the provisions of this Law.~~

~~2. — The State encourages, and provides favorable conditions for, creative and fair competitive acts in manufacturing, trading and transferring intellectual properties during the course of production, business and techno-scientific development activities to service socio-economic development, defense assurance and improvement of people’s material and spiritual lives.~~

~~3. — Any organizations/individuals committing an act of violation of IP legislation and infringement upon IPRs shall be dealt with in a strict and timely manner and in compliance with the law.~~

~~4. — The State shall not protect the IP subject matters which are contrary to the social interest and order, to the humanitarian principles and harmful to national defense and security.~~

#### **~~Article 5 — Responsibilities of organizations and individuals~~**

~~1. — All organizations and individuals are responsible to self-protect their IPRs in accordance with this Law and other relevant legislation.~~

~~2. — All organizations and individuals must respect IPRs of the others.~~

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## **Article 6 — Responsibilities of State authorities**

1. — The Government shall uniformly carry out State administration of IP.
2. — Ministries, ministerial-level authorities, Government authorities and people's committees of various levels shall carry out State administration of IP in accordance with the Government assignment and decentralization.
3. — Legal protection agencies are responsible for promptly investigating and strictly and lawfully dealing with acts of violation of the IP legislation and infringement upon IPRs.

## **Article 7 — International cooperation on IP**

The State promotes international cooperation on IP with other countries and international organizations on the basis of mutual respect of independence and sovereignty; equality, for mutual benefits and in conformity with the law of each party and with international laws and practice.

## **Article 8 — Application of laws**

1. — In case there is a difference between the provisions of this IP Law and those of the Civil Code, this IP Law shall prevail.
2. — Where the IP Law does not contain any specific provisions governing the IP-related matters, the provision of the Civil Code shall apply.
3. — Where an international treaty to which the Socialist Republic of Vietnam is a party or signatory contains different provisions from this Law, such international treaty shall apply.

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

This Law stipulates intellectual property rights including copyright, copyright-related rights; industrial property rights; rights in new plant varieties and enforcement of intellectual property rights.

## **Article 2. Subject matter of aApplicable subjectsion**

1. This Law applies to Vietnamese organizations and individuals.
2. This Law also applies to foreign organizations and individuals that satisfy the required conditions for the entitlement to the protection of intellectual property rights regulated in this Law and international agreements of to which Vietnam is a member party.

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## **Article 3. Interpretation of terminologies**

### **Interpretation of terminologies**

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

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1. An "Intellectual property right holder" is the owner of the intellectual property right or a person who is licensed or assigned the right by the owner.
2. A "literary, artistic and scientific work" is a work, which includes every production in the literary, artistic and scientific domain, whatever may be the mode or form of its expression.
3. An "original work" is a work, which is used to create derivative works.
4. A "derivative work" is a work which is translated from one language to another language; adapted work; modified, transformed work; compiled, annotated, selected work.
5. An "anonymous work" is a published work on which no author's real or pen name is indicated.
6. A "posthumous work" is a work that is published for the first time after the death of the author.
7. A "work of unidentified author" is a published work of which the author has not been ascertained.
8. "Published work" is a work or its copy which is distributed to the public under authorization of its author or copyright owner.
9. To "copy" a work means the making of copy or copies of the work in any form or by any technical methods, including permanent or provisional backup of the work in electronic form.
10. "To photocopy" a work is understood as to make an identical copy of a part or the whole of the work by applying a process of photocopy, photography, or the like.
11. A "copy" of a work is a production obtained by copying or photocopying a part or the whole of the work by any technical methods.
12. A "work is published for the first time in Vietnam" is a work of a foreign person or organization, which has not been published in any foreign country prior to being published in Vietnam.
13. "Simultaneous publication" is the publication of a work within a period of 30 days counted from the date of its first publication in any countries.
14. "Create a work" means reasoning-activities of an author who directly creates that work.
15. An "audiovisual work" is a work that consists a series of continuously related images which create a moving visible effect with or without accompanying sounds, and it is audible together with accompanying sounds.
16. A "computer program" is a set of instructions which is expressed under forms of commands, codes, diagrams or the like, to be readable by a computer in order to bring a certain result.
17. A "compilation" is a work formed by the collection of data that is arranged in a creative way by electronic form.
18. "Expressions of folklore" means the following productions of collective

creations based on traditions of a community or individuals reflecting expectations of such community of which the expression appropriate to its cultural and social characters, and its criteria and values are handed down orally or by imitation or the like:

a) Folk tales, folk poetry and riddles;

b) Folk songs and instrumental music;

c) Folk dances and plays;

d) Productions of folk art are including indigenous drawings, paintings, woodwork, metal ware, jewelry, handicrafts, costumes, and textiles.

19. A "photographic work" is work that records the images of objects on photosensitive materials by any means in which the images are created or possibly created by any technical methods (chemicals, electronics, or the like); a still image which is created from a audiovisual work shall be considered as a part of this audiovisual work, not be considered as a photographic work.

20. An "applied art work" is an artistic creation by hand or industrial ~~production of which useful functions combine~~production of which useful functions combines with a useful object.

21. "Related rights" means rights of performers to their performance, rights of phonogram producers to their phonograms, rights of broadcasting organizations to their broadcasting programs, over the distribution of their legal literary and artistic works to the public.

22. "Performers" means actors, singers, musicians, dancers, and ~~other persons~~others who perform literary and artistic works.

23. "Fixation" means the expression of sounds and images, or recreation of that sounds and images, from which the sounds and images can be ~~perceived~~percept, reproduced or transmitted though a certain equipment.

24. "Reproduction of a phonogram" means the making of a copy or copies of a phonogram, including permanent or provisional backup of the phonogram in electronic form.

25. "Phonogram" means the fixation of sounds and images of a performance or other sounds and images, or the fixation of the recreation of sounds and images which is not the fixation of a motion picture or other audio-visual works.

26. "Duplicate of a phonogram" means an article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds and images fixed in that phonogram.

27. "Broadcasting" means the transmission by wireless means for public reception of sounds, or images and sounds, or its recreation; such transmission by satellite shall be considered as "broadcasting"; the distribution of derived signals shall be considered as "broadcasting" when the decoded devices are provided for the public by the broadcasting organization or under its

agreement.

28. "Rebroadcasting" means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.

29. "Derived program-carrying signals" means program-carrying signals transmitted by satellite in the form of which characteristics of sounds or images, or both, are transformed or changed in order to preventing persons to receive the programs by illegal devices which are designed for the purposes of elimination of effects of that transformation or changing.

30. "Broadcasting organization" (radio station, television) means a legal person who instigates and assumes the responsibility for the transmission for the public reception of sounds or images or both of sounds and images, or the recreation of that sounds and images.

— "Communication to the public of a performance or a phonogram" means the transmission to the public in any form other than wireless means of sounds or images of a performance or both sounds and images or the recreation of sounds and images that fixed in the phonogram.

31. "Communication to the public" shall include the creation of sounds, images or recreation of sounds and images fixed in the phonogram, which can be accessed from the public domain.

32. "Publication of a performance which is fixed or a phonogram" means the distribution of copies of the fixed performance or the phonogram to the public with the authorization of the owner of the related rights, and provided that these copies are distributed to the public with appropriate quantity.

33. "Protection title" means a certificate granted by an State authority to an individual or organization in order to establish industrial property rights to inventions, industrial designs, layout designs of semi-conducting integrated circuits, trademarks, geographical indications; and rights to plant varieties.

#### Article 4. Subject matter Objects of intellectual property rights

1. Subject-matters of copyright include literary, artistic and scientific works; ~~object~~subject-matters of related rights include performances, sound recordings, video recordings; broadcasting programs; satellite signals with the carrying encrypted program.

2. Objects Subject-matters of industrial property rights include inventions; industrial designs; ~~layout design~~layout-designs of semi-conductor integrated circuits; trade secrets; trademarks; trade names and geographical indications.

3. New plant varieties

#### Article 5. Law application of laws

1. In caseWhere we s that Intellectual property, this Law does not regulate

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intellectual property related issues, the provisions of Civil Code and other relevant legislation shall be applied.

2. ~~In cases that~~Where the provisions of the international agreements to which Vietnam is a party contravene the provisions of this Decree, the former shall be applied.~~international agreements of which Vietnam is a member are different from this Law, the provisions of such international agreements shall be applied.~~

#### Article 6. Base of establishment of intellectual property rights

1. Copyright establishment bases on a work which is created and fixed in a certain material form, irrespective of the content, form and independent of from publication or registration with the competent state authorities.
2. Related rights establishment bases on performance, sound recording, video recording, broadcasted program, satellite signals with the encrypted and broadcasted program.
3. Intellectual property rights are established on the following bases:
  - a) Industrial property rights in inventions, industrial designs, layout designs of semi-conductor integrated circuits, trademarks, geographical indications are established on the basis of the competent state authority's decision on the grant of protection title or the recognition of registration of competent state authorities or acknowledgement of international registration under international agreements of to which Vietnam is a member party.
  - b) Industrial property rights in trade names are established on the basis of lawful uses of the trade names using these trade names legally.
  - c) Industrial property rights in trade secrets established on the basis of owning the information legally which forms trade secrets and is keeping secret.
  - d) Rights against unfair competition established on the basis of business's competition activities.
4. Rights in new plant varieties are established on the basis of the competent state authority's decision on the grant of Title of Plant Varieties Protection. Title registration of competent state authorities.

#### Article 7. Restrictions of intellectual property rights

1. Intellectual property rights owner is allowed to implement his/her right in the scope which is established in accordance with the law and the subject matter's nature of the intellectual property.
  2. An intellectual property rights only exists during the term of protection, except for non-transferable personal rights as provided for by laws.
- ~~exist during the term of its protection, excluding personal rights which are not transferred in accordance with the law.~~

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3. In circumstances provided forreferred to in this Law, an intellectual property rights owners shall be restricted from exercising one or more of his/her rights.the implementation of one or more their rights.

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#### Article 8. ~~The s~~State protection of intellectual property rights

1. ~~The state~~The state recognizes and protects intellectual property rights of organizations, individuals in order to promote creation activities, to contribute to socio-economic development, to improve people's material and spiritual life.
2. Any organization or individual committing a breach of the intellectual property legislation or infringement upon intellectual property rights shall be dealt with in a strict and timely manner in accordance with the law.

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~~Organizations, individuals who infringe the intellectual property legislation and violate intellectual property rights shall be treated strictly, promptly in accordance with the law.~~

3. ~~The State~~The state shall not protect the intellectual property subjectobjects the of which contents and aimobjectives of which are contrary to the social interests and order, or detrimental to social order and principles of humanity or harmful to national defense and securityto the principles of humanity, and harmful to national defence and security.

#### Article 9. ~~Protection of the interests of the State~~the state, society and other personsothers.

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1. ~~The establishment and implementation~~exercise of intellectual property rights are shall not allowed to violate infringe upon the interests of the statethe state - the public and/or the legitimate rights and interests of the other personsothers.

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2. In circumstances referredprovided for to in this Law, in order to ensure the targetobjectiveness of national defencedefense, security and other interests of the nation and society, an intellectual property rights owners are shall be compelled to license allow other personsothers to use one or more their of his/her rights withsubject to appropriate conditions; ~~The state~~The state canhas the right to applytake special measures to ensure that the implementationexercise of intellectual property rights shall not be detrimental to such objectives and interests,which is not harmful to these targets and interests.

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#### Article 10. ~~The r~~Rights and responsibilities of organizations, individuals in protection of ~~the~~ intellectual property rights

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Any ~~O~~rganizations, individuals shall have the rights and responsibilities to take appropriate measures permitted by law in order to self-protect their own intellectual property rights and must respect intellectual property rights of others in accordance with this Law and other applicable provisions of law.

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~~to apply legal measures for self-protecting their intellectual property rights and must respect the intellectual property rights of other organizations, individuals under this Law and other provisions of the related law.~~

## **~~Article 11. The Contents and responsibilities of the state~~ ~~administration of intellectual property~~**

### **~~1. The contents of the state~~ the state administration of intellectual property:**

- a) ~~To promulgate~~ and organization of the implementation of legal ~~document~~ instruments on intellectual property;
- b) Formulation and direction of the implementation of strategies and policies for intellectual property rights protection ~~To construct and guide the implementation of strategy, policy on protection of intellectual property rights;~~
- c) ~~To~~ Organization of the system of intellectual property ~~management~~ administration mechanism;
- d) ~~To~~ Grant, reform, amendment, suspend, cancellation and repeal, invalidation of copyright registration certificates, related right registration certificates, industrial property object protection titles, Protection Titles of intellectual property subject matters, plant varieties protection titles, Protection Titles;
- d) Supervision, inspection and control of the observance of intellectual property legislation; resolution of intellectual property disputes, complaints and denunciations; and dealing with breaches of intellectual property legislation ~~To supervise, inspect, verify the execution on the intellectual property legislation; to settle the disputes, complaints and denouncements on the intellectual property; to deal with the violation of intellectual property legislation;~~
- e) ~~To~~ Organization of the information and statistics activities on intellectual property;
- g) Organization, ~~To~~ organize, provide of guidelines for guide and management of activities of assessment activities on intellectual property;
- h) ~~To~~ training, education, propagation, popularization of ~~e~~ the knowledge of and law on intellectual property;
- i) International co-operation on intellectual property.

### **~~2. The responsibilities of state authorities on intellectual property:~~**

- a) ~~The Government exercises centrally the~~ the state ~~management~~ administration of intellectual property.
- b) ~~Ministries, Ministerial-level organizations, organizations subordinated to the Government, People's Committees of provinces and cities directly under Central Government shall exercise the~~ the state ~~management~~ administration of intellectual property in accordance with this

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Law and the Government assignment and decentralization.

- c) ~~Legal protection~~ Law enforcement bodies are in charge of responsible for the investigating on, dealing with organizations and individuals who that violate committed acts of, violation of the intellectual property legislation and infringe-ment upon intellectual property rights.

## Article 12. Intellectual property fees and charges

Organizations and individuals must pay fees and charges when conducting intellectual property related procedures in accordance with this Law and other provisions of legislation.

~~When carrying out procedures which relate to intellectual property, organizations and individuals must pay fees and charges under the provisions of this Law and other provisions of the legislation.~~

## Part Two

## COPYRIGHT AND RELATED RIGHTS

### Chapter I

### COPYRIGHT

#### *Section 1. Authors, works, and terms of copyright protection*

## Article 13. Authors

1. An author is a person who personally creates the work.
2. The following persons shall be recognized as authors:
  - a) A person who translates a work from one language to another language shall be recognized as author of the translated work;
  - b) A person who makes adaptation of an original work, or makes modification or transformation of an original work to another genre shall be recognized as author of the adapted, modified, transformed work;
  - c) A person who makes compilation, annotation, selection of others' works and arrangement in view of a certain theme bearing creative features, shall be recognized as author of the compiled, annotated, selected work.
3. The authors as provided for in paragraph 2 of this Article who want to make translation, adaptation, modification, compilation, annotation or selection of ~~other persons~~others's works, must have the permission of the authors or owners of the original works; any change in contents of the original works shall

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be made only with the permission of the author, and the name of the author and the title of the original work must be acknowledged.

#### **Article 14. Criteria of eligibility for copyright protection for ~~organisations~~organizations and individuals**

1. Authors are Vietnamese citizens.
2. Copyright owners are Vietnamese ~~organisations~~organizations and individuals.
3. Authors are foreign citizens who create the works within the period of permanent residence in Vietnam, or are the copyright owners.
4. Foreign ~~organisations~~organizations and individuals who have published the work firstly or simultaneously in Vietnam.
5. Foreign ~~organisations~~organizations and individuals who have the works eligible for protection in Vietnam under international treaties to which Vietnam is party.

#### **Article 15. Works protected by copyright**

1. Literary, artistic and scientific works protected under this Law include the followings:
  - a) Written works of literary and journalistic domains;
  - b) Written works of research, textbooks, teaching materials, speeches and other works expressed in the forms of letters and other writing characters;
  - c) Musical works;
  - d) Dramatic works;
  - ~~d) d~~ Cinematographic works and other audiovisual works;
  - e) Fine art works and applied art works;
  - g) Graphics, sketches, maps, drawings relevant to topography and scientific works;
  - h) Photographic works and the like;
  - i) Architectural works;
  - k) Computer programs and compilations of data;
  - l) Derivative works;
  - ~~m) Folk~~m) Folk artistic and literary works.
2. Information just for the purposes of communication; documents issued by State bodies, or by political, social-political, social, socio-professional, and economic organizations and the translations thereof shall not be copyright protected.
3. Processes, operation processes, definitions, principles, discoveries, and statistics shall not be copyright protected.

#### **Article 16. Works not protected by ~~the State~~the state**

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1. ~~The State~~ The state shall not protect the copyright of works of the following kinds:

- a) Works which rouse people against ~~the State~~ the state of Vietnam, and which are detrimental to national unity;
- b) Works which rouse violence, or which constitute propaganda for aggressive wars, or which provoke hatred among nations and peoples, or which spread reactionary ideologies and cultures, obscene life-styles, crime, social evils, or superstitions that damage good social morals and fine custom;
- c) Works which disclose Party, State, Army, national security, economic or diplomatic secrets, as well as confidential information concerning individual privacy and other secrets as per the law;
- d) Works, which falsify the truth, deny revolutionary achievements, defame national heroes, or slander or damage the reputation of organizations or the dignity and honor of individuals.

2. All communications on circulating, using and benefit getting of works that provided for in paragraph 1 of this Article shall be illegal and unaffected: infringers shall be handled by the law.

#### **Article 17. Terms of copyright protection**

1. Personal rights as provided for in Article 19 of this Law shall be protected indefinitely.

2. Property rights as provided for in Article 20 of this Law shall be protected with the following terms:

- a) During the life of the author and for 50 years counted from the year of his death and ended at the date of 31 December of the 50th year after the year of his death;
- b) In respect of cinematographic works and other audiovisual works, posthumous works, and anonymous works, the term of protection shall be 50 years counted from the date of the first publication of the work. If within 5 years from the fixation, a cinematographic work has not been published, the term of protection shall be 50 years counted from the fixation date of the work. When information relating to authors of an anonymous work is available, the term of protection shall be counted as stipulated in ~~points~~subparagraph a of; paragraph 2 of this Article;

***Option 2 . In respect of cinematographic works and other audio-visual works, the term of protection shall be 75 year. (According to the Vietnam-US Bilateral Trade Agreement).***

- c) In respect of work created by co-authors, the term of protection shall be ended at the date of 31 December of the 50th year after the year of death of the last surviving co-author.

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## Section 2. Contents of copyright

### Article 18. Copyright

Copyright is comprised of personal rights and economic rights to a work. These rights shall be raised from the moment at which the work is created in a certain form.

### Article 19. Personal rights

Personal rights of an author shall include the following:

1. The right to name his work;
2. The right to place his name or pseudonym on the work and to have his/her name or pseudonym acknowledged when his work is published, or used;
3. The right to protect the integrity of his/her work from any distortion, garbling or amendments with which the reputation and goodwill of the author is damaged;
4. The right to receive awards relating to his work.

### Article 20. Economic rights

1. Economic rights of an author shall include the following exclusive rights:

- a) The right to publish his work or give permission to another person or legal person to publish his work;
- b) The right to translate his work;
- c) The right to perform his work to the public;
- d) The right to reproduce his work (make copies, photocopies);
- ddd') The right to circulate to the public the original or copies of his work;
- e) The right to give permission on translating, adapting, modifying, transforming, annotating, compiling and selecting his work;
- g) The right to broadcast his/her work to the public by any wire or wireless means or any technical means;
- h) The right to lease the original or copies of cinematographic works, other audiovisual works, computer programs.

2. Persons and legal persons who exploit or use one, several or all of the rights provided for in paragraph 1 of this Article must ask for permission from the copyright owner and pay him with royalties, remuneration and other material benefits.

### Article 21. Copyright in respect of cinematographic works and other audiovisual works

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1. Persons who are directors, editors, cameramen, stage managers, composers, painters, sound-men, lighting-men, studio artists, studio-instrument managers, high-tech makers, and others related to create a cinematographic work shall have the rights stipulated in Article 19 of this Law and other rights as agreed.
2. Persons and legal persons who invest finance and other material conditions in making cinematographic works and other audiovisual works shall be the right owners stipulated in Article 20 of this Law.
3. Persons and legal persons mentioned in Paragraph 2 of this Article shall have obligations to pay royalties, remuneration determined by means of contracts signed with persons that mentioned in Paragraph 1 of this Article.

### Section 3. Copyright limitations

#### **Article 22. Forms of use of published works without obtaining permission or paying royalties, remuneration and other material benefits**

1. The following forms of use of published works shall not require to obtain permission or pay any royalties, remuneration and other material benefits:
  - a) Reproducing a copy for personal use only in condition that copy does not contain the whole or the main part of the work;
  - b) Reasonable quoting works without alteration of their contents for commentary or for illustration in one's own works;
  - c) Quoting from a work without alteration of their contents for use in articles, periodic journals, radio and television programs and documentary films (in this case, it is necessary to quote about origination, author of the work, as much as possible);
  - d) Using a work without alteration of the contents for teaching and testing activities in schools, not for commercial purposes;
  - d<sup>4</sup>) Archival and library use, not for commercial purposes;
  - e) Performing theatrical works and other forms of performing arts in cultural gatherings or in promotional campaigns at public places without any form of charges and payment of remuneration and other material benefits to performers;
  - g) Directly recording and reporting performances for public information and educational purposes;
  - h) Taking pictures of or televising works of fine art, photographic, and applied art that have already been publicly displayed for introduction purposes;
  - i) Translating a work into Braille;
  - k) Importing copies of ~~other persons~~ others' works for personal use only.
2. Persons and legal persons who use the works as stipulated in Paragraph 1 of this Article shall not make any affect to normal exploitation of the works or any infringement to the rights of the authors or copyright owners; they must to

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acknowledge name of the authors and origins of works.

3. Any use of works as stipulated in Paragraph 1 of this Article is not applicable to architectural, fine art works or computer programs.

#### **Article 23. Forms of use of published works without obtaining permission but payment of royalties and remuneration**

1. The forms of use of published works without obtaining permission but payment of royalties and remuneration are including of plays of songs, music, poems for purposes of broadcast, performance at restaurants and hotels, or karaoke services.
2. Persons and legal persons who use the works as stipulated in paragraph 1 of this Article must not make any infringement to the personal rights provided for in Article 19 of this Law.

#### *Section 4. Copyright owners*

#### **Article 24. Copyright owners**

Copyright owners are persons or legal persons, who own one, several or all of the economic rights as stipulated in Article 20 of this Law.

#### **Article 25. Copyright owner who is simultaneously the author**

Author who creates his work by using his own time, materials, finance and other material conditions, shall have the personal rights as stipulated in Article 19 and economic rights as stipulated in Article 20 of this Law.

#### **Article 26. Copyright owners are simultaneously the co-authors**

1. Co-authors who co-create a work by using their own time, materials, finance and other material conditions, shall have the personal rights as stipulated in Article 19 and economic rights as stipulated in Article 20 of this Law.
2. Where the work created by co-authors mentioned in Paragraph 1 of this Article, consists of different parts, each of which can be used separately from others, the co-author shall have the personal rights as stipulated in Article 19 and economic rights as stipulated in Article 20 of this Law over his part.

#### **Article 27. Copyright owners are agencies, organizations, individuals**

1. An agency or organization that assigns a duty of creating a work to an author who is its employee, shall be the owner of the economic rights as stipulated in Article 20 of this Law.
2. An agency, organization, or individual who concludes the contract with an

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author who creates a work, shall be the owner of one, several or all economic rights as stipulated in Article 20 of this Law.

#### **Article 28. Copyright owner is a heir**

Agencies or organizations that are heirs in accordance with provisions of inheritance and other relevant legal provisions shall be the owners of the economic rights as stipulated in Article 20 of this Law.

#### **Article 29. Copyright owner who is copyright assignee**

Persons or legal persons who are assignees of one, several or all of the economic rights as stipulated in Article 20 of this Law under assignment contracts, shall be the copyright owners.

#### **Article 30. Works owned by the State**

1. Posthumous works, unidentified authors.
2. Works of which the owners of the economic rights died without any heir(s), or with heir(s) who have renounced the inheritable estate or have been disinherited.

#### **Article 31. Works of public domain**

1. Folk arts or folk literary.
2. Literary and artistic works for which the protection terms have expired.

#### **Article 32. Obligations of persons and legal persons upon their uses of works**

1. Persons, legal persons who use works of other persons must conclude the contracts with the copyright owners on using their economic rights provided for in the Law and pay them royalties, remunerations and other material interests as determined in the contracts.
2. The Government shall provide specific rules on the use of works provided for in Articles 30 and 31 of this Article.

### Section 5. Copyright infringement activities

#### **Article 33. Copyright infringement activities**

Copyright infringement activities shall include any of the following acts:

1. Seizing copyrights of a literary, artistic, scientific work;
2. Assuming the author's name of a work;

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3. Illegally publishing, producing and disseminating a work without its author's permission;
4. Publishing, producing and disseminating a co-author work without permission of other co-author(s);
5. Illegally distorting, gabling and modifying a work of another person;
6. Copying a work of another person without permission of the author or the copyright owner;
7. Making derivative work based on a work of another person without permission of the author or the copyright owner of the original work;
8. Exploiting a work of another person without any agreement and payment of royalties and remuneration as per the law;
9. Renting a work without any payment of royalties, remuneration and other material benefits to its author and copyright owner;
10. Photocopying, producing, disseminating, publishing, displaying, editing or communicating to the public by broadcasting network or digital devices, a work of another person without permission of the copyright owner;
11. Publishing a book without permission of the copyright owner;
12. Intentionally canceling or invalidating technical methods applied by the copyright owner to protect his work without his permission;
13. ——Intentionally erasing or amending electronic information on copyright management of a work without permission of the copyright owner;
14. Making and selling a work of which the author's signature is false;
15. Exporting, importing, disseminating copies of a work without permission of the copyright owner.

## **Chapter II**

### **Related rights****RELATED RIGHTS**

#### *Section 1. Related rights protected by ~~the State~~the state*

#### **Article 34. Related rights**

Related rights protected by ~~the State~~the state shall include:

1. Rights of performers.
2. Rights of producers of phonograms (excluding cinematographic works and other audiovisual works).
3. Rights of broadcasting organizations including organizations of distribution of program-carrying signals transmitted by satellite.

#### **Article 35. Related right owners**

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A person or legal person who invests the finance and other material conditions to make a performance, a phonogram or a broadcasting program shall be the owner of that subject-matter, unless otherwise agreed.

#### **Article 36. Conditions for protection of related rights**

1. Protected performances shall include:

- a) Any performance undertaken by Vietnamese nationals;
- b) Any performance takes place in Vietnam;
- c) Any performance is fixed on a phonogram, to be protected under Article 37 of this Law;
- d) Any performance unfixed on a phonogram but broadcasted, to be protected under Article 38 of this Law;
- d<sup>4</sup>) Any performance protected under international treaties signed or acceded to by Vietnam.

2. Protected phonograms shall include:

- a) Any phonogram of producer who is a national of Vietnam;
- b) Any phonogram of the producer protected under international treaties signed or acceded to by Vietnam.

3. Protected broadcasts shall include:

- a) Any broadcast of an organization with Vietnamese nationality;
- b) Any broadcast of organizations protected under international treaties signed or acceded to by Vietnam.

4. Performances, phonograms and broadcasts shall be protected only when the contents do not infringe Article 16 of this Law.

#### *Section 2. Contents of related rights*

#### **Article 37. Rights of performers**

1. Performers shall have exclusive rights to or to allow others to:

- a) Acknowledge their names upon performance, except for cases in which their names cannot be acknowledged;
- b) Protect their performances from any distortion, mutilation or modification, detrimental to their reputation and goodwill;
- c) Fix their live performances on phonograms;
- d) Directly or indirectly reproduce their performances which are fixed on phonograms;
- d<sup>4</sup>) Broadcast and communicate to the public their unfixed performance, except in cases where the performances are carried out for broadcasting purposes;

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e) Publish to the public the originals and copies of their performances which have been fixed on phonograms by selling or renting or wire or wireless devices ~~accessible~~ accessible to the public at any time and in any place upon the performers' choices.

2. Persons or legal persons who exploit and use the rights as stipulated in paragraph 1 of this Article shall pay royalties to the performers as agreed in the contracts or as per the law if there is no detail agreements on royalties.

3. The right of performers shall be protected as from the fixation date of the performance and lasted until the end of a period of 50 years counted from the end of the year in which the performance is fixed on phonogram.

#### **Article 38. Rights of producers of phonograms**

1. Producers of phonograms shall have exclusive rights to carry out or ~~authorise~~ authorize others to carry out:

a) Direct or indirect reproduction of their phonograms;

b) Publication to the public of originals and copies of their phonograms by selling, renting or by wire or wireless devices accessible to the public at any time and in any place upon the producers' choices or other forms of ownership transfer.

2. Producers of phonograms have the right to receive royalties when their phonograms are published to the public.

3. The right of producers of phonograms shall be protected as from the fixation date and last until the end of a period of 50 years counted from the end of the year in which the phonogram is published, or 50 years counted from the end of the year in which the phonogram is undertaken in case of unpublished phonogram.

#### **Article 39. Right of broadcasting ~~organisations~~ organizations**

1. Broadcasting ~~organisations~~ organizations have exclusive rights to carry out or ~~authorise~~ others to carry out:

a) Broadcasting or ~~rebroadcasting~~ rebroadcast of their broadcasting programs;

b) Dissemination to the public of their broadcasting programs;

c) Fixation of their broadcasting programs;

d) Reproduction of the fixation of their broadcasting programs.

2. Broadcasting organizations have the right to receive royalties when their broadcasting programs are recorded, broadcasted and transmitted to the public.

3. The right of broadcasting ~~organisation~~ organization shall be protected as from the broadcasting date and lasted until the end of a period of 50 years counted from the end of the year in which the broadcasting program is undertaken.

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### Section 3. Related right limitations

#### **Article 40. Form of use of related rights without obtaining permission or paying royalties and remuneration**

1. The following forms of use of related rights shall not require to obtain permission or pay any royalties, remuneration:
  - a) Reproducing a copy for personal use only in condition that copy does not contain the whole or the main part of the phonogram or broadcasting program;
  - b) Reasonable quoting for the purpose of providing information only;
  - c) Reproducing for the purposes of scientific research or teaching except for cases where performances, phonograms and broadcasting programs published for the purposes of scientific research or teaching.
2. Persons and legal persons who use the rights as mentioned in paragraph 1 of this Article do not make any affects to the normal exploitation of the performances, phonograms and broadcasting programs, and do not make any damages to the legal benefits of the performers, phonogram producers or broadcasting organizations.

#### **Article 41. Forms of use of related rights without obtaining permission but payment of remuneration**

Persons or legal persons shall not be required to obtain permission but payment of remuneration and other material benefits to authors, copyright owners, performers, phonogram producers as agreed if they directly or indirectly use for commercial purpose any published phonogram for broadcasting; exploiting, using in restaurants, hotels, karaoke services, tourists, air planes, public transportation.

### Section 4 . Infringement ~~activities~~ of related rights

#### **Article 42. Infringement ~~activities~~ of related rights**

Infringement ~~activities~~ of related rights shall include the following acts:

1. Uses of the related rights without permission of the related right owner;
2. Unloading or changes of any electronic information on the right management without permission of the related right owner;
3. Dissemination, importation for distribution, broadcasting, provision to the public of performances, fixed copies of performances or phonograms without permission of the related right owner;
4. Production, assembling, transformation, distribution, importation, exportation or renting of an equipment or system when knowing or having basis to know that such equipment or system is mainly used for illegal decoding a derived

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program-carrying signal;

5. Intentional recording or continuous dissemination of a derived program-carrying signal if the signal is decoded without permission of the lawful distributors.

### **Chapter III**

## **ASSIGNMENT CONTRACTS OF COPYRIGHT AND RELATED RIGHTS; CONTRACTS FOR THE USE OF COPYRIGHT AND RELATED RIGHTS**

### **Assignment contracts of copyright or related rights; contracts for the use of copyright or related rights**

#### **Article 43. Assignment of copyright and related rights**

1. Assignment of copyright or related rights means that the owner of the copyright or related rights transfers to ~~other persons~~others/legal persons of one, several or all of his exclusively economic rights as stipulated in Articles 20, 37, 38 and 39 of this Law.
2. Author, owner of copyright or related rights shall not allow to transfer their personal rights as stipulated in Article 19 of this Law to ~~other person~~others/legal persons.

#### **Article 44. Assignment contract of copyright and related rights**

1. An assignment contract of copyright or related rights is the agreement in written between the owner of copyright or related rights and other individuals/organizations on transferring one, several or all of his economic rights as stipulated in Articles 20, 37, 38 and 39 of this Law.
2. In case of signing an assignment contract of copyright or related rights of a co-authors' work, it must have the agreement of all co-authors or their assigned persons and the assignee, and all of them have to sign the contract.
3. Assignment contracts of copyright or related rights must be in written and containing all contents provided for in Article 45 of this Law, unless the parties have agreed otherwise.

#### **Article 45. Contents of assignment contracts of copyright or related rights**

An assignment contract of copyright or related rights shall include the following main contents:

1. Form of assignment of copyright or related rights;
2. Scope of assignment of copyright and related rights;

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3. Amount of money and form of payment;
4. Rights and obligations of all parties;
5. ResponsibilitiesResponsibilities when a party breaches the contract.

#### **Article 46. Rights and obligations of parties in the assignment contract of copyright or related rights**

1. Owners of copyright or related rights shall have the following rights and obligations:
  - a) Where the work created by co-authors who are simultaneously the co-owners of copyright or related rights of separate parts of the work and each of which can be used separately, each co-owner of copyright or related rights can freely transfer his copyright or related rights overrights to his part to other personsothers/legal persons;
  - b) An owner of copyright or related rights shall have the right to request the assignee to respect the signed contract and pay the compensation when this party breaches the contract;
  - c) Owners of copyright or related rights shall have the obligations to respect and implement the signed contracts, provisions of this Law and other legal provisions concerned.
2. Assignees of copyright or related rights shall have the following rights and obligations:
  - a) An assignee of copyrights or related rights shall have the rights overrights to assigned rights as indicated in the assignment contract of copyrights or related rights;
  - b) An assignee of copyrights or related rights shall have the right to sign any assignment contracts of his economic rights to other personsothers/legal persons, and get benefits from such transferred rights.

#### **Article 47. Cancellation and invalidation of the assignment contracts of copyright or related rights**

One party shall have the right of unilateral cancellation or invalidation of the assignment contract of copyright or related rights and request other party to pay the compensation when this party breaches the contract.

#### **Article 48. Use of copyright or related rights**

Any person or legal person who desires to use copyright or related rights of another person shall have the following obligations:

1. Implementation of obligations occurred respectively from personal rights and economic rights as stipulated in Articles 19, 20, 37, 38 and 39 of this Law.
2. Making agreement with the owner of copyright or related rights on using his

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work by contract.

#### **Article 49. Contracts for the use of copyright or related rights**

1. A contract for the use of copyright or related rights is an agreement between an owner of rights and another person or legal person (the user) on the use of one, several or all of his economic rights overrights to his work in a certain period of time.
2. In case of signing a contract for the use of copyright or related rights of a work of co-authors who is simultaneously the co-owners of copyright or related rights, it must have the agreement of all co-authors or their assignees and the user, and all of them must sign the contract.
3. The StateThe state management authority of copyright shall provide the forms of assignment contracts of copyright or related rights, and types of contracts for the use of copyright or related rights.

#### **Article 50. Contents of contracts for the use of copyright or related rights**

A contract for the use of copyright or related rights shall include the following main contents:

1. Forms of using copyright or related rights;
2. Scope and duration of using copyright or related rights;
3. Royalties, remuneration, other material benefits and form of payment;
4. Rights and obligations of parties who signed the contract;
5. Responsibilities when a party breaches the contract.

#### **Article 51. Rights and obligations of parties in a contract for the use of copyright or related rights**

1. Owners of copyrights or related rights shall have the following rights and obligations:
  - a) An owner of copyrights or related rights shall have the rights to demand that the user of his copyright or related rights to pay royalties, remuneration and other material benefits as agreed in the contract;
  - b) An owner of copyrights or related rights shall have the right to sign contracts for the use of his remain copyright or related rights with other personsothers/legal persons;
  - c) An owner of copyrights or related rights shall have the right to transfer the work to the user as agreed in the contract;
  - d) An owner of copyrights or related rights shall have the right to demand that the user to respect the signed contract and pay the compensation for any breaches;
  - d') An owner of copyrights or related rights shall have the obligation to respect

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and implement the signed contract, regulations of this Law and other relevant provisions.

2. Users of copyright or related rights shall have the following rights and obligations:

- a) Users of copyrights or related rights shall have the rights to enjoy benefits arising from exploitation and use of works followed the contracts:
- b) Users of copyrights or related rights shall have the right to use the work in accordance with the agreed forms, scopes and terms:
- c) Users of copyrights or related rights shall have the obligation to refrain from transferring the using right to ~~other persons~~others/legal persons without permission of the owners of copyright or related rights:
- d) Users of copyrights or related rights shall have the obligation to pay agreed royalties, remuneration and other material benefits to the owners of copyright or related rights:
- e) Users of copyrights or related rights shall have the obligation to pay compensation for damages caused by any breaches the contracts to the owner of copyright or related rights.

#### **Article 52. Cancellation and invalidation of contracts for the use of copyright or related rights**

One party shall have the right of unilateral cancellation or invalidation of a contract for the use of copyright or related rights, and request the other party to pay the compensation when this party breaches the contract.

### **Chapter IV**

#### **Registration-REGISTRATION OF COPYRIGHT AND RELATED RIGHTSof copyright and related rights**

#### **Article 53. The right to file application for registration of copyright and related rights**

- 1. The following persons and legal persons shall have the right to directly file or empower to other organizations, individuals to file applications for Copyright Registration Certificates:
  - a) Authors:
  - b) Copyright owners.
- 2. The following persons and legal persons shall have the right to directly file or empower to ~~other persons~~others or legal persons to file applications for ~~Registration Certificates of Related Rights~~Related Rights Registration Certificates:

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- a) Performers;
- b) Producers of phonograms;
- c) Broadcasting organizations, including distributors of program-carrying signals transmitted by satellite.

#### **Article 54. Procedures for registration of copyright and related rights**

An application file for Copyright Registration Certificate, or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate shall include the followings:

- a) Request for grant of Copyright Registration Certificate, or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate, of which must contain all of the following main contents: Information concerning the applicant; Information concerning the author, copyright owner, related right owner; Main contents of the work, performance, phonogram or broadcasting program; Name of author and title of the original work (in case the work that is intended to be registered is a derivative work); Time, place, and form of publication; Assignment contract of copyright or related rights, if any; Warranty and commitment for assuming all responsibilities concerning the information indicated in the Request;
  - b) 02 copies of the work that is intended to be copyright registered; 02 copies of the fixation that is intended to be related right registered;
  - c) Power of attorney (in case the applicant is an empowered person);
  - d) Documents on proving the legal inheritance (in case the applicant is a heir);
  - d') Agreement of all co-authors (in case a co-author's work is intended to be registered);
  - e) Agreement of all co-owners (in case the copyright or related rights belong to a collective ownership).
2. All documents provided for in subparagraphs a and c of paragraph 1 of this Article must be in written in Vietnamese, or translated into Vietnamese if documents in other languages.

#### **Article 55. Competence in granting the Copyright Registration Certificates, and Related Rights Registration Certificates of Related Rights**

~~The State~~The state management authority of copyright shall the authority responsible for granting, re-granting, changing and restoring the Copyright Registration Certificates, and ~~Registration Certificates of Related Rights~~Related Rights Registration Certificates.

#### **Article 56. Time limit for granting Copyright Registration Certificates and Related Rights Registration Certificates ~~Copyright Registration Certificates, and Registration Certificates of Related Rights~~**

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Within a period of 10 working days counted from the officially receiving date of an application, ~~the State~~the state management authority of copyright shall be responsible for granting the Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate to the applicant. In case of refusing to grant the Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate, this authority shall reply in written and state the reasons clearly.

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**Article 57. Validity of Copyright Registration Certificates and Related Rights Registration Certificates**~~the Copyright Registrations Certificates or Registration Certificates of Related Rights~~

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Copyright Registration Certificates or ~~Registration Certificates of Related Rights~~Related Rights Registration Certificates shall be effective in the whole territory of Vietnam. ~~The State~~The state management authority of copyright shall provide the forms of the Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate.

**Article 58. Cancellation of validity of the Copyright Registration Certificate or Registration Certificate of Related Rights**~~Related Rights Registration Certificate~~

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1. ~~The State~~The state management authority of copyright which grants the Copyright Registration Certificates or ~~Registration Certificates of Related Rights~~Related Rights Registration Certificates, shall have the right to cancel the validity of a Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate if find out that the person who is granted the Certificate is not the author, copyright owner, or related rights owner, or the registered subject-matter is not protected by ~~the State~~the state.

2. Any person or legal person who discovers that the grant of a Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate is contrary to the provisions of this Law, shall have the right to request ~~the State~~the state management authority of copyright to cancel the validity of that Copyright Registration Certificate or ~~Registration Certificate of Related Rights~~Related Rights Registration Certificate.

**Article 59. National register of copyright and related rights**~~National Copyright and Related Rights Register registration~~

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1. Copyright Registration Certificates or ~~Registration Certificates of Related Rights~~Related Rights Registration Certificates shall be acknowledged in the ~~National Register of Copyright and Related Rights~~National Copyright and Related Rights Register.

2. Decisions on granting, re-granting, changing, or restoring, declarations on

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cancellation of validity of the Copyright Registration Certificate or Registration Certificate of Related Rights Related Rights Registration Certificate shall be published in the Copyright and Related Rights Gazette.

**Chapter V**  
**REPRESENTATIVE ~~representative~~ ORGANIZATIONS ~~organizations~~ OF**  
**COPYRIGHT**  
**AND RELATED RIGHTS ~~of Copyright and related rights~~**

**Article 60. Collective management organizations of copyright and related rights**

1. Authors, copyright owners, and related rights owners shall have the right to make agreements on establishment of organizations to which they are members, in order to collectively manage their copyright and related rights.
2. Authors, copyright owners, related rights owners may empower to a collective management organization to manage and exploit their copyright and related rights on behalf of them.
3. Collective management organizations of copyrights and related rights are socio-professional, non-profit, established and operated organizations.

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**Article 61. Consulting and service organizations of copyright and related rights**

1. Authors, copyright owners, related right owners may empower to a consulting and service organization of copyright and related rights to carry out services relating to their rights and benefits in accordance with the provisions of the law.
2. Consulting and service organizations of copyright and related rights are established and operated in accordance with the provisions of the law.

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**Section 1**

**Principles for protection of the rights of authors**

**Article 9 — Automatic protection of literary and artistic works**

Rights of authors in respect of literary, artistic and scientific works (hereinafter referred to as "works") shall start from the time when the creative ideas of the works are fixed in a certain material form, irrespective of the contents, forms and language used for expression and regardless of any conditions on publication or registration.

**Article 10 — Independent protection**

1. — Protection of the rights of authors shall be independent shall not be dependent or conditional on any other simultaneous protection.
2. — The ownership of copyright with regard to a work shall be independent of the

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ownership of the work.

#### **Article 11 — Works not protected by the State**

The State shall not grant copyright protection to any work with the following contents:

1. — Encouraging or inducing people to oppose the State of the Socialist Republic of Vietnam or to undermine the bloc of national unity;
2. — Encouraging or inducing violence, propagandizing war of aggression and hostility among races and nations, disseminating reactionary ideologies and cultures, lustful and depraved lifestyle, criminal acts, social evils and superstition, undermining the national fine traditions and custom;
3. — Disclosing State secrets, military, security, economic or foreign-affair secrets, privacy or and other secrets as provided for by law;
4. — Distorting the truth, repudiating revolutionary achievements, offending distinguished persons and national heroes, slandering or hurting the reputation of an organization, honor or dignity of an individual.

#### **Article 12 — Definitions**

In this Chapter, the following terms shall be understood as follows:

1. "Literary and artistic work" shall include any product in the literary, artistic and scientific domains regardless of the mode or form of its expression.
2. "Original work" means a work novelly created in a certain material form.
3. "Anonymous work" means a work, which does not contain name of author upon publication (whether real name or pseudonym).
4. "Posthumous work" means a work published for the first time after the death of the author.
5. "Work of unidentified author" means a work the author of which cannot be identified upon publication.
6. "Joint authorship work" means a work co-created by two or more authors.
7. "Work owned by the State" means a work of unidentified author or an anonymous work for which the copyright belongs to the State.
8. "Work in public domain" means a folk literary and artistic work, or a literary and artistic work for which term of protection has expired.
9. "Derivative work" means a work created on the basis of novel work, including works translated from one language into another, or a re-created, transformed or adapted work, or a compiled, annotated or selected work.
10. "Author" means person who uses his/her ability to directly create a literary, artistic or scientific work, which is expressed, in a certain existing or future material form.
11. "Co-authors" means various persons who use their ability to directly create a literary, artistic or scientific work, which is expressed in a certain existing or future material form.
12. "Rights of author" include personal rights and property rights of the author with

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regard to the work he or she has created.

13. ~~"Owners of copyright" means any individuals or organizations possessing property rights with regard to a work.~~

14. ~~"Publication of work" means issuance of sufficient copies to the public under the decision of the author.~~

15. ~~"Duplication of works" means the re-expression of the main part of or the entire works in any material form.~~

16. ~~"Duplication" means use of the main part of or the entire work of other persons in any form or using any technical means.~~

17. ~~"Copying" means an act of duplicating identically the work or any part of the work by the way of photocopying, or taking photograph or any similar forms.~~

18. ~~"Duplicate of work" means a duplicate or copy of a part of or the entire work.~~

19. ~~"Copyright service organization" means an enterprise specialized in providing legal services and advice on copyrights that has been established in accordance with the laws.~~

20. ~~"Collective copyright management organization" means a non-governmental organization, representing authors and owners of copyrights in managing copyrights that operate in accordance with the principles of non-profit making and financially self-sufficient.~~

21. ~~"Work published in Vietnam for the first time" means a work of foreigners or foreign legal organizations, which has not been published in any country before it is published in Vietnam.~~

22. ~~"Simultaneous publication" means the publication of work in Vietnam within 30 days from the date of its first publication in any other country.~~

23. ~~"Derivative work" means a work created on the basis of the novel work, including translated, adapted, compiled, transformed, re-written works, etc.~~

## **Section 2**

### **Authors, works, term for protection of the rights of author**

#### **Article 13 — Protected authors and works**

1. ~~A work of an author who is a Vietnamese citizen;~~

2. ~~A work of a Vietnamese organization or legal organization;~~

3. ~~A work of a foreigner or a foreign legal organization that is created and expressed in a certain material form in Vietnam;~~

4. ~~A work of a foreigner or a foreign legal organization published for the first time, or simultaneously published in Vietnam;~~

5. ~~A work of a foreigner or a foreign legal organization protected in Vietnam in accordance with international treaties to which Vietnam is a party.~~

#### **Article 14 — Forms of protected works**

1. ~~Works protected under this Law shall include all products in the literary, artistic and scientific domains fixed in any visible material form whereby the works are directly or indirectly perceived, reproduced or disseminated to the public,~~

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including *inter alias* the following forms:-

a/ ~~Novels, medium length stories, short stories, study works, textbooks, presentations, speeches and other characters, which are expressed in the forms of books or magazines;~~

b/ ~~Musical works;~~

c/ ~~Theatrical works;~~

d/ ~~Cinematographic works and other audiovisual works;~~

e/ ~~Plastic art works and applied fine art works;~~

f/ ~~Graphics, sketches, maps, drawings relevant to geographic settings;~~

g/ ~~Photographic works and other similar expression;~~

h/ ~~Architectural works;~~

i/ ~~Computer software and data base;~~

j/ ~~Derivative works;~~

k/ ~~Folk cultural works provided for in paragraphs a, b, c, d, e, f, g, h, i of this Article;~~

l/ ~~Legal instruments, documents of the State agencies, political organizations, socio-political organizations, social organizations, social professional organizations, economic organizations, and the translations thereof;~~

m/ ~~Other forms as provided by law.~~

2. ~~News purely for the purpose of information, press, and current affairs shall not be protected under this Law.~~

#### **Article 15 — Term for protection of rights of author**

1. ~~Personal rights provided for in Article 17 of this Law shall be protected indefinitely.~~

2. ~~Property rights provided for in Article 18 of this Law shall be protected with the following terms:-~~

a. ~~The life of the author and fifty years after his/her death starting from 1 January of the year following the year of his/her death.~~

b. ~~In respect of cinematographic works, posthumous works, the term of protection shall be fifty years from the first publication of works. If within five years from the creation time a cinematographic work has not been published, the term of protection shall be fifty years from the time when the works are fixed.~~

c. ~~In respect of works created by co-authors, the term of protection shall be 50 years from the death of the last co-author.~~

~~Option 2: In respect of cinematographic works and other audiovisual works, the term of protection shall be 75 years. (According to the Vietnam — USA Trade Agreement)~~

### **Section 3**

#### **Contents of rights of author**

#### **Article 16 — Rights of author**

~~Author's rights shall include personal rights (spiritual rights) and property rights (economic rights) with regard to a work.~~

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#### **Article 17 — Moral rights**

An author shall have the following personal rights:

1. To name his/her work;
2. To put his/her real name or pseudonym in the work; to have his/her real name or pseudonym mentioned when his/her work is published, or used;
3. To publish his/her work;
4. To protect the integrity of his/her work, to object to any distortion, mutilation, or other modification in any form in relation to his/her work, which would be prejudicial to his/her honor or reputation.

#### **Article 18 — Economic rights**

1. — An author or owner of copyright shall have the following exclusive rights:

- a. Right of translation;
- b. Right of performance to the public;
- c. Right of photocopying (photocopying, reproduction)
- d. Right to sell copies;
- e. Right to allow others to make derivative works;
- f. Right of communication to the public by wire or wireless means or any technical means;

2. — An author or owner of copyright shall be entitled to royalties, remuneration and other material benefits from allowing other individuals or organizations to exploit, use one, some or all rights provided for in Paragraph 1 of this Article.

#### **Article 19 — Rights of author with regard to cinematographic works and other audiovisual works**

1. — Persons who work as movie directors, writers, cameramen, musicians, painters and persons who are in charge of sound, lighting, decoration, equipment or movie art shall enjoy the rights provided for in Article 17 of this Law.

2. — An individual or organization that invests capitals and other material conditions for making cinematographic works and other audiovisual works shall be owner of rights provided for in Article 18 of this Law.

3. — An individual or organization provided for in Paragraph 2 of this Article shall pay royalties and remuneration as agreed in contract, to persons provided for in Paragraph 1 of this Article.

#### **Article 20 — Conditions to become author of derivative works**

1. — An individual or organization that makes a derivative work must obtain permission from the author and owner of the copyright of the novel work.

2. — In case of alteration of contents of novel works, a consent of author of the novel works must be obtained and his/her name must be put in the work; royalties must be paid to the author, owner of the novel works as agreed in the contract.

#### **Article 21 — Act of infringement of rights of author**

Acts of infringement of rights of author shall include without limitation to the

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following acts:-

- 1.—— Publishing, producing and issuing a work without permission of the author;
- 2.—— Publishing, producing and issuing a work created by co-authors as if such work is created by him/her only without permission of other co-authors;
- 3.—— Putting his/her name as author in the work created by another person for his/her individual motives without his/her participation in the creation of the work;
- 4.—— Distorting, mutilating work created by another person;
- 5.—— Reproducing work created by another person;
- 6.—— Exploiting in the form of display, film-making, or other similar forms, or adapting, translating, compiling, or any other forms without permission of the owner of copyright with regard to the novel work;
- 7.—— Exploiting work created by another person without agreement and payment of royalties according to the laws;
- 8.—— Leasing works without permission of the owner of copyright of works. These works may also be audiovisual works created by a method similar to method used in film-making, computer software, audiovisual recording, or image recording;
- 9.—— Any act in breach of rights of author and/or neighboring rights, and in breach of rights, benefits relating to rights of author;
- 10.—— Reproducing, producing copies, distributing, issuing, displaying, transmitting, editing to the public through communication network of a work created by another person without permission of the owner of copyright, except for cases allowed by this Law;
- 11.—— Publishing book for which the exclusive right of publication is owned by another party;
- 12.—— Purposely abrogating or neutralizing technical methods used by the owner for protection of his/her work without his/her permission, except for cases allowed by this Law;
- 13.—— Purposely deleting, changing electric information for right management in the work without permission of the owner of copyright, except for cases allowed by this Law;
- 14.—— Making and selling works for which the signature of author is false.

#### **Section 4**

#### **Limitations for rights of author**

#### **Article 22 — Exceptions**

An individual or organization shall be entitled to use of work of another person which has been published or disseminated, if such work is not prohibited from being copied and such use is not for commercial purposes and does not affect the normal exploitation of the work, and not detrimental to other interests of the author or owner of the copyright; such an individual or organization shall not have to obtain permission from and pay any remuneration to the author or owner of copyright, but must acknowledge or mention the name of the author and the origin of the work.

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### **~~Article 23 — Forms of use of work without obtaining permission or paying royalties and remuneration~~**

~~1. — Any exploitation or use of work provided for in Article 22 of this Law shall only include the following forms:~~

- ~~a. Duplicating/reproducing a work for personal use;~~
- ~~b. Quoting from a work without falsifying the author's ideas in order to make commentaries or illustration in his/her work;~~
- ~~c. Quoting from a work without falsifying the author's ideas in order to write newspaper articles, or for use in periodical publications, broadcasting or television programs, or documentary films;~~
- ~~d. Quoting from a work without falsifying the author's ideas for the purpose of teaching, or examinations in schools;~~
- ~~e. Copying a work for archives in libraries;~~
- ~~f. Performing theatrical works and other types of artistic performance in cultural and propaganda activities at public places;~~
- ~~g. Making audio and visual recording of performances for reporting news or teaching purposes;~~
- ~~h. Taking photograph, televising and introducing works of sculpture, photography, applied arts displayed in public places in order to introduce the image of such works;~~
- ~~i. Converting a printed work into Braille characters for the blind people.~~

~~2. — Any exploitation, or use of the work under forms provided for in Paragraph 1 of this Article must quote the origin of work, not applicable to works of architecture, sculpture, and computer software.~~

### **~~Article 24 — Exploitation or use without obtaining permission, but payment of royalties and remuneration~~**

~~An individual or organization who exploits or uses literary, artistic and scientific works provided for in Paragraphs a, b, f, j, k, l of Article 14 of this Law for performance, audiovisual recording, transmission, public communication are not required to obtain permission, but must mention the origin of work, pay royalties, remuneration to the owner of copyright.~~

## **Section 5**

### **Owners of copyright**

#### **~~Article 25 — Owners of copyright~~**

~~Owners of copyright shall be individuals or organizations possessing one, some or all property rights provided for in Article 18 of this Law.~~

#### **~~Article 26 — Author is also owner of copyright~~**

~~An author who creates a work by using his/her time, funds, and other material conditions shall be the owner of copyright provided for in Articles 17 and 18 of this Law.~~

#### **~~Article 27 — Co-authors are also co-owners of copyright~~**

~~1. — Co-authors who create a work by using time, funds and their other material~~

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conditions shall be the co-owners of copyright provided for Articles 17 and 18 of this Law.

2. In cases where co-authors create a work provided for in Paragraph 1 of this Article hold separate parts which may be taken for independent use without detrimental to other parts of other co-authors, co-authors who have made such separate parts shall be owners of copyright provided for in Articles 17 and 18 of this Law, unless otherwise agreed by the co-authors.

#### **Article 28 — Owner of copyright is an agency, organization, or individual**

1. An agency or organization that assigns tasks to an author who is an employee of such an agency or organization and creates a work shall be the owner of copyright provided for in Article 18 of this Law.

2. An agency, organization or individual that enters into contract with an author who creates a work shall be the owner under the contract in respect of one, some or all property rights provided for in Article 18 of this Law.

#### **Article 29 — Owner is an inheritor**

1. An inheritor under the Inheritance Law and other relevant laws shall be the owner of one, some or all rights provided for in Article 18 of this Law.

2. An agency or organization that inherits under the Inheritance Law and other relevant laws shall be the owner of one, some or all property rights provided for in Article 18 of this Law.

#### **Article 30 — Owner is transferee of copyright**

An individual or organization that is transferred one, some or all property rights provided for in Article 18 of this Law under a transfer contract shall be the owner of copyright.

#### **Article 31 — Works owned by the State**

1. Works the authors of which is unidentified; anonymous works;

2. Works of which owner of copyright has died without inheritor, or inheritor refuses to receive the inheritance or not entitled to the inheritance.

#### **Article 32 — Work in public domain**

1. Folk literary and artistic works;

2. Works for which the term of protection has expired.

#### **Article 33 — Obligations of an individual, organization upon exploitation, or use of property rights**

1. To agree in contract on exploitation, or use of property rights with the owners of copyright provided for in this Section; to pay royalties and remuneration and other material benefits under the contract.

2. The Government shall provide specific rules for the exploitation and use of works owned by the State provided for in Article 31, folk literary and artistic works, works of which term of protection has expired provided for in Article 32 of this Law.

### **Section 6**

#### **Registration of rights of author**

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**~~Article 34 — Right to submit an application for registration of rights of author~~**

~~The following individuals, organizations shall have the right to directly or authorize other persons or organizations to apply for a Copyright Registration Certificate:~~

- ~~1. Authors;~~
- ~~2. Owners of copyright.~~

**~~Article 35 — Conditions for carrying out rights of submission of application for registration of rights of author~~**

- ~~1. An individual or organization that applies for a Copyright Registration Certificate provided for in Paragraph 1 of Article 34 shall be those provided for in Article 13 of this Law.~~
- ~~2. A work for which the registration of rights of author is sought shall fall into the list of works provided for in Paragraph 1 of Article 14 and not contain contents provided for in Article 11 of this Law.~~

**~~Article 36 — Procedures for registration of copyright~~**

- ~~1. — Document file for applying for Copyright Registration Certificate must be submitted to the Literary and Artistic Copyright Bureau, or its representative office in Ho Chi Minh City, or provincial Cultural and Information Department under central authority.~~
- ~~2. — Document file for applying for Copyright Registration Certificate shall include the following:~~
  - ~~a. — Application for Copyright Registration Certificate. The application must contain the following:~~
    - ~~— information relevant to the applicant;~~
    - ~~— information relevant to author, owner of copyright of work for which the registration is sought;~~
    - ~~— main contents of works;~~
    - ~~— name of author, novel work, if the work is a derivative work;~~
    - ~~— time, location, forms for publication of work, if the work has been published;~~
    - ~~— copyright transfer contract, if any;~~
    - ~~— commitments and responsibilities relating to the truth and correctness of information given in the application.~~
  - ~~b. — 02 copies of the work that applies for registration;~~
  - ~~c. — Identification papers of the applicant;~~
  - ~~d. — In cases where the applicant is an authorized person, he/she is required to show a proper authorization paper;~~
  - ~~e. — In cases where the applicant is an inheritor, he/she is required to show any paper proving him/her as a legal inheritor;~~
  - ~~f. — In cases where the applicant is one of co-authors or co-owners, he/she is required to show an authorization paper of all co-authors, co-owners, authorizing him/her to submit the application or all co-authors sign the application.~~

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3. Documents and papers as provided for in subparagraphs a, d, e, f of Paragraph 2 of this Article must be in Vietnamese or must be attached with the Vietnamese translation certified by a State notary public office.

**Article 37 — Competence for issuance of Copyright Registration Certificate**

1. The Literary and Artistic Copyright Bureau under the authority of the Ministry of Culture and Information shall be the competent agency to issue and withdraw the Copyright Registration Certificate.

2. The Copyright Registration Certificate shall be re-granted or changed upon a request by the author, owner of copyright.

**Article 38 — Time limit for response of application for the Copyright Registration Certificate**

1. Within 30 days from the date of receipt of application for the Copyright Registration Certificate, the Literary and Artistic Copyright Bureau shall reply in writing to the applicant.

2. In cases where the Literary and Artistic Copyright Bureau refuses to grant the Copyright (and neighboring rights) Registration Certificate and the applicant is not satisfied with this refusal, the applicant has the right to appeal to the Minister of the Culture and Information.

**Article 39 — Legal value of the Copyright Registration Certificate**

1. The Copyright Registration Certificate shall be effective in the whole territory of Vietnam.

2. All Copyright Registration Certificates which were issued by the Copyright Protection Firm, Copyright Protection Agency of Vietnam, and Copyright Bureau before this Law takes effect shall continue to be effective. Authors, owners of copyright shall be entitled to rights under this Law.

3. The Copyright Registration Certificate shall not certify the substantive values, artistic nature, exploitation, use or any other values of the registered works.

**Article 40 — Annulment of the validity of the Copyright Registration Certificate**

1. The Literary and Artistic Copyright Bureau shall annul the validity or withdraw a Copyright Registration Certificate if person who is granted the Copyright Registration Certificate is found not to be the author, copyright owner or the registered work is not protected under copyright.

2. Any individual who has related rights and benefits and discovers any illegal issuance of the Copyright Registration Certificate shall have the right to make a complaint and request the Literary and Artistic Copyright Bureau to annul the validity or withdraw it.

3. The Minister of Culture and Information, Chief Inspector of the Ministry of Culture and Information, the People's Court shall have the competence to announce and request the Literary and Artistic Copyright Bureau to withdraw or annul the validity upon discovery of any illegal issuance of the Copyright Registration Certificate.

#### **Article 41 — Fees**

1. — An individual, organization for that the Copyright Registration Certificate is issued, re-issued or changed by the Literary and Artistic Copyright Bureau shall pay fees in accordance with the laws.
2. — The rate of fees shall be provided for by the Ministry of Finance.

#### **Article 42 — Organization for recording of copyright registration**

1. — The Copyright Registration Certificate shall be recorded in the national registration book on copyright kept by the Literary and Artistic Copyright Bureau.
2. — Any decision of issuance, re-issuance or changing, or withdrawal, or announcement of annulment of the validity of the Copyright Registration Certificate shall be published in the national copyright official gazette.

### **Section 7**

#### **Copyright assignment contract, contract for use of work**

#### **Article 43 — Copyright assignment**

1. — Copyright assignment means assignment of one, some or all exclusive property rights provided for in Article 18 of this Law from the copyright owner to another individual or organization.
2. — Authors, copyright owners shall not be allowed to transfer their personal rights provided for in Article 17 of this Law to any individual or organization.

#### **Article 44 — Copyright assignment contract**

1. — Copyright assignment contract means an agreement in writing between copyright owner on assignment of one, some or all property rights with regard to work owned by him/herself provided for in Article 18 of this Law to another individual, organization who is the transferee of the work.
2. — Copyright assignment contract with regard to work jointly created by co-authors who are also copyright co-owners shall be the agreed between the copyright co-owners or person who is authorized by the copyright co-owners and the assignee. Copyright co-owners or the authorized person and the assignee shall jointly sign the contract.
3. — Copyright assignment contract shall be entered into on the basis of contents provided for in this Law and shall be in writing, unless otherwise agreed.

#### **Article 45 — Content of the assignment contract**

A copyright assignment contract shall be agreed between the parties and include the following main contents:-

1. Form of assignment;
2. Scope of assignment;
3. Price and payment method;
4. Rights and obligations of parties to the assignment contract;
5. Liabilities, compensation rate of each party upon violation of the contract;
6. Other contents as agreed by parties.

#### **Article 46 — Rights and obligations of parties in the assignment contract**

1. — Rights and obligations of copyright owner:

a. — Copyright owner shall have the right to refuse to transfer personal rights as provided for in Article 17 of this Law upon the assignment.

b. — In respect of work jointly created by co-authors who are also copyright co-owners of separate parts, which may be taken for independent use, the copyright owner of the separate parts shall have the right to transfer his separate parts to another individual or organization.

c. — Copyright owner shall have the right to request the transferee to observe the signed contract and compensate any damages caused by any breach.

d. — Copyright owner shall be responsible for respecting and observing the signed contract, regulations of this Law and other relevant regulations.

2. — Rights and obligations of the assignee

a. — be entitled to rights which are transferred under the assignment contract;

b. — be entitled to enter into contract for transferring his/her property rights to any other individual, organization and entitled to benefits gained from such transfer.

#### **Article 47 — Annulment and suspension of assignment contract**

One party shall have the right to unilaterally annul, suspend the assignment contract and claim for compensation for any damages upon any breach of contract by the other party.

#### **Article 48 — Exploitation, use of work**

Any individual, organization that desires to exploit, use work created by copyright owner shall:

1. — performs relevant obligations arising from personal rights and property rights provided for in Articles 17 and 18 and other relevant Articles of this Law.

2. — agree with copyright owner to use the work under a contract.

#### **Article 49 — Contract for use of a work**

1. — A contract for use of a work is an agreement under which the copyright owner shall allow another individual or organization that is user of the work to use one or some property rights with regard to work under his/her ownership for a certain period of time.

2. — A contract for use of a work jointly created by co-authors who are also co-owners shall be agreed between co-authors or transferee of co-authors and user of the work. The copyright co-owner or their transferee and user of the work shall jointly sign the contract.

#### **Article 50 — Content of contract for use of a work**

A contract for use of a work shall be agreed by parties and include the following major contents:

1. — Form for use of work;

2. — Scope, time limit for use of work;

3. — Royalties, remuneration, and other material benefits and payment method;

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- 4.—— Rights and obligations of parties upon signing contract;
- 5.—— Liabilities, compensation rate of each party upon breach of contract;
- 6.—— Other contents as agreed by the parties.

#### **Article 51——Rights and obligations of parties in a contract for use of a work**

- 1.—— Rights of copyright owner:
  - a.—— to request the work user to pay fully the royalties, remuneration, other material benefits in a timely manner and in accordance with the payment method as agreed;
  - b.—— to concurrently enter into contract for use of his/her work with other individuals or organizations with respect to the remaining property rights;
  - c.—— to transfer work to the work user in a timely manner and in accordance with the location as agreed;
  - d.—— to have the right to request the work user to observe the signed contract and compensate any damages caused by any breach;
  - e.—— to be liable for respecting and observing the signed contract, regulations of this Law and other relevant regulations.
- 2.—— Rights and obligations of the assignee, and work user:
  - a.—— to be entitled to any benefits arising from the exploitation, use of work under the contract;
  - b.—— to use work in accordance with the form, scope and time limit as agreed;
  - c.—— not to transfer rights which are transferred to him/her under the contract to another individual or organization without permission of the copyright owner;
  - d.—— to pay fully the royalties, remuneration, other material benefits to the copyright owner in a timely manner and in accordance with the payment method as agreed;
  - e.—— to compensate any damages caused by any breach of rights and obligations in the contract to the copyright owner.

#### **Article 52——Annulment and suspension of contract for use of work**

One party shall have the right to unilaterally annul or suspend the contract for use of work and claim for compensation for any damages upon any breach by the other party.

#### **Article 53——Some forms of using special works**

The Government shall stipulate standard forms of the assignment contract and contract for use of special works in accordance with this Law and other relevant laws.

### **Chapter III Related rights**

#### **Section 1**

#### **Principles for protection of related rights**

#### **Article 54——Related rights**

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Related rights shall be protected under this Law, including:

1. — Rights of performers
2. — Rights of organizations producing sound recordings, video recordings;
3. — Rights of broadcasting organizations, including organizations that distribute signals for satellite programs.

#### **Article 55 — Principles for protection of related rights**

The protection of the related rights shall ensure the uniformity and not be detrimental to the protection of rights of author with regard to literary, artistic and scientific works provided for in Chapter II of this Law.

#### **Article 56 — Conditions for protection of the related rights**

1. — Performance protected shall include:
  - a. — any performance which is done in Vietnam;
  - b. — any performance which is fixed on the sound recordings shall be protected under Article 59 of this Law;
  - c. — any performance which has not been fixed on the sound recordings, video recordings, but broadcasted shall be protected under Article 60 of this Law;
  - d. — any performance that is done in a country with which Vietnam has an international treaty, shall be protected under the international treaty.
2. — Sound recordings, video recordings protected shall include:
  - a. — Any sound recordings, video recordings of organizations producing sound recordings, video recordings holding Vietnamese citizenship;
  - b. — Any sound recordings, video recordings of organizations producing sound recordings, video recordings firstly published in Vietnam or simultaneously published within 30 days in Vietnam from the first publication in another country;
  - c. — Any sound recordings, video recordings of organizations producing sound recordings, video recordings protected under international treaty to which Vietnam is a party.
3. — Broadcasting programs protected shall include:
  - a. — Any broadcasting programs of a broadcasting organization having office in Vietnam;
  - b. — Any broadcasting programs which are broadcasted from a station located in Vietnam;
  - c. — Any broadcasting programs of a broadcasting organization protected under an international treaty to which Vietnam is a party.

#### **Article 57 — Definitions**

1. — "Performer" means an actor/actress, singer, musician, dancer and any person who casts, plays role, sings, reads, declaims, presents a literary and artistic work;
2. — "Fixation" means the expression of sound or image or re-expression of sound or images that can be perceived, duplicated or communicated via an equipment;
3. — "Copying of a sound recording or video recording" means production of one or



more copies of a sound recording or video recording;

4. — “Sound recording or video recording” means a fixed version of sound or images of a performance or other sound or images, or a fixation of re-expressed sound or images which is not attached or linked with other cinema graphic or audiovisual works.

5. — “Copy of a sound recording or video recording” means an object containing sound that is directly or indirectly copied from a sound recording or video recording and expresses the whole or main part of the fixed sound recording or video recording;

6. — “Organization producing sound and video recording” means an individual or legal entity that takes initiative and is responsible for the first fixation of sound or images of a performance or other sound or images, or re-expression of such sound or images;

7. — “Broadcasting” means the transmission of sound or image or its re-expression through television technology to the public; the same transmission, which is made through satellite, is also “broadcasting”. The transmission of the encrypted signals shall be “broadcasting” when the decoding equipment have been provided for the public by or with the consent of the broadcasting organization;

8. — “Re-broadcasting” means simultaneous broadcasting of a broadcasted program of another broadcasting organization by a broadcasting organization;

9. — “Satellite signals with the encrypted program” mean program signals transmitted via satellite where the nature of the sound or images, or both, has been modified or changed to prevent illegal reception of the program by those who do not possess lawful equipment that is designed to nullify the effects of the intended modified or changed nature;

10. — “Broadcasting organization” (radio and television broadcasting organization) is a legal entity that takes initiative and responsible for the communication to the public of sound or images or the re-expression such sound, images;

11. — “Communication to the public of performance or sound and video recording” means the transmission in any means to the public of sound or images of a performance or sound or image or the re-expression thereof. The communication to the public shall include the creation of sound or image or the re-expression of sound or image fixed in the audio or video recording accessible in public places;

12. — “Publication of a fixed performance or sound and video recordings” means the issuance of copies of the fixed performance or sound and video recordings to the public with the consent of owner of the related rights, provided that the number of copies provided for the public must be reasonable.

## **Section 2**

### **Contents of related rights**

#### **Article 58 — Rights of performer**

1. — A performer shall have an exclusive right to or allow others to:

a. — Introduce his/her name upon the performance, except for cases in which

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~~his/her name cannot be introduced due to the performance nature;~~

~~b. — Protect his/her performance from any distortion, mutilation or modification, detrimental to his/her honor and reputation.~~

~~c. — Fix his/her live music performance in sound recordings, video recordings;~~

~~d. — Directly or indirectly duplicate his/her performance which has been fixed in a sound recording;~~

~~e. — Broadcast and communicate to the public his/her performance which has not been fixed, except for cases where his/her performance is made for broadcasting purpose;~~

~~f. — Publish to the public the novel and duplicated copies of his/her performance which has been fixed in the sound recordings by the way of selling or transferring his/her ownership;~~

~~g. — Lease the novel and duplicated copies of his/her performance which has been fixed in the sound recordings to the public;~~

~~h. — Provide to the public his/her performance, which has been fixed in sound recordings through wire or wireless means, to which the public may access from any place and at any time selected by them.~~

~~2. — Performer shall be entitled to remuneration when his/her performance is recorded through video, audio techniques, or broadcasted to the public.~~

~~Term of protection: Rights of performer shall be protected for 50 years from the year following the year of his/her performance, which is fixed in sound recordings.~~

#### **~~Article 59 — Rights of organization producing sound recordings, video recordings~~**

~~1. — Organizations producing sound recordings, video recordings shall have exclusive right to carry out or allow others to carry out the following:~~

~~a. — To directly or indirectly duplicate his/her sound recordings;~~

~~b. — To publish the novel and duplicated copies of his/her sound recordings to the public by the way of selling or transferring his/her ownership;~~

~~c. — To lease the novel and duplicated copies of his/her sound recordings to the public;~~

~~d. — To provide to the public his/her sound recordings by wire, wireless means, to which the public may access at a place and at any time selected by them.~~

~~2. — Organization producing sound recordings, video recordings shall be entitled to remuneration when its sound recordings, video recordings are broadcasted to the public.~~

~~3. — Term of protection: Rights of organization producing sound recordings, video recordings shall be protected for 50 years starting from the year following year of publication, or 50 years starting from the year following year of fixation if the sound recordings, video recordings have not been published.~~

~~Option No. 2: Term of protection shall be 75 years (according to a commitment in the Vietnam — USA Trade Agreement)~~

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**Article 60 — Rights to enjoy remuneration gained from allowing others to use sound recordings**

1. — In cases where a sound recording has been published for commercial purpose, any individual or organization directly or indirectly using it to broadcast or communicate to the public shall pay remuneration to performer/s and organization producing sound recordings, video recordings.

2. — The above-mentioned remuneration shall be distributed under an agreement between the performer/s and organization producing sound recordings, video recordings.

**Article 61 — Rights of broadcasting organization**

1. — Broadcasting organization shall have an exclusive right to carry out or allow others:

- a. — To re-broadcast its broadcasted program;
- b. — To communicate to the public its broadcasted program;
- c. — To fix its broadcasted program;
- d. — To duplicate the fixed copy of its broadcasted program.

2. — Broadcasting organization shall be entitled to remuneration when its broadcasted program is recorded by audio or video means, broadcasted, communicated to the public.

3. — Term of protection: Rights of broadcasting organization shall be protected for 50 years starting from the year following year that the broadcasting program is made.

**Option No. 2:** Term of protection shall be 75 years (according to the undertakings provided for in the Vietnam — USA Trade Agreement)

**Article 62 — Limitations to the related rights**

1. — The related rights are stipulated under Articles 57, 58, 59 and 60 of this Law, not applicable to the following use:

- a. — To duplicate only for personal use;
- b. — To use the quoted paragraph for report of current events for the purpose of provision of information;
- c. — To duplicate only for scientific research, teaching, except for cases where performance, sound recordings, video recordings, broadcasting programs are published for teaching or guiding materials;
- d. — To produce temporary recordings for broadcasting purpose by the broadcasting organization.

2. — The above use shall not affect the normal exploitation of the performance or the sound recordings, video recordings and not detrimental to the legal benefits of performer, and organization producing sound recordings, video recordings or broadcasting organization.

**Article 63 — Acts of breach of the related rights**

1. — Except for the limitations to the related rights provided for in Article 60, any

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acts of using the related rights without permission of the owner of the related rights shall be considered as breach of the related rights.

2. Acts of breach relevant to the protection of right management information shall include:

a. Dismantlement or change of any electronic right management information without the necessary permission;

b. Distribution, import for distribution, broadcasting, communicating or provision to the public of any performance, or copy of the performance, without permission, which has been fixed or of any the sound recording that he/she may knows that the electronic right management information has been dismantled or changed without permission.

3. Acts of breach relevant to protection of satellite signals with the encrypted program shall include:

a. Production, assembling, alteration or distribution (including import, export, sale or leasing) of any equipment or system made by one person when he/she may know that such equipment or system will be used for illegal decoding of a satellite signal with the encrypted program;

b. Purposely receiving or continuous distribution of satellite signals with the encrypted program without permission of the legal distributor of such signal or any person/s who is/are nominated by the first person who distributes the signals to be a legal distributor of the signal.

### Section 3

#### Registration of the related rights

##### **Article 64 — Right for submitting an application for registration of the related rights**

The following individuals, organizations shall have the right to directly or authorize other persons or organizations to submit an application for the related rights registration Certificate:

1. Performer;

2. Organization producing sound recordings, video recordings;

3. Broadcasting organization including organization that distributes signal with satellite program.

##### **Article 65 — Conditions for carrying out right to submit an application for registration of the related rights**

1. An individual, organization that submits an application for the relevant right registration Certificate shall be objects provided for in Article 54 of this Law.

2. The related rights for registration must satisfy conditions provided for in Article 56 and not containing contents provided for in Article 11 of this Law.

##### **Article 66 — Procedures for registration of the related rights**

1. Document file for applying for the Relevant Right Registration Certificate shall be submitted in the Literary and Artistic Copyright Bureau, or representative office of

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the Bureau in Ho Chi Minh City, the provincial cultural and information Department under the central authority.

2. Document file for applying for the Relevant Right Registration Certificate shall include:

a. Application for the Relevant Right Registration Certificate, which expressly state the following major contents:

Information relevant to the applicant;

Information relevant to the owner of the related rights;

Major content of the fixed version which is used for application for registration

Time, place, form for publication if the fixed copy, which is used for application for registration has been published.

Transfer contract of the related rights, if any;

Commitments and responsibilities relevant to information given in the application

b. 02 copies of the fixed versions of the related rights, which is used for application for registration.

c. Identification papers of the applicant;

d. In cases where the applicant is an authorized person, he/she is required to show a proper authorization paper;

e. In cases where the applicant is an inheritor, he/she is required to show any paper proving him/her as a legal inheritor;

f. In cases where the applicant is one of co-owners of the related rights, he/she is required to show an authorization paper of all co-owners, authorizing him/her to submit the application or all co-owners must sign the application.

3. Documents as provided for in Subparagraphs a, d, e, f of Paragraph 2 of this Article must be in Vietnamese or must be attached with the Vietnamese translation certified by a State notary public office.

#### **Article 67 Competence for issuance of the Relevant Right Registration Certificate**

1. The Literary and Artistic Copyright Bureau under the authority of the Ministry of Culture and Information is the competent agency to issue and withdraw the Relevant Right Registration Certificate.

2. The Relevant Right Registration Certificate shall be re-issued or changed upon receipt of a request submitted by the individual or organization.

#### **Article 68 Time limit for response to an application for the Relevant Right Registration Certificate**

1. Within 30 days from the date of receipt of the application for the Relevant Right Registration Certificate, the Literary and Artistic Copyright Bureau shall reply in writing to the applicant.

2. In cases where the Literary and Artistic Copyright Bureau refuses to grant the Relevant Right Registration Certificate, and the applicant is not satisfied with this refusal, the applicant has the right to appeal to the Minister of the Culture and

Information.

**Article 69 — Legal value of the Relevant Right Registration Certificate**

1. — The Relevant Right Registration Certificate shall be effective in the whole territory of Vietnam.

2. — All Relevant Right Registration Certificates, which were issued by the Copyright Protection Firm, the Copyright Protection Agency of Vietnam, and the Copyright Bureau before this Law takes effect shall continue to be effective.

3. — The Relevant Right Registration Certificate shall not certify the substantive, artistic, exploiting or using value or any economic values of the registered related rights.

**Article 70 — Annulment of validity of the Relevant Right Registration Certificate**

1. — Any individual who has related rights and benefits and discovers any illegal issuance of the Relevant Right Registration Certificate shall have the right to make complaints and request the Literary and Artistic Copyright Bureau to annul its validity or withdraw it.

2. — The Literary and Artistic Copyright Bureau shall annul the validity or withdraw the Relevant Right Registration Certificate if person who is granted the Relevant Right Registration Certificate is discovered not to be the owner of the related rights or not those protected under the related rights.

3. — The Minister of Culture and Information, Chief Inspector of the Ministry of Culture and Information, the People's Court shall have the competence to announce and request the Literary and Artistic Copyright Bureau to withdraw or annul the validity upon discovery of any illegal issuance of the Relevant Right Registration Certificate.

**Article 71 — Fees**

1. — An individual, organization that is granted, re-granted or changed the Relevant Right Registration Certificate by the Literary and Artistic Copyright Bureau shall pay fees in accordance with the laws.

2. — The rate of fees shall be provided for by the Ministry of Finance.

**Article 72 — Organization for recording the related rights registration**

1. — The Relevant Right Registration Certificate shall be recorded in the national registration book on copyright kept by the Literary and Artistic Copyright Bureau.

2. — Any decision of issuance, re-issuance or changing, or withdrawal, or announcement of annulment of the validity of the Relevant Right Registration Certificate shall be published on the national copyright official gazette.

**Section 4**

**Assignment contract of the related rights, contract for use of the related rights**

**Article — 73 — Assignment of the related rights**

Assignment of the related rights means assignment of one, some or all exclusive

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rights provided for in Articles 58, 59, 60 and 61 of this Law from one individual or organization to another individual or organization.

**Article 74 — Assignment contract of the related rights**

1. — An assignment contract of the related rights means an agreement in writing between the owner of the related rights on assignment of one, some or all related rights provided for in this Law to another individual or organization who is transferee of the related rights.

2. — An assignment contract of the related rights shall be agreed to between the owner of the relevant right and the transferee of the relevant right.

An assignment contract of the related rights shall be signed on the basis of contents provided for in this Law and shall be in writing, unless otherwise agreed by parties.

**Article 75 — Contents of the assignment contract of the related rights**

An assignment contract shall include the following main contents:

1. Form of assignment;
2. Scope of assignment;
3. Remuneration and payment method;
4. Rights and obligations of parties upon signing the assignment contract;
5. Liabilities, compensation rate of each party upon breach of the contract;
6. Other contents as agreed by parties.

**Article 76 — Rights and obligations of parties in the assignment contract of the related rights**

1. — Rights and obligations of owner of the related rights:

a. — Owner of the related rights shall have the right to refuse to transfer his/her personal rights as provided for in Subparagraphs a and b of Paragraph 1 of Article 57 of this Law when the assignment is made.

b. — In cases where co-owners of the related rights that have separate parts which may be taken for independent use, the owner of the separate parts shall have the right to transfer his separate parts to another individual or organization.

c. — Owner of the related rights shall have the right to request the transferee to observe the signed contract and compensate any damages caused by any breach of the contract.

d. — Owner of the related rights shall respect and observe the signed contract, regulations of this Law and other relevant regulations.

2. — Rights and obligations of transferee of the related rights

a. — be entitled to rights which are transferred under the assignment contract of the related rights;

b. — be entitled to enter into any assignment contract for transferring his/her property rights to any other individual, organization and entitled to benefits gained from such transfer.

**Article 77 — Annulment and suspension of assignment contract of the related rights**

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~~One party shall have the right to unilaterally annul or suspend the assignment contract of the related rights and claim for compensation for any damages upon any breach of contract by the other party.~~

**~~Article 78 — Contract for use of the related rights~~**

~~1. — A contract for use of the related rights is an agreement under which the owner of the related rights shall allow another individual or organization that is user of the related rights to use one or some the related rights for a certain period of time.~~

~~2. — A contract for use of the related rights owned by co-owners shall be agreed to between co-owners of the related rights and the user of the related rights. The co-owners and the user of the related rights jointly sign the contract.~~

**~~Article 79 — Content of contract for use of the related rights~~**

~~A contract for use of the related rights shall include the following main contents:~~

- ~~1. Form for use of the related rights;~~
- ~~2. Scope, time limit for use of the related rights;~~
- ~~3. Remuneration and payment method;~~
- ~~4. Rights and obligations of parties upon signing contract;~~
- ~~5. Liabilities, compensation upon breach of contract;~~
- ~~6. Other contents as agreed by parties.~~

**~~Article 80 — Rights and obligations of parties in a contract for use of the related rights~~**

~~1. — Rights of owner of the related rights:~~

- ~~a. — to request the user to pay the remuneration in a timely manner and in accordance with the payment method as agreed;~~
- ~~b. — to concurrently enter into contract for use of his/her related rights with other individuals or organizations, except for otherwise agreed;~~
- ~~c. — to have the right to request the user to observe the signed contract and compensate any damages caused by any breach;~~
- ~~e. — to be liable for respecting and observing the signed contract, regulations of this Law and other relevant regulations.~~

~~2. — Rights and obligations of the user of the related rights:~~

- ~~a. — to be entitled to any benefits arising from the exploitation, use of the relevant right under the contract;~~
- ~~b. — to use the related rights in accordance with the form, scope and time limit as agreed;~~
- ~~c. — to pay the remuneration to the owner of the related rights in a timely manner and in accordance with the payment method as agreed;~~
- ~~e. — to compensate any damages caused by any breach of rights and obligations in the contract to the owner.~~

**~~Article 81 — Annulment and suspension of contract for use of the related rights~~**

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Any party shall have the right to unilaterally annul or suspend the contract for use of the related rights and claim for compensation for any damages upon any breach by the other party.

## Chapter IV

### RIGHTS TO INVENTIONS/UTILITY SOLUTIONS

#### Section 1. Principles of establishment of rights to inventions/utility solutions

##### Article 82 — Inventions/utility solutions

An invention/utility solution is a technical solution, in form of product or a process, whereby a specific matter shall be resolved by way of applying natural laws.

##### Article 83 — Bases for establishment of the rights to inventions/utility solutions

1. — The rights to an shall be established on the basis of a protection title granted in accordance with the registration procedures set out in this Chapter by the State authority authorized to register inventions/utility solutions (to be referred to as Invention/Utility SolutionInvention Registration Authority).

2. — A protection title for an invention/utility solutioninvention shall be an invention/utility solutioninvention patent which acknowledges the scope of protection with regard to that invention/utility solutioninvention, the owner (holder) of the right to that invention/utility solutioninvention and its author.

3. — The registration of an invention/utility solutioninvention shall be made by way of acknowledgment of the grant of the invention/utility solutioninvention patent and the whole contents of that patent in the National Registry for Inventions/Utility Solutions which registry is opened and maintained by the Invention/Utility SolutionInvention Registration Authority.

##### Article 84 — Filing of applications for registration of inventions/utility solutions

1. A person seeking for entitlement to the rights to an invention/utility solutioninvention must prepare and file an application for the grant of an invention/utility solutioninvention patent with the Invention/Utility SolutionInvention Registration Authority to be referred to as an Invention/Utility SolutionInvention Registration Application.

2. A Vietnamese individual, legal entity or another subject may directly or through its by law or by proxy representative file an invention/utility solutioninvention registration application.

3. — A foreign individual permanently residing in Vietnam or a foreign organization with an official production or business establishment in Vietnam may file an invention/utility solutioninvention registration application either directly or through its legal representative in Vietnam.

A foreign individual not permanently residing in Vietnam or a foreign organization without an official production or business establishment in Vietnam must file an invention/utility solutioninvention registration application through its legal

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representative in Vietnam.

**Article 85 — ~~The right to file invention/utility solution~~invention registration applications**

1. — ~~The right to file an invention/utility solution~~invention registration application shall belong to the following:

(a) — ~~the author of the technical solution~~invention who created the technical solutioninvention by his/her efforts and expenses; or

(b) — ~~the organization or individual who invests funds and material facilities in the form of an assignment or hiring for the author to create the technical solution~~invention, unless otherwise agreed in the labor contract or hiring contract.

2. — ~~In case several organizations or individuals jointly create or jointly invest in the creation of a technical solution~~An invention, the right to file an application shall belong to all of those organizations or individuals and shall only be exercised subject to their consensus.

3. — ~~A person with the right to file an application may assign that right including all the filed applications to another organization or individual by way of a written assignment, inheritance or other forms of passing property-related rights provided for by laws.~~

**Article 86 — ~~The first-to-file principles~~**

1. — ~~If two or more invention/utility solution~~invention registration applications are filed in respect of one and the same technical solutioninvention on different dates, the invention/utility solutioninvention patent shall only be granted to the person who first files the application.

2. — ~~If two or more invention/utility solution~~invention registration applications are filed in respect of one and the same technical solutioninvention on the same date, the invention/utility solutioninvention patent shall only be granted to the persons under whose names a joint and unique application is filed subject to acceptance of all the above applicants.

**Article 87 — ~~Priority right of invention/utility solution~~invention registration applications**

1. — ~~The person who files an application is entitled to request for the entitlement to the priority right on the basis of a registration application in respect of one and the same subject matter first filed in Vietnam or in another Paris Convention's member country or on the basis of another international treaty concerning the priority right which the Socialist Republic of Vietnam entered into or adhered to, provided that the application seeking for the priority right is filed within 12 months from the date of filing of the first application.~~

2. — ~~The relevant priority date of an invention/utility solution~~invention registration application entitled to the priority right shall be the date of filing of the first application and the priority date shall be regarded as the date of filing when applying the provisions of Article [novelty] and Article [principles of filing of the first application].

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3.—— A person requesting for the entitlement to the priority right must specify the basis for that request and must produce documents proving the priority right and the payment of fees in accordance with the laws.

4.—— If an invention/utility solution~~invention~~ registration application is entitled to the priority right in accordance with different dates, then the prescribed time limits shall be calculated from the earliest priority date among the accepted priority dates.

5.—— An applicant may withdraw his/her request for entitlement to the priority right.

#### **~~Article 88 — Fees and charges related to invention/utility solution~~invention registration applications**

1.—— A person who files an invention/utility solution~~invention~~ registration application must pay in full and on time all the prescribed fees and charges applicable during the completion of a procedure, otherwise the relevant procedures shall be rejected.

2.—— The Government shall provide for types of fees and charges, their rates, payment time limits and method of using relevant fees and charges with regard to invention/utility solution~~invention~~ registration applications.

#### **~~Article 89 — Validity of invention/utility solution~~invention patents**

1.—— The exclusive rights to an invention/utility solution~~invention~~ shall be valid throughout the territory of Vietnam.

2.—— The exclusive rights to an invention/utility solution~~invention~~ shall be effective from the date it is granted and shall last relatively for 20 years or 10 years as from the date of filing of the application, provided that the owner must pay an annual fee to maintain its effectiveness.

3.—— An invention/utility solution~~invention~~ patent may be suspended or revoked in accordance with Article [suspension] or Article [revocation].

4.—— Rights of an invention/utility solution~~invention~~ patentee shall be protected during the effective period of the patent.

#### **~~Article 90 — Suspension of invention/utility solution~~invention patents**

1.—— An invention/utility solution~~invention~~ patent shall be suspended in the following circumstances:

(a)—— The owner of the patent fails to pay a maintenance fee for the patent as regulated.

(b)—— The owner of the patent declares to waive the whole registered exclusive rights.

(c)—— The owner of the patent no longer exists and does not have any lawful heir.

2.—— In the circumstance referred to in clause 1(a) of this Article, after the expiration of the time limit for paying the maintenance fee, the head of the Invention/Utility Solution~~Invention~~ Registration Authority shall issue a decision to suspend the invention/utility solution~~invention~~ patent from the commencement date of the first effective year for which the maintenance fee is not paid.

3.—— In the circumstance referred to in clause 1(b) of this Article, after receiving the declaration from the owner of the patent, the head of the Invention/Utility Solution~~Invention~~ Registration Authority shall issue a decision to suspend the

invention/utility solution~~invention~~ patent from the date such declaration is made.

4. — In the circumstance referred to in clause 1(c) of this Article, any organization or individual may request the Invention/Utility Solution~~Invention~~ Registration Authority to suspend the invention/utility solution~~invention~~ patent, provided that a prescribed fee must be paid.

— On the basis of the consideration of the request for suspension of the invention/utility solution~~invention~~ patent and comments from related parties, the head of the Invention/Utility Solution~~Invention~~ Registration Authority shall either issue a decision to suspend that utility/solution patent or a notice of refusal to suspend the patent as from the date its owner ceases to exist.

5. — Procedures and order for processing requests for suspension of invention/utility solution~~invention~~ patents shall be provided for by the Government.

#### **Article 91 — Revocation of invention/utility solutions**

1. — An invention/utility solution~~invention~~ patent shall be revoked in the following circumstances:

(a) — The application is not filed by the person with the right to file an application.

(b) — The subject matter of the patent is not a technical solution~~An invention~~ or does not qualify for the grant of a patent.

2. — An invention/utility solution~~invention~~ patent shall be partially revoked if such relevant part fails to meet the protection criteria.

3. — If a patent is revoked, the whole or part of the rights to relevant invention/utility solution~~invention~~ shall be regarded as never arising.

4. — Any organization or individual may request the Invention/Utility Solution~~Invention~~ Registration Authority to revoke an invention/utility solution~~invention~~ patent in those circumstances referred to in clauses 1 and 2 of this Article, provided that a prescribed fee must be paid.

— On the basis of the consideration of the request for revocation of an invention/utility solution~~invention~~ patent and comments from related parties, the head of the Invention/Utility Solution~~Invention~~ Registration Authority shall issue a decision to revoke the patent either wholly or partially or shall serve a notice of refusal to revoke the patent.

5. — Procedures and order for processing requests for revocation of invention/utility solution~~invention~~ patents shall be provided for by the Government.

#### **Article 92 — Amendment of invention/utility solution~~invention~~ patents**

1. — The owner of an invention/utility solution~~invention~~ patent may request the Invention/Utility Solution~~Invention~~ Registration Authority to acknowledge all changes to, and rectifications of errors relating to, the name and address of the owner, changes of the owner and requests for curtail of the scope of the right already acknowledged in the National Registry for Inventions/Utility Solutions, subject to the payment of prescribed fees and charges.

2. — In case of applying to curtail the scope of rights to an invention/utility solution~~invention~~, the invention/utility solution~~invention~~ registration application must

be re-examined in respect of its contents and the applicant must pay a fee for such examination.

3. Procedures and order for processing requests for amending invention/utility solution invention patents shall be provided for by the Government.

**Article 93 Publication of decisions relating to invention/utility solution invention patents**

1. Any decision concerning the establishment, amendment, suspension, revocation or assignment of exclusive rights to invention/utility solutions shall be published by the Invention/Utility Solution Invention Registration Authority in the Industrial Property Official Gazette within 60 days from the date of the decision.

2. Procedures, contents and forms of publication of decisions related to the rights to inventions/utility solutions shall be provided for by the Government.

**Part Three**

**INDUSTRIAL PROPERTY RIGHTS**

**Chapter VI**

**INDUSTRIAL PROPERTY OBJECTS  
AND PROTECTION REQUIREMENTS**

**Section 1. Inventions**

**Article 62. Inventions and protection requirements**

1. An invention is a technical solution, in form of a product or a process, resolving a specific problem by utilizing laws of nature.
2. An invention shall be protected if it is novel, non-obvious and capable of industrial application.

**Article 63. Subject matters not protected as inventions**

1. The following subject matters are not inventions:
  - a) Discoveries, scientific theories; mathematical methods;
  - b) Schemes, plans, rules or methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;
  - c) Presentations of information;
  - d) Solutions of aesthetic characteristics only.
2. The following inventions shall not be patented:
  - a) Plant or animal varieties;
  - b) Essentially biological processes for the production of plants and animals other than microbiological processes.

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#### **Article 64. Novelty**

1. An invention shall be considered as novel if it is not identical with any technical solution already disclosed in ~~the state~~the state of the art before the filing date of the invention registration application.
2. ~~The state~~The state of the art before the filing date of an invention registration application comprises all technical solutions publicly disclosed, domestically or overseas, by means of a written or oral description, by use or in any other way before the filing date.
3. An invention is considered not yet publicly disclosed if it is only known to a limited number of persons who are obliged to keep it secrete.
4. An invention is not considered as lacking of novelty if it is publicly disclosed in the following circumstances, provided that a registration application for such invention is filed within 6 months from the date of such a disclosure:
  - a) the invention has been publicly disclosed without the permission of the person having the right to file an application;
  - b) the invention has been publicly disclosed in the form of a scientific presentation by the person having the right to file an application;
  - c) the invention has been displayed by the person having the right to file an application at a national exhibition of Vietnam or at an official or officially recognized international exhibition.

#### **Article 65. Non-obviousness**

1. An invention is considered as non-obvious if, based on ~~the state~~the state of the art prior to the filing date of the invention registration application, it involves an inventive step and cannot be easily created by a person with average skill in the art.
2. ~~The state~~The state of the art referred toprovided for in paragraph 1 of this Article is the same as ~~the state~~the state of the art related to the novelty assessment as prescribed in paragraph 2 of Article 64 of this Law.

#### **Article 66. Industrial applicability**

1. An invention is considered as capable of industrial application if it can be worked in any industry to make the product or apply the process, in an industrial scale with identical results.
2. Industry referred toprovided for in paragraph 1 of this Article shall be understood in the broadest sense which comprises of all production industries of both manufactured and natural products, and all service industries.
3. Preventative, diagnostic and treatment methods for human and animals which are practiced on human and animals body shall not be considered as solutions capable of industrial application.

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## Article 67. ~~Low-protection of Inventions: Utility solution Patent~~Utility Solution Patent

1. An invention that fulfills requirements of novelty and industrial applicability as prescribed in Article 64 and Article 66 of this Law and that is non-over obvious as prescribed in paragraph 2 of this Article shall be protected in the form of granting a ~~Utility solution Patent~~Utility Solution Patent if such a Patent is requested in the invention registration application.
2. An invention is considered as non-over obvious if, based on ~~the state~~the state of the art prior to the filing date of the invention registration application, it cannot be too easily created by a person with average skill in the art.

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### INDUSTRIAL PROPERTY RIGHTS

#### Chapter VI

#### INDUSTRIAL PROPERTY OBJECTS AND PROTECTION REQUIREMENTS

#### Section 21. ~~Conditions for granting invention/utility solution patents~~Conditions for granting invention/utility solution patents

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#### Article 9462 Inventions and protection requirements Conditions for granting invention/utility solution patents

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**Article 81.** ~~An invention is a technical solution, in form of a product or a process, resolving a specific problem by utilizing laws of nature.~~

**1.** ~~An invention patent shall be granted to a technical solution which protected if it is novel, non-obvious and is capable of industrial application.~~

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**2.** ~~A utility solution patent shall be granted to a technical solution which is novel, not too-obvious and capable of industrial application.~~

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~~Article 95 Subject matters not protected as to which inventions/utility solutions shall not be granted~~

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**1.** ~~The following subject matters which is are not a technical solutioninventions, including the following subject matters, shall not be granted with an invention/utility solution patent:~~

- ~~(a) Discoveries, scientific invention/theories; mathematical methods;~~
- ~~(b) Schemes, plans, rules and or methods of conductingfor performing inmentellectual activities, training of domestic animals, conducting playing games, doing business; computer programs;~~
- ~~(c) mPresentations ofmethod of expression of information;~~
- ~~(d) Solutions of aesthetic characteristics only.~~

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2. The following inventions/utility solutions shall not be patented:

(a) ~~Plant or animal varieties;~~

b) ~~Essentially biological~~, animal breeds, processes of biological nature used for ~~the~~ production of plants and animals, except for ~~other than~~ microorganic ~~microbiological~~ processes;

~~(b) Technical solution~~Inventions in respect of which the publication or use shall be contrary to the public interest and social morals.

~~Article 96 Novelty~~

1. ~~A technical solution~~An invention shall be regarded ~~considered~~ as novel if it is not identical to ~~with a technical solution~~any technical solution~~An invention~~ already disclosed with a technical status ~~in the state of the art before~~ before the filing date of filing of ~~the an invention registration application~~invention/utility solution~~invention registration application~~.

2. The ~~state of the art~~technical status known before the filing date of filing of an ~~an~~ invention/utility solution~~invention~~ registration application consists ~~comprises all technical solutions publicly disclosed, of the technical solution~~inventions which have already been disclosed publicly domestically or overseas, either in form ~~by means of a written or oral description~~, descriptive document or in words, by way of being used or ~~in any other way~~ form before the filing date of filing of the application as referred to above.

3. A technical solution~~An invention~~ is ~~considered~~ regarded as not yet being ~~publicly disclosed~~made public if it is only known to a limited extent of ~~definite~~number of persons ~~who are obliged to keep it secret~~.

4. A technical solution~~An invention~~ is not ~~considered~~ regarded as losing its ~~lack of~~novelty if it is ~~publicly disclosed~~made public in the following circumstances, provided that an invention/utility solution~~invention~~ registration application for such technical solution~~invention~~ is filed within a time limit of six (6) months from the date of ~~such a publication~~disclosure:

(a) the technical solution~~invention~~ ~~is~~has been made publicly disclosed without the consent ~~permission~~ of the person possessing ~~having~~ the right to file an application;

(b) the technical solution~~invention~~ ~~has been publicly disclosed~~is made public in the form of a scientific presentation by the person possessing ~~having~~ the right to file an application in the form of a scientific report;

(c) the technical solution~~invention~~ ~~is~~has been introduced displayed by the person possessing ~~having~~ the right to file an application in ~~at a national exhibition ofn~~ official exhibition deemed to be official exhibition organized by the Vietnamese State authority ~~or in at an official or officially recognized~~ official or deemed to be official international exhibition.

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## ~~Article 97 — Non-obviousness and the non-t-tooover-obviousness of inventions/utility solutions~~

~~1. A technical solutionAn invention is consideredregarded as unobvious non-obvious if, on the basised of on the technical statusstate of the art already known beforeprior to the filing date, of filing of anthe invention/utility solutioninvention registration application, such technical solutioninvention is an outstanding creationit involves an inventive step and which cannot be easily created by an person with average man in the relevant technical fieldskill in the art.~~

~~2. A technical solutionAn invention is regarded as not too obvious if, on the basis of the technical status before the date of filing of an invention/utility solutioninvention registration application, it cannot be created too easily by an average man in the relevant technical field~~

~~2.3. The technical solutionstate of the art invention already known as referred to in clause paragraph 1 and 2 of this Article is the same as the state of the art related to the novelty assessment consists of the technical solutioninventions referred toas prescribed in clause paragraph 2 of Article [novelty] 64 of this ChapterLaw.~~

## ~~Article 98 — Industrial applicability of inventions/utility solutions~~

~~1. A technical solutionAn invention is considered regarded as being capable of industrial application when if it is can be possible to apply such solution, i.e. to worked in any industry to make themake products or apply relevant the processes, in an in any industrial scale with identical resultsy including agriculture.~~

~~2. Industryy referred to in paragraph 1 of this Article is construedshall be understood in its the broadest meaning sence which comprises of all production production sectors industries includingof both processed manufactured products andand natural products, and all service sectorsindustries.~~

~~3. Preventative, diagnostic and therapeutic treatment methods for human and animals which are applied practised on human and animals body shall not be regarded considered as solutions capable of industrial application.~~

## ~~Low-protection of Inventions: Utility solution Patent~~

~~An invention that fulfills requirements of novelty and industrial applicability as prescribed in Article 64 and Article 66 of this Law and that is non-overobvious as prescribed in paragraph 2 of this Article shall be protected in the form of granting a Utility solution Patent if such a Patent is requested in the invention registration application.~~

~~An invention is considered as non-overobvious if, based on the state of the art prior~~

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to the filing date of the invention registration application, it cannot be too easily created by a person with average skill in the art. *Section 2. Industrial designs*

## Article 68. Industrial designs and protection requirements

1. Industrial design means a shape of a product expressed in lines, dimensions, colors or any combination thereof.
2. An industrial design shall be protected if it is novel, non-obvious and industrial applicable.
3. The product in this Article means a thing, device, equipment or vehicle which has clear structure and functions and is able to be independently circulated.

## Article 69. Subject matters not protected as industrial designs

The following subject matters shall not be protected as industrial designs:

1. Appearance of a product which is indispensable to secure the technical functions of the product;
2. Appearance of a product which purely has aesthetic value;
3. Appearance of civil or industrial construction works;
4. Appearance of a product which is invisible during the use;

## Article 70. Novelty

1. An industrial design shall be considered as novel if, as of the filing date of the industrial design registration application, the industrial design significantly differs from other industrial designs that are already disclosed inside or outside the country either by way of use or description in writing or in any other forms.
2. Two industrial designs shall not be deemed significantly different from each other if they are only different in features which may not easily be recognized and memorized and which can not be used to generally distinguish these industrial designs.
3. An industrial design shall not be deemed publicly disclosure if it is known and confidentially kept by a limited number of certain persons.
4. An industrial design shall not be deemed lacking novelty if it is published in following situations, provided that industrial design registration application is filed within the period of six months preceding the publication date of the application:
  - a) The industrial design is published by another person without the permission of the applicant;
  - b) The industrial design is published by the applicant in form of scientific reports;

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c) The industrial design is presented by the applicant in a national exhibition of Vietnam, or in an official international exhibition.

#### Article 71. Non-obviousness

An industrial design shall be considered as non-obvious if it is not easily created by a person with ordinary skill in a relevant field.

#### Article 72. Industrial applicability

An industrial design shall be considered as industrial applicable if it can be used as a model for mass production of products having appearance of such industrial design either by industrial or handicraft methods.

#### Section 3. Layout-designs of semiconductor integrated circuits

#### Article 73. Layout-designs of semiconductor integrated circuits and protection requirements

1. A layout-design of a semiconductor integrated circuit (hereinafter referred to as "layout-design") means a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.
2. A layout-design shall be protected if it is original and commercially novel.
3. A semiconductor integrated circuit referred to provided for in paragraph 1 of this Article means a product, in its final or intermediate form, which is intended to perform an electronic function and in which at least one of the elements is an active element, and in which some or all of the interconnections are integrally formed in and/or on a piece of semiconductor material. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".

#### Article 74. Subject matters not protected as layout-designs

The following subject matters shall not be protected as layout-designs:

1. Principles, processes, systems or methods operated by semiconductor integrated circuits;
2. Information or software contained in semiconductor integrated circuits.

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## Article 75. Originality

1. A layout-design shall be considered to be original if it fully satisfies the following conditions:
  - a) It is the result of its creator's own intellectual effort;
  - b) It is not widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation.
2. A layout-design that consists of combination of elements and interconnections that are commonplace shall only be considered to be original if the combination, taken as the whole, is original as prescribed in paragraph 1 of this Article.

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## Article 76. Commercial novelty

1. A layout-design shall be considered to be commercially novel if prior to the filing date of the application for registration it has not been commercially exploited anywhere in the world.
2. A layout-design shall not be considered lacking of commercial novelty if it has, no earlier than 2 years preceding the filing date of the application for registration, been commercially exploited anywhere in the world by the person who has the right to file the application or the person who has obtained permission from such a person.

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### ~~Section 3. Layout designs of semiconductor integrated circuits~~

#### ~~Layout designs of semiconductor integrated circuits and protection requirements~~

~~A layout design of a semiconductor integrated circuit (hereinafter referred to as "layout design") means a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.~~

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~~A layout design shall be protected if it is original and commercially novel.~~

~~A semiconductor integrated circuit referred to in paragraph 1 of this Article means a product, in its final or intermediate form, which is intended to perform an electronic function and in which at least one of the elements is an active element, and in which some or all of the interconnections are integrally formed in and/or on a piece of semiconductor material. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".~~

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#### ~~Subject matters not protected as layout designs~~

~~The following subject matters shall not be protected as layout designs:~~

~~Principles, processes, systems or methods operated by semiconductor integrated circuits;~~

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~~Information or software contained in semiconductor integrated circuits.~~

### **Originality**

~~A layout design shall be considered to be original if it fully satisfies the following conditions:~~

- ~~a) It is the result of its creator's own intellectual effort;~~
- ~~b) It is not widely known among creators of layout designs or manufacturers of semiconductor integrated circuits at the time of its creation.~~

~~A layout design that consists of combination of elements and interconnections that are commonplace shall only be considered to be original if the combination, taken as the whole, is original as prescribed in paragraph 1 of this Article.~~

### **Commercial novelty**

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

~~A layout design shall not be considered lacking of commercial novelty if it has, no earlier than 2 years preceeding the filing date of the application for registration, been commercially exploited anywhere in the world by the person who has the right to file the application or the person who has obtained permission from such a person.~~

## **Section 4. Trademarks**

### **Article 77. Trademarks and their protectability**

- ~~1. A trademark shall be any sign used to distinguish goods or services of different entities and individuals doing business.~~
- ~~2. Collective mark shall be a trademark distinguishing goods or services of members of an entity which is the owner of the trademark from those of other individuals and entities doing business who are not members.~~
- ~~3. A certification mark shall be signs used by the trademark owner to certify characteristics in respect of origin, materials, production methods of goods or supply methods of services, quality, accuracy, safety or other characteristics of goods or services bearing such the trademark as produced or provided by other individuals, entities.~~
- ~~4. Trademarks set forth in clause paragraphs 1 to 3 of this Article shall be protectable if being visible signs which are letters, words, pictures, figures, including three dimensional figures or the combination thereof, represented in one or several colors, being distinguishable and not being among~~

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circumstances provided for in Article 78 of this Law.

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#### Article 78. Signs not protectable as trademarks

The following signs shall not be protectable as trademarks:

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1. Signs without distinctive characteristics, such as simple shapes and geometric shapes, numerals, letters, or wordings that cannot be pronounced as words; or foreign letters or words of uncommon languages, except for such signs that have been widely used and recognized as being distinguishable;

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2. Signs, symbols, pictures or common names in any language of goods or services that have been widely and often used and are common knowledge;

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3. Signs indicating the time, place, method of production, kind, quantity, quality, property, composition, intended purpose, or value of the descriptive character in relation to the goods or services, except for such signs that have acquired distinguishability due to use that assign before applying;

4. Signs describing the legal status of businesses;

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5. Signs liable to mislead, confuse or deceive consumers as to the origin, functional parameters, intended purpose, quality, value or other characteristics of the goods or services;

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6. Signs indicating the geographical origin of the goods or services, except for such signs that have been widely used and recognized as being distinguishable, distinguishable, or protected as collective marks or certification marks provided for in this Law;

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7. Signs identical with or confusingly similar to the national flags, national emblems;

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8. Signs identical with or confusingly similar to quality marks, control marks, warranty marks etc. of Vietnam, foreign countries or international organizations;

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9. Signs identical with or confusingly similar to emblems, flags, symbols, full names or names in short of organizations of Vietnam or international organizations, unless permitted by the competent authorities.

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10. Signs contrary to public order or social morality or signs prohibited from using pursuant to laws and regulations.

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#### Article 79. Distinctiveness of trademarks

1. A trademark shall be recognized as being distinctive if it has been created from one or several unique, noticeable elements or from several elements combining a unique and noticeable and not being the signs provided for in clause paragraph 2 of this Article.

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2. The following trademarks shall be considered as without distinguishable capability:

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a) A trademark which is identical with or confusingly similar to protected;

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trademark of another person in respect of the identical or similar goods or services;

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b) A trademark which is identical with or confusingly similar to the trademarks described in the trademark registration applications of ~~other persons~~ others that bear earlier priority dates in respect of the identical or similar goods or services (including the trademark registration applications that were filed under international agreements to which Vietnam is party);

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c) A trademark which is identical with or confusingly similar to a protected trademarks or trademarks described in the trademark registration applications of ~~other persons~~ others and that bear earlier priority dates in respect of the non-identical or dissimilar goods or services, provided that the protected trademarks or trademarks described in the applications of earlier priority dates having reputation due to being widely used in Vietnam and the use of the identical or confusingly similar trademark shall prejudice of the distinctiveness or reputation of the protected trademarks or the trademark of earlier priority dates or shall be for the purposes of taking advantage of reputation;

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d) A trademark which is identical with or confusingly similar to a trademark of another person that has been used and widely recognized in respect of the similar or identical goods or services;

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~~ded')~~ A trademark which is identical with or confusingly similar to the another person's trademark in respect of the goods or services identical with or similar to those in the list attached to the trademark registration whose validity has been terminated within the last 3 years, except where the validity has been terminated on the basis of non-use of the trademark provided for in ~~clauses~~ subparagraph d of paragraph of ~~1-d~~ Article 100 of this Law;

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e) A trademark which is identical with or confusingly similar to another person's trademark recognized as a well-known trademark in respect of the goods or services that are identical with or similar to those bearing the well-known trademark; or in respect of non-identical or dissimilar goods or services if the use of such trademark may prejudice the distinctiveness or take advantage of the well-known trademark;

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g) A trademark which is identical with or confusingly similar to another person's protected trade name if the use of the trademark may make consumers confused;

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h) A trademark which is identical with or confusingly similar to the protected geographical indications;

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i) A trademark which is identical with another person's industrial design that has been applied with earlier priority date and protected;

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k) A trademark which is identical with names or symbols of characters belonging to another person's copyrights, except where permitted by this

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person;

l) A trademark which is identical with the names of ~~other persons~~others' protected new plant varieties in respect of plant varieties or seeds or the similar goods or services;

m) A trademark that is identical with or confusingly similar to the names (including names, nicknames, pen names), images, of Vietnamese or foreign leaders, national heroes, and famous personalities, except where permitted by the authorized persons.

#### Article 80. Criteria for recognition of a well-known trademark

The following criteria shall be examined while considering whether a trademark is well-known:

1. The number of the related consumers who are aware of the trademark through the purchase, use of the goods or services bearing such trademark or through advertising;
2. Territorial scope within which the goods or services bearing the trademark are circulated;
3. Turn-over of the sale of the goods or supply of the services bearing the trademark or the volume of the goods sold or the services supplied;
4. The consecutive period of time to use the trademark;
5. Wide goodwill of the goods or services bearing the trademark;
6. Number of the countries granting protection to the trademark;
7. Number of the countries recognizing the trademark to be well-known;
8. Value of the trademark in the form of assignment, licensing, capital contribution;
9. Such other criteria as specified by the laws and regulations.

#### Section 5. Trade names

#### Article 81. Trade names and protection requirements

1. A trade name means a designation of an organization or individual used in business transactions in order to distinguish the business entity bearing such designation from other business entities acting in the same field and locality of business.
2. The locality of business ~~referred to~~provided for in paragraph 1 of this Article shall be the geographical areas where business entities have business partners, clients or reputation.
3. A trade name shall be protected if it is capable of distinguishing business entities bearing the trade name from other business entities acting in the same field and locality of business.

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## Article 82. Subject matters not protected as trade names

The following subject matters shall not be protected as trade names:

- a) Signs other than combinations of letters and numerals that can be pronounced;
- b) Designations of administrative authorities, political organizations, socio-political organizations, social organizations, socio-professional organizations or those entities who are not engaged in business activities.

## Article 83. Distinguishing capability

The following trade names shall not be considered as being capable of distinguishing:

1. A trade name that consists of no proper name but the elements describing the legal status, business field and geographical origin except in case such trade name has, as result of use, been widely known;
2. A trade name that is identical with or confusingly similar to a trade name or a mark of other persons/others' right that has been established before the first use of such trade name.

### Section 5. Trade names

## ~~Tradenames and protection requirements~~

1. A trade name means a designation of an organisation or individual used in business transactions in order to distinguish the business entity bearing such designation from other business entities acting in the same field and locality of business;
  2. The locality of business referred to in paragraph 1 of this Article shall be the geographical areas where business entities have business partners, clients or reputation;
- A trade name shall be protected if it is capable of distinguishing business entities bearing the trade name from other business entities acting in the same field and locality of business.

## ~~Subject matters not protected as trade names~~

The following subject matters shall not be protected as trade names:

- a) Signs other than combinations of letters and numerals that can be pronounced;
- b) Designations of administrative authorities, political organizations, socio-political organizations, social organizations, socio-professional organizations or those entities who are not engaged in business activities.

## ~~Distinguishing capability~~

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The following trade names shall not be considered as being capable of distinguishing:

1. A trade name that consists of no proper name but the elements describing the legal status, business field and geographical origin except in case such trade name has, as result of use, been widely known;
2. A trade name that is identical with or confusingly similar to a trade name or a mark of other persons right that has been established before the first use of such trade name;

#### Section 6. Geographical indications

### Article 84. Geographical indications and their protectability

1. A protectable geographical indication shall be a designation, symbol or image of a specific area, locality or country which is used to indicate products originating from such area, locality or country and has at least one characteristic of quality or reputation relating to the natural and/or human conditions of such area, locality or country.
2. A geographical indication shall be protected as an appellation of origin if it is a geographical name of a specific area, locality or country, which is used to indicate a product originating from that area, locality or country provided that the product's unique characteristics and quality are wholly or significantly attributable to the unique and pre-eminent geographical factors, including the natural and human factors or the combination thereof and the manufacturing, processing and blending of those products are carried out in the relevant geographical area.
3. Traditional names wherether are geographical names or not but used to indicate the goods originating from a specific area or locality which satisfy the conditions set out provided for in clause paragraphs 1 and 2 of this Article shall be protected as geographical indications.

### Article 85. Subject matters not protected as geographical indications

The following subject matters shall not be protected as geographical indications:

1. Names, indications that have become generic names of goods in Vietnam at the time of the applying for registration;
2. Geographical indications that are not protected or no longer be protected or have not been used in the origin country of such geographical indication.

### Article 86. Unique characteristics, reputation of goods bearing geographical indications

1. The unique characteristics or quality of a good shall be represented in one or several elements such as quantitative, qualitative norms or physical, chemical, microbiological sensations and these elements shall be capable of being

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inspected by technical means or experts using testing methods that have been determined in advance.

2. Reputation, goodwill of a good bearing a geographical indication shall be expressed on the basis that such good has been widely known among consumers of the related good through the whole time of existence and development of the good.

**Article 87. Unique characteristics of geographical conditions**

1. The unique characteristics in connection with the natural conditions shall be expressed through the unique factors of climate, hydrography, hydrograph, geology, terrain, ecological system and other natural factors.
2. The unique characteristics in connection with human factors shall be expressed through the unique factors of skills and expertise of producers, including the traditional production process of local people if that process is the factor creating and maintaining the quality and reputation of the goods bearing the geographical indication.

**Article 88. Geographical area corresponding to geographical indications**

1. The geographical area corresponding to a geographical indication shall have the boundary accurately determined by words and in map.
2. In case where the processing, blending of the good bearing the geographical indication is not carried out in the area of the geographical indication, the boundary of the area where the processing, blending of the good shall also be determined in accordance with clause paragraph 1 of this Article.
3. A geographical area may be a national administrative unit, a geographical area belonging to one or several administrative units or the entire territory of a country. In case where the geographical area does not correspond to an administrative unit or units, the map shall be made on the basis of the area where the good bearing the geographical indication is practically produced, and certified by the relevant administrative authority of such geographical area.

**Article 89. Business secrets and protection conditionsprotection requirements**

Protected business secrets are information which is obtained from financial and/or intellectual activities and fully fulfill satisfy the following conditionsrequirements:

1. Being those other than general knowledge and not easily obtained;
2. Being applicable to business activities, and when being used, such information may render advantages to their holders over those who do not hold or use such information;
3. Being kept secret by their owners with necessary measures so that such information shall neither be disclosed nor easily accessible.

**Article 90. Subject matters not protected as business secrets**

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The following secret information shall not be protected as business secrets:

1. Personal status secrets
2. State management secrets.
3. Security and national defense secrets.
4. Other secret information irrelevant to business.

## Chapter VII

### THE ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

#### Section 1. Principle of establishment of industrial property rights

#### Article 91. The right to apply for registration of an invention, industrial design and semiconductor layout design, layout-design of semiconductor integrated circuit registration:

1. The right to apply for an invention, industrial design and semiconductor layout design, layout-design of semiconductor integrated circuit registration belongs to:

(a) the inventors who have created the industrial property subject matters by his/her efforts and expenses; or

(b) the organizations or individuals who invested material facilities in the form of an assignment or hiring for the inventor to create the industrial property subject matters, unless otherwise agreed in the labor contract or hiring contract, except for the cases provided for in clause paragraph 2 of this Article.

2. In case the funds and material facilities provided for in clause paragraph 1 of this Article invested by State budget, the right to apply shall only belong to the person who has been allocated in order to provide investment to creation, but not allow agreeing with the inventor as to right to apply.

3. In case several organizations or individuals jointly create or jointly invest to the creation of an industrial property subject matter provided for in clause paragraphs 1 and 2 of this Article, the right to apply shall belong to all of those organizations or individuals and shall only be exercised subject to their consensus.

4. A person who has the right to apply provided for in clause paragraphs 1 to 3 of this Article may assign that right, including the filed applications, to other organizations or individuals in the form of written assignment, inheritance or other forms of transfer property rights provided for by laws and regulations.

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## Article 92. Right to apply for a trademark registration

1. Individuals, legal entities shall have the right to apply for registration of a trademark to be used on their goods or services.
2. Individuals or legal entities legally engaged in the trade in products manufactured by a third party shall have the right to apply for registration for a trademark to be used for such products, provided for the manufacturer does not use such trademark for the respective products and the manufacturer does not object to such an application.
3. Legal entities established in accordance with the laws shall have the right to apply for registration of a collective mark in order for their respective members to use in accordance with the relevant rules on using collective mark.
4. Legal entities which are capable of certifying and supervising the characteristics of the goods or services bearing a certification mark, and do not conduct production or trading activities in relation to such goods or services shall have the right to apply for registration of a certification mark.
5. Two or more individuals or legal entities shall have the right to jointly apply for registration of a trademark in order to become the co-owners thereof, provided that the use of that trademark shall:
  - a) Be on behalf of all co-owners or the use of that trademark shall be for the goods or services of which the co-owners participate in production or trading process; and
  - b) Not make the public confused and shall not be in contrary to public interests.
6. The persons who have the right to apply provided for in clause paragraphs 1 to 5 of this Article may assign the right, including file applications, to other individuals or legal entities by the written contracts, provided that the assignee satisfied criteria as to respective applicant.

## Article 93. Right to apply for registration of a geographical indication

The following individuals or legal entities shall have the rights to apply for registration of a geographical indication:

1. Individuals, legal entities producing product bearing geographical indication, collective organizations representing such individuals or legal entities or the local administrative authorities of the locality of the geographical indication.
2. Individuals, legal entities having the right to use geographical indications in the origin country of the geographical indication or individuals or legal entities having the right to apply for registration in the origin country of geographical indication in case of applying for registration of a geographical indication of

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foreign countries.

#### **Article 94. Method of applying for protection titles**

1. Individuals, legal entities of Vietnam, foreign individuals permanent-ly residing in Vietnam and foreign legal entities having production, trading establishments in Vietnam may either directly proceed or authorize lawful representatives in Vietnam to proceed with the application for protection titles.
2. Foreign individuals not residing in Vietnam, foreign legal entities not having production or trading establishments in Vietnam shall apply for protection titles through their lawful representatives in Vietnam.

#### **Article 95. The first-to-file principle**

1. Where two or more applicants have filed applications for protection titles for the same invention or the same industrial design or the same trademark used for the same goods or services on different dates, the protection titles may only be granted to first applicant.
2. Where two or more applications provided for in clause paragraph 1 of this Article filed on the same earliest date, protection titles may only be granted to the applicant of a single application in accordance with the agreement of all applicants. Without such an agreement, subject matter described in the application shall never be examined in order to be granted protection to any person.

#### **Article 96. Principle of priority**

1. Applicants for a protection title for an invention, an industrial design or a trademark may claim priority on the basis of the first application for the same subject matter which has been filed in Vietnam or in another country if adequately satisfy the following conditions:
  - a) The other country where the first application was filed is a member of international conventions having priority rights provisions to which Vietnam is a member;
  - b) The applicant is a national or resident or has an industrial or commercial establishment in Vietnam or a country member of an international convention having priority right provisions to which Vietnam is also a member;
  - c) Claim for priority was clearly mentioned in the application and a copy of the first application certified by the receiving office of that application has been filed;
  - d) Application for protection title in Vietnam has been filed within the time limit provided for in the respective international

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conventions.

2. In an invention, industrial design or trademark application, applicant may claim multiple priorities based different earlier applications, provided that the applicant indicates the corresponding contents in the earlier applications and the application (filed in Vietnam).

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3. An application with an accepted priority claim shall bear the priority date as the first filing date. The priority date shall be considered as filing date for the purpose of valuating novelty, non-obviousness of an invention, an industrial design or distinctiveness of a trademark.

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#### Article 97. Protection Titles and National Registry

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1. Protection Titles record the proprietors of inventions, industrial designs, layout design, layout-designs, trademarks (hereinafter called as protection title, Protection Title owner); creator of inventions, industrial designs, layout design, layout-designs; scope and protection time limit.

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2. Protection title of a geographical indication record collective management organization in respect to geographical indication, individuals, legal entities having the right to use the geographical indication, the protected geographical indication, unique characteristics of the product bearing the geographical indication, unique characteristics of geographical conditions (factors) and the respective geographical area.

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3. The registration of establishment of rights shall be made in the form of record of the granting protection titles, Protection Titles and contents of the protection titles, Protection Titles in the national registry on industrial property established and maintained by the state, the state authority competent for industrial property.

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#### Article 98. Validity of the protection titles, Protection Titles

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1. The protection titles consist of include Patent for Invention, Invention Patent, patent for utility solution, Utility Solution Patent, patent for industrial design, Industrial Design Patent, Certificate of registration of semiconductor layout design, Layout-design of Semiconductor Integrated Circuit Registration Certificate, of integrated circuit; Certificate of trademark registration, Trademark Registration Certificate and Certificate of geographical indication registration, Geographical Indication Registration Certificate.

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2. The protection titles, Protection Titles have effect throughout of Vietnam territory.

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3. Patent for invention have validity beginning on the granting date and expiring at the end of 20 years calculated from the filing date, provided that annual maintenance fee shall be paid;

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4. Patent for utility solution have validity beginning on the granting date and expiring at the end of 10 years ~~calculated from the filing date, provided that annual maintenance fee shall be paid.~~

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5. ~~Patent for industrial design~~ Industrial Design Patents have validity beginning on the granting date and expiring at the end of 5 years ~~calculated from the filing date, and renewable for two consecutive terms of 5 years:~~

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6. ~~Certificate of registration of semiconductor layout design~~ layout-design of Semiconductor Integrated Circuit Registration Certificates ~~of integrated circuit~~ have validity beginning on the granting date and expiring at the earliest date among the following dates:

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a) ~~At~~ The end of 10 years counted from the filing date:

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b) ~~At~~ The end of 10 years counted from the date of commercial exploitation by the person having the right to apply or a Protection Title or the person who has his/her permission:

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c) ~~At~~ The end of 15 years counted from the date of creation of the ~~layout design~~ layout-design.

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## Article 99. Maintenance and Renewal of validity of ~~protection titles~~ Protection Titles

1. In order to have ~~be maintained~~ validity of an Invention Patent or Utility Solution Patent maintained or to have ~~renew~~ validity of an Industrial Design Patent or a Trademark Registration Certificate renewed, ~~the~~ its owner of ~~patent for invention, patent for utility solution, patent for industrial design or Certificate of trademark registration~~ shall pay respective maintenance or renewal fees respectively.

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2. Maintenance and renewal procedures of ~~protection titles~~ Protection Titles shall be provided for by the Government.

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## Article 100. ~~The~~ Termination of the validity of ~~protection titles~~ Protection Titles

1. The validity of a ~~protection title~~ Protection Title shall be terminated in the

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following cases:

- a) The owner of a ~~protection title~~Protection Title has not paid the due fees for the maintenance of the ~~protection title~~Protection Title's validity in time or has not applied for renewal.
  - b) The owner of a ~~protection title~~Protection Title claims to relinquish the rights conferred by the ~~protection title~~Protection Title.
  - c) The owner of a ~~protection title~~Protection Title has no longer existed or the owner of a ~~Certificate of trademark registration~~Trademark Registration Certificate has no longer conducted business activities without a lawful successor;
  - d) The trademark has not been put to genuine use by the owner of a ~~Certificate of trademark registration~~Trademark Registration Certificate or with his consent (licensee), for 5 consecutive years prior to the request for termination of validity and there are no legitimate reasons for non-use, except such use is commenced or resumed after the expiry of the 5 year period and before the application for termination is made;
  - ~~ded')~~ The collective mark owner fails to supervise or ineffectively supervise the implementation of the rules on using collective mark;
  - e) The certification mark owner violates rules on using certification mark or fails to supervise or ineffectively supervise the implementation of the rules on using certification mark.
  - g) The unique geographical factors attributable to the unique characteristics or quality or reputation of the products bearing such geographical indication have been changed so that those characteristics or quality are no longer unique or the reputation is diluted.
2. Where the maintenance fees for ~~protection title~~Protection Title for invention have not been paid, ~~State administration of industrial property~~State administrative authority of industrial property shall decide to terminate the validity of ~~protection title~~Protection Title from the first day of the year for which the annual fees have not been paid.
  3. -Where the rights conferred under ~~thea protection title~~Protection Title have been relinquished by the owner as provided for in ~~clausesubparagraph b of paragraph 1-B~~ of this Article, ~~State administration of industrial property~~State administrative authority of industrial property shall decide to terminate the validity of ~~protection title~~Protection Title from the receiving date of the relinquishment;
  4. -Any third party shall have the right to request the ~~State administration of industrial property~~State administrative authority of industrial property to

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terminate the validity of a ~~protection title~~Protection Title for reasons referred to provided for in ~~clause~~subparagraphs c, d, d' and g of paragraph 2-c, d, @ and g of this Article provided that the prescribed fees shall be paid.

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According to examination of application for termination of validity of ~~protection title~~Protection Title, the ~~State administration of industrial property~~State administrative authority of industrial property shall issue a decision to terminate the validity of the ~~protection title~~Protection Title or notice to refuse terminating the validity of the ~~protection title~~Protection Title.

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5. Provisions in ~~clause~~paragraphs 1, 3 and 4 of this Article shall be applied mutatis mutandis to the termination of validity of international trademark registrations under Madrid Agreement.

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#### **Article 101. Invalidation of ~~protection title~~Protection Titles**

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The Protection Title shall be entirely invalidated in the following cases:

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a) The application for ~~protection title~~Protection Title has been filed by the person who has no right to apply, except case industrial property rights to inventions, industrial designs, ~~layout design~~layout-designs, trademarks be transferred to the person who has the right to apply at their request;

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b) The subject matter has not satisfied the protectable criteria at the granting date of ~~protection title~~Protection Title.

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2. The Protection Title shall be partly invalidated if that part has not satisfied the protectable criteria.

3. During the protection time period of a ~~protection title~~Protection Title, any third party shall have the right to request the ~~State administration of industrial property~~State administrative authority of industrial property to invalidate the ~~protection title~~Protection Title for reasons referred to provided for in ~~clause~~paragraphs 1 and 2 of this Article, provided that the prescribed fees shall be paid.

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The time period for request to invalidate a certificate of trademark registration is 5 years counted from the granting date, except case the certificate has been granted due to applicant's dishonesty.

4. According to examination of application for invalidation of a ~~protection title~~Protection Title and interested parties' opinions, the ~~State administration of industrial property~~State administrative authority of industrial property shall issue a decision to entirely or partly invalidate the ~~protection title~~Protection Title or notice to refuse invalidating the ~~protection title~~Protection Title.

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5. Provisions in ~~clause~~paragraphs 1, 2, 3 and 4 of this Article shall be applied mutatis mutandis to the invalidation of international trademark registrations under Madrid Agreement.

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## Article 102. Amendments to ~~protection titles~~Protection Titles

1. The ~~protection title~~Protection Title owners shall have the right to request the competent authority of industrial property to record the following information, provided that the prescribed fees shall be paid:

a) Changes, correction in relation to the name, address of the ~~protection title~~Protection Title owners;

b) Changes in ~~protection title~~Protection Title owners;

c) Changes in description of unique characteristics, quality in relation to geographical indications.

2. The ~~protection title~~Protection Title owners shall have the right to request the competent authority of industrial property to narrow the protection scope of industrial property rights. In this case, the respective application shall be reexamined as substance and the applicant shall pay the fees for substance examination.

## Article 103. ~~-Publication of decisions relating to industrial property rights~~

All decisions relating to establishment, amendment, invalidation, transfer of industrial property rights shall be published by the ~~State administration of industrial property~~State administrative authority of industrial property in the industrial property Gazette within 60 days counted from deciding date.

### *Section 2. Applications for industrial property right registration*

## Article 104. General requirements in respect of applications

1. Applications for registration of inventions, industrial designs, ~~layout design~~layout-designs, trademarks and geographical indications (hereinafter called registration application) shall meet requirements provided for in this Article.

2. Registration application shall consist of the following documents:

a) Request, in prescribed form;

b) Documents, samples, information represent industrial property subject matter claimed protection as provided for in Articles 106, 107, 108, 109 and 110 of this Law;

c) Power of attorneys, if any;

d) Documents proving the right to apply in case applicant acquired that right

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from others;

~~add')~~ Documents proving the priority rights in case there are claim for priority;

e) Fee, official fee vouchers.

3. Registration applications and communication documents between the applicants and the ~~State administration of industrial property~~ State administrative authority of industrial property shall be made in Vietnamese, except the followings can be made in other languages but shall be translated into Vietnamese at the request of the authority:

a) Power of attorneys;

b) Documents proving the right to apply in case applicant acquired that right from others;

c) Documents proving the priority rights;

d) Other documents supporting to applications.

4. Documents proving the priority rights include:

a) Copy of earlier application-(s) certified by the receiving office;

b) Document on assignment of priority rights if the rights has been acquired from other personsothers.

#### Article 105. Unity of a registration application

1. Each registration application is applied for a ~~protection title~~ Protection Title only for a single industrial property subject matter, except for the cases provided for in ~~clause~~ paragraphs 2, 3 and 4 of this Article.

2. Each ~~invention application~~ invention patentInvention Patent in respect of a group of inventions which are closely linked to form a single common inventive idea.

3. Each industrial design application may be applied for a ~~patent for industrial design~~ Industrial Design Patent in respect of:

a) a set of ~~articles that is a set of more than one articles~~ -expressing a single common inventive idea and that are used together or use from a single purpose;

b) a industrial design accompanied one or several different variants of that industrial design that is variation of that industrial design which express a single common inventive idea and are not substantively different from that industrial design.

4. Each trademark application may be applied for a trademark used to one or

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some different goods or services.

#### **Article 106. Requirements for invention registration applications**

1. Documents identifying the invention claimed in an invention registration application shall include a Specification of the invention (containing its Description and Scope of protection claimed) and an Abstract of the invention.
2. The Description of the invention shall fulfill the following conditions:
  - a) Shall disclose the nature of invention in a manner sufficiently complete and clear for the invention to be carried out by a person having ordinary skill in the art;
  - b) Shall briefly explain the drawings, if it is required to further clarify the nature of the invention; and
  - c) Shall clarify the novelty, non-obviousness and capability of industrial application of the invention.
3. The Scope of protection claimed of an invention shall be expressed with a combination of those technical features necessary and sufficiently to identify the scope of the rights to that invention, and must be in line with to the Specification of the invention and drawings.
4. The Abstract of an invention must disclose the substantial features of the nature of the invention.

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#### **Article 107. Requirements for industrial design registration applications**

1. Documents defining an industrial design for protection in an industrial design registration application shall contain a set of photos or drawings of the industrial design.
2. A description of the industrial design shall comply with following conditions:
  - a) The description shall fully disclose features which express nature of such industrial design and specify features which are new, different in comparison with the least different known industrial design, and be consistent with its photos or drawings;
  - b) If the industrial design registration application consists of various alternatives, the description shall fully specify these alternatives and clearly define distinctions between the principal alternative and the other alternatives;
  - c) If the industrial design in the registration application is a design of a set of products, the description shall fully specify designs of each product of the set.
3. A scope of protection shall specify features for being protected; consist of features which are new, different in comparison with similar known industrial design.
4. The set of photos, drawings shall fully specify features of the industrial design.

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## Article 108. Requirements for layout-design registration applications

Documents, materials and information identifying the layout-design claimed in an application for layout-design registration shall include drawings, photos of the layout-design, its functions and structure and samples of a semiconductor integrated circuit manufactured by incorporation of that layout-design.

## Article 109. Requirements of trademark registration applications

1. Documents, samples, information which specify the trademark claimed protection in the trademark application shall include:

- a) Trademark samples and list of goods or services bearing the trademark;
- b) Rules on using collective mark or Rules on using certification mark.

2. The trademark sample shall be described in order to make it clear as to the components of the trademark and the comprehensive meaning of the trademark (if any). If the trademark consisting of letters, words belonging to hieroglyphic languages, such words and letters shall be transliterated. A trademark consisting of signs in foreign languages shall be translated into Vietnamese.

3. Goods or services listed in an application for trademark registration shall be classified in accordance with the International Classification of Goods and Services under the Nice Agreement that published by the State administrative authority of industrial property.

4. The rule on using collective mark shall consist of the following main contents:

- a) The legal entity who is the mark owner;
- b) Conditions for using the mark;
- c) Conditions to become a member of the legal entity owning the collective mark;
- d) Sanctions applicable to acts infringing the rules on using the collective mark;
- e) List of legal entities and individuals permitted to use the mark (if any).

5. The rules on using certification mark shall consist of the following main contents:

- a) The legal entity, individual who is the mark owner;
- b) Conditions for using the mark;
- c) Characteristics of goods and services certified by the mark;

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d) Methods to evaluate the above characteristics and supervise the use of the mark;

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ded') Expenses (if any) payable by the mark user for the certification and protection of the mark.

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#### **Article 110. Requirements of geographical indication applications**

1. Documents, information which specify the geographical indication claimed protection in the geographical indication application shall include:

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a) Name or sign which is the geographical indication;

b) Product bearing the geographical indication;

c) Descriptions of the unique characteristics and quality, the reputation of the product bearing the geographical indication and unique natural factors attributing to the unique characteristics, quality, and reputation of the product (hereinafter called the Descriptions of the unique characteristics);

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

ded') Documents proving the geographical indication is under protection in the country of origin if it has foreign origin;

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2. The Descriptions of the unique characteristics shall at least include the following contents:

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a) Descriptions of the relevant products, including raw materials (if any), and physical, chemical and biological and sensation elements of the product;

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b) Methods to determine the geographical area corresponding to the geographical indication;

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c)- Evidence proving that the product originates from such geographical area, with the respective meanings referred to provided for in clause paragraphs 1 and 2 of Article 84 of this Law;

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d) Descriptions of the local and stable production methods of the product;

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ded') -Information on the relationship between the unique characteristics, quality or reputation of the product with the natural conditions in the meanings provided for in clause paragraphs 1 and 2 of Article 84 of this Law;

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e)- Information on the self-inspection mechanism of the unique characteristics and quality of the products.

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#### **Article 111. Authorized representation in completing procedures related to industrial property rights**

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1. All authorized representation to carry out the procedures in relation to the establishment, maintenance, amendments, termination and cancellation of the validity of ~~protection titles~~Protection Titles shall be made in written form, called as a power of attorney.

2. A power of attorney shall include the following main contents:

a) Full name and address of the principal;

b) Full name and address of the attorney;

c) Scope of authorization, including the tasks to be carried out by the attorney on behalf of the principal;

d) Date of the power of attorney;

~~add')~~ Signature and/or seal of the person issuing the power of attorney;

e) Tenure of the power of attorney.

3. A power of attorney that does not specify the tenure shall be valid forever and the validity thereof shall be terminated when the principal declares to terminate the authorization.

*Section 3. Procedures for handling ~~the~~ registration applications  
and granting ~~protection titles~~Protection Titles*

**Article 112. Receiving applications; Filing date**

1. ~~A registration application shall only be received by State administration of industrial property~~State administrative authority of industrial property if it consists of at least the following documents and information:

a) Request for registration of invention, industrial design, semiconductor layout design~~layout-design~~ of integrated circuit, trademark or geographical indication which include adequate information to identify the applicant and trademark sample, list of the goods or services bearing the trademark (for the trademark application);

b) Descriptions, which include protection scope (for the invention application and industrial design application); Descriptions of the unique characteristics (for the geographical indication application);

c) Voucher of fees and charges.

2. Filing date shall be the date on which the application revived by the competent authority on industrial property or the international filing date in case of PCT

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applications.

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### Article 113. Examination of application as to formality

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1. Registration applications shall be examined as to formality in order to verify whether the applications qualified an officially accepted application.

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2. A registration application shall be refused as an officially accepted application in the following circumstances:

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a) The application does not meet the requirements of formality;

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b) The subject matter of the application is not a protectable object;

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c) The application was filed by a person who does not have the right to apply, including where the right to apply belongs to more than one persons but one or several of them do not agree to apply;

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d) The application was filed contrary to the method of applying;

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ddd') The applicant fails to pay the prescribed fees and charges.

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3. If a registration application falls into clause paragraph 2 of this Article, the ~~State administration of industrial property~~ State administrative authority of industrial property shall carry out the following procedures:

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a) Issuing a notice of the intention to refuse the application, which sets out the reasons of refusal and time limit for the applicant to come over the insufficiency or object the refusal intention;

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b) Issuing a notice to refuse the application if the applicant fails to come over the insufficiency and does not have reasonable objection to the intention to refuse the application referred to provided for in item (a) of this clausesubparagraph a of paragraph;

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c) Issuing a notice to refuse granting ~~Certificate of registration of semiconductor layout design~~ Layout-design of Semiconductor Integrated Circuit Registration Certificate of integrate circuit;

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d) Carrying out the procedures set out provided for in clause paragraph 4 of this Article if the applicant successfully come over the insufficiency or has reasonable objection to the intention to refuse the application referred to provided for in item (a) of this clausesubparagraph a of this paragraph.

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4. If the registration application does not fall into the circumstances set out provided for in clause paragraph 2 of this Article, or if the application falls into item d clause subparagraph d of paragraph 3 of this Article, the ~~State administration of industrial property~~ State administrative authority of industrial property shall issue a notice of acceptance of a official application or grant ~~protection title~~ Protection Title and enter into register in respect of layout

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~~design~~ layout-design applications as provided for in Article 122 of this Law.

#### **Article 114. Publication of registration applications**

1. A registration application shall be published by ~~the State~~ the state management agency in charge of industrial property in the Industrial Property Official gazette in accordance with the provisions of this Article.
2. A registration application which has been officially accepted shall be published in the 19<sup>th</sup> month as from the filing date or the priority date with regard to the application with the priority right or earlier as requested by the applicant.
3. An application for an industrial design or a trademark or a geographical indication registration shall be published within 2 months from the officially accepted date of the application.
4. Any application for ~~layout design~~ layout-design registration which have been officially accepted shall be published by way of allowing direct access (no reproduction is allowed) at ~~the State~~ the state management agency in charge of industrial property. With regard to the confidential information contained in an application for ~~layout design~~ layout-design registration as provided for by the Government, only authorized bodies and related parties to the process of revoking registration [certificates] or dealing with right infringements shall have the right to access.

The main information about an application for ~~layout design~~ layout-design registration and the ~~protection title~~ Protection Title for a ~~layout design~~ layout-design shall be published within two months as from the date such ~~protection title~~ Protection Title is granted.

#### **Article 115. Keeping the applications for invention/industrial design registration secret before their publication**

1. Before an application for invention/industrial design registration is published in the Industrial Property Official Gazette, ~~the State~~ the state management agency in charge of industrial property is responsible to keep the secrecy of the application.
2. Officers and civil servants in ~~the State~~ the state management agency in charge of industrial property who disclosed information about an application for invention/ industrial design registration shall be disciplined and if such disclosure results in a loss to the applicant, compensation must be paid in accordance with the law.

#### **Article 116. Third parties' opinions in relation to grant of a ~~protection title~~ Protection Title**

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As from the time a registration application is published the Industrial Property Official Gazette, any third party shall have the right to present opinions to the State the state management agency in charge of industrial property in relation to the grant or refusal of a ~~protection title~~ Protection Title to the application. Those opinions shall only be considered if they are made in writing with relevant arguments and must be accompanied by materials or references proving such arguments.

#### Article 117. Request for substantive examination of the invention registration applications

1. Within 42 months—, as from the filing date or from the priority date in case the application is entitled to the priority right, the applicant or any third party may request the State the state management agency in charge of industrial property to examine the application as to substance, provided prescribed substantive examination fees must be paid.
2. The time limit for request for substantive examination of an invention registration application which claims for a ~~patent for utility solution~~ Utility Solution Patent, shall be 36 months as from the filing date or from the priority date in case the application is entitled to the priority right.
3. Where no request for substantive examination filed within the time limit under ~~clause~~ paragraphs 1 or 2 of this Article, the invention registration application shall be regarded as being withdrawn at the expiration of that time limit

#### Article 118. Substantive examination of registration applications

1. The following registration applications shall be examined as to substance in order to evaluate protectability of the subject matters claimed in the applications in respect of protection criteria and determine the respective scope of protection:
  - a) Applications for invention registration which have been ~~officially accepted~~ and the request for substantive examination has been filed as prescribed;
  - b) All applications for industrial design registration, applications for trademark registration and applications for geographical indication registration;
2. Application for ~~layout design~~ layout-design registration shall not be examined as to substance.

#### Article 119. Amendment, Division, Conversion of registration applications

1. Before the issuance of the decision to grant or refuse a ~~protection title~~ Protection Title by the State the state management agency in charge of

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industrial property, the applicant shall have the following rights:

a) Amend or supplement to the application;

b) Divide of the application;

c) Request to record changes in name or address of applicant;

d) Request to record changes to the applicant as a result of assignment of the application or conveyance of rights to the application as a result of inheritance, merger or division of legal entities, or under a decision of a competent agency.

~~ded')~~ Convert the application for ~~patent for invention~~ Invention Patent into an application for ~~patent for utility solution~~ Utility Solution Patent and vice versa.

2. The person who request for the procedures set out provided for in clause paragraph 1 of this Article must pay due fees and charges as provided for by laws.

3. Any amendment or supplement to a registration application must not expand the scope of the subject matter already claimed in the application and must not change the substance of the subject matter for which registration is claimed as specified in the application and must ensure the unity of the application.

4. A divided application is allowed to sustain the filing date of the dividing application.

## Article 120. Withdrawal of registration applications

1. Before the issuance of the decision to grant or refuse a ~~protection title~~ Protection Title by ~~the state~~ the state management agency in charge of industrial property, the applicant shall have the right to withdraw the application in writing by himself or through an industrial property representative agent provided that the power of attorney clearly stated the authorization for withdrawal of the application.

2. At the moment an applicant state the withdrawal of the registration application, all further procedures related to the application shall be suspended; fees and charges which already paid in relation to the procedures that have not been yet commenced shall be refunded to the applicant at his/her request.

3. Any application for inventions or industrial designs registration which has been withdrawn or is considered as withdrawn before publication and any applications for trademark registration which have been withdrawn shall be

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deemed never having been filed.

## Article 121. Refusing to grant ~~protection titles~~ Protection Titles

1. An application for an invention, an industrial design, a trademark or a geographical indication shall be refused to be issued with a ~~protection title~~ Protection Title in the following cases:

- a) the respective subject matter does not adequately satisfy the protection criteria;
- b) the invention disclosed in the application is identical with the invention disclosed in another person's application with earlier filing date or earlier priority date.
- c) the industrial design stated in the application is identical with or not substantially different from the industrial design described in another person's application with earlier filing date or earlier priority date.

2. An application for ~~layout design~~ layout-design registration shall be refused to be issued with a ~~protection title~~ Protection Title if it does not satisfy the formality requirements as ~~set out~~ provided for in Article 105 of this Law.

3. If a registration application ~~falls within~~ falls under clause paragraphs 1 or 2 of this Article, ~~the State~~ the state management agency in charge of industrial property shall carry out the following procedures:

- a) to issue a notice of refusal intention of granting a ~~protection title~~ Protection Title which must specify the reasons and fix a time limit for the applicant to oppose to that intention;
- b) to issue a notice to refuse granting a ~~protection title~~ Protection Title if the applicant does not oppose or makes an unreasonable complaint about the intention referred to provided for in subparagraph point (a) above of this paragraph;
- c) to carry out the procedures to issue a ~~protection title~~ Protection Title and enter in to register in accordance with provisions of Article 122 of this Law if the applicant makes a reasonable complaint about the intention referred to provided for in subparagraph a of this paragraph point (a) above.

## Article 122. Granting ~~protection titles~~ Protection Titles; Entering into Register

If a registration application ~~falls within~~ falls under clause paragraphs 1, 2 or and subparagraph b of paragraph 3 ~~(b)~~ of Article 121 of this Law and the applicant has paid the prescribed fee, ~~the State~~ the state management agency in charge of industrial property shall carry out the following procedures:

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1. To issue a decision to grant a ~~protection title~~Protection Title and record an entry in the National Registry ~~for Industrial Property~~ and
2. To grant the ~~protection title~~Protection Title to the relevant applicant.

### **Article 123. Objection to grant or refusal to grant ~~protection titles~~Protection Titles; re-examination of registration applications**

1. An applicant and any third party with rights and benefits directly relating to the grant of, or refusal to grant, a ~~protection title~~Protection Title has the right to object to those relevant decisions.
2. If any decision to grant, or refusal to grant, a ~~protection title~~Protection Title is objected, the relevant registration application shall be re-examined in respect of the issues being objected to.

### *Section 4. International registration applications and processing international registration applications*

### **Article 124. PCT applications under the Patent Cooperation Treaty (PCT)**

1. An application for invention registration filed under the Patent Cooperation Treaty shall (be referred to as ~~referred to as~~ PCT application).
2. A PCT application with designation or selection of Vietnam means an application which claims for protection of an invention in Vietnam.  
A PCT application with designation or selection of Vietnam shall only be examined if the procedures for entering into the National Phase are completed by the applicant as provided for in this Law.
3. A PCT application originating from Vietnam means a PCT application which is filed in Vietnam through the ~~State administration of industrial property~~State administrative authority of industrial property.

### **Article 125. PCT applications designating Vietnam**

For PCT applications designating Vietnam, in order to enter into the National Phase, the applicant must produce the following documents to the ~~State administration of industrial property~~State administrative authority of industrial property within 31 months from the filing date of the international application or from the priority date, as the case may be:

1. A Request for registration of the invention;
2. A copy of the international application if the application has been requested entering into the National Phase before the date of international publication;
3. The Vietnamese translation of the international application: the descriptive document, (including the description section and the scope of protection),

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notes to drawings and the summary (the published version or the originally lodged version, if the application is not yet published, and revised version and explanatory document thereof if the PCT invention application is revised under Article 19 of the PCT Treaty):

- 4. The descriptive document and summary already revised.
- 5. National fees and charges.

**Article 126. PCT invention applications selecting Vietnam**

For PCT invention applications selecting Vietnam, in order to enter into the National Phase, the applicant must produce the following documents to the State administration of industrial property/State administrative authority of industrial property within 31 months from the date of lodgment of the international application or from the priority date, as the case may be:

- 1. A declaration form for registration of the invention/utility solution using the prescribed form;
- 2. The Vietnamese translation of the international application: the descriptive document (including the description section and the scope of protection), notes to drawings and the summary (the published version or the originally lodged version, if the application is not yet published, and revised version and explanatory document thereof if the PCT invention application is revised under Article 19 and/or Article 34.2(b) of the PCT Treaty);
- 3. The descriptive document and summary already revised.
- 4. The Vietnamese translation of appendices to the International Preliminary Examination Report (in case of a request for examination of the contents of the application).
- 5. National fees and charges.

**Article 127. Processing PCT invention applications designating or selecting Vietnam**

- 1. For PCT invention applications designating or selecting Vietnam, the State administration of industrial property/State administrative authority of industrial property shall be the designated agency or selected agency.
- 2. The processing of a PCT invention application designating Vietnam or selecting Vietnam in the National Phase shall start from the first day of the 32nd month as from the date of lodgment of the international application, if the applicant does not request in writing for early processing of his/her application.
- 3. An international application designating or selecting Vietnam shall be processed in accordance with the procedures set out provided for in this Chapter including publication.

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4. The temporary rights to an invention/utility solution stated in a PCT invention application shall only arise after the time such application is published under ~~clause paragraph 3 of this Article.~~

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5. An international application designating or selecting Vietnam shall be regarded as being withdrawn in the following circumstances:

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a) upon the failure to pay the prescribed national fee;

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b) upon the failure to file on time the Vietnamese translation;

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c) in other circumstances provided by the PCT Treaty.

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#### **Article 128. Right of priority to PCT invention applications**

In order to be entitled to the right of priority to a PCT invention application, the applicant must:

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1. Confirm his claim for the right of priority at the time of entering into the National Phase.

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2. Pay a fee for making such claim;

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3. At the request of the ~~State administration of industrial property~~ State administrative authority of industrial property, submit Vietnamese translations of the documents already filed with the International Bureau under Rule 17.1(a) of the Rules implementing the Treaty.

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#### **Article 129. PCT invention applications originating from Vietnam**

1. A PCT invention application originating from Vietnam must be made in accordance with the provisions of the PCT Treaty.

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2. A PCT invention application originating from Vietnam must be made in English or Russian.

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#### **Article 130. Processing PCT invention applications originating from Vietnam**

The ~~State administration of industrial property~~ State administrative authority of industrial property shall be the authority in charge of receiving PCT invention applications in Vietnam and has the following responsibilities:

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1. Receiving PCT invention applications originating from Vietnam.

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2. Collecting fees and forwarding relevant fees to the International Bureau and the International Search Authority in compliance with PCT Treaty.

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3. Checking whether the prescribed fees are paid in time;

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4. Examining and processing PCT invention applications originating from Vietnam in accordance with the Treaty.

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5. Identifying whether the subject matter stated in the application falls within falls under the category of State secrets, and the procedures referred to provided

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for, in clause paragraphs 6 and 7 of this Article shall not be carried out and relevant fees shall be reimbursed to the applicant if it fall within the state, the state secrets.

6. Sending a copy (of the file copy) of the PCT invention application originating from Vietnam to the International Bureau and one copy (of the Reference copy) to the International Search Authority.

7. Sending and receiving communications to and from the applicant and international authorities.

#### **Article 131. Processing trade international registration applications under the Madrid Agreement designating Vietnam**

An application for trademark registration under the Madrid Agreement designating Vietnam shall be examined in accordance with the procedures to substantive examination in relation to the application for trademark registration filed directly with the State administration of industrial property, State administrative authority of industrial property, and provisions of the Madrid Agreement.

#### **Article 132. International trademark registration application under Madrid Agreement originating from Vietnam**

Vietnamese individuals, legal entities who have registered their trademarks in Vietnam shall have the right to file an application for registering their trademarks in the country members of the Madrid Agreement on International Registration of Marks in accordance with the provisions of such Agreement.

#### **Article 133. Processing international trademark registration applications for under Madrid Agreement originating from Vietnam**

1. The State administration of industrial property, State administrative authority of industrial property shall be the authority in charge of receiving international applications for mark registration under Madrid Agreement originating from Vietnam.

2. The State administration of industrial property, State administrative authority of industrial property shall have the following responsibilities:

a. Receiving international applications for mark registration under Madrid Agreement originating from Vietnam.

b. Collecting fees and charges and forwarding them to the International Bureau if the applicant fails to directly pay such fees and charges to the International Bureau.

c. Certifying that the information in the international trademark registration application is correspondent to the information recorded in the National Registry for Industrial Property and other contents in accordance with the

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Agreement.

d. Forwarding the international registration applications to the International Bureau.

dd'. Sending a notice to the International Bureau in respect of the termination or invalidation of the trademark registration under the provisions of Madrid Agreement.



## Chapter VIII

### SCOPE AND LIMITATIONS OF INDUSTRIAL PROPERTY RIGHTS

Section 3. — ~~Invention/utility solution~~Invention registration applications

Article 99 — ~~Invention/utility solution~~Invention registration applications

An ~~invention/utility solution~~invention registration application must contain the following documents:

(a) — A declaration form for registration of the ~~invention/utility solution~~invention which specifies the request for the grant of an ~~invention/utility solution~~invention patent, name and address of the applicant, and full name of the author of the ~~invention/utility solution~~invention.

(b) — A descriptive document of the ~~invention/utility solution~~invention including a description section and the protection claims.

(c) — A summary of the ~~invention/utility solution~~invention.

(d) — A letter of authorization, if the application is filed by a representative.

(dd) — Documents proving the priority right, in case the entitlement to the priority right is sought.

(e) — Documents proving the payment of fees and charges.

Article 100 — The unity of ~~invention/utility solution~~invention registration applications

Each ~~invention/utility solution~~invention registration application may only claim protection for one and only technical ~~solution~~invention or combination of technical ~~solutions~~inventions with relevant technical connection and common and unique creative idea.

Article 101 — Declaration forms for registration inventions/utility solutions

1. — A declaration form for registration inventions/utility solutions must be made by using the prescribed form and must be filled in fully.

2. — The Government shall provide for the contents and forms of declaration forms for registration inventions/utility solutions.

Article 102 — Description of the ~~invention/utility solution~~invention

The description of the ~~invention/utility solution~~invention must meet the following

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conditions:-

~~(a) — it must expose the nature of invention/utility solution invention to such a clear and sufficient extent that it can serve the basis for an average man in a relevant technical sector to implement such invention/utility solution invention;~~

~~(b) — it must briefly explain the invention/utility solution invention together with its drawings (in case it is required to do so to more clarify the nature of the technical solution invention); and~~

~~(c) — it must clarify the novelty, non-obviousness, not-too-obviousness and capability of industrial application of the invention/utility solution invention.~~

~~Article 103 — The scope of protection of inventions/utility solutions~~

~~The scope of protection of an invention/utility solution invention must be expressed in form of series of technical indications to such a sufficient extent to identify the scope of protection of that invention/utility solution invention, and must be pursuant to the description of the invention/utility solution invention and its drawings.~~

~~Article 104 — Abstract of the invention/utility solution invention~~

~~The summary of an invention/utility solution invention must disclose the basic features of the nature of the relevant technical solution invention.~~

~~Article 105 — Documents proving the priority right~~

~~Documents proving the priority right with regard to an invention/utility solution invention registration application comprise the following:-~~

~~(a) — Copies of the application or the first applications with certification of the agency that received the application.~~

~~(b) — Assignment document in respect of the priority right if it is obtained from another person.~~

~~Article 106 — Authorization of representatives~~

~~1. — Any authorization of another person to complete relevant procedures to grant, maintain, amend, suspend or revoke an invention/utility solution invention patent must be made in writing, to be referred to as the Power of Attorney.~~

~~2. — A letter of authorization must have the following contents:~~

~~a) — (Full) name and address of the principal;~~

~~b) — (Full) name and address of the authorized person;~~

~~c) — Scope of authorization which specifies the duties which the authorized person can do on behalf of the principal.~~

~~d) — Date of the Power of Attorney.~~

~~dd) — Signature and/or seal of the principal.~~

~~e) Duration of the authorization.~~

~~3. — A letter of authorization which does not specify the duration of the authorization shall be regarded as having unlimited validity and shall only terminate if it is so declared by the principal.~~

~~Article 107 — Languages~~

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~~1. Except for those documents referred to in clause 2 of this Article, an invention/utility solution~~invention~~ registration application and all the transaction documents between the applicant and the Invention/Utility Solution~~Invention~~ Registration Authority must be in Vietnamese. Any documents in other languages shall only be used for the purpose of comparison, reference or examination.~~

~~2. The following documents may be made in a language different from Vietnamese but must be translated into Vietnamese when so requested by the Invention/Utility Solution~~Invention~~ Registration Authority:~~

~~a) Power of Attorney~~

~~b) Documents proving the lawful right to file an application if the applicant obtains that right from another person.~~

~~c) Documents proving the priority right.~~

~~d) Other documents subordinating the invention/utility solution~~invention~~ registration application.~~

#### ~~Article 108 PCT Applications~~

~~An invention/utility solution~~invention~~ registration application under the Patent Cooperation Treaty (to be referred to as PCT Application) shall include the following:~~

~~(a) a PCT application designating or selecting Vietnam, which is an application for registration of an invention/utility solution~~invention~~ in Vietnam which is filed in another PCT member country.~~

~~(b) a PCT application originating from Vietnam, which is an application for registration of an invention/utility solution~~invention~~ in a PCT member country which is filed in Vietnam.~~

#### ~~Article 109 PCT applications designating Vietnam~~

~~For PCT applications designating Vietnam, in order to enter into the National Phase, within 31 days from the date of filing of the international application or from the priority date, as the case may be, the applicant must produce the following to the Invention/Utility Solution~~Invention~~ Registration Authority:~~

~~(a) a declaration form for registration of the invention/utility solution~~invention~~;~~

~~(b) a copy of an international application if the application is filed during the national Phase before the date of international publication;~~

~~(c) the Vietnamese translation of the international application: the descriptive document, description section, the scope of protection, notes to drawings and the summary (the published version or the novelty filed version, if the application is not yet published, and revised version and explanatory document thereof if the PCT application is revised under Article 19 of the PCT Treaty);~~

~~(d) The descriptive document and summary already revised.~~

~~(dd) National fees and charges.~~

#### ~~Article 110 PCT applications selecting Vietnam~~

~~For PCT applications selecting Vietnam, in order to enter into the National Phase, within 31 days from the date of filing of the international application or from the~~

~~priority date, as the case may be, the applicant must produce the following to the Invention/Utility Solution~~Invention~~ Registration Authority:~~

~~(a) — a declaration form for registration of the invention/utility solution~~invention~~;~~

~~(b) — the Vietnamese translation of the international application: the descriptive document, description section, the scope of protection, notes to drawings and the summary (the published version or the novelty filed version, if the application is not yet published, and revised version and explanatory document thereof if the PCT application is revised under Article 19 and/or Article 34.2(b) of the PCT Treaty);~~

~~(c) — The descriptive document and summary already revised.~~

~~(d) — the Vietnamese translation of appendices to the International Preliminary Examination Report (in case of a request for examination of the contents of the application);~~

~~(dd) — National fees and charges.~~

~~Article 111 — Priority right to PCT applications~~

~~In order to be entitled to the priority right to a PCT application, the applicant must confirm his request for the entitlement of the priority right in the National Phase and must pay a fee for making such request; and at the request of the Invention/Utility Solution~~Invention~~ Registration Authority must submit Vietnamese translations of the documents already filed with the International Office under Rule 17.1(a) of the Rules implementing the Treaty.~~

~~Article 112 — PCT applications originating from Vietnam~~

~~1. — A PCT application originating from Vietnam must be made in accordance with the provisions of the PCT Treaty.~~

~~2. — A PCT application originating from Vietnam must be made in English or Russian.~~

#### ~~Section 4~~

#### ~~Procedures for processing applications and granting invention/utility solution~~invention~~ patents~~

~~Article 113 — Receiving invention/utility solution~~invention~~ registration applications~~

~~An invention/utility solution~~invention~~ registration application shall only be received by the Invention/Utility Solution~~Invention~~ Registration Authority if it contains at a minimum the following information and documents:~~

~~— (a) — a declaration form for registration of the invention/utility solution~~invention~~ patent;~~

~~— (b) — sufficient information to identify the applicant;~~

~~(c) — a descriptive document specifying the scope of protection;~~

~~(d) — documents proving the filing fee.~~

~~Article 114 — The date of filing of invention/utility solution~~invention~~ registration applications~~

~~The date of filing means the date on which the Invention/Utility Solution~~Invention~~ Registration Authority receives an invention/utility solution~~invention~~ registration~~

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application or the date of filing with regard to a PCT application.

~~Article 115 — Examination of the format of invention/utility solution~~invention  
~~registration applications~~

~~1. — An invention/utility solution~~invention ~~registration application must be examined in respect of its format to ensure that it satisfies all the qualifications of a valid application.~~

~~2. — An invention/utility solution~~invention ~~registration application shall be refused to be accepted as a valid application in the following cases:~~

~~(a) — the application fails to meet the requirements as to the format of an application;~~

~~(b) — the subject matter stated in the application is not a technical solution~~An invention~~;~~

~~(c) — the application is not filed by the person with relevant right to file an application, even where the right to file an application is possessed by several organizations or individuals but one of them rejects such filing of the application;~~

~~(d) — the application is filed contrary to the regulations on the exercise of the right to the file an application;~~

~~(dd) — the applicant fails to pay fees and charges in accordance with the law.~~

~~3. — If an invention/utility solution~~invention ~~registration application falls within any of the cases referred to in clause 2 above, the head of the Invention/Utility Solution~~Invention ~~Registration Authority shall carry out the following procedures:~~

~~(a) — to issue a notice of intent to refuse the application which must specify the reason and fix a time limit for the applicant to rectify errors or to make a complaint about that notice of intent;~~

~~(b) — to issue a notice refusing the application if the applicant fails to properly rectify the errors and does not make a reasonable complaint about the notice of intent referred to in point (a) above;~~

~~(c) — to complete the procedures referred to in clause 4 of this Article if the applicant properly rectifies the errors and makes a reasonable complaint about the notice of intent referred to in point (a) above.~~

~~4. — If an invention/utility solution~~invention ~~registration application does not fall within any of the cases referred to in clause 2 above or if its falls within the case referred to in clause 3(c) of this Article, the head of the Invention/Utility Solution~~Invention ~~Registration Authority shall issue a notice of acceptance of the application's validity.~~

~~Article 116 — Publication of invention/utility solution~~invention ~~registration applications~~

~~1. — Any invention/utility solution~~invention ~~registration application which has been accepted as valid shall be promptly published by the Invention/Utility Solution~~Invention ~~Registration Authority after the expiry date of the 18-month period as from the date of filing of the application or the priority date with regard to the application with the priority right or earlier as requested by the applicant.~~

~~2. — The contents and manner of the publication of invention/utility~~

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~~solutioninvention~~ registration applications shall be provided by the Government.

~~Article 117—Protecting the secrecy of invention/utility solutioninvention registration applications before publication~~

~~1.—Before an invention/utility solutioninvention registration application is published in the Industrial Property Official Gazette, the Invention/Utility SolutionInvention Registration Authority is responsible to keep the secrecy of the application.~~

~~2.—Officers and civil servants in the Invention/Utility SolutionInvention Registration Authority who disclosed information about an invention/utility solutioninvention registration application shall be disciplined and if such disclosure results in a loss to the applicant, compensation must be paid in accordance with the law.~~

~~Article 118—Temporary rights to published inventions/utility solutions~~

~~As from the time an invention/utility solutioninvention registration application is published the Industrial Property Official Gazette, if the applicant has served a written notice of the invention/utility solutioninvention stated in the application, then after he is granted with an invention/utility solutioninvention patent the owner is entitled to request those people who use the invention/utility solutioninvention for commercial purposes during the period from the date of the written notice by the applicant to the date the patent is granted, to pay a compensation equivalent to the cost of assignment of the patent in respect of that invention/utility solutioninvention.~~

~~Article 119—Comments of third parties on the grant of invention/utility solutioninvention patents~~

~~As from the time an invention/utility solutioninvention registration application is published the Industrial Property Official Gazette, third parties have right to provide the Invention/Utility SolutionInvention Registration Authority with their comments on the grant or failure to grant of a patent with regard to such application. Those comments shall only be considered if they are made in writing with relevant arguments and must be accompanied by materials or references proving such arguments.~~

~~Article 120—Request for examination of the contents of invention/utility solutioninvention registration applications~~

~~1.—Within 42 months, for invention registration applications, and 36 months, for utility solution registration applications, as from the date of filing of an application or from the priority date in case the application is entitled to the priority right, the applicant or any third party may request the Invention/Utility SolutionInvention Registration Authority to examine its contents, provided a prescribed fee must be paid for such examination.~~

~~2.—Where no request for substantive examination of an application is made within the time limit under clause 1 of this Article, the invention/utility solutioninvention registration application shall be regarded as being withdrawn at the expiration of that time limit~~

~~Article 121—Examination of contents of invention/utility solutioninvention~~

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~~registration applications~~

~~1. Any invention/utility solutioninvention registration application which has been accepted as valid and in respect of which a request has been made to examine the contents of the application under Article 120.1 shall be examined in respect of its contents in order to evaluate the possibility of the grant of a patent for the subject matter stated therein in accordance with the protection criteria and to identify relevant protection scope (volume).~~

~~2. The Government shall provide for procedures for examining the contents of invention/utility solutioninvention registration applications.~~

~~Article 122 Modification, division and conversion of invention/utility solutioninvention registration applications~~

~~1. At all times before the Invention/Utility SolutionInvention Registration Authority issues a notice refusing to grant an invention/utility solutioninvention patent or decides to grant an invention/utility solutioninvention patent, an applicant also has the following rights, namely to:~~

~~(a) amend or supplement the application;~~

~~(b) divide the application;~~

~~(c) request for the acknowledgement of a change to the name or address of the applicant;~~

~~(d) request for the acknowledgement of a change to the applicant as a result of assignment of the application or transfer of rights to the application as a result of inheritance, merger or division of legal entities under court judgment etc.~~

~~(dd) convert the invention registration application into a utility solution registration application and vice versa.~~

~~2. The person completing one of the procedures set out in clause 1 of this Article must pay relevant fees and charges including fees and charges for amending and supplementing applications, fees and charges for separating applications, fees and charges for acknowledgement of changes to applications.~~

~~3. Any amendment or supplement to an invention/utility solutioninvention registration application must not expand the scope of the subject matter already stated in the descriptive document and must not change the characteristics of the technical solutioninvention specified in the application and must ensure the unity of the application.~~

~~4. A divided application is allowed to sustain the date of filing of the novel application.~~

~~Article 123 Withdrawal of invention/utility solutioninvention registration applications~~

~~1. At all times before the Invention/Utility SolutionInvention Registration Authority issues a decision to grant or issues a notice of refusal to grant an invention/utility solutioninvention patent, an applicant is entitled to make public his/her withdrawal of the application filed under his/her name or through an industrial property representation service organization if such withdrawal is expressly specified in the letter of authorization.~~

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~~2. — As soon as the applicant declares to withdraw his/her invention/utility solutioninvention registration application, any related consequent procedures shall be suspended; and all the fees and charges already paid in relation to the procedures that are not yet proceeded with shall be refunded to the applicant at his/her request.~~

~~3. — Any invention/utility solutioninvention registration application which has been withdrawn or is regarded as being withdrawn shall be regarded as never being filed.~~

#### ~~Article 124 — Refusing to grant invention/utility solutioninvention patents~~

~~1. — An invention/utility solutioninvention registration application shall be refused if the invention/utility solutioninvention does not satisfy the patenting conditions or is identical to the technical solutioninvention described in another invention/utility solutioninvention registration application which has been filed earlier.~~

~~2. — If an invention/utility solutioninvention registration application falls within clause 1 of this Article, the head of the Invention/Utility SolutionInvention Registration Authority shall carry out the following procedures:~~

~~(a) — to issue a notice of intent to refuse the grant of a patent which must specify the reason and fix a time limit for the applicant to rectify errors or to make a complaint about that notice of intent;~~

~~(b) — to issue a notice refusing the grant of a patent if the applicant fails to properly rectify the errors and does not make a reasonable complaint about the notice of intent referred to in point (a) above;~~

~~(c) — to complete the procedures referred to in Article [granting patents] if the applicant properly rectifies the errors and makes a reasonable complaint about the notice of intent referred to in point (a) above.~~

#### ~~Article 125 — Patenting; registration~~

~~If an invention/utility solutioninvention registration application does not fall within clause 1 of Article [on refusing] or falls within clause 2(c) of Article [on refusing] and the applicant has paid the prescribed fee, the head of the Invention/Utility SolutionInvention Registration Authority shall carry out the following procedures:~~

~~(a) — To issue a decision to grant an invention/utility solutioninvention patent and record an entry in the National Registry for Inventions/Utility Solutions; and~~

~~(b) — Grant the invention/utility solutioninvention patent to the relevant applicant.~~

#### ~~Article 126 — Protesting against a grant or refusal to grant invention/utility solutioninvention patents~~

~~1. — An applicant and any third party with rights and benefits directly relating to the grant of, or refusal to grant, an invention/utility solutioninvention patent has the right to protest against those relevant decisions.~~

~~2. — Any protest against the grant of, or refusal to grant, an invention/utility solutioninvention patent shall be made in accordance with the provisions concerning settlement of protests referred to in Article [protest] of this Law.~~

~~3. — If any decision to grant, or refusal to grant, an invention/utility solutioninvention patent is protested against, the relevant invention/utility solutioninvention registration application shall be re-examined in respect of the issues~~

~~being protested against.~~

~~Article 127 — Processing PCT applications originating from Vietnam~~

~~1. — The Invention/Utility Solution~~Invention~~ Registration Authority shall be the authority in charge of receiving PCT applications in Vietnam and has the following responsibilities:~~

~~(a) — Receiving PCT applications originating from Vietnam.~~

~~(b) — Collecting fees and transferring relevant fees to the International Office and the International Agency in compliance with PCT Treaty.~~

~~(c) — Checking whether prescribed fees are paid in time;~~

~~(d) — Examining and processing PCT applications originating from Vietnam in accordance with the Treaty.~~

~~(dd) — Identifying the subject matter for which the protection is claimed: if the subject matter stated in the application falls within the category of State secrets, the following works shall not be carried out and relevant fee amounts shall be reimbursed to the applicant.~~

~~(e) — Sending a copy (of the file documents) of the PCT application originating from Vietnam to the International Office and one copy (of the Reference Document) to the International Agency.~~

~~(f) — Sending and receiving correspondences to and from the applicant and international agencies.~~

~~2. — The International Agency and the International Preliminary Examination Agency which have jurisdiction over the PCT Application originating from Vietnam shall be provided for by the Government.~~

~~Article 128 — Processing PCT applications designating or selecting Vietnam~~

~~1. — For PCT applications designating or selecting Vietnam, the Invention/Utility Solution~~Invention~~ Registration Authority shall be the designated agency or selected agency.~~

~~2. — The processing of a PCT application designating Vietnam or selecting Vietnam in the National Phase shall start from the first day of the 32<sup>nd</sup> month as from the date of filing of the international application, if the applicant does not request in writing for early processing of his/her application.~~

~~3. — An international application designating or selecting Vietnam shall be processed in accordance with the procedures set out in this Chapter including publication.~~

~~4. — The temporary rights to an invention/utility solution~~invention~~ stated in a PCT Application shall only arise after the time such application is published under clause 3 of this Article.~~

~~5. — An international application designating or selecting Vietnam shall be regarded as being withdrawn in the following circumstances:~~

~~(a) — upon the failure to pay the prescribed national fee;~~

~~(b) — upon the failure to file on time the Vietnamese translation;~~

~~(c) — in other circumstances provided by the PCT Treaty and its implementing Rules.~~

## Section 1. Scope and limitations of rights to inventions

5

### ~~Rights and obligations established under invention/utility solution~~ invention patents

#### Article 134. Rights of ~~invention patent~~ Invention Patent owners

1. An ~~invention patent~~ Invention Patent owner shall have the following rights:

- a) the right to use, permit others ~~persons to use or prohibit others persons~~ from using, the invention;
- b) the provisional right in respect of the invention already published as provided for in the Article 135 of this Law;
- c) the right to dispose of the whole rights to the invention by way of ~~assignment or transfer by virtue of consolidation, merger, separation, decision of a competent authority, inheritance or relinquishment.~~

2. The use of an invention means the conduct of any of the following acts with regards to the product or the process being the invention:

- a) manufacturing that product;
- b) applying that process;
- c) exploiting the uses of that product or the product obtained by that process;
- d) circulating or advertising, offering, stocking for circulating that product or the product obtained by that process;
- ~~ded')~~ importing that product or the product obtained by that process.

#### Article 135. Provisional rights to inventions

With respect to an invention claimed in an application already published in the Industrial Property Official Gazette, in case the applicant has served a written notice of the invention to others, when a patent is granted the patent owner has the right to claim, against the person who has used the invention for commercial purposes within the period from the date of being noticed to the patent grant date, the payment of compensation in a sum of money equivalent to the payment for such a license to the invention.

#### Article 136. Restrictions to rights of ~~invention patent~~ Invention Patent owners

The following acts shall not be regarded as infringing the rights of an ~~invention patent~~ Invention Patent owner:

- a) Using the invention for non-commercial purposes, including private use, evaluations, analysis, research or teaching, pilot production and other non-commercial use;

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- b) Circulating, importing or exploiting uses, of the products that have been put into the market place, including foreign markets, by the owner, a licensee, a compulsory licensee or a person enjoying the prior user's right;
- c) Using the invention only for the purpose of maintaining the operation of a foreigner's vehicle which is in transit or only temporarily being in the territory of Vietnam.

#### **Article 137. Prior user's rights to inventions**

1. Any person who has, before the publication date of a application for invention registration and independently from the applicant, made use of the invention claimed in the application or made necessary preparation therefore, shall be, without having to obtain permission from or paying compensation to the ~~invention patent~~Invention Patent owner, entitled to continue such use within the same scope and volume of use or preparation made before the publication date.
2. The person enjoying the prior user's right shall not be entitled to transfer such right to others, except where such right as the whole is transferred together with the business establishment where the prior use was made or prepared conditions for.

#### **Article 138. Rights to use inventions on behalf of ~~the State~~the state**

1. In order to meet urgent social needs or for public non-commercial purposes, national defense, national security, disease prevention and treatment for people, ~~the State~~the state competent authorities may authorize organizations or individuals to use, on its behalf, an invention without having to obtain permission from the ~~invention patent~~Invention Patent owner.
2. The authorization given under paragraph 1 of this Article shall be limited to the scope and conditions provided for in Articles 186 and 187 of this Law.

#### **Article 139. Dependent inventions**

1. A dependent invention means an invention which can only be used on condition of using another invention, an industrial design, a layout-design of semiconductor integrated circuit or a plant variety that belongs to another person's right conferred by a Protection Title granted upon an application with an earlier filing date or priority date.
2. With regard to a dependent invention, the ~~invention patent~~Invention Patent owner and the licensees may not exercise the right to use such invention unless they are granted a license to use the subject matter on which such invention is dependent.

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#### **Article 140. Obligation to use inventions**

The ~~invention-patent~~Invention Patent owner and his exclusive licensee shall be obliged to manufacture the protected product or to apply the protected process to satisfy the social needs; otherwise he/she shall be compelled to license others to use the invention under provisions on compulsory licensing provided for in Articles 186 and 187 of this Law.

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#### **Article 141. Obligation to pay remuneration to inventors**

1. Unless there is an agreement between the ~~invention-patent~~Invention Patent owner and the inventor, the former shall have the obligation to pay remuneration to the later as follows:

- a) 10% of the revenue gained from the use of such invention every year;
- b) 15% of the total amount of money received by the ~~invention-patent~~Invention Patent owner on each payment upon the granting of a license.

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2. Unless otherwise agreed between the ~~invention-patent~~Invention Patent owner and the inventor, the payment of remuneration to the inventor provided for in paragraph 1 of this Article shall be made no later than 60 days as from the last day of the 12th month of each year of use or no later than 30 days from the date the ~~invention-patent~~Invention Patent owner has received money as payment for the granting of a license.

#### **Article 142. Rights of inventors**

An inventor shall have the following rights:

1. To be named as an inventor in the National Invention Register, the ~~invention-patent~~Invention Patent and the documents in which the invention is published;
2. To receive remuneration from the ~~invention-patent~~Invention Patent owner under the provisions on the obligation to pay remuneration provided for in Article 141 of this Law;
3. To assign or to give inheritance to others the right to remuneration.

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#### **Article 143. Co-ownership of inventions**

1. Where an ~~invention-patent~~Invention Patent is granted commonly to all ~~organisations~~organizations and individuals who have jointly exercised their right to file an application, the rights to the invention shall be under their co-ownership in accordance with the following provisions:

- a) Part co-ownership if there is an agreement on partial right to the invention of each of the ~~organisations~~organizations and individuals;
- b) Unified co-ownership if there is not any agreement on partial right to the invention of each of the ~~organisations~~organizations and individuals.

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2. The licensing, assignment, mortgage of rights to an invention under co-ownership to others must be agreed upon by all co-owners.
3. Each of the co-owners shall have the right to use the invention under co-ownership without having to obtain permission from the other co-owners, except where otherwise agreed among them.

#### Article 144. Infringement of rights of ~~invention patent~~ Invention Patent owners

The following acts shall be regarded as an infringement of ~~invention patent~~ Invention Patent owner's rights:

1. Using the invention within the validity term of the ~~invention patent~~ Invention Patent without permission of the patent owner where the use does not fall under any of the limitations or exceptions provided for in Articles 135, 136 and 137 of this Law;
2. Using the invention without paying compensation in accordance with the provisions on provisional right of the patent owner provided for in Article 135 where the use does not fall under any of the limitations or exceptions provided for in Articles 136, 137 and 138 of this Law.

#### Article 145. Infringement of rights of inventors

The following acts shall be regarded as an infringement of the inventor's rights:

1. Failing to fulfill obligation to pay remuneration to the inventor as provided for in Article 141 of this Law;
2. Failing to ensure the right to be named as an inventor.

#### ~~Rights of invention patent owners Article 129 Rights of the owner of invention/utility solution invention patents~~

~~1. The An invention patent owner of an invention/utility solution invention patent shall have the following rights, namely:~~

~~(a) the right to use, permit other persons to use allow other people to use, or prohibit other personseople from using, ing, the invention/utility solution invention;~~

~~(b) the to have the temporaryprovisional right to in respect of the invention/utility solution invention already published as provided for in the Article 135 of this Law;~~

~~(c) the right to dispose of the whole rights to the invention of the right to the invention/utility solution invention by way of assignment or of rights or transfer of rights as a result of by virtue of an event of consolidation, merger, separation etc of legal entities, decision of a competent authority;~~

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by way of inheritance or ~~relinquishment~~waiver of the whole rights to the invention/utility solution~~invention~~.

~~Article 130 Using inventions/utility solutions~~

~~21. Using The use of an invention/utility solutioninvention means the conduct of any of the following acts with regards to the that product or the process being the invention/utility solutioninvention for business purposes:~~

~~a) manufacturing thate patented product;~~

~~b) applying thate patented process;~~

~~c) exploiting the uses of thate patented product or the products manufactured by way of applyingobtained by a that patented process;~~

~~d) distributing circulating or advertising, offerring, stocking for circulating that product or the product obtained by that process;~~

~~the patented product or products manufactured by way of applying a patented process;~~

~~d)d) importing that product or the product obtained by that process.the patented product or products manufactured by way of applying a patented process;~~

~~Provisional rights to inventions~~

~~With respect to an invention claimed in the application already published in the Industrial property official gazette, in case the applicant has served a written notice of the invention to other persons, when a patent is granted the patentee has the right to claim, against the person who has used the invention for commercial purposes within the period from the date of being noticed to the patent grant date, the payment of compensation in a sum of money equivalent to the payment for such a license to the invention.~~

~~2. The act of distribution referred to in clause 1(d) of this Article is construed as any form of commercial circulation including sale, lease, assignment, advertising, offers or storage for those purposes.~~

~~Article 131 Restrictions to rights of rights to inventions patent owners /utility solutions~~

~~The following acts shall not be regarded as falling within the exclusive rightinfringing the rights of the an owner of an invention/utility solutioninvention patent owner:~~

~~(a) Using suchthe invention/utility solutioninvention for non-business commercial purposes, including private use, evaluations, analysis, research or teaching, pilot production and other non-commercial use;~~

~~(b) DistributingCirculating, importing or exploiting uses of the the products that have been brought output in to the market place, including foreign overseas markets, by the owner, his/her a assignee licenseeof the right to~~

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use, the grantee of a compulsory license and or a person with enjoying the prior-evious user's right to use;

- (c) Using such the invention/utility solution invention only for the purpose of maintaining the operations of the a foreigner's vehicle of a foreigner which is in transit or only temporarily operating being in the territory of Vietnam:

Prior user's r

Article 132 Rights of previous users of inventions/utility solutions

1. Any person who, independently from the applicant, has, before the publication date of a application for invention registration and independently from the applicant, made used of the invention claimed in the application or made necessary preparedartion therefore all necessary conditions for using an invention/utility solution invention stated in the invention/utility solution invention registration application before the date of publication of the application, shall be, without having to obtain permission from or paying compensation to the invention patent owner, entitled to continue such using such invention/utility solution invention within the same scope and to the extent he/she volume has used of use or or prepared necessary condititions formade using such invention/utility solution invention before the publication date of filement of the application without having to obtain permission from or paying remuneration to the owner of the invention/utility solution invention.
2. A The person having enjoying the previousior user's right to use shall not be entitled to may not transfer such right to other persons, except where such right as the whole previous right to use is transferred together with the business establishment where the previous prior use was made or prepared conditions for.

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Article 133 Rights to use inventions/utility solutions by on behalf of the State

1. In order to meet urgent social needs or for public non-commercial purposes, national defence, national security, disease prevention and treatment for people, tThe State competent authorities may authorize allow organizations or individuals or organizations to use, on its behalf, an invention/utility solution invention without having to obtain permission from the owner of the invention/utility solution invention patent owner in order to meet urgent social needs or for the public or non-commercial purpose, such as meeting the demand of the national defence, national security, disease prevention and treatment for people.
2. AnyThe permission authorization given under clause paragraph 1 of this Article to use an invention/utility solution invention shall be limited to the extent of the scope and the conditions set out provided for in Articles 186 and 187 [scope and conditions for compulsory licensing] of this Law.

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#### Article 134 Dependent inventions/utility solutions

1. A dependent invention/utility solution invention means an invention/utility solution invention which are can only be useable used subject to on a condition that of using another invention/utility solution invention falling within a patent of another person is used or that, an industrial design, a layout design layout design of the semiconductor integrated circuit or that a plant variety that belongs to another person's is used that falls within the right of another person and established under conferred by a Protection Title granted upon an application with an earlier filing date or priority date of filing.
2. With regard to a dependent invention/utility solution invention, the owner of an invention/utility solution invention patent owner and the licensees are not allowed may not to exercise the right to use such invention/utility solution invention if unless they are not granted a licensed to use the subject matter to on which such invention/utility solution invention is dependent.

#### Article 135 Obligation to use inventions/utility solutions

The invention patent owner and his exclusive licensee of an invention/utility solution invention patent or the person to whom the owner of the invention/utility solution invention patent transfer the compulsory license shall be obliged to manufacture the protected products or to apply the protected process to satisfy them meet social needs, otherwise he/she shall be compelled to assign the right to use such invention/utility solution invention to license others to use the invention people (compulsory licensing) in accordance with under provisions on compulsory licensing provided for in Articles [compulsory licensin 186 and 187 of this Law].

#### Article 136 Obligation to pay remuneration to authors of inventions/utility solutions

1. Unless there is an agreement otherwise agreed between the invention patent owner of an invention/utility solution invention patent and the author of the invention/utility solution invention inventor, the owner of the patent former shall be obliged have the obligation to pay remuneration to the author later of the invention/utility solution invention at as the follows: ing rates and within the following time limits:
  - a) the minimum rate of remuneration of ten per cent (10%) of the revenue gained from the use of such invention/utility solution invention every year;  
or
  - b) fifteen per cent (15%) of the total amount of money sum received by the invention patent owner owner of the invention/utility solution invention patent on each occasion of receipt of payment upon the granting of a license as a result of assignment of the right to use such invention/utility

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~~solutioninvention:~~

~~(b)2. Unless otherwise agreed between the invention patent owner and the the inventor, the payment of remuneration to the inventor provided for in paragraph 1 of this Article shall be made must be paid no later than 60 days as from the last day of the 12th month of each year of use or no later than 30 than 30 days from the date after receipt by the invention patent owner of the invention/utility solutioninvention patent has received money as payment for the granting of a licenseof the payment as a result of an assignment of the right to use such invention/utility solutioninvention.~~

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~~Rights of inventors Article 137 Rights of authors of inventions/utility solutions~~

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~~1. The author of an invention/utility solutioninvention means the person who creates such invention/utility solutioninvention by way of his/her creative activities.~~

~~People providing technical or material support or assistance or funds but not contributing to the creation of an invention/utility solutioninvention by way of their creative activities shall not be regarded as authors.~~

~~2. TheAn author of an invention/utility solutioninventorion shall have the following rights:~~

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~~a)1. To have his/her fullbe named as an inventor stated in the National Invention RRegistry for Inventions, Utility Solutions or for the Invention/Utility SolutionInvention Patent and the as well as in other documents in which the invention is concerning the publication of such invention/utility solutioninventionshed.~~

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~~b)2. To receive remuneration paid fromby the invention patent owner under the provisions on the obligation to pay remunerationowners in accordance withprovided for in Article 114136 of this ChapterLaw.~~

~~3.~~

~~3. The right of the author of an invention/utility solutioninvention to receive remuneration may be aTo assigned or to give inheritance to others the right to remuneration persons including by way of inheritance in accordance with the law.~~

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~~Article 138 Co-ownership right toof inventions/utility solutions~~

~~1. Where an invention patent is granted commonly to all organisations and individuals who have jointly exercised their right to file an application, the rights to the invention shall be under their co-ownership in accordance with the following provisions:~~

~~a) Part co-ownership if there is an agreement on partial right to the invention of each of the organisations and individuals:~~

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*b) Unified co-ownership if there is not any agreement on partial right to the invention of each of the organisations and individuals.*

*2. The licensing, assignment, mortgage of If the rights to an invention/utility solution invention fall within a under co-ownership, then any transfer of the right to use or assignment or mortgage of the right to such invention/utility solution invention to another person must be agreed upon by all co-owners.*

*—3.—E*

*2. If the rights to an invention/utility solution invention fall within a co-ownership, each of the co-owners shall have the right to use such the invention/utility solution invention under co-ownership without having to obtain permission from the other co-owners, except where otherwise agreed among them.*

#### *Article 139 Infringement of rights of the invention patent owners rights to inventions/utility solutions*

*1. The following acts shall be regarded as an infringingment of invention patent owner's rights the rights to an invention/utility solution invention:*

*(a) 1. Using Any act involving use of the invention/utility solution invention which is conducted during within the effective period validity term of the invention patent without consent permission of the patent owner of the patent and where the use does not fall within under any of the limitations or cases exceptions referred to provided for in Articles [exceptions] 135, 136 and 137 of this Law.*

*(b) 2. Using the invention Using an invention/utility solution invention without paying compensation in accordance with the provisions concerning the temporary on provisional right of the patent owner provided for in Article 135 of the patent which where the use does not fall under any of the limitations or exceptions provided for in Articles 136, 137 and 138 of this Law within any of the cases referred to in Article [exceptions].*

*2. Any act involving the distribution of the components of a product (including spare parts, appurtenances used for assembly of structures or other component used to manufacture the substance of the product) which have been patented; or use of materials or equipment used to apply a patentee process shall be regarded as contributing to infringement of the rights to inventions/utility solutions.*

#### *Article 140 Infringement of rights the of inventors rights of authors of inventions/utility solutions*

*The following acts shall be regarded as an infringing infringement of the inventor's rights of the author of an invention/utility solution invention:*

*(a) 1. FA failureing to fulfill of the owner of the patent obligation to pay remuneration to the author of the invention/utility solution inventor in accordance with the regulations as provided for in Article 141 of this Law.*

*(b) 2. A failing failure by any person to ensure the exercise of the right of the*

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~~author of that to be named as an invention/utility solution/inventor, to have his/her name stated.~~

## ~~Section 2. Scope and limitations of the right over right to industrial designs~~

### ~~Article 146. The rights of an industrial design patent~~Industrial Design Patent owner

~~1. An industrial design patent~~Industrial Design Patent owner shall have the following rights:

- ~~a) Right to use, permit others to use or prohibit others from using~~permit or prevent other persons to use, the industrial design as provided for in paragraph 2 of this Article;
- ~~b) Provisional right over to the industrial design that is applied mutatis mutandis to provisional right over to inventions as provided for stipulated in the Article 135 of this Law;~~
- ~~c) Right to decide by ways of assignment, transfer for incorporation, unification, separation or implementation of a competent agency's decision, or for inheritance, relinquishment, waiver of the right over right to the industrial design;~~

~~2. Using an industrial design means conducting following acts:~~

- ~~a) Manufacturing products having the appearance which is the industrial design;~~
- ~~b) Putting into circulation, advertising, offering and storing for circulation of products having the appearance which is the industrial design;~~
- ~~c) Importing products having appearance which is industrial design;~~

### ~~Article 147. Obligation of payment of remuneration to an industrial design author~~

~~Provision on obligation of an industrial design patent~~Industrial Design Patent owner to pay the remuneration to the such industrial design author is applied mutatis mutandis to obligation of an ~~invention patent~~Invention Patent owner stipulated in the Article 141 of this Law, in which the respectively remuneration rate stipulated in the Article 141.1.a) of this Law is 2%.

### ~~Article 148. Dependent industrial design~~

- ~~1. A dependent industrial design means the industrial design which would be only used if it utilizes another person's protected industrial design or invention under an application filed prior to the filing date or the priority date.~~
- ~~2. With regard to the dependent design, the owner and licensees of the industrial design patent~~Industrial Design Patent, shall not exercise the right to use such

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industrial design if the right to use objects on which the industrial design depends is not licensed to them.

**Article 149. Infringement of the ~~rights over~~rights to an industrial design**

1. The following acts shall be considered as acts of infringement of the right of an ~~industrial design patent~~Industrial Design Patent owner:
  - a) Using the industrial design during the term of patent validity without the patent owner's permission and does not fall within any of the cases of limitations and exceptions stipulated in the Article 150 of this Law.
  - b) Using the industrial design without payment of remuneration according to the provision on Provisional right of the owner of the ~~industrial design patent~~Industrial Design Patent and does not fall within any of the cases of limitations and exceptions stipulated in the Article 150 of this Law.
2. Conducting acts stipulated in this Article regarding to industrial designs which do not significantly differ from the protected industrial design shall also be considered as acts of infringement of the right of the ~~industrial design patent~~Industrial Design Patent owner.

**Article 150. Application of provisions on scope and limitations of the right ~~over~~right to inventions**

Provisions on provisional right, restrictions of rights of an ~~invention patent~~Invention Patent owner, the right of an invention author, co-ownership of inventions, infringement of rights of an invention author which are stipulated in Articles 135, 136, 137, 142, 143 and 145 of this Law shall be applied mutatis mutandis to industrial designs.

...

*Section 3. Scope and limitations of rights to layout-designs*

**Article 151. Rights of Layout-designs ~~R~~egistration Certificate owners**

1. The owner of a Layout-design Registration Certificate shall have the following rights:
  - a) the right to use, permit others—~~persons~~ to use or prohibit ~~other persons~~others from using, the ~~layout design~~layout-design;
  - b) the provisional right in respect of the layout-design already been commercially exploited as provided for in the Article 153 of this Law;
  - c) the right to dispose of the whole rights to the layout-design by way of assignment or transfer by virtue of consolidation, merger, separation, decision of a competent authority, inheritance or relinquishment.
2. The use of a layout-design means the conduct of any of the following acts:
  - a) Reproducing the layout-design or manufacturing semi-conductor integrated

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circuits by applying the ~~layout-design~~ layout-design;

- b) Distributing, including selling, leasing, assigning, advertising, offering or storing, a copy of the ~~layout-design~~ layout-design, a semi-conductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semi-conductor integrated circuit;
- c) Importing a copy of the ~~layout-design~~ layout-design, a semi-conductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semi-conductor integrated circuit.

#### **Article 152. Commercial exploitation of layout-designs**

The commercial exploitation of a layout-design means any acts of distributing a semiconductor integrated circuit manufacturer by applying the layout-design or an article incorporating such a semiconductor integrated circuit, which are conducted publicly and for commercial purpose.

#### **Article 153. Provisional right to commercially exploited layout-designs**

With respect to a layout-design which has, before the grant date of a Layout-design Registration Certificate, been commercially exploited by the person having the right to file an application or a licensee, in case the applicant has served a written notice of the application filing to others, the Layout-design Registration Certificate owner has, from the registration date, the right to claim, against the person who has used the layout-design for commercial purposes within the period from the date of being noticed to the registration date, compensation in a sum of money equivalent to a royalty payable for such a license to the layout-design.

#### **Article 154. Restrictions to the rights to layout-designs**

The following acts shall not be regarded as infringing the rights to a layout-design conferred by a granted Layout-design Registration Certificate:

1. Using the layout-design for non-commercial purposes, including private use, evaluations, analysis, research or teaching, pilot production and other non-commercial use;
2. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit without knowing or having no reasonable ground to know the fact that a registration certificate in respect of the layout-design have been granted;
3. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit that have been obtained or ordered without knowing or having no reasonable ground to know the fact that a registration certificate in respect of the layout-design have been

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granted, if such use is conducted after having known the fact and the user pays the Layout-design Registration Certificate owner a sum of money equivalent to a royalty payable under a license with respect to the layout-design;

4. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit that have been put into the market place, including foreign markets, by the Layout-design Registration Certificate owner, a licensee, or a lawful user provided for in paragraph 3 of this Article;
5. Using another original layout-design having been created on the basis of analysis and evaluation of the layout-design as provided for in paragraph 1 of this Article or an identical layout-design having been created independently by another person.

#### **Article 155. Obligation to pay remuneration to layout-design authors**

The owner of a Layout-design Registration Certificate shall have the obligation to pay remuneration to the layout-design author similar to such obligation of the ~~invention patent~~ Invention Patent owner as provided for in Article 141 of this Law, where applicable minimum rate of remuneration provided for in subparagraph a paragraph 1 Article 141 of this Law is 5%.

#### **Article 156. Dependent layout-designs**

1. A dependent layout-design means a layout-design which can only be used on condition of using another ~~layout-design~~ layout-design, an invention, or an industrial design that belongs to another person's rights conferred by a Protection Title granted upon an application with an earlier filing date or priority date.
2. With regard to a dependent ~~layout-design~~ layout-design, the owner of Layout-design Registration Certificate and licensees cannot exercise the right to use the layout-design unless they are granted a license to use the subject matter on which the layout-design is dependent, except for the limitations provided for in paragraph 5 Article 154 of this Law.

#### **Article 157. Infringement of rights of Layout-design Registration Certificate owners**

1. The following acts shall be considered as an infringement of the right of the owner of a ~~layout-design~~ layout-design:
  - a) Using the layout-design within the validity term of the Layout-design Registration Certificate without permission of the Certificate owner where the use does not fall under any of the limitations provided for in Article 154 of this Law;

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b) Using the layout-design without paying compensation in accordance with the provisions on provisional right to layout-designs provided for in Article 135 where the use does not fall under any of the limitations or exceptions provided for in Articles 136, 137 and 138 of this Law.

2. The acts provided for in paragraph 1 of this Article performed with regards to any part of the layout-design that fulfill the requirement of originality provided for in Article 73 of this Law shall also be considered as an infringement of the right of the owner the Layout-design Registration Certificate.

#### **Article 158. Application of provisions on scope and limitations of rights to inventions**

The provisions on rights of inventors, co-ownership of inventions, infringement of rights of inventors in Articles 142, 143 and 145 of this Law shall also apply to layout-designs.

#### **Rights of Layout designs registration Certificate owners**

1. The owner of a Layout-design Registration Certificate shall have the following rights:-

- a) the right to use, permit other persons to use or prohibit other persons from using, the layout design:-
- b) the provisional right in respect of the layout-design already been commercially exploited as provided for in the Article 153 of this Law:-
- c) the right to dispose of the whole rights to the layout-design by way of assignment or transfer by virtue of consolidation, merger, separation, decision of a competent authority, inheritance or relinquishment:-

2. The use of a layout-design means the conduct of any of the following acts:-

- a) Reproducing the layout-design or manufacturing semi-conductor integrated circuits by applying the layout design:-
- b) Distributing, including selling, leasing, assigning, advertising, offering or storing, a copy of the layout design, a semi-conductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semi-conductor integrated circuit:-
- c) Importing a copy of the layout design, a semi-conductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semi-conductor integrated circuit:-

#### **Commercial exploitation of layout designs**

The commercial exploitation of a layout-designs means any acts of distributing a semiconductor integrated circuit manufacturer by applying the layout-design or an article incorporating such a semiconductor integrated circuit, which are conducted publicly and for commercial purpose:-

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### Provisional right to commercially exploited layout-designs

With respect to a layout-design which has, before the grant date of a Layout-design Registration Certificate, been commercially exploited by the person having the right to file an application or a licensee, in case the applicant has served a written notice of the application filing to others, the Layout-design Registration Certificate owner has, from the registration date, the right to claim, against the person who has used the layout-design for commercial purposes within the period from the date of being noticed to the registration date, compensation in a sum of money equivalent to a royalty payable for such a license to the layout-design.

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### Restrictions to the rights to layout-designs

The following acts shall not be regarded as infringing the rights to a layout-design conferred by a granted Layout-design Registration Certificate:

1. Using the layout design for non commercial purposes, including private use, evaluations, analysis, research or teaching, pilot production and other non-commercial use;
2. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit without knowing or having no reasonable ground to know the fact that a registration certificate in respect of the layout-design have been granted;
3. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit that have been obtained or ordered without knowing or having no reasonable ground to know the fact that a registration certificate in respect of the layout design have been granted, if such use is conducted after having known the fact and the user pays the Layout-design Registration Certificate owner a sum of money equivalent to a royalty payable under a licence with respect to the layout-design;
4. Distributing or importing a copy of the layout-design or a semiconductor integrated circuit manufactured by applying the layout-design or an article incorporating such a semiconductor integrated circuit that have been put into the market place, including foreign markets, by the Layout-design Registration Certificate owner, a licensee, or a lawful user provided for in paragraph 3 of this Article;
5. Using another original layout-design having been created on the basis of analysis and evaluation of the layout-design as provided for in paragraph 1 of this Article or an identical layout-design having been created independently by another person.

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### Obligation to pay remuneration to layout-design authors

The owner of a Layout-design Registration Certificate shall have the obligation to pay remuneration to the layout design author similar to such obligation of the invention patent owner as provided for in Article 141 of this Law, where applicable minimum rate of remuneration provided for in subparagraph a paragraph 1 Article 141 of this Law is 5%.

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### Dependent layout-designs

1. A dependent layout design means a layout design which can only be used on condition of using another layout design, an invention, or an industrial design that belongs to another person's rights conferred by a Protection Title granted upon an application with an earlier filing date or priority date.
2. With regard to a dependent layout design, the owner of Layout design Registration Certificate and licensees cannot exercise the right to use the layout design unless they are granted a license to use the subject matter on which the layout design is dependent, except for the limitations provided for in paragraph 5 Article 154 of this Law.

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### Infringement of rights of Layout-design Registration Certificate owners

1. The following acts shall be considered as an infringement of the right of the owner of a layout design:
  - a) Using the layout design within the validity term of the Layout design Registration Certificate without permission of the Certificate owner where the use does not fall under any of the limitations provided for in Article 154 of this Law.
  - b) Using the layout design without paying compensation in accordance with the provisions on provisional right to layout designs provided for in Article 135 where the use does not fall under any of the limitations or exceptions provided for in Articles 136, 137 and 138 of this Law.
2. The acts provided for in paragraph 1 of this Article performed with regards to any part of the layout design that fulfill the requirement of originality provided for in Article 73 of this Law shall also be considered as an infringement of the right of the owner the Layout design Registration Certificate.

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### Application of provisions on scope and limitations of rights to inventions

The provisions on rights of inventors, co-ownership of inventions, infringement of rights of inventors in Articles 142, 143 and 145 of this Law shall also apply to layout designs.

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#### Section 4. Rights and restriction to rights in trademarks

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#### Article 159. Rights of trademark owners

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1. A trademark owner shall have the following rights:

a) To use, allow or prohibit others from the using of the trademark pursuant to clause paragraph 3 of this Article:

b) To dispose by way of assignment of rights or conveyance of rights as a result of an event of consolidation, merger, separation or under a decision of the competent agency to the trademark, by way of inheritance or waiver of the entire or a part rights to the trademark.

2. In respect of the right to use of trademark referred in clause paragraph 1 of this Article, the owner of a certification mark shall have no right to direct use of the mark but right to allow or prohibit others from using the mark pursuant to rules on using certification mark registered.

3. The following acts shall be deemed as using trademark:

a) Affixing the trademark onto goods, goods' packages, means of supplying services and communicating papers in business activities:

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b) Circulating, offering for sale, advertising for sale and storing for sale, goods bearing the trademark:

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c) Importing goods or services bearing the trademark.

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#### Article 160. Rights of well-known mark owners

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In addition to the rights set out provided for in Article 159 of this Law, a well-known mark owner shall have the following rights:

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1. To prohibit others from registration of the trademarks that are identical with or confusingly similar to his/her own trademark which are used for identical or similar goods or services: or used for non-identical or dissimilar goods or services but possibly making consumers confused as to the origins of the goods or services or possible dilution of the reputation, goodwill, distinctiveness of the well-known mark.

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2. To prohibit others from using signs that are identical with or similar to the well-known mark, or using the signs being translated, transliterated from the well-known mark on non-identical or dissimilar goods or services or goods/services not relating to those bearing the well-known mark, if the act of use possibly makes it confused as to the origins of goods or services or causes wrong impression about the relationship between the person using the sign and the well-known mark owner.

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#### Article 161. Prior right to use trademarks

1. A person who, independently from the person who has filed an trademark registration application, used for goods or services listed in the application before the filing date of the application, and the connection between that trademark with the trademark user have been widely awaked of among consumers, such person shall be entitled to continue using the said trademark without the trademark owner's consent, provided the using scope is not expanded.
2. A person having prior right to use may not transfer such right to other persons, except where the whole prior right to use is transferred together with the business establishment where the prior use was made.
3. The trademark owner shall have the right to request that the person having the prior right to use the trademark referred to provided for in Clause paragraph 1 of this Article to supplement appropriate indications on the goods or services in order not to make it confused as to the origins of goods or services.

#### Article 162. Restriction to rights of trademark owners

The following acts shall not be considered as infringement of the trademark rights:

1. Using trademarks for non-commercial purposes;
2. Circulating, offering for sale, advertising for sale, storing for sale, importing goods or services bearing the trademark put into the market, including foreign market, by the trademark owners or its licensee.

#### Article 163. Obligations of collective mark and certification mark owners

1. The owner of a collective mark shall be obliged to supervise the compliance to the regulations to use the mark of individuals, entities entitled to use such collective mark.
2. The owner of a certification mark shall have the following obligations:
  - a) to respect the provisions of the rules on using the certification mark in certifying goods or services to be qualified to bear the mark;
  - b) to supervise the compliance to the rules on using the certification mark of individuals, legal entities entitled to use the relevant certification mark.
3. Where the collective mark or certification mark owner fails to comply with the regulations provided for in clause paragraphs 1 and 2 of this Article, the respective registration may be terminated in accordance with Article 100 of this Law.

#### Article 164. Infringement of trademark rights

The following acts done by third persons without permission of the trademark

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owner shall be considered as infringement of a protected trademark:

1. Using signs those are identical with a protected trademark for goods or services identical with or similar to those in the list attached to the protected trademark registration;
2. Using signs those are identical with a protected trademark for goods or services similar or related to those in the list attached to the trademarks registration if the use of the signs possibly makes it confused as to the origins of the goods or services;
3. Using signs those are similar to a protected trademark for the goods or services identical with, similar or related to those in the list attached to the trademark registration, if the use of the signs possibly makes it confused as to the origins of the goods or services;
4. Using signs those are identical with or similar to a well-known mark, or using signs being translated or transliterated of the well-known mark for any goods or services, including goods or services dissimilar or not related to those bearing the well-known mark, if the use of the signs possibly makes it confused as to the origins of the goods or causes wrong impression as to the relationship between the user of the signs and the well-known mark owner.

#### *Section 5. Scope and limitations of rights to trade names*

### **Article 165. Rights of owners of rights to trade names**

1. The owner of rights to a trade name shall have the following rights:
  - a) The right to use, permit ~~other persons~~ others to use or prohibit ~~other persons~~ others from using, the trade name as provided for in paragraph 2 of this Article;
  - b) The right to dispose of the whole rights to the trade name by way of assignment or transfer by virtue of consolidation, merger, separation, decision of a competent authority, inheritance or relinquishment.
2. The use a trade name means the conduct of any acts for commercial purposes by using the trade name in business activities, expressing it in transaction documents, signs, products, goods, and packages and means of service and advertisements.
3. The right to make contractual licensing or assignment or transfer by inheritance of rights to a trade name to others shall only be exercised together with the transfer of the entire business establishment and business activities under the trade name.

### **Article 166. Infringement of rights to trade names**

1. Any act of using such commercial indications which are identical with or similar to another person's trade name in respect of the same or similar goods or

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services that making confusion as to business entities, business establishments or business activities under the trade name shall be considered as being infringement of the rights to trade names.

2. The commercial indications referred to provided for in paragraph 1 of this Article means signs, information serving as guidelines to trade of goods and services, including marks, trade names, business symbols, business slogan, geographical indications and labels.

3. The use of commercial indications referred to provided for in paragraph 1 of this Article means any acts of affixing such commercial indications on goods, packages, service means, transaction documents, [and] advertising means, and of selling and advertising for sale, storing for sale and importing of goods affixed with such commercial indications.

#### ~~Rights of owners of rights to trade names~~

~~1. The owner of rights to a trade name shall have the following rights:~~

- ~~a) The right to use, permit other persons to use or prohibit other persons from using the trade name as provided for in paragraph 2 of this Article;~~
- ~~b) The right to dispose of the whole rights to the trade name by way of assignment or transfer by virtue of consolidation, merger, separation, decision of a competent authority, inheritance or relinquishment.~~

~~2. The use a trade name means the conduct of any acts for commercial purposes by using the trade name in business activities, expressing it in transaction documents, signs, products, goods, and packages and means of service and advertisements.~~

~~3. The right to make contractual licensing or assignment or transfer by inheritance of rights to a trade name to others shall only be exercised together with the transfer of the entire business establishment and business activities under the trade name.~~

#### ~~Infringement of rights to trade names~~

~~1. Any act of using such commercial indications which are identical with or similar to another person's trade name in respect of the same or similar goods or services that making confusion as to business entities, business establishments or business activities under the trade name shall be considered as being infringement of the rights to trade names.~~

~~2. The commercial indications referred to in paragraph 1 of this Article means signs, information serving as guidelines to trade of goods and services, including trademarks, trade names, business symbols, business slogan, geographical indications and etikets.~~

~~3. The use of commercial indications referred to in paragraph 1 of this Article means any acts of affixing such commercial indications on goods, packages,~~

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~~service means, transaction documents, [and] advertising means, and of selling and advertising for sale, storing for sale and importing of goods affixed with such commercial indications.~~

~~Section 6. Rights and Limitations to rights in geographical indication~~

**Article 167. ~~Rights of holders~~ owners of rights to geographical indication**

- ~~1. The ownership right to geographical indications shall belong to the State the state and shall be managed by the collective management organizations of the rights to geographical indications referred to provided for in Article 169 of this Law.~~
- ~~2. Organizations or individuals producing and trading qualified products with unique characteristics or quality in a geographical area corresponding to the geographical indication shall have the right to use such geographical indication in accordance with clause paragraph 3 of this Article.~~
- ~~3. Using a geographical indication means the conduct of the following acts:~~
  - ~~a) Affixing geographical indication to goods or goods packages;~~
  - ~~b) Circulating, offering for sale, advertising for sale, and storing for goods bearing the geographical indication;~~
  - ~~c) Importing goods bearing the geographical indication.~~

**Article 168. Obligations of geographical indication users**

Individuals and organizations entitled to use registered geographical indications shall have the following obligations:

1. Ensuring unique characteristics, quality or reputation of the products bearing geographical indications;
2. Carrying out requirements and creating favorable conditions for the competent agencies and organizations to inspect and examine unique characteristics and quality of products and goods bearing geographical indications where necessary.

**Article 169. Collective management organizations of rights to geographical indications**

1. A collective management organization of rights to geographical indications shall be the organization which manages and protects Vietnamese geographical indications.
2. The Government shall provide for the conditions for the establishment and operations of collective management organizations of rights to geographical indications.

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## **Article 170. Infringement of right to geographical indications**

The following acts shall be considered as being infringement of the rights to geographical indications:

1. Using a geographical indication under protection for goods which do not satisfy the unique characteristics and quality that have been registered in relation to that geographical indication;
2. Using a geographical indication under protection for goods, which are similar to the goods registered as to that geographical indication for the purposes of taking advantage of the reputation and goodwill of the protected geographical indication;
3. Using any commercial indication that is similar to the protection geographical indication causing wrong impression about the geographical origin of goods, including the case where the true origin of goods is stated or the geographical indication is translated into foreign languages or the geographical indication is used accompanied by such words as "kind", "type" or "adapted", or the like;
4. Using geographical indications for wines or spirit or geographical indications protection as appellations of origin for products that are not originated from the territories corresponding to these geographical indications, including the case where the true origin of goods is indicated or the geographical indication used in the form of transliteration or the geographical indication is used with such words as "kind", "type", or "adapted" or the like;

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## **Article 171. Restriction to rights to geographical indications**

1. An act of circulating and using products bearing a geographical indication put into market by the person having the right to use that geographical indication shall not be deemed as being an act infringing the right to that geographical indication.
2. Registration of geographical indication shall not affect the registration eligibility or validity of trademark registrations for the reason that the said trademark is identical with or similar to the geographical indication, if the application for the trademark registration has been filed in good faith or the trademark registration certificate has been granted in good faith of the applicant before the following date:
  - a) Effective date of this Law; or
  - b) Before the geographical indication in question has been protected in the country of that geographical indication.
3. The registration of geographical indication for wines or spirit shall not affect the right of any third persons having an act of using, or using that geographical indication in a similar way, if these persons have used the geographical indication consecutively in Vietnam for goods or services of the same kinds for

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at least 10 years before 15 April 1994, or have used the same in good faith manner before that date.

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*Section 7. Contents of and limitations to rights to business secrets*

**Article 172. Rights of the owners of business secrets**

1. The owners of business secrets shall have the following rights:
  - a) To use, or authorize ~~other persons~~ others to use or prohibit ~~other persons~~ others from using the business secret in accordance with ~~clause paragraph 2~~ of this Article;
  - b) To allow ~~other persons~~ others to access or disclose the business secret or prohibit ~~other persons~~ others from doing so.
  - c) Dispose of the rights by way of assignment of rights or conveyance of rights as a result of an event of consolidation, merger, and separation or under a decision of the competent agency, by way of inheritance or waiver of the whole rights to the business secret.
  - d) To keep the secrecy of the testing data and other confidential data as stated in the applications lodged with the agencies authorized to grant business licenses or circulation licenses in accordance with Article 174 of this Law.
2. Using a business secret means the conduct of the following acts:
  - a) Applying the business secret to manufacture products, supply services and trade in goods;
  - b) Selling, advertising for sale, storing for sale and importing products manufactured as a result of applying such business secret.

**Article 173. Acts of infringing the rights to business secrets**

1. The following acts shall be regarded as infringing upon the rights to business secrets:
  - a) Accessing or gathering information on business secrets by taking acts against secret-keeping measures of lawful controllers of business secrets.
  - b) Disclosing or using information on business secrets without permission of owners of such business secrets.
  - c) Breaching secret-keeping contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of, persons in charge of keeping secret in order to access, gather or disclose such business secrets.
  - d) Getting access to and/or gathering information on business secrets of others, when such business secrets are filed in accordance with procedures for granting business-related permits or permits for circulation of products by taking acts against secret-keeping measures of competent bodies.
  - ~~ded')~~ Using and/or disclosing information on business secrets, whether having

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known or being obliged to know that such business secrets gathered by others are relating to one of the acts as referred to provided for in subparagraph Clauses 1(a) to 1(d) a to d of paragraph 1 of this Article.

2. Lawful controllers of business secrets referred to provided for in clause paragraph 1 of this Article consist of the owners of business secrets, persons who are legally transferred with the rights to use business secrets, persons who manage business secrets.

#### **Article 174. Secret-keeping obligations of ~~the State~~ the state agencies**

1. In case where the laws provide that the applicants for permits to conduct business in or circulate pharmaceutical and agro-chemical products must provide testing results or any other data being the business secrets and the applicants request the keeping of secret of such information, then the relevant competent bodies shall have obligations to carry out necessary measures so that such data are not used for unfair commercial purposes and not disclosed except the case where the disclosure is necessary for protecting the public.
2. From the date on which the secret data stated in the application are delivered to the competent agency as referred to provided for in clause paragraph 1 of this Article to the end of 5-year period as from the date of lodgment of the application, the competent agency must not grant permits to ~~other persons~~ others if their applications for permits use such secret data either directly or indirectly, unless otherwise agreed by the applicant.

#### **Article 175. Acts not considered as infringing the ~~rights over~~ rights to business secrets**

The following acts shall not be regarded as infringements upon the rights to business secrets:

1. Disclosing or using business secrets gathered when not knowing or having no ground to know that such business secrets are gathered illegally by others.
2. Disclosing secret data specified in paragraph Clause 1 of Article 174 of this Law by competent bodies for the purpose of protecting the public.
3. Using secret data specified in paragraph Clause 1 of Article 174 of this Law not for commercial purposes.
4. Disclosing or using business secrets created independently.
5. Disclosing or using business secrets created from analyzing and/or evaluating legally distributed products, provided that the analyzers and/or evaluators do not have other agreement with owners of business secrets or sellers.

#### *Section 8. Right against unfair competition*

#### **Article 176. Right against unfair competition**

1. Organizations and individuals that suffer or are likely to suffer from damage

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caused by acts of unfair competition as specified in the Competition Law shall be entitled to directly take civil remedies set out provided for in Section Five of this Law or to request the court to do so.

2. Collective organizations which represent organizations and individuals and are legally established are entitled to represent their members to exercise the right as referred to provided for in paragraph Clause 1 of this Article.

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## **Chapter IX**

### **LICENSING OF INDUSTRIAL PROPERTY OBJECTS.** **ASSIGNMENT AND TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

#### *Section 1. Contractual licensing of industrial property object*

#### **Article 177. License contract of industrial property object**

1. A licensing contract of an industrial property object means such a contract whereby an industrial property owner (hereinafter ~~referred to as~~ referred to as licensor) permits another person (hereinafter ~~referred to as~~ referred to as licensee) to use the industrial property object within the scope of the formers use right (hereinafter ~~referred to as~~ referred to as contract for use of industrial property object).

A sub-license contract for use of an industrial property object means such a contract the licensor of which is a licensee of the industrial property object under another contract.

2. Contracts for use of industrial property object may be of the following types:
  - a) An exclusive license contract, which is such a contract whereby the licensee has an exclusive right to use the industrial property object while the licensor can, during the term of the contract, neither conclude any contracts for use of industrial property object with any third party nor use the industrial property object;
  - b) A non-exclusive license contract, which is such a contract whereby the licensor has the rights both to use the industrial property object and also to conclude non-exclusive contracts with others.

#### **Article 178. Restrictions to licensing of industrial property object**

1. The licensor shall only license the right to use the industrial property object within the scope of his or her own right. In the event that a dispute arises over the licensing, the licensor shall be responsible for settling.
2. The rights to use a geographical indication or a trade name shall not be licensed.

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3. The rights to use collective mark owners shall not be licensed to non-member organisations or individuals of the collective mark owner.
4. An exclusive licensee shall have the right to conclude with a third party a sub-license contract within the scope of the exclusive license contract. An non-exclusive licensee shall have the right to conclude a sub-license contract with the permission of the licensor.
5. The mark licensee shall have the obligation to indicate on the goods, packaging that the goods have been produced under a contract for use of mark.

#### **Article 179. Contents of contract for use of industrial property object**

1. A contract for use of industrial property object shall have the following substantial provisions:
  - a) Name and complete address of the licensor and the licensee;
  - b) Bases of the license;
  - c) Scope of the license, including type of license; limitations to use; territorial limitations; term of license);
  - d) Price for the license;
  - ~~dd)~~ Rights and obligations of the parties.
2. A contract for use of industrial property object shall not have the following provisions:
  - a) Prohibiting the licensee to improve the industrial property object other than marks; compelling the licensee to grant a free license, to assign the right to file an application for industrial property protection or to assign an industrial property right in respect of such improvements to the licensor;
  - b) Directly or indirectly restricting export of goods produced or services supplied under the contract for use of industrial property object to the territories where the licensor neither is the owner of the industrial property right in nor has the exclusive right to import such goods;
  - c) Compelling the licensee to buy all or a given percentage of materials, components or equipments from the licensor or the persons designated by the licensor without aiming at ensuring the quality of goods produced or services supplied by the licensee;
  - d) Prohibiting the licensee from contesting validity of the industrial property right or the right to license.
3. The provisions provided for in paragraph 2 of this Article, if incorporated in a contract upon agreement of the parties, shall be invalid ex-officio.

#### **Section 2. Assignment and transfer of industrial property rights**

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#### **Article 180. Forms of assignment and transfer of industrial property rights**

1. A contract of assignment of industrial property right means such a contract whereby an industrial property owner (hereinafter referred to as assignor) transmits, partially or wholly, the industrial property right to another person (hereinafter referred to as assignee) who becomes the owner of the industrial property right.

A contract of assignment of industrial property right shall be made in writing.

3. The transfer of industrial property rights may take the following forms:

- a) Inheritance;
- b) Consolidation, merger, division or separation of a legal person;
- c) Change in proprietary form;
- d) Decision of a competent authority.

#### **Article 181. Restrictions to assignment and transfer of industrial property rights**

1. An industrial property owner shall only dispose of his or her own right within the scope of protection.

2. The rights to a geographical indication shall not be assigned.

3. The rights to a trade name shall only be assigned together with the transfer of the entire business establishment and business activities under the trade name.

4. The assignment of the rights to marks shall not cause confusion as to characteristics or origin of the goods or services bearing the mark.

5. The rights to a mark shall only be assigned or transferred to the organizations or individuals who fulfill all requirements for the person having the right to file a registration in respect of that mark.

#### **Article 182. Substantial provisions contract of assignment of industrial property rights**

A contract of assignment of industrial property right shall have the following substantial provisions:

- 1. Name and complete address of the parties to the contract;
- 2. Bases of assignment;
- 3. Price for assignment;
- 4. Rights and obligations of the parties.

#### **Section 3. Effect and registration of licensing or assignment contracts and transfer of industrial property right**

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**Article 183. Effect of licensing or assignment contracts and transfer of industrial property right**

1. The assignment and transfer of the rights to an invention, an industrial design, a layout-designs or a mark shall only be effective upon registration with the state industrial property administration authority.
2. The licensing of the right to use an invention, an industrial designs, a layout-designs or a mark shall only be effective against a third party upon registration with the state industrial property administration authority.
3. Validity of a contract for use of industrial property object shall be terminated ex-officio upon the termination of licensor's industrial property right.

**Article 184. Dossier for registration of licensing or assignment contracts and transfer of industrial property right**

1. A dossier for registration of licensing or assignment contracts shall comprise the following:
  - a) A request for registration of contract, made in prescribed form;
  - b) An original or a valid copy of the contract;
  - c) The original of the Protection Title (in case of assignment of industrial property right);
  - d) Co-owners' written agreement on the licensing or assignment in case the relevant industrial property right is under co-ownership or a written explanation of the reason for disagreement of the rest co- owners;
  - ~~d)~~ 'd') Receipt of prescribed fees and charges;
  - e) Power of attorney, if any.
2. A dossier for registration of transfer of industrial property rights shall comprise the following:
  - a) A request for registration of transfer, made in prescribed form;
  - b) Documents evidencing the transfer;
  - c) The original of the Protection Title;
  - d) Power of attorney in case the dossier filed through a representative;
  - ~~d)~~ 'd') Receipt of prescribed fees and charges.

**Article 185. Processing dossier for registration of licensing or assignment contracts and transfer of industrial property right**

The Government shall promulgate detailed provisions on procedures of receiving and processing dossiers for registration of licensing or assignment contracts and transfer of industrial property rights.

Section 4. Compulsory licensing of inventions

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## **Article 186. Circumstances for compulsory licensing of inventions**

1. Compulsory licensing of the right to use an invention means the permission of using an invention given, compelled under a decision of a ~~State~~ state competent authority, by the ~~invention patent~~ Invention Patent owner or ~~utility solution patent~~ Utility Solution Patent owner (commonly referred to as referred to as patent holder) or an exclusive licensee of the patent owner (hereinafter referred to as referred to as the holder of the exclusive right to use an invention) to other organization or individual.
2. Compulsory licensing of the right to use an invention shall be made in the following cases:
  - a) Where the holder of the exclusive right to use the invention fails to fulfill the obligation of using such invention and the person who wants to use such invention cannot, in spite of efforts made for negotiation on reasonable price and commercial conditions, reach an agreement with the former upon the conclusion of a contract for use of industrial property object;
  - b) Where such use of that invention aims at the meeting of urgent needs of the society or for the public non-commercial purposes such as national defense, security, people's healthcare and nutrition.
3. Compulsory licensing of the right to use an invention in the case provided for in subparagraph a of paragraph 2 of this Article shall only be made after the expiration of 4 years from the filing date of the invention registration application and expiration of 3 years from the grant date the ~~invention patent~~ Invention Patent.

## **Article 187. Scope and conditions of compulsory licensing of inventions**

1. The right to use an invention under a compulsory license shall be in compliance with the following provisions:
  - a) Such right of use is non-exclusive;
  - b) Such right of use shall only be limited to such a scope and period sufficient to attain the aim of the compulsory licensing, and predominantly to meet the demand of the domestic market. With regard to an invention in semiconductor technology, the right of use shall only be compulsorily licensed for the public non-commercial purposes or as a remedy against an anti-competitive act under competition law;
  - c) A compulsory licensee shall not, neither assign, except with his/her business establishment nor sub-license, the right of use to others;
  - d) A compulsory licensee shall pay to the compulsory licensor an amount of money corresponding to the economic value of the right of use or equivalent to the price for a contractual license of the same scope and period;

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~~de)~~d') A compulsory licensor has the right to request for termination of the right to use when the circumstances for compulsory licensing provided for in Article 186 no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the compulsory licensee.

2. In addition to those conditions provided for in paragraph 2 of Article 186 and paragraph 1 of this Article, a compulsory license of the right to use an invention (pertaining to the first patent) in order to meet the need of using another invention dependent on that invention (pertaining to the second patent) must also meet the following additional conditions:

- a) The dependent invention pertaining to the second patent shall involve an important technical advance of considerable economic significance in relation to the invention pertaining to the first patent;
- b) The compulsory licensor of the right to use the invention pertaining to the first patent shall also be licensed the right to use the invention pertaining to the second patent on reasonable terms; and
- c) The right to use the invention pertaining to the first patent compulsorily licensed shall be non-assignable, except with the assignment of ownership of the second patent.

#### **Article 188. Procedures for compulsory licensing of inventions**

1. A decision on compulsory licensing shall be issued by the specialized State administration authority upon consideration of a request for compulsory licensing in cases provided for in subparagraph a of paragraph 2 of Article 186 of this Law or in the occurrence of circumstances referred to provided for in subparagraph a of paragraph 2 of Article 186 of this Law.
2. A decision on compulsory licensing shall ~~set out~~ be provided for appropriate scope and conditions of use in accordance with Article 187 of this Law and the time limit for fulfillment of the obligation of licensing.
3. A decision on compulsory licensing or a decision on refusal of compulsory licensing shall be subject to an administrative appeal or a judicial litigation in accordance with the laws.

#### **Section 6 Chapter IX**

#### **LICENSING OF INDUSTRIAL PROPERTY OBJECTS;**

#### **ASSIGNMENT AND TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

*~~Section 1. Contractual licensing of industrial property objects; assignment and transfer of rights to inventions/utility solutions~~*

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#### **License Article 141 — Assignment of the right contract to use inventions/utility solutions on a contractual basis of industrial property object**

1. A licensing license contract of an of industrial property object means such a contract whereby an industrial property owner (hereinafter referred to as licensor) permits another person (hereinafter referred to as licensee) to use the industrial property object within the scope of the former's use right (hereinafter referred to as contract for use of an industrial property object):

A sub-license contract for use of an industrial property object means such a contract the licensor of which is a licensee of the industrial property object under another contract.

2. Contracts for use of industrial property object may be of the following types:

- a) An exclusive license contract, which is such a contract whereby the licensee has an exclusive right to use the industrial property object while the licensor can, during the term of the contract, neither conclude any contracts for use of industrial property object with any third party nor use the industrial property object;
- b) A non-exclusive licence contract, which is such a contract whereby the licensor has the rights both to use the industrial property object and also to conclude non-exclusive contracts with others;

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#### **Restrictions onto licensing of industrial property object**

1. The licensor shall only license the right to use the industrial property object within the scope of his or her own right. In the event that a dispute arises over the licensing, the licensor shall be responsible for settling;

If the industrial property right belongs to several owners, each of the co-owners shall be entitled to transfer his or her respective part of the right on condition that the other co-owners so agree, or have no legitimate reasons to disagree or do not wish to obtain the parts of the right as transferees;

2. The rights to use a geographical indications or a trade names a shall not transferable be licensed;

3. The rights to use a collective mark owners shall not be licensed to non-member organisations or individuals of the collective mark owner;

4. An exclusive licensee shall have the right to conclude with a third party a sub-license contract within the scope of the exclusive license contract. An non-exclusive licensee shall have the right to conclude a sub-license contract with the permission of the licensor;

5. The mark licensee shall have the obligation to indicate on the goods, packaging that the goods have been produced under a contract for use of mark;

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#### **The transfer of industrial property rights over trademarks shall**

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~~not cause confusion over the characteristics or origin of the goods or services bearing the trademarks;  
The transfer the ownership right on an associated mark shall be concurrently carried out together with all associated marks;  
The transfer of the ownership of a well-known mark must ensure the goodwill of the traders of the goods and services bearing the well-known mark.~~

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~~2. Contents of contract for use of an industrial property object~~

- ~~1. A contract for use of industrial property object shall have the following substantial provisions:
  - ~~a) Name and complete address of the licensor and the licensee;~~
  - ~~b) Bases of the license;~~
  - ~~c) Scope of the license, including type of license; limitations to use; territorial limitations; term of license);~~
  - ~~d) Price for the license;~~
  - ~~d' Rights and obligations of the parties;~~~~
- ~~2. A contract for use of industrial property object shall not have the following provisions:
  - ~~a) Prohibiting the licensee to improve the industrial property object other than marks; compelling the licensee to grant a free license, to assign the right to file an application for industrial property protection or to assign an industrial property right in respect of such improvements to the licensor;~~
  - ~~b) Directly or indirectly restricting export of goods produced or services supplied under the contract for use of industrial property object to the territories where the licensor neither is the owner of the industrial property right in nor has the exclusive right to import such goods;~~
  - ~~c) Compelling the licensee to buy all or a given percentage of materials, components or equipments from the licensor or the persons designated by the licensor without aiming at ensuring the quality of goods produced or services supplied by the licensee;~~
  - ~~d) Prohibiting the licensee from contesting validity of the industrial property right or the right to license;~~~~
- ~~3. The provisions provided for in paragraph 2 of this Article, if incorporated in a contract upon agreement of the parties, shall be invalid ex-officio.  
The [assignment] of the right of the owner of an invention/utility solution patent to allow other people (the licensing) to use the invention/utility solution must be made under a written contract (a licensing contract) in compliance with the legislation concerning civil and economic contracts.~~

2. To the extent and subject to the terms stated in a licensing contract, the licensee has the following rights:-

- a) to use the invention/utility solution either exclusively or non-exclusively;
- b) sub-license a third party subject to consent of the owner of the patent.

3. A licensing contract shall only be valid if it is acknowledged by the Invention/Utility Solution Registration Authority at the request of the contracting parties.

4. A licensing contract shall be automatically suspended or revoked upon the suspension or revocation of the invention/utility solution patent of the licensor to the invention/utility solution.

## Section 2. Assignment and transfer of industrial property rights

### Forms of assignment and transfer of industrial property rights

1. A contract of assignment of industrial property right means such a contract whereby an industrial property owner (hereinafter referred to as assignor) transmits, partially or wholly, the industrial property right to another person (hereinafter referred to as assignee) who becomes the owner of the industrial property right.

A contract of assignment of industrial property right shall be made in writing.

The transfer of industrial property rights may take the following forms:

- a) Inheritance;
- b) Consolidation, merger, division or separation of a legal person;
- c) Change in proprietary form;
- d) Decision of a competent authority.

### Restrictions to assignment and transfer of industrial property rights

- 1. An industrial property owner shall only dispose of his or her own right within the scope of protection.
- 2. The rights to a geographical indication shall not be assigned.
- 3. The rights to a trade name shall only be assigned together with the transfer of the entire business establishment and business activities under the trade name.
- 4. The assignment of the rights to a marks shall not cause confusion as to characteristics or origin of the goods or services bearing the mark.
- 5. The rights to a mark shall only be assigned or transferred to the organisations or individuals who fulfill all requirements for the person having the right to file a registration in respect of that mark.

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## Substantial provisions contract of assignment of industrial property rights

A contract of assignment of industrial property right shall have the following substantial provisions:-

1. Name and complete address of the parties to the contract;
2. Bases of assignment;
3. Price for assignment;
4. Rights and obligations of the parties.

### Chapter X

## INDUSTRIAL PROPERTY REPRESENTATIVES

### Article 189. Industrial property service agency and Industrial property agent

1. An industrial property service agency means an organization that is satisfied all conditions for conducting industrial property service business stipulated in the Article 193 of this Law.
2. An industrial property agent means a member of an industrial property service agency who is satisfied all conditions for practicing industrial property service business stipulated in the Article 192 of this Law.
3. An industrial property representative refers to an industrial property service agency or industrial property agent.

### Article 190. Rights of industrial property representatives

1. An industrial property representative shall have the following rights:
  - a) To represent other persons others before the State the state competent authority in respect of establishment and protection of industrial property rights;
  - b) To advise on issues relating to procedures for establishment and protection of industrial property rights;
  - c) To provide other services concerning procedures for establishment and protection of industrial property rights;
2. The industrial property service agency shall be entitled to provide services within the scope of authorization and to re-authorize the other industrial property service agency only with the written consent of the authorizing party.
3. The industrial property service agency shall be entitled to waive its industrial property service business if it has legally transferred all pending works to another industrial property service agency.

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## Article 191. Obligations of industrial property representatives

1. An industrial property representative shall have the following obligations:
  - a) To specify national fees and charges and their rates relating to procedures for establishment and protection of industrial property rights, service charges and their rates under a list registered at the State the state competent authority;
  - b) To keep confidential all the information and documents relating to a case in which it represents;
  - c) To inform truthfully and adequately all notifications, requirements of the State the state competent authority in respect of establishment and protection of industrial property rights; deliver in time the Protection Title and other Decisions to a represented party;
  - d) To protect interests of the represented party by satisfying in time all requirements for a represented party of the State the state competent authority;
  - de d') To notify to the State the state competent authority in respect of establishment and protection of industrial property rights about all changes to a name, address and other information of a represented party, if necessary.
2. An industrial property agent shall only work for an industrial property service agency of which he/she is a member.
3. An industrial property representative shall be responsible for all issues relating to its representation.
4. An industrial property representative shall not conduct following acts:
  - a) Acting on behalf of the State the state competent authority in respect of establishment and protection of industrial property rights to exercise competences of such authority;
  - b) Representing simultaneously conflicting parties;
  - c) Withdrawing an application for granting the Protection Title, declaring abandonment of protection, withdrawing an appeal application against the establishment of industrial property rights without a permission of authorizing party;
  - d) Deceiving or forcing its clients to enter into industrial property representative services contracts.
  - de d') Disclosing information relating to national security and interests when conducting its representative business.

## Article 192. Conditions for practicing industrial property service business

1. An individual who satisfied the following conditions shall be granted a Certificate of practicing as an industrial property representative and entitled to practice as an industrial property agent:

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a) Being a Vietnamese citizen, having full capacity for civil acts;

b) Residing in Vietnam;

c) Having obtained a university degree;

d) Having been directly worked in the field of industrial property legislation for at least 5 consecutive years; or having been directly worked in the field of examination of industrial property applications at national or international industrial property offices for at least 5 consecutive years; or having obtained a certificate of graduation from a training course on industrial property laws and profession under a stipulated program which was organized by the State the state competent authority;

~~d)~~ Not being an official or a public servant who is working for State management authorities in respect of establishment and protection of industrial property rights;

e) Having passed an examination on prevailing industrial property laws and regulations organized by a competent authority.

2. Provisions on training programs on industrial property laws and profession, examination and grant of Certification of practicing industrial property service business shall be regulated by the Government.

#### **Article 193. Conditions for conducting industrial property service business**

1. An organization that satisfied the following conditions shall be entitled to conduct industrial property service business as an industrial property service agency:

a) Being an enterprise established and operating in accordance with the Law on State Enterprises, the Law on Enterprises; or being a law firm, an associated law firm established and operating in accordance with the Ordinance on Lawyers; or being a scientific and technological service organization established and operating in accordance with the Law on Science and Technology;

b) Having a function of conducting industrial property service business which is recorded in a registration certificate of business of the enterprise, or in a registration certificate of operation of a law firm or in a registration certificate of operation in the field of science and technology of a scientific and technological service organization (collectively referred to as referred to as the registration certificate of operation);

c) A head of the organization or a person authorized by the head shall satisfy all conditions with regard to the industrial property agent stipulated in Article 192 of this Law.

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#### **Article 194. Recognition, deletion, abandonment of conducting and practicing industrial property service business**

1. An organization, an individual that satisfied all conditions for conducting and practicing industrial property representative service business stipulated in the Article 192 and 193 of this Law shall be published in the Industrial Property Official Gazette and recorded in the National Register of Industrial property representatives.

2. A competent authority in respect of granting the registration certificate of operation shall revoke the Certificate or delete the field of industrial property service business (in case the organization have been conducting businesses in other fields) in circumstances stipulated by laws on enterprises, on law firms and on scientific and technological organizations, and in the following situations:

- a) An industrial property service agency declares abandonment of its activities in the field of industrial property service business;
- b) An industrial property service agency violates provisions of Article 191 of this Law;
- c) A industrial property agent makes serious profession mistakes while practicing or violates provisions of this Law, that damage service users and the others or State authorities.

A competent authority in respect of granting the registration certificate of operation shall notify the State the state competent authority revocation of the certificate in order to delete in the National Register the name of the agency of which the certificate is revoked.

3. A Decision of revocation of the registration certificate of operation and a Decision of deletion of the field of industrial property service business shall be published in the Industrial Property Official Gazette.

In case the registration certificate of operation of an industrial property service agency is revoked, all pending works conducted by such agency may be suspended and be continued within a period of 3 months from the publication date on which the Decision of revocation of the registration certificate of operation is published on the Industrial Property Official Gazette.

4. An agency of which the registration certificate of operation is revoked, the field of industrial property service business is deleted or declared to abandon shall be responsible for notifying the termination of its business and transferring documents and information relating to pending procedures to a represented party or to an industrial property service agency at the request of the represented party.

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#### **Part Four**

#### **RIGHTS TO NEW PLANT VARIETIES**

## Chapter XI

### PROTECTED SUBJECT MATTERS AND PROTECTION CONDITIONS PROTECTION REQUIREMENTS

#### Article 195. Plant varieties and protection conditions protection requirements

1. Plant variety is a plant grouping within a single botanical taxon of the lowest known rank and homogeneous form which grouping can be defined by the expression of the characteristics resulting from a given genotype and distinguished from any other plant grouping by the expression of at least one of the said genetic characteristics.
2. A protected plant variety means the variety which is created or discovered and developed, which falls under the list of plant varieties protected by the State the state and which must be new, distinct, uniform and stable and must have an appropriate appellation denomination (to be referred to as referred to as "new plant variety").

#### Article 196. Novelty

A plant variety shall be regarded to be new if its propagating materials or harvested products have not been sold or otherwise distributed by or with the consent of the breeder for the purpose of exploitation of such plant variety in the territory of Vietnam in which the application has been filed earlier than one year before that date and outside the territory of Vietnam where the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

#### Article 197. Distinctiveness

1. A plant variety shall be deemed to be distinct if it is clearly distinguishable by one or more fundamental particularities, from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.
2. A plant variety of common knowledge as referred to provided for in clause paragraph 1 of this Article means a plant variety in one of the following cases:
  - a) It is no longer new.
  - b) In respect of that plant variety an application for protection registration or a registration application has been lodged under a list of plant varieties in any other country being a member of an international treaty of which

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Vietnam is also a member.

- c) The detailed description of that variety or its propagating materials has been available in a grouping that has been published in Vietnam one year prior to the date of lodgment of an application for protection registration; or in another country being the member of an international treaty on protection of plant varieties of which Vietnam is also a member four years before the date of filing the application or, in the case of trees or of vines, six years before the said date.

#### Article 198. Uniformity

A plant variety shall be deemed to be uniform during its propagation if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

#### Article 199. Stability

A plant variety shall be regarded to be stable if its relevant characteristics remain unchanged as they are initially described after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

#### Article 200. Appropriate ~~appellation~~ denominations

1. The ~~appellation~~ denomination of a plant variety shall be regarded as appropriate if it is easily distinguishable from those of other plant varieties of the same species or similar species of common knowledge.
2. The following ~~appellation~~ denominations shall not be regarded as appropriate:
  - a) Consisting of only numerals;
  - b) Violating social ethics;
  - c) Easily causing misunderstanding of the characteristics and properties of the species or the author's biography;
  - d) Being identical or confusingly similar to marks, trade names or geographical indications already protected prior to the date of filing application.
  - ~~de)~~ d') Being identical or similar to harvested products of such plant varieties bearing such ~~appellation~~ denomination.

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## **Chapter XII**

### **ESTABLISHMENT OF RIGHTS TO NEW PLANT VARIETIES**

#### *Section 1. Establishment of rights to new plant varieties*

##### **Article 201. General principles**

1. The ~~rights over~~rights to plant varieties are established under a decision to grant a ~~protection title~~Protection Title issued by the ~~State management agency in charge of plant variety~~the state administration authority of plant variety during the course of registering the protection of a new plant variety in accordance with the provisions of this Law.
2. The rights to a new plant variety mean the rights of the person who created or discovered and developed such variety by his/her own efforts and funds or of the organization or individual that has invested in the creation, discovery and development of that new variety by way of hiring or assignment, unless it is otherwise agreed in the contract.

##### **Article 202. Lodgment of applications for ~~protection titles~~Protection Titles for new plant varieties**

1. To be granted with a ~~protection title~~Protection Title for a new plant variety, a relevant organization or individual must lodge an application for that purpose with the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety in accordance with this Law.
2. Vietnamese individuals and organizations; foreigners permanently residing in Vietnam and foreign organizations with a business establishment in Vietnam may file an application for ~~protection title~~Protection Title either directly or through their lawful representatives in Vietnam.
3. Foreigners not permanently residing in Vietnam and foreign organizations without a business establishment in Vietnam must file an application for ~~protection title~~Protection Title through their lawful representatives in Vietnam.

##### **Article 203. Principles of filing first application**

1. If two or more independent persons lodge an application for ~~protection title~~Protection Title in respect of one and the same new plant variety on different dates, the ~~protection title~~Protection Title shall only be granted to the person who first lodges the application.
2. If several applications ~~referred to~~provided for in ~~clause~~ paragraph 1 of this Article are lodged on the same day, the ~~protection title~~Protection Title shall only be granted to the person under whose name a joint and unique application is lodged subject to consensus among all the applicants. If such

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consensus is not reached, a ~~protection title~~Protection Title shall not be considered to be granted to any applicant with regard to the subject matter stated in the application, except where it is possible to identify the author who first created or discovered and developed the plant variety in which case the ~~protection title~~Protection Title shall only be granted to person who lodged an application for registration of such plant variety.

**Article 204. Right of priority of applications for protection of new plant varieties**

1. The person filing an application is entitled to ~~request for~~claim the right of priority on the basis of the first filed application with respect to the same plant variety (the first application) if:
  - a) The application for registration is filed within 12 months after the date of filing the first application in a country being a member of an international treaty on protection of plant varieties of which Vietnam is also a member;
  - b) The plant variety has been named in the List of plant varieties permitted to be produced and traded in Vietnam within one year as at the date of filing.
2. To enjoy the right of priority, the applicant for such right must file is/her request within no more than 3 months as from the date of filing of the registration application, and must simultaneously produce copies of the documents relating to the first application as certified by the competent agency and evidence of the fact that the new plant variety stated in those two applications is the same and must pay prescribed fees. The applicant may produce information and materials or necessary things to the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety for examination in accordance with Articles 213 and 214 of this Law within 2 years from the expiry date of the term of the right of priority or within a reasonable period of time after the first application is rejected or withdrawn.
3. The date of priority of an application for registration with claims of right of priority shall be the date of filing the first application or the date on which the variety is included in the list ~~referred to~~provided for in ~~clauses~~subparagraph b of paragraph 14**(b)** of this Article.

**Article 205. The ~~protection title~~Protection Title of plant varieties and National Registry**

1. A ~~protection title~~Protection Title of a new plant variety acknowledges the ownership right to the new plant variety (to be ~~referred to as~~referred to as the holder of the ~~protection title~~Protection Title), the author of the plant variety and the term of protection of the plant variety.
2. The registration of plant varieties is made in the form of recording the grant of a ~~protection title~~Protection Title and its contents in the National Registry of

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Plant Varieties established and kept by the ~~State management agency in charge of plant varieties~~state administration authority of plant variety.

**Article 206. Validity of the ~~protection title~~Protection Title of plant varieties**

1. A ~~protection title~~Protection Title of new plant varieties is valid in the entire territory of Vietnam.
2. A ~~protection title~~Protection Title of pant varieties shall be valid for 20 years; and 25 years with respect to vines and other trees, as from the date of filing, provided that the holder of the ~~protection title~~Protection Title must pay annual maintenance fee.

**Article 207. ~~-Termination of the validity of protection titles of plant varieties~~Plant Variety Protection Titles**

1. The validity of a ~~protection title~~Protection Title of plant varieties shall be terminated in the following circumstances:
  - a) The holder of the ~~protection title~~Protection Title fails to pay annual maintenance fees;
  - b) The holder of the ~~protection title~~Protection Title waives his/her rights to the plant varieties;
  - c). The holder of the ~~protection title~~Protection Title no longer exists without a lawful successor.
  - d) The plant variety no longer meets the conditions with regard to the uniformity and stability at the time of the ~~protection title~~Protection Title.
  - ~~dd)~~d') The holder of the ~~protection title~~Protection Title fails to provide materials or necessary propagating things at the request of the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety.
2. With respect to the circumstances as ~~referred to~~provided for in subparagraph a of paragraph~~Clause 1(a)~~ of this Article, upon the expiration of the time limit for payment of annual maintenance fee, the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety shall issue a decision to terminate the validity of the ~~protection title~~Protection Title as from the first date of the effective year for which the fee is supposed to be paid.
3. In the circumstance of declaration by the holder of a ~~protection title~~Protection Title to waive his rights to the plant variety as ~~referred to~~provided for in ~~clauses~~subparagraph b of paragraph 1~~(b)~~ of this Article, the ~~State management agency in charge of plant varieties~~state administrative authority of plant

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variety, after receiving such declaration, shall issue a decision to terminate the validity of such ~~protection title~~Protection Title as from the date it receives such declaration from the holder of the ~~protection title~~Protection Title.

4. In the circumstance ~~referred to~~provided for in ~~clauses~~subparagraphs c, d, and d' of paragraphs 1(c), (d) and (dd) of this Article, any organization or individual may request the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety to terminate the validity of a ~~protection title~~Protection Title.
5. On the basis of the consideration of a request for termination of such ~~protection title~~Protection Title and comments from related parties, the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety shall either issue a decision to terminate the validity of such ~~protection title~~Protection Title or serve a notice of refusal to do so.

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#### **Article 208. ~~Cancellation of~~ the validity of ~~protection titles of plant varieties~~Plant Variety Protection Titles**

1. The validity of a ~~protection title~~Protection Title shall be wholly cancelled in the following circumstances:
  - a) The application for registration for protection of a new plant variety is not lodged by the person with the right to lodge an application, except where the right to the new plant variety has been conveyed to the person with the right to lodge an application at his/her request.
  - b) The protected plant variety does not meet the conditions with regard to the novelty, distinctiveness, uniformity or stability at the time of the ~~protection title~~Protection Title.
2. During the term of validity of a ~~protection title~~Protection Title, any organization or individual may request ~~the State~~the state management agency in charge of plant varieties to cancel the validity of a ~~protection title~~Protection Title.

On the basis of the consideration of such request for cancellation of the validity of a ~~protection title~~Protection Title and comments from related parties, the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety shall issue a decision either to cancel the validity of such ~~protection title~~Protection Title or refuse to do so.

#### **Article 209. ~~Modifying~~Amendment of ~~protection titles of plant varieties~~Plant Variety Protection Titles**

The holder of a ~~protection title~~Protection Title of a new plant variety may request ~~the State~~the state management agency in charge plant varieties to record the following information provided that prescribed fees and charges must be paid:

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1. Changes and rectifications of errors relating to the name and address of the holder of the ~~protection title~~Protection Title.
2. Changes of the holder of the ~~protection title~~Protection Title.
3. Changes to the names of the plant varieties.

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#### **Article 210. Publication of decisions relating to the ~~rights over~~rights to plant varieties**

Any decision relating to the establishment, modification, termination suspension, cancellation annulment and transfer of ~~rights over~~rights to plant varieties shall be published by ~~the State~~the state management agency in charge of announced by the plant varieties registration Body in the Official Gazette on Plant Varieties within 60 days from the date of issuing such decision.

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#### *Section 2. Applications for protection registration of new plant varieties*

#### **Article 211. General requirements for application for protection registration of new plant varieties**

1. Application for protection registration of a new plant variety consists of the following documents:

- a. Declaration of registration of plant variety for protection;
- b. Technical declaration photos;
- c. Power of attorney if filed through representative;
- d. Motion for right of priority right and documents evidencing such right of priority if the applicant is the transferee of the filing right;
- ~~de-d')~~ Documents evidencing the payment of fees and charges.

2. Documents evidencing the right of priority of an application for protection registration of a new plant variety comprise of the following:

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- a. Copy(ies) of the first application(s) with certification of the application receiving agency;
- b. Documents evidencing the transfer of the right of priority as the case may be.

#### *Section 3. Processing applications and granting ~~protection titles~~Protection Titles of new plant varieties*

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**Article 212. Receiving applications for protection registration of new plant varieties**

1. An application for protection registration of a new plant variety shall only be received by the State management agency in charge of new plant varietiesstate administrative authority of plant variety when it contains in full all the documents ~~set out~~ provided for in Article 213.1 of this Law.
2. The date of lodgment of the application shall be the date on which the application is received by the State management agency in charge of new plant varietiesstate administrative authority of plant variety.

**Article 213. Examination of the form of applications for protection registration of plant varieties**

1. The State management agency in charge of new plant varietiesstate administrative authority of plant variety shall examine the form of an application for protection registration of a new plant variety within 15 days from the date of receipt of the application in order to determine its validity.
2. An application for protection registration of a new plant variety shall be rejected under the following circumstances:
  - a)- The application does not meet the formal requirements.
  - b)- The plant variety referred to provided for in the application is not one of those named in the list of protected plant varieties:
  - c)- The application is not filed by the person with the right to file application including the case where the right to file application jointly belongs to organizations, individuals but one of them does not agree with the filing of the application;
  - d)- The applicant fails to pay prescribed charges and fees.
3. The State management agency in charge of new plant varietiesstate administrative authority of plant variety shall carry out the following procedures:
  - a)- Issuing a notice of refusal to receive the application specifying the reason, with regard to the cases referred to provided for in clauses subparagraphs b and c of paragraphs 2(b) and 2(c) of this Article.
  - b)- Issuing a notice to the applicant in respect of the errors in the application, with regard to the cases referred to provided for in clauses subparagraphs a and d of paragraphs 2(a) and 2(d) of this Articles and fixing a period of 30

days as from the date of the receipt of the notice ~~by the applicant~~ for him to rectify those errors.

c)- Issuing a notice of refusal to receive the application if the applicant fails to rectify the errors mistakes or does not have reasonable complaint about the notice of refusal ~~referred to~~ provided for in ~~clause~~ subparagraph a of paragraph 3(a) ~~above~~ of this Article;

d) C.- Completing the procedures ~~referred to~~ provided for in ~~clause~~ paragraph 4 of this Article, if the applicant properly rectifies the errors or makes a reasonable complaint about the notice of intent ~~referred to~~ provided for in ~~clause~~ paragraph 3(a) ~~above~~ of this Article.

4. If the application is proved to be valid, the ~~State management agency in charge of plant varieties~~ state administrative authority of plant variety shall be responsible to do the following:

a)- To accept the application.

b)- To publish it in the specialized bulletin ~~(magazine)~~ within 90 days from the date the application is proved to be valid.

c)- To notify the applicant so that he/she is going to send propagating materials to the agency for examination.

5. The publication shall include the date of lodgment of the application, the applicant, name of the plant variety, name of the species and the date on which the application is proved to be valid.

#### **Article 214. Examination of the contents of application for protection registration of plant varieties**

The contents of an application which has been accepted to be valid shall be examined by the ~~State management agency in charge of plant varieties~~ state administrative authority of plant variety. The examination details comprise the following:

1. Whether or not the plant variety stated in the application is new and has appropriate ~~appellation~~ denomination.

2. Examination of the distinctiveness, uniformity and stability of the plant variety stated in the application.

3. The ~~State management agency in charge of plant varieties~~ state administrative authority of plant variety shall directly examine such plant variety or authorize a qualified organization or individual to do so or may use previous examination results.

4. The ~~State management agency in charge of plant varieties~~ state administrative

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authority of plant variety shall provide for the time limit and procedures for examination of the contents of an application for protection registration of new plant variety.

#### **Article 215. Publication of applications for protection registration of plant varieties**

All applications for registration of plant varieties shall be published in a specialized bulletin (magazine) on plant varieties.

#### **Article 216. Third persons' opinions**

Within 60 days from the date an application for protection registration of a new plant variety is published in a specialized bulletin on plant varieties, any third person shall have the right to provide opinions to the State management agency in charge of plant varietiesstate administrative authority of plant variety on the issue or refusal to issue a ~~protection title~~Protection Title for that new plant variety. Those opinions shall only be considered if they are made in writing with arguments and necessary documents to protect those arguments.

#### **Article 217. Refusing to grant ~~protection titles~~Protection Titles for of plant varieties**

An application for protection registration of a new plant variety shall be refused for being granted with a ~~protection title~~Protection Title if it does not meet any condition set out provided for in Article 195.2 of this Law. In case of such refusal, the State management agency in charge of plant varietiesstate administrative authority of plant variety shall carry out the following procedures:

1. Issuing a notice of intent of refusal to grant a ~~protection title~~Protection Title specifying the reasons and fixing a time limit for the applicant to rectify the errors or to make a reasonable complaint about that intent;
2. Issuing a notice of refusal to grant a ~~protection title~~Protection Title if the applicant fails to rectify the errors and does not make a reasonable complaint about the notice of intent referred toprovided for in clause paragraph 1 of this Article;
3. Carrying out procedures in accordance with Article 218 of this Law if the applicant properly rectifies the errors or makes a reasonable complaint about the notice of intent referred toprovided for in clause paragraph 1 of this Article.

#### **Article 218. Grant of ~~protection titles of plant varieties~~Plant Variety Protection Titles**

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If an application for protection registration of a new plant variety does not fall within any of the cases of refusal referred to provided for in Article 217 of this Law and if the applicant pays in full all the prescribed fees, the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety shall decide to grant a ~~protection title~~Protection Title of that plant variety and record it in the National Registry for Plant Varieties.

**Article 219. Protesting against a grant or refusal to grant ~~protection titles~~Protection Titles; re-examination of applications for protection registration of plant varieties**

1. An applicant and any third party with rights and benefits directly relating to the grant of, or refusal to grant, a ~~protection title~~Protection Title of a new plant variety has the right to protest against those relevant decisions.
2. If any decision to grant, or refusal to grant, a ~~protection title~~Protection Title is protested against, the relevant application for registration of new plant variety shall be re-examined in respect of the issues being protested against.
3. Procedures and sequence for re-examination are in accordance with Articles 213 and 214 of this Law.

**Chapter XIII**

**RIGHTS AND OBLIGATIONS OF ~~HOLDERS~~OWNERS  
OF PROTECTION TITLES  
OF NEW PLANT VARIETIES**

**Article 220. Rights of ~~holders~~owners of ~~protection titles~~Protection Titles of new plant varieties**

The ~~holders~~owners of a ~~protection title~~Protection Title of new plant varieties shall have the following rights:

1. To use, permit or forbid others to use, the protected plant varieties or their propagating materials for in business purpose;
2. To transfer the right to use the protected plant varieties to others;
3. To allow others to conduct the following acts relating to the propagating materials of the protected plant variety or prohibit others from doing so:
  - a) Produce or propagate.
  - b) Process the variety.

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c) Offering for sale.

d) Sale or conduct other acts to access the market.

~~dd)~~ Export.

e) Import.

g) Store for the purpose of conducting the above acts.

4. To bequeath, transfer or assign the ownership right to the plant variety in accordance with the law.

5. To directly protect his/her rights in accordance with this Law and other relevant legislation or request competent State agencies to do so.

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#### **Article 221. Temporary ~~rights over~~rights to plant varieties**

1. Temporary rights to a new plant variety mean the rights of the owner of the rights to such plant variety which arise from the publication of the application for protection registration of that plant variety and last until the date of grant of a ~~protection title~~Protection Title.

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2. The owner of the temporary ~~rights over~~rights to a plant variety is entitled to request a third party, who has exploited such variety for commercial purpose, to pay a compensation equivalent to the transfer price with respect to such plant variety.

#### **Article 222. Limitations to ~~rights over~~rights to plant varieties**

The following activities shall not be deemed as infringements upon the rights to plant varieties:

1. Using the new plant varieties for personal use and non-commercial purpose;

2. Using plant varieties for the purpose of propagation and scientific research;

3. Using the harvested products by farmers collected from the protected plant varieties to carry out propagation by themselves and further cultivate so propagated varieties for the following crop on their area of land, provided that propagating materials are used lawfully.

4. Using the materials of the protected plant varieties and other plant varieties brought out to the market including overseas market by the ~~holders~~owners of ~~protection titles~~Protection Titles, the transferees of right to use, the transferee of the right to use such plant varieties on a compulsory basis, except where such use is aimed at propagation and export of propagating materials to a country where such plant varieties are not protected for the purposes of commercial exploitation.

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The materials of the protected plant varieties as mentioned above may comprise propagating materials, harvested products or any other products directly produced from the harvested products of the protected plant varieties;

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#### **Article 223. Extension of rights to other plant varieties**

~~The rights over~~rights to plant varieties specified in Article 220 of this Law shall also apply to other plant varieties, subordinated plant varieties as follows:

1. ~~Plant varieties essentially originating from the protected plant varieties when such protected plant varieties themselves are not those essentially originating from another protected plant variety;~~
2. ~~Plant varieties which are not clearly distinctive from the protected plant varieties;~~
3. ~~Plant varieties the production of which requires repeated use of protected plant varieties.~~

#### **Article 224. Obligations of ~~the the holders of protection titles of plant varieties~~Plant Variety Protection Title owner**

~~The Plant Variety holders of a protection title~~Protection Title of a plant varietyowner shall have the following obligations:

1. ~~To pay remuneration to the author as agreed. If there is no such agreement on remuneration between the authors and the holder of the protection title~~Protection Title owner, the remuneration rate shall be in accordance with the law.
2. ~~To pay maintenance fees as stipulated.~~
3. ~~To store the protected plant variety, provide propagating materials of the protect plant varieties to the State management agency in charge of plant varieties~~state administrative authority of plant variety and maintain the stability of the protected plant variety as stipulated.
4. ~~To use the protected plant variety in order to meet the reasonable demand of society.~~
5. ~~To use the appellation~~denomination of the protected plant variety even if the validity of the ~~protection titles~~Protection Titles has expired.

#### **Article 225. Rights and obligations of the authors of new plant varieties**

1. ~~The authors of a plant varietiesy~~ shall have the following rights:

- a-) ~~To have their~~be named~~s inscribed in the capacity of~~as -the authors in the ~~protection titles~~Protection Title, the ~~National Registry of protected plant varieties~~Plant Variety National Registry as well as in the publication documents on plant varieties;
- b-) ~~To receive remuneration in accordance with paragraph 1 Article 224-4 of this Law;~~
- c-) ~~To bequeath the right to remuneration;~~

d-) To request competent bodies to deal with or take legal action against a third party who infringes the rights as specified in points subparagraphs a and b of this Clauseparagraph.

2. The authors of plant varieties have the obligations to assist the holdersowners of protection titles of plant varietiesPlant Variety Protection Titles in maintaining propagating materials of the protected plant varieties.

**Article 226. Infringements of the rights of holdersowners of protection titlesProtection Titles and authors of plant varieties**

The following activitiesacts shall be considered as infringements upon to infringe the rights holders of the protection titlesProtection Titles owner and authors of plant varieties:

1. Exploiting and using the rights of holdersowners of protection titles of plant varietiesPlant Variety Protection Titles without their consent;
2. Using appellationdenominations of plant varieties which are identical or similar to those of the protected plant varieties for other's protected plant varieties of the same species.
3. Infringing upon the temporary rights of the holdersowners of the protection titlesProtection Titles without payment of remuneration as prescribed;
4. Failure to comply with the obligation to pay remuneration to the authors of plant varieties as stipulated or failure to ensure the authors' rights to have their names inscribed in accordance with Article 225 of this Law.

**Chapter XIV**

**TRANSFERS, LICENSING AND ASSIGNMENTS**

**OF RIGHTS TO**

**PROTECTED PLANT VARIETIES**

**Article 227. TransfersLicensing of the right to use a protected new plant variety**

1. To transferLicensing the rights to use protected a new plant varieties means to permit others persons to conduct one or severalmore activities falling within the transferlicensor's rights to use such plant varieties.
2. Where the rights to use an plant varieties-y belong toare under common-ownership, the transferlicensing of such rights to others persons-must be subject to the consensus of all common-owners.
3. The transfer-licensing of the rights to use a plant varietiesy must be made in a

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written contract.

4. A contract for ~~transfer~~licensing of the right to use a protected new plant variety ~~must~~ shall not contain any terms which unreasonably restrict the rights of the ~~transfer~~licensee, especially those restrictive terms which ~~do not~~ neither originate from the licensee~~transferor's~~ rights to the ~~relevant~~ plant variety ~~or~~ ~~do not~~ aim to at the protection of such rights.

#### **Article 228. Rights of the parties to a ~~transfer~~licensing contract**

1. The ~~transfer~~licensor shall have the following rights:
  - a)- To ~~allow~~permit the ~~transfer~~licensee to ~~sub-transfer~~transfer such the licensed right to of use to a third party- or to prohibit the ~~transfer~~licensee from doing so;
  - b)- To use the plant varieties of the transferee, if the parties have agreed upon the exchange of the right to use.
2. The ~~transfer~~licensee shall have the following rights:
  - a)- To transfer the ~~transfer~~licensed the right of use to a third party with permission of ~~is so approved by~~ the ~~transferor~~licensor.
  - b)- To request the ~~transf~~licensor to take necessary and appropriate measures against infringing acts of third parties causing damages to the ~~transfer~~licensee;
  - c)- To ~~carry out~~take appropriate measures against the infringing acts of the third parties if the ~~transferor~~licensor fails to ~~do the~~do so at his/her request ~~referred to as~~ provided for in ~~clauses~~subparagraph b of paragraph 2(~~b~~) of this Article within 3 months from the date of the request.

#### **Article 229. Assignment of ownership ~~rights over~~rights to new plant varieties**

1. To assign the ownership ~~rights over~~rights to a plant varietiesy means to transfer all the ~~rights over~~rights to those plant varietiesy. The assignee shall become the ~~holder~~owner of the Plant Variety ~~protection title~~Protection Title of the plant varietiesas from the date after registration of the assignment contract is registered with the State management agency in charge of plant varietiesstate administrative authority of plant variety in accordance with the prescribed procedures.
2. Where the ~~rights over~~rights to a plant varietiesy belong to is under common-ownership, the assignment of such rights to ~~other persons~~others must be subject to the consensus of all ~~common~~-owners.
3. The assignment of the ownership ~~rights over~~rights to a plant varietiesy must be made ~~manifested~~in a written contract.

#### **Article 230. Compulsory ~~transfer~~licensing of the right to use new plant varieties**

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1. Compulsory ~~transfer~~licensing of the right to use new plant varieties means the ~~transfer~~licensing of the right to use under a decision of the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety in the cases ~~referred to~~provided for in Article 231 of this Law, at the request of third parties.
2. A ~~c~~Compulsory ~~transfer~~license of the right to use a new plant varieties ~~y~~ means the transfer of ~~shall be non-exclusive right to use~~.
3. A ~~c~~Compulsory ~~transfer~~license of the right to use a new plant varieties ~~y~~ is ~~shall~~ only be restricted to the scope and ~~within a period~~ sufficient to meet the purpose of such ~~compulsory transfer~~compulsory licensing and is mainly aimed at meeting the domestic market demand;
4. A compulsory license ~~The transferee~~of the right to use a new plant varieties ~~y~~ ~~on a compulsory basis must~~shall not sub-transfer such right to use to ~~other persons~~others, except where such right is transferred together with the business establishments conducting business in such licensed plant varieties ~~y~~.

**Article 231. Conditions for ~~compulsory transfers~~compulsory licensing of the right to use new plant varieties**

1. Any third party is entitled to request the ~~State management agency in charge of plant varieties~~state administrative authority of plant variety to compel the owner of rights to ~~such a~~ plant variety to ~~transfer~~license the right to use of the ~~such plant variety to that third party~~him/her if the owner of ~~rights over~~rights to plant varieties:
  - a)- ~~refuses to transfer~~license the right to use such plant variety without ~~adequate~~justifiable reasons; or
  - b)- imposes or lays down unreasonable conditions for such ~~transfer~~orlicensing.
2. The ~~State management agency in charge of plant varieties~~state administrative authority of plant variety shall compel the owner of rights to ~~such~~the plant variety to ~~transfer~~license the right to use such plant variety to the requesting ~~third party~~, subject to ~~on~~ the following conditions:
  - a)- It is necessary to ~~transfer~~license the right to use such plant varieties so that the varieties shall be widely used at a fair price and with a secured quality;
  - b)- The requesting party has appropriate financial and technical and other capacities to use the plant varieties ~~y~~ for the purposes specified in sub paragraph ~~Point a)~~ of this paragraph~~Clause~~.

**Article 232.- ~~Rights of holders of the protection titles~~Protection Title owner regarding in case of compulsory ~~transfer~~licensing of the rights to use plant varieties**

The ~~holder of a protection title~~Protection Title owner of a plant variety whose rights to use have been ~~transferred on a compulsory~~licensed ~~y~~ basis shall have

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the following rights:

1. To receive an amount of money corresponding to the economic value of such right ~~to~~ use or equivalent to the price of contractual ~~transfer~~ licensing of such right ~~under a contract~~ with similar scope and term;
2. To request the ~~State management agency in charge of plant varieties~~ state administrative authority of plant variety to amend, terminate or cancel the validity of the compulsory ~~transfer~~ license when the conditions resulting in such compulsory ~~transfer~~ compulsory licensing no longer exist or if such amendment, termination or cancellation does not cause damages to the compulsory ~~transfer~~ licensee of the right to use on a compulsory basis.

**Article 233. ~~Orders and p~~Procedures for requesting for grants, amendments, termination or cancellation of compulsory transfers/licenses of right to use new plant varieties**

~~The procedures and orders for requesting for grants, amendments, termination or cancellation of compulsory transfers~~ compulsory licenses of right to use new plant varieties shall be provided for by the ~~State management agency in charge of plant varieties~~ state administrative authority of plant variety.

**Section 3. ~~Effect and registration of licensing and assignment contracts and transfer of industrial property right~~**

**Article 142 ~~Disposal Effect of licensing and assignment contracts and transfer of industrial property right of rights to inventions/utility solutions~~**

1. ~~The assignment and transfer of the rights to an right to assign to another person the whole rights to an invention/utility solution~~ invention, an industrial designs, a layout designs or a of mark shall only be effective upon registration with the state industrial property administration authority;
2. ~~The licensing of the right to use an invention, an industrial designs, a layout designs or a mark shall only be effective against a third party upon registration with the state industrial property administration authority:~~
3. ~~Validity of a contract for use of industrial property object shall be terminated ex-officio upon the termination of licensor's industrial property right:~~

~~the owner of a patent must be exercised by way of entering into a written contract (an assignment contract) in compliance with the legislation concerning civil and economic contracts-~~

2. ~~The assignment of the whole right to an invention/utility~~

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~~solution/invention in any form shall only take effect as soon as it is acknowledged by Invention/Utility Solution/Invention Registration Authority as so requested by the parties.~~

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~~3. From the date an assignment is acknowledged, the assignee shall become the owner and shall take over all the rights and obligations to which the assignor is entitled under the patent, and shall also take over all the rights and obligations of the assignor which arise from its transactions with third parties, provided that this must be stated in the assignment documents.~~

~~4. When a licensing contract exists and remains in its effective term, unless it is consented by the licensee, the licensor who is the owner of the patent or the grantee of an exclusive licence to an invention/utility solution/invention must not waive his/her rights under the patent or the exclusive licensing contract.~~

~~This provision shall not apply when only one or several co-owners or when only one or several persons jointly acting under the name of the grantee of the exclusive licence, waive his/their respective rights.~~

~~1. A license contract of industrial property object means such a contract whereby an industrial property owner (hereinafter referred to as licensor) permits another person (hereinafter referred to as licensee) to use the industrial property object within the scope of the former's use right (hereinafter referred to as contract for use of industrial property object):~~

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~~The [assignment] of the right of the owner of an invention patent to allow other people (the licensing) to use the invention must be made under a written contract (a licensing contract) in compliance with the legislation concerning civil and economic contracts.~~

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~~The transfer the ownership right on an associated mark shall be concurrently carried out together with all associated marks.  
The transfer of the ownership of a well-known mark must ensure the goodwill of the traders of the goods and services bearing the well-known mark.~~

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#### ~~Section 4. Compulsory licensing for inventions~~

##### ~~Article 143. Conditions for c Compulsory licensing~~

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~~1. Compulsory licence with regard to an invention/utility solution/invention shall be compulsorily issued in the following cases:~~

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~~(a) — Where the party that wants to use the invention/utility solution/invention cannot reach an agreement upon the signing of a licensing contract with the person [who holds the entire rights to use that invention/utility solution/invention], although best efforts have been given to negotiate the price and other reasonable commercial~~

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conditions; or

(b) — Where it is required to use of an invention/utility solution invention in order to meet urgent needs of the society or for the public or non-commercial purposes such as national defence, security, people's healthcare.

2. A compulsory licence with regard to an invention/utility solution invention shall not be granted before the expiration of the 4-year period as from the date of filing of an invention/utility solution invention registration application and before the expiration of the 3-year period from the date an invention/utility solution invention patent is granted.

**Article 144 — Scope and conditions for compulsory licensing**

A compulsory licence with regard to an invention/utility solution invention must be in compliance with the following provisions:

(a) The compulsory licence shall be a non-exclusive licence;

(b) — The compulsory licence shall be limited within a scope and period which are sufficient to meet the objectives for such licensing, and only for the purpose of meeting the demand of the domestic market; in particular, with regard to an invention/utility solution invention in the semi-conductor technology sector, the compulsory licences shall only be issued for the public and non-commercial purposes or as a remedy for an act judged by an authorized State authority as anti-competitive under the competition (antitrust) legislation.

(c) The grantee of a compulsory licence may not assign that licence to other persons, except where such licence is assigned with the business establishment using such licence, and may not grant sub-licences to other persons;

(d) The grantee of a compulsory licence is granted must pay to the compulsory licensor an amount corresponding to the economic value of the right to use under such licence, or equivalent to the price for transfer of a voluntary licence pursuant to a contract with the same scope and period of licence.

(dd) — The compulsory licensor may have the right to suspend a compulsory licence when the event attributed to such non-voluntary licensing no longer exists and is impossible to re-occur, provided that such suspension must not cause damages to the grantee of the compulsory licence.

2. For the purpose of meeting the demand for using dependent inventions/utility solutions, a compulsory licence with regard to an invention/utility solution invention falling within the scope of the "first patent" shall only be granted subject to the following conditions in addition to those set out in clause 1 of this Article:

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(a) ~~The dependent invention/utility solution invention (falling within the scope of the "second patent" must involve an important technical advance of considerable economic significance in relation to the invention/utility solution invention of the "first patent"~~

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(b) ~~The owner of the first patent is cross-licensed (to use the invention/utility solution invention falling within the second patent) under reasonable conditions; and~~

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(c) ~~The right to use the invention/utility solution invention falling within the first patent which is granted under a compulsory licence shall be non-assignable right, except where it is assigned with the ownership right to the second patent.~~

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#### ~~Article 145 — Procedures for compulsory licensing~~

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~~1. The Ministry of Science and Technology shall be authority in charge of considering applications for compulsory licensing, making or refusing to make decisions on compulsory licensing, and making or refusing to make decision on suspension of compulsory licences:~~

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~~2. A decision on compulsory licensing of the Minister of Science and Technology must fix the licensing conditions appropriate to the provisions of Article 144 and the time limit for such compulsory licensing:~~

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~~3. A decision of the Minister of Science and Technology to compel compulsory licensing or refuse to do so may be appealed against in accordance with the Law on Complaints and Denunciations, may be denounced or subject to a lawsuit in accordance with administrative procedures:~~

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~~4. The Government shall provide for the order and procedures for compulsory licensing:~~

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### ~~Part Five~~

## ~~ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS~~

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### ~~Chapter XV~~

## ~~PRINCIPLES OF INTELLECTUAL PROPERTY RIGHT ENFORCEMENT~~

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### ~~Article 234. Right to request for the handling action against acts of infringement of intellectual property rights~~

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~~Intellectual property right holders shall have the right to request intellectual property right enforcement agencies referred to provided for in Article 236 of this Law to handle act, in accordance with this Law and other applicable laws and regulations, against organizations and individuals conducting/committing acts of intellectual property right infringements in accordance with this Law and other~~

relevant laws and regulations.

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#### **Article 235. Measures Remedies for intellectual property right enforcement**

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1. Organizations and individuals committing acts of ~~conducting an~~ intellectual property right infringement as referred to provided for in Articles 33, 42, 144, 149, 157, 164, 170 and 173 of this Law shall be subject to the following remedies depending on the nature and seriousness of their infringements:

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a) Civil remedies applicable to intellectual property right infringements:-

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b) Administrative remedies applicable to the acts regarded as administrative offences in accordance with Article 249.1 of this Law:-

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c) Criminal remedies applicable to the acts referred to provided for in paragraph 2 Article 249-2, of this Law which comprises all the crime constituent elements in accordance with criminal laws and regulations.

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2. At the request of intellectual property right holders, organizations and individuals suspected of committing intellectual property right infringements committing acts of intellectual property right infringement may be also subject to provisional measures and border control measures set out provided for in Articles 245 and 253 of this Law.

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#### **Article 236. Authority to apply mMeasures for intellectual property right enforcement**

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Intellectual property right enforcement agencies including courts, intellectual property right inspectorate, market control agencies, customs authorities, police authorities, people's committees of provinces and cities directly under the Government and arbitration agencies shall have the authority to apply the following measures remedies for intellectual property right enforcement as follows:

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1. The application of civil remedies falls within falls under the power of civil courts, except where the parties have agreed to resolve their disputes by arbitration:-

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2. The application of provisional measures falls within falls under the power of courts:-

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3. The application of administrative remedies for domestic business activities and import and export falls within falls under the power of the intellectual property right inspectorate, police authorities, customs authorities, market control agencies and people's committees of provinces and cities directly under the Government:-

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4. The application of criminal remedies falls within falls under the power of criminal courts:-

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5. The application of border control measures falls within falls under the power of customs authorities.

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#### **Article 237. Safeguard measures for intellectual property right protection**

An intellectual property right holder has the right to apply by themselves the

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following measures to protect his intellectual property right:

1. Taking technological measures aimed at preventing intellectual property right\* infringements:-
2. Requesting infringing organizations and individuals to stop their infringing acts, rectify and make public apology and pay damages:-
3. Setting up or joining collective organizations of intellectual property right holders:-
4. Making complaints or denunciations or initiating lawsuit in accordance with the laws and regulations:-
5. Taking other measures in accordance with the laws and regulations.

#### **Article 238. Intellectual property assessmentVerification**

1. Intellectual property verificationassessment means a competent organization or individual uses its intellectual property expertise or qualifications to assess and conclude the matters involved in an intellectual property right infringement case accepted for resolution by an intellectual property right enforcement agency.
2. An intellectual property right enforcement agency has right to request for an intellectual property verificationassessment in order to resolve any of the cases accepted by that agency.
3. An intellectual property right holder and other related organizations or individuals have right to request for an intellectual property verificationassessment in order to protect their intellectual property rights.
4. The Government shall provide detailed provisions for intellectual property verificationassessment activities.

### **Chapter XVI**

#### **INTELLECTUAL PROPERTY RIGHT ENFORCEMENT**

##### **BY WITH CIVIL REMEDIES**

##### *Section 1. General provisions*

#### **Article 239. Civil remedies**

The court shall take the following civil remedies to handle against organizations and individuals having committed an act of intellectual property right infringements:

1. Compelling terminatdesist of ion of the intellectual property right the infringing act:-
2. Compelling public rectification and public apology:-
3. Compelling the performancefulfillment of civil obligations:-

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4. Compelling payment of damages.
5. Compelling distribution or use for non-commercial purpose of goods, materials and implements ~~mainly~~ predominantly used for ~~making~~ creating intellectual property right infringing goods, provided that such distribution and use does not affect the intellectual property right holder's capacity to exploit his/her intellectual property right.

#### **Article 240. The rights and burden of proof of the litigants**

1. The plaintiff and defendant in an intellectual property right civil lawsuit shall have the rights and ~~obligations~~ burden of proof ~~referred to~~ provided for in Article 79 of the Civil Procedures Code and this Article.
2. The plaintiff shall have the burden of proof that he/she is the intellectual property right holder by way of producing the following evidence:
  - a) A valid copy of the ~~protection title~~ Protection Title; an extract from the National Registers of inventions, industrial designs, ~~layout design~~ layout designs, marks, geographical indications, plant varieties; the copyright/related right registration certificate.
  - b) Other necessary evidence of the bases for establishment of the copyright/related rights in case of absence of a copyright/related right registration certificate; and evidence of the rights to business secrets and rights to trade names or well-known marks.
  - c) A registration certificate with regard to a contract for exclusive right to use industrial property subject matters.
3. The plaintiff must produce evidence of the intellectual property right infringement act or unfair competition act.
4. In a lawsuit against an infringement of the rights to a patented invention which is a process for obtaining products, if the products are new or if the products are not new, but are substantially produced by patented invention, and the plaintiff has been unable to prove the process actually used by the defendant to be patented invention, the defendant must prove his products have been obtained by process other than patented invention, otherwise defendant's products are regarded as to be obtained by patented invention.
5. In case of a claim for damages, the plaintiff must prove his/her actual loss and specify the basis for his/her claim in accordance with Article 243 of this Law.

#### **Article 241. Resolution of intellectual property right disputes by negotiations, mediations or arbitration**

1. An intellectual property right holder and the alleged infringer may agree to resolve their disputes through negotiation, mediation or arbitration.
2. The resolution of a dispute by arbitration must comply with the laws and regulations concerning arbitration. If the parties have agreed to resolve their disputes by arbitration they shall have no right to initiate a civil lawsuit for resolution of that dispute at the court.

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**Article 242. Principles of determination of loss caused by intellectual property right infringements**

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1. The loss caused to the holder of intellectual property right by an infringement comprises both physical and spiritual loss.

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(a) Physical losses comprise loss to property, decreased income and profits and reasonable costs for prevention and rectification of such loss, reasonable attorney fees and other tangible loss; loss of business opportunities, decrease in the business reputation and other intangible loss.

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(b) Spiritual loss comprises of loss to the dignity, honour, prestige and other spiritual loss.

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2. The level of loss shall be determined on the basis of the actual losses incurred by the holder of intellectual property rights due to the infringement upon such intellectual property rights.

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**Article 243. Bases for determination of ~~losses~~ damages caused by intellectual property right infringements**

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1. If the plaintiff succeeds in proving that an intellectual property right infringement has caused physical loss to him/her, he/she shall have the right to ask the court to determine the level of damages on one of the following bases:

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(a) The total physical loss as determined in cash plus the profits gained by the intellectual property right infringer if such profits have not yet been included in the total physical loss.

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(b) The value of transfer of the intellectual property right subject matter with the assumption that the defendant has been transferred by the plaintiff the right to use that industrial property subject matter under a contract for using such industrial property subject matter to the extent equivalent to the act of infringement committed.

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(c) At the rate fixed by the court depending on the level of loss but not exceeding VND 200 million.

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2. If the plaintiff succeeds in proving that such intellectual property right infringement has caused spiritual loss to him/her, he/she may request the court to determine an appropriate level of damages in the range of VND 5 million to VND 50 million depending on the level of loss.

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**Section 3. Application of provisional measures**

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**Article 244. Right to request the court to apply provisional measures**

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1. Right to request for the application of provisional measures in the intellectual property sector shall be exercised in accordance with this Law and other relevant provisions of the laws and regulations on civil procedure.

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2. An intellectual property right holder may request the court to apply provisional measures in the following cases:
- There is a threat of damage to the intellectual property right holder which cannot be prevented by any other measure.
  - There is a threat of disperse or destruction of intellectual property right infringing goods and relevant evidence if they are not protected in time.
3. Provisional measures may be applied either before a lawsuit being initiated, simultaneously with the initiation of a lawsuit or after a lawsuit has been initiated at the court.

#### Article 245. Provisional measures

Provisional measures in intellectual property field, including the following measures, shall be applied to suspected intellectual property right infringing goods, material, implements that are used for producing, trading such goods:

- Seizure:-
- Attachment Listing:-
- Sealing: prohibiting to change the status quo or to convey move:-
- Prohibiting the transfer of ownership rights (by way of sale, donation or gift etc):-
- Other provisional measures as provided for by the civil procedures laws and regulations.

#### Article 246. Obligations of the person who requests for the application of provisional measures

- A person who requests for the application of provisional measures is obligated to prove his right to request in accordance with Article 240.1 of this Law, including the production of materials and evidence referred to provided for in paragraph 2 Article 240-2 of this Law.
- A person who requests for the application of provisional measures is obligated to guarantee the payment of damages to the persons who are subject to provisional measure in case of wrongful request, which guarantee may be made in one of the following forms:
  - Deposit an amount of money equal to 20% of the value of the goods that is subject to the application of provisional measure; or VND 20 million if it is impossible to evaluate those goods.
  - A guarantee document issued by a bank or another credit organization.
- Where a request is made for the application of provisional measures before a lawsuit is initiated, the person that made such request must initiate the lawsuit within 10 days from the date on which such provisional measures are applied. If the person that made such request fails to initiate a civil lawsuit within that time limit or fails to request a competent agency to handle the persons who are subject to provisional measure by administrative procedures, the court shall invalidate the decision on the application of such provisional measures.

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#### **Article 247. Invalidation of the application of provisional measures**

The court shall decide to invalidate the application of a provisional measure in any of the cases referred to provided for in paragraph 1 Article 122 of the Civil Procedure Code or the persons who are subject to provisional measure succeeds in proving that the application of such provisional measure is not grounded.

#### **Article 248. Power Authority and procedures for applying provisional measures**

The power authority and procedures for applying provisional measures shall comply with the provisions of Chapter VIII, Part Five of the Civil Procedures Code, unless otherwise provided for in this Law.

### **Chapter XVII**

## **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHT BY ADMINISTRATIVE AND CRIMINAL PROCEDURE REMEDIES**

### **Section 1. Handling administrative offences and prosecuting criminal liability**

#### **Article 249. Administrative offences and intellectual property crimes**

1. Acts of intellectual property right infringement conducted in form of trading in mark counterfeit goods, counterfeit geographical indication goods and copyright pirated goods (hereinafter referred to as trading in intellectual property right counterfeit goods) shall be regarded as administrative offences and shall be handled by administrative procedures if such infringements have not yet contained sufficient crime constituents elements.
2. An intellectual property right infringement in the following cases shall be regarded as crimes and be handled in accordance with the criminal laws and regulations:
  - a)- Any of the acts of infringement referred to provided for in paragraph 1 of this Article conducted after the infringer has been handled by administrative procedures, or after the infringer has been sentenced for this crime and the criminal records have not yet been deleted.
  - b)- Any act of intentional intellectual property right infringement resulting in serious consequences to the society.

#### **Article 250. Intellectual property right counterfeit goods**

1. The mark counterfeit goods referred to provided for in paragraph 1 Article 249 of this Law mean the goods or their packing bearing without authorization a mark which is identical or substantially indistinguishable from the mark that have been registered with respect to the same goods.

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2. The counterfeit geographical indication goods referred to provided for in paragraph 1 Article 249.4 of this Law mean the goods or their packing bearing without authorization a sign which is identical or substantially indistinguishable from the geographical indication that have been registered with respect to the same goods.

3. Pirated goods referred to provided for in paragraph 1, Article 249.4 of this Law mean any goods which are copies made in Vietnam or overseas without the consent of the copyright/related right holder in the country of production and which are made directly or indirectly from an article where the making of that copies would have constituted an infringement of a copyright or a related right in Vietnam.

#### **Article 251. Administrative remedies for intellectual property right counterfeit goods**

1. Administrative remedies for intellectual property right counterfeit goods comprise the following:

a) Warning;

b) Monetary fine;

c) Confiscation of intellectual property right counterfeit goods, materials and implements mainly used for trading such intellectual property right counterfeit goods and destruction or distribution and use of the same for non-commercial purpose provided that such distribution and use does not affect the intellectual property right holder's capacity to exploit his/her intellectual property right;

d) Compelling delivery out of the territory of Vietnam or re-export of the intellectual property right counterfeit goods, materials and implements mainly used for trading in such intellectual property right counterfeit goods;

dd) Other measures in accordance with the laws and regulations concerning the handling of administrative offences in the intellectual property sector.

2. The monetary fine rates referred to provided for in sub paragraph b paragraph 1-b) of this Article must not be lower than the profits which are already gained or would be gained from such infringement and must not exceed 1.5 times of such profits.

#### **Article 252. Power, procedures and measures to handle administrative and criminal offences**

1. Power, procedures and measures to handle administrative offences of organizations and individuals which trade in intellectual property right counterfeit goods shall be complied with the provisions of this Law and the relevant laws and regulations on handling administrative offences.

2. Power, procedures and measures to handle criminal offences of individuals conducting business in intellectual property right counterfeit goods shall be

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complied with the laws and regulations on criminal and criminal procedure.

## Section 2. Intellectual property right border control measures

### Article 253. Border control measures

1. Intellectual property right border control measures comprise the following:
  - a) Suspension of customs procedures for suspected intellectual property right infringing goods.
  - b) Supervision to detect goods with indications of infringement upon intellectual property rights.
2. Suspension of customs procedures for suspected intellectual property right infringing goods is a measure taken at the request of the intellectual property right holder in order to collect information and evidence about the lots of goods which serves as the basis for the intellectual property right holder to exercise the right to request for the handling of the infringement and to request for the application of provisional measures.
3. Supervision to detect goods with signs of infringement upon intellectual property rights is a measure taken at the request of the intellectual property right holder in order to collect information in order to exercise the right to request for the suspension of customs procedures.
4. During the course of application of a measure referred to provided for in paragraphs 2 or 3 of this Article, if any goods are detected to contain indication of an administrative offence in accordance with paragraph 1 of Article 249-4 of this Law, the customs authority shall accept the case for resolution in accordance with the administrative procedures applicable to intellectual property right counterfeit goods trading activities, notwithstanding the application of the border control measure as requested by the intellectual property right holder.

### Article 254. Obligations of persons requesting for suspension of customs procedures

1. A person who requests for suspension of customs procedures must prove that he/she is the intellectual property right holder by way of production of the materials and evidence referred to provided for in paragraph 2 Article 240-2 of this Law.
2. A person who requests for suspension of customs procedures must provide the following information sufficient to identify the suspected intellectual property right infringing goods, specifically:
  - a) Name and address of the importer/exporter;
  - b) Predicted information about the time and venue of completion of import/export procedures;
  - c) Detailed description or photo of the goods suspected to infringe intellectual

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property right;

d) ~~Verification~~ Assessment results in respect of the prima facie evidence of the competent agency (if any).

3. A person who requests for suspension of customs procedures must lodge an application for that purpose with the customs authority and must pay fees and charges prescribed by the laws and regulations.

4. A person who requests for suspension of customs procedures must guarantee the payment of damages to the persons being subject to the suspension of customs procedures in case such request is unreasonable, which guarantee may be made in one of the following forms:

a) Deposit an amount of money equal to 20% of the value of the lots of goods that is subject to the suspension of customs procedures; or VND 20 million if it is impossible to evaluate the lots of goods;

b) A guarantee document issued by a bank or another credit organization.

#### **Article 255. Suspension of customs procedures**

1. When a person who requests for suspension of customs procedures has properly performed his/her obligations ~~referred to~~ provided for in Article 254 of this Law, the customs authority shall issue the decision on the suspension of customs procedures with regard to relevant lots of goods.

2. The term of suspension of customs procedures shall be 10 days from the date of issuing the decision on the suspension of customs procedures. This term may be prolonged by up to 10 days if the person who requests for suspension of customs procedures has due reasons.

3. At the expiration of the term ~~referred to~~ provided for in paragraph 2 of this Article if the person who requests for suspension of customs procedures fails to initiate a civil lawsuit and the customs authority does not accept the case to handle the importer of the lots of goods under administrative procedures, the customs authority oblige:

a) To continue the completion of customs procedures for the lots of goods;

b) To compel the person who requests for suspension of customs procedures to pay for all the damages to the owner of the lots of goods due to improper suspension of customs procedures; and other incurred costs such as expenses for storage and maintenance as well as other costs incurred by the customs authority and other related organizations and individuals in accordance with the laws and regulations on customs;

c) To refund the person who requests for suspension of customs procedures the rest of the deposited security money after he/she has performed obligations and has paid all the costs ~~referred to~~ provided for in subparagraph b) of this paragraph.

#### **Article 256. Obligations of the person who requests for supervision to detect goods with indication of infringing upon intellectual property right signs of infringement**

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1. A person who requests for supervision to detect goods with indication of infringing upon intellectual property rights signs of infringement must prove that he/she is the intellectual property right holder by way of production of the materials and evidence referred to provided for in paragraph 2 Article 240-2 of this Law.

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2. A person who requests for supervision to detect goods with indication of infringing upon intellectual property rights signs of infringement must provide sufficient information to identify such goods.

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3. A person who requests for supervision to detect goods with indication of infringing upon intellectual property rights signs of infringement must lodge an application for that purpose with the customs authority and must pay fees and charges prescribed by the laws and regulations.

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#### Article 257. Supervision to detect goods with indication of infringing upon intellectual property rights signs of infringement

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After Having detected a lots of goods of goods with indication of infringing upon intellectual property rights signs of infringement, the customs authority must shall immediately inform it to notify the person who requests for such supervision to detect goods with indication of infringing upon intellectual property rights. Within one day from the date of such notification, if the person who requests for such supervision fails to make a request for suspension of customs procedures and the customs authority does not decide to handle the importer of the lots of goods under administrative procedures, the customs authority shall continue completing customs procedures for such lots of goods.

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#### Chapter V

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#### RIGHTS TO INDUSTRIAL DESIGNS

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#### Section 1. Principles of establishment of rights to industrial designs

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#### Article 146 — Definition of industrial designs

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1. "Industrial design" is construed as the appearance of a product expressed in line characters, dimension, colors or the combination of such factors.

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2. In this Article, a "product" means a thing, device, equipment or vehicle manufactured by industrial or handicraft making method which has clear structure and functions and is independently circulated.

#### Article 147 — Bases for establishment of rights to industrial designs

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1. Rights to an industrial design shall be established on the basis of a protection title issued by an authorized State body in accordance with the order and procedures set out in this Law.

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— The grantee of a protection title shall be entitled to the rights subject to the details, scope, term and conditions set out in that protection title in accordance with this Law.

2. In this Chapter, the State body authorized to issue protection titles for

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industrial designs shall be called the Industrial Design Registration Authority.

~~Article 148 — Industrial design patents~~

~~1. A protection title for industrial design means an industrial design patent.~~

- ~~2. An industrial design patent is the sole certificate of the State which certifies the exclusive rights of the patentee, the copyright of the author of the industrial design and the scope of protection of the industrial property.~~

~~Article 149 — Filing of applications for registration of industrial designs~~

~~1. A person wishing to obtain an industrial design patent must prepare and file an industrial design registration application with the Industrial Design Registration Authority.~~

- ~~2. A Vietnamese individual, legal entity or another subject may directly or through its by-law or by-proxy representative file an industrial design registration application.~~

- ~~3. A foreign individual permanently residing in Vietnam or a foreign organization with an official production or business establishment in Vietnam may file an industrial design registration application either directly or through its legal representative in Vietnam.~~

~~A foreign individual not permanently residing in Vietnam or a foreign organization without an official production or business establishment in Vietnam must file an industrial design registration application through its legal representative in Vietnam.~~

~~Article 150 — The right to file industrial design registration applications~~

~~1. The right to file an industrial design registration application shall belong to the following:~~

- ~~(a) The author who created an industrial design by his/her efforts and expenses; or~~
- ~~(b) Other organization, individual or legal entity who invests funds and material facilities or pays remuneration for the author to create the industrial design by way of assignment or hiring or entering into a labour contract, unless otherwise agreed in the labor contract or hiring contract;~~
- ~~(c) Organisation, individual, other subject that are assigned the right to file the industrial design applications from the subject prescribed in Clause 3 of this Article.~~

- ~~2. In case several organizations or individuals jointly create or jointly invest in the creation of an industrial design, they shall have the right to file a registration application subject to consensus among themselves.~~

- ~~3. The right to file including all the applications which have been filed of an organization or individual may be assigned or passed by inherited to the other organization or individual in writing or other forms provided for by laws.~~

~~Article 151 — The first to file principles~~

~~1. If two or more industrial design registration applications are filed on different dates in respect of the same industrial design, the industrial design patent~~

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shall only be granted to the person who first files the application.

2. If two or more industrial design registration applications are filed on the same date in respect of the same industrial design, the industrial design patent shall only be granted to the persons whose their unique application is filed subject to acceptance of all the above applicants.

#### ~~Article 152~~ ~~Priority right of industrial design registration applications~~

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1. The applicant is entitled to request for the priority right on the basis of a registration application in respect of one and the same subject matter first filed in Vietnam or in another Paris Convention's member country or on the basis of another international treaty with the following conditions:

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- a) another country where the first application is filed means a member or a signatory of an international treaty of which Vietnam is also a member or a signatory and that international treaty provides for the priority right as referred to above;
- b) applicant means a national of or a resident in or a persons with an official production or business establishment in a country being a member or a signatory of an international treaty which contains provisions concerning the priority right as referred to above and of which Vietnam is also a member or a signatory; or means a citizen of a country which has entered into a bilateral agreement to provide Vietnamese citizens with such priority right as referred to above;
- c) the basis for the priority right is specified in the industrial design registration application and a copy of the application filed earlier as referred to above with the certification from the agency received that application;
- d) the application is filed in Vietnam within the time limit fixed by the relevant international treaty.

2. Where the applicant requests for the priority right under the Paris Convention, the relevant application must be filed within 6 months from the date of filing of the first application.

3. To be engaged to the priority right, the applicant must specify the basis for that request and must file documents proving the priority right and must pay the prescribed fees. If an industrial design registration application including the request for the priority right with different dates, then the priority date shall be calculated from the earliest priority date among the accepted priority dates.

4. An applicant may withdraw his/her request for the priority right.

#### ~~Article 153~~ ~~Fees and charges~~

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- A person who files an industrial design registration application must pay in full and on time all the prescribed fees and charges applicable during the completion of a procedure, otherwise the relevant procedures shall be rejected to conduct.

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#### ~~Article 154~~ ~~Register of industrial design patents~~

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- The Industrial Design Registration Authority shall establish a Registry to record all

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the information about industrial design patents before they are issued by the Authority. The Registry is the novel and official source of information about the rights to industrial designs which shall be used for examinations, cross-examinations, verification, certification and other purposes in accordance with the regulations.

~~Article 155~~ — ~~Publication of industrial design patents~~

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~~1. Within 60 days from the register date of an industrial design patent, the Industrial Design Registration Authority must publish all the information about that patent in the Industrial Design Official Gazette.~~

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~~2. In addition to the information published in Clause 1 of this Article, any interested person may get access to more detailed information about the subject matter of the right to industrial design patents.~~

~~— The Industrial Design Registration Authority shall be responsible for satisfaction of all the requests for access of the above referred information.~~

~~Article 156~~ — ~~Main contents of industrial design patents~~

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~~An industrial design patent must contain the following details: name and number of the patent; name and address of the patentee; number of the industrial design registration application; date of its filing and relevant priority date; name of the industrial property service agent; name of the author of the industrial design; name of the protected subject matter; protection scope and protection term.~~

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~~Article 157~~ — ~~Validity of industrial design patents~~

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~~1. An industrial design patent shall be valid throughout the territory of Vietnam.~~

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~~2. An industrial design patent shall be valid during the term and subject to the conditions provided for in this Law. During that term, the patentee shall be entitled to the exclusive rights pursuant to the scope stated in the patent. Rights of the patentee shall terminate on the day following the expiry date of the effective period of the patent.~~

~~3. An industrial design patent may be early invalidated or be canceled for the reasons and in accordance with the procedures set out in this Law.~~

~~— If an industrial design patent is early invalidated, rights of the patentee shall terminate on the date of such invalidation.~~

~~— If an industrial design patent is canceled, rights of the patentee shall be considered as never having arisen.~~

~~Article 158~~ — ~~Valid period of industrial design patents~~

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~~1. An industrial design patent takes effect from the date it is issued until the end of period of 5 years from the filing date.~~

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~~2. An industrial design patent may be consecutively extended twice for five years per each.~~

~~Article 159~~ — ~~Extending the validity of industrial design patents~~

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~~1. To extend an industrial design patent, before its expiration, the owner of the industrial design patent must file a request for extension and must pay an~~

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extension fee in accordance with the regulations.

2. The Government provides for detailed procedures for extension of an industrial design patents.

#### ~~Article 160 — Suspending industrial design patents~~

- ~~1. An industrial design patent shall be suspended in the following cases:~~

- ~~(a) The owner of the patent declares to waive rights to which she/he is entitled under the patent. In this case, the patent shall be suspended from the date of such declaration;~~
- ~~(b) The owner fails to pay an extension fee in accordance with the regulations;~~
- ~~(c) The owner no longer exists and does not have any lawful heir.~~

- ~~2. When an industrial design patent is suspended, relevant industrial property rights shall cease to exist as soon as the patent is suspended.~~

- ~~3. Any third party may file a request to the Industrial Design Registration Authority for suspension of an industrial design patent for the reason referred to in clause 1(b) and 1(c) of this Article provided that evidences must be filed and prescribed fees and charges must be paid.~~

~~— If it is revealed by the consideration of the request for suspension of an industrial design patent that one of the cases referred to in clause 1 of this Article has happened, the Head of the Industrial Design Registration Authority shall decide to suspend that industrial design patent and shall publish that decision in the Industrial Property Official Gazette within the prescribed time limit.~~

- ~~4. Procedures for suspension industrial design patents shall be provided for by the Government.~~

#### ~~Article 161 — Revocation of industrial design patents~~

- ~~1. An industrial design patent shall be wholly revoked on the basis that the patent is not granted in accordance with the law in force at the time the patent is granted for the following reasons:~~

- ~~(a) The patentee does not have the right to file an industrial design registration application and is also not assigned such right by the person who has the right to do so.~~
- ~~(b) The right to file an industrial design registration application belongs to various individuals, organizations but one of them disagrees filing the application.~~
- ~~(c) The industrial design patent inaccurately records the author due to a deliberate act of the applicant.~~
- ~~(d) The protected subject matter fails to meet protection criteria.~~

- ~~2. An industrial design patent shall be partly revoked on the basis of the evidence that the relevant part fails to meet protection criteria. When it is revoked, the validity of the relevant part of the patent is regarded as having never arisen.~~

- ~~3. When a patent is revoked, industrial property rights shall not arise.~~

- ~~4. Any third party may file a request to the Industrial Design Registration~~

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Authority for revocation of an industrial design patent for the reason that the patent is not granted in accordance with the provisions of law as stipulated in this Article, provided that evidences must be filed and prescribed fees and charges must be paid.

— If it is revealed by the consideration of the request for revocation of an industrial design patent that the industrial design patent is not granted in accordance with the provisions of laws, the Head of the Industrial Design Registration Authority shall decide to revoke either partially or wholly that industrial design patent and shall publish that decision in the Industrial Property Official Gazette within the prescribed time limit.

5. Procedures for revocation of industrial design patents shall be provided for by the Government.

#### Article 162 — Amending contents of industrial design patents

1. After the Industrial Design Registration Authority issues an industrial design patent, the owner of the patent may at his/her own discretion request for amendments of the contents of that patent.

— The owner of the patent must file an application for amendments of the patent which must specify the details of amendments as compared with the novel and must pay a fee in accordance with the regulations.

2. The Industrial Design Registration Authority shall have to examine the contents of the application for amendments of an industrial design patent.

3. Any amendment of contents of an industrial design patent must not expand the protection scope beyond the extent stated in the patent. If any amendment results in the expansion of the protection scope or in a change of the nature of the subject matter, that application for amendment of contents of the industrial design patent shall not be rejected.

#### Section 2. Conditions for granting industrial design patents

##### Article 163 — Conditions for granting industrial design patents

An industrial design shall be granted a patent if it is novel, original and industrial applicable.

##### Article 164 — Subject matters not to be protected as industrial designs

The following subject matters shall not be protected by the State as industrial designs:

- a) external appearance of a product which naturally results from the technical characteristics of products or which only bears technical characteristics;
- b) external appearance of a product which only has a pure aesthetic value;
- c) external appearance of civil or industrial construction works;
- d) appearance of a product which is invisible during the use;
- e) external appearance of a product which is contrary to social interest, public

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order and humanitarian principles:

**Article 165 — Novelty**

1. An industrial design shall be recognized as novel if, as at the filing date of the application, that industrial design is substantially different from other industrial designs already exposed inside or outside the country.

— An industrial design may be exposed either by way of being used, or described in writing or in any other form before the above filing date of the application.

2. In this Article, two industrial designs shall not be considered substantially different if they are only different in the features of their external appearance which may not easily be recognized and memorized and which cannot be used to generally distinguish between those two industrial designs.

3. An industrial design shall not be regarded as losing its novelty if it is published by another person and the date of such publication falls within the 6-month period before the filing date of an application for the grant of a protection title for the industrial design.

**Article 166 — Originality**

An industrial design shall be recognized as original if it is aesthetically impressive to vision and is not easily created by an average person in the relevant field.

**Article 167 — Industrial applicability**

An industrial design shall be recognized as industrial applicable if it can be used as a model for mass production of products with the external appearance of such industrial design either by industrial or handicraft making methods.

**Section 3. Industrial Design Registration Applications**

**Article 168 — Applications for registration of industrial design**

1. An industrial design registration application is a series of documents presenting the applicant's request for the grant of an industrial design patent with relevant contents and scope of protection.

2. An industrial design registration application must contain the following documents:

- (a) A request form for registration of an industrial design;
- (b) A set of photos or drawings of the industrial design;
- (c) A description of the industrial design;
- (d) Invoices of prescribed fees and charges;
- (e) Other documents (if any)

3. The formality and contents of an industrial design registration application must meet prescribed requirements.

**Article 169 — The unity of industrial design registration applications**

1. An industrial design registration application must ensure the unity specifically

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as follows:-

- (a) Each application shall only claims registration of the industrial design of a product or set of products.
- (b) The applicant may also claim the protection of various alternatives of the industrial design described in the application filed within the prescribed time limit, provided that the number and filing date of that application must be specified.

2. In this Article, the following terms are construed as follows:-

- (a) "Set of products" means a combination of two or more products used either together or for the same purpose.
- (b) "Various alternatives" of an industrial design means the variants of that industrial design expressed on a product or a set of product, which are insubstantially different from each other.

~~Article 170 Documents proving the priority right~~

~~Documents proving the priority right with regard to an industrial design registration application comprise the following:-~~

- (a) Copies of the application or the first applications with certification of the agency that received the application; and
- (b) Document on assignment of the priority right if the right obtained from another person.

~~Article 171 Authorization of representatives~~

~~The provisions of this Law concerning the authorization of a representative with regard to an invention/utility solutioninvention application shall also apply mutatis mutandis to industrial design application.~~

~~Article 172 Language~~

~~All the documents enclosed in an industrial design registration application and all the transaction documents between the applicant and the Industrial Design Registration Authority must be in Vietnamese. Any documents in other languages shall only be used for the purpose of comparison, reference or examination.~~

~~Section 4. Procedures for processing applications and~~

~~issuing industrial design patents~~

~~Article 173 Receiving applications~~

~~The provisions of this Law concerning receipt of invention/utility solutioninvention registration applications shall also apply to industrial designs subject to appropriate amendments.~~

~~Article 174 Date of receipt of applications~~

~~The provisions of this Law concerning the date of receipt of invention/utility solutioninvention registration applications shall also apply to industrial designs~~

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subject to appropriate amendments:-

~~Article 175 — Formality examination of the industrial design applications~~

- ~~1. The formality of an industrial design registration application shall be examined by the Industrial Design Registration Authority.~~
- ~~2. The purpose of this examination is to ensure that the application satisfies all the formality requirements which serves as the basis to make conclusions of its validity. An application which is regarded as valid shall be accepted for further processing. An invalid application shall be refused.~~
- ~~3. During the formality examination of an application, the applicant may, at his/her own discretion or at the request of the Industrial Design Registration Authority, revise the documents accompanying the application.~~
- ~~4. The Government shall make provisions for the procedures and time limit for formality examination of industrial design registration applications.~~

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~~Article 176 — Publication of applications~~

- ~~1. Any industrial design registration application which has been accepted as valid shall be promptly published by the Industrial Design Registration Authority in the Industrial Property Official Gazette.~~
- ~~2. On the basis of the information about an application already published in the Industrial Property Official Gazette, any person may get access to detailed information about the subject matter described in the application or request the Industrial Design Registration Authority to do so, and may comment on the filing of that application.~~
- ~~3. The Government shall make detailed provisions for the procedures and time limit for the publication of industrial design registration applications.~~

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~~Article 177 — Protecting the secrecy of applications before publication~~

- ~~1. Before an industrial design registration application is published in the Industrial Property Official Gazette, the Industrial Design Registration Authority is responsible to keep the secrecy of the application.~~
- ~~2. Officers and civil servants of the Industrial Design Registration Authority who disclosed information about an invention/utility solution invention registration application shall be disciplined and if such disclosure results in a loss to the applicant, compensation must be paid in accordance with the law.~~

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~~Article 178 — Temporary rights after publication of applications~~

- ~~1. From the date of publication of an industrial design registration application in the Industrial Property Official Gazette to the date the patent is issued, if any person commences to use an industrial design which is identical to the industrial design stated in the application, the applicant has the right to notify that user of his/her filement of the application.~~
- ~~2. If the user of the industrial design continues his/her use notwithstanding the notice having been given, after an industrial design patent is issued, the owner of the patent has the right to request that the person who has been using the industrial design pay a remuneration equivalent to the payment for the~~

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transfer of the right to use the relevant subject matter of industrial property (licence) to other persons for a similar period.

#### ~~Article 179 — Opinions of third parties~~

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~~1. On the basis of the information about an industrial design registration application already published, any third party may provide opinions as to agree or disagree with the filing of such application.~~

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~~2. Opinions of a third party relating to the filing of an application must be given in writing to the Industrial Design Registration Authority before the Industrial Design Registration Authority makes any decision relation to that application in accordance with the this Law, and the third party must not have to pay any fees or charges.~~

#### ~~Article 180 — Substantive examination of applications~~

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~~1. Contents of all industrial design registration applications shall be examined by the Industrial Design Registration Authority provided that the application has been accepted as valid.~~

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~~2. The purpose of this examination is to evaluate the possibility of protection of the subject matter stated therein in accordance with the protection criteria and to identify relevant protection scope.~~

~~3. During the substantive examination of an application, the Industrial Design Registration Authority shall search information from various sources available at the Industrial Design Registration Authority and as supplied by third parties in order to compare and evaluate the subject matter described in the application under the protection criteria.~~

~~4. At the request of the applicant or the Industrial Design Registration Authority, the substantive examination of an industrial design registration application may be suspended.~~

~~— The Industrial Design Registration Authority shall reinstate the substantive examination of an application if the applicant provides reasonable arguments against the reason for suspension.~~

~~5. The Government shall make detailed provisions for procedures and time limit for examining the contents of industrial design registration applications.~~

#### ~~Article 181 — Amendment of applications~~

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~~1. Before Industrial Design Registration Authority issues a notice refusing to accept an application, or refusing to grant an industrial design patent or decides to grant an industrial design patent, an applicant may, either at his/her own discretion or at the request of the Industrial Design Registration Authority, make amendments his/her application including supplementing documents accompanying the application or assigning the application.~~

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~~— The applicant must provide a supplementary document and explanatory document of the amendments as compared with the novel and must pay a fee in accordance with the regulations.~~

~~2. Any revision of an application must not expand the protection scope beyond~~

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the extent exposed in the set of photos/drawings and the descriptive document and must not change the characteristics of the subject matter specified in the application. If any revision of the application results in the expansion of the protection scope or in a change of the characteristics of the subject matter, a new application must be filed and procedures shall be re-completed from the beginning.

3. An applicant may request for the acknowledgement of a change to his/her name or address or any changes concerning the applicant (as a result of assignment of the application or transfer of rights to the application as a result of inheritance, merger or division of legal entities under court judgment etc). A request for such acknowledgement must be made in writing and the person making that request must pay a prescribed fee. A written request may claim acknowledgement of a specific change to various applications provided that applicant must pay fees for the relevant number of applications.

#### ~~Article 182~~ Withdrawal of applications

- ~~1. At all times before NOIP issues a decision to grant or not to grant an industrial design patent, an applicant is entitled to make public the withdrawal of his/her industrial design registration application by way of serving a notice thereof on the Industrial Design Registration Authority.~~

~~— If the declaration of the withdrawal of an industrial design registration application is given by the applicant through an industrial property representation service organization, the authority to withdraw the application must be specified in the letter of authorization.~~

- ~~2. As soon as the applicant declares to withdraw his/her industrial design registration application, any related consequent procedures shall be suspended; and all the fees and charges already paid in relation to the procedures that are not yet proceeded with shall be refunded to the applicant.~~
- ~~3. Any industrial design registration application which has been withdrawn or is regarded as being withdrawn before its publication shall be regarded as never being filed with the Industrial Design Registration Authority.~~

#### ~~Article 183~~ Granting or refusal to grant industrial design patents

- ~~1. If the subject matter stated in an industrial design registration application satisfies all protection criteria and the applicant has paid the prescribed fee, the Industrial Design Registration Authority shall issue a decision to grant an industrial design patent to the relevant applicant specifying the name and address of the patentee, serial number of the application, date of its filing and relevant priority date; name of the industrial property service agent; full names of the authors of the industrial design; name of the protected subject matter; name and serial number of the industrial design patent; protection scope and protection term.~~

- ~~2. In case of failing to meet the patenting conditions set out in Article [patenting conditions] of this Law or if the request for the entitlement of the priority right of the applicant is not accepted on the basis of determination of the novelty of~~

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~~the industrial design stated in the application, the Industrial Design Registration Authority shall serve a notice of refusal to grant an industrial design patent on the applicant specifying the reason for that refusal.~~

~~3. An industrial design patent shall be granted to the applicant. If the applicant consists of a collective, then the patent shall be granted to all the members of that collective.~~

~~4. An industrial design patent may be re-granted at the reasonable request of relevant organization or individual provided that a prescribed fee is paid.~~

~~Article 184 — Publication and registration of industrial design patents~~

~~1. A decision to grant an industrial design patent shall be published in the Industrial Property Official Gazette.~~

~~2. Industrial design patents shall be recorded in the National Registry for Industrial Property.~~

~~Article 185 — Complaints about decisions of refusal or decisions to grant industrial design patents~~

~~1. On the basis of a decision of refusal to grant an industrial design patent, the applicant has the right to complain about that decision.~~

~~2. On the basis of a decision to grant or a decision of refusal to grant an industrial design patent, any third party has the right to complain about that decision or refusal.~~

~~3. Complaint of an applicant about a decision of refusal to grant an industrial design patent must be made in writing and filed with the Industrial Design Registration Authority within the prescribed time limit, and the applicant must pay the prescribed fee and charge.~~

~~— Complaint of a third party about a decision to grant or a decision of refusal to grant an industrial design patent must be made in writing and filed with the Industrial Design Registration Authority within the effective period of the patent, and the applicant must pay the prescribed fee and charge.~~

~~4. Complaints about decisions to grant or decisions of refusal to grant industrial design patents must be made in accordance with current regulations concerning the order and procedures for making complaints.~~

~~Article 186 — Re-examination~~

~~On the basis of a complaint of the applicant or a third party referred to in Article 185 of this Article, the Industrial Design Registration Authority shall re-examine and carry out other procedures in accordance with relevant provisions of this Law to resolve the complaint.~~

~~Section 5~~

~~Rights and obligations established under industrial design patents~~

~~Article 187 — Rights of owners of industrial design patents~~

~~The owner of an industrial design patent shall have the following rights, namely:~~

~~(a) to have the exclusive right to use the industrial design;~~

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- (b) to assign, pass by inheritance, or assign the right to use the industrial design;
- (c) to request authorized State bodies to compel persons conducting an act of infringing upon his/her industrial property rights to stop that act and pay compensation.

#### Article 188 — Using industrial designs

Using an industrial design means the conduct of one or several acts as follows with regard to a protected industrial design for commercial purpose, namely to:

- manufacture the products having an external appearance protected as an industrial design;
- put into circulation; advertise, offer and store for sale the products having an external appearance protected as an industrial design;
- import the products having an external appearance protected as an industrial design;

#### Article 189 — Right to prior use

1. Prior to the date of publication of an industrial design registration application, if any individual or organization has been making use of such industrial design independently from the owner of such industrial design and has not yet publicly exposed that design, such individual and organization shall be entitled to continue to so use within the scope or volume of use prior to the date of publication of the application ("the previous right to use"). The owner of the industrial design cannot exercise the right to request that any measure be taken or take legal action and exercise the temporary rights against that individual or organization previously using the design if that such individual or organization does not expand the scope or volume of use as compared with prior to the date of publication of the application.

2. If, after the date of publication of an industrial design registration application as stated in clause 1 of this Article, another individual or organizations expands the scope and volume of use of the industrial design as compared with the previous use, the expanded part shall not fall within the scope of the pervious right to use.

3. The person having the previous right to use may not assign such right to other persons, except where the whole previous right to use is assigned together with the business establishment where such previous use was made.

#### Article 190 — Limitations to the rights to industrial designs

The following acts using an industrial design shall not be regarded as infringing the rights to such industrial design:

- (a) Using it for non-commercial purpose such as for personal use, study, search, training and teaching.
- (b) Using the product brought out to the market including overseas market by the owner of the industrial design, assignee of the industrial design or person having the previous right to use.

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~~(c) Using the industrial design only for the purpose of maintaining the operations of the vehicle of a foreigner which is in transit or only temporarily operating in the territory of Vietnam.~~

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~~Article 191 — Rights of authors of industrial designs~~

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~~1. The author(s) of an industrial design shall have the following rights:~~

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~~(a) To have his/her (their) name(s) stated in the industrial design patent and other scientific documentation;~~

~~(b) To receive remuneration from the owner of the industrial design when that design is used, unless otherwise agreed between the author and the owner;~~

~~(c) To request the court and other authorized State bodies to take measures to deal with infringements upon his/her copyright.~~

~~(d) To receive awards in respect of the industrial design of which he/she is the author.~~

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~~2. The economic right, the right to request handling measures to be taken and the right to take legal action of the author of an industrial design referred to in clause of this Article may be assigned to another person and/or may be passed by inheritance in accordance with the law.~~

~~Article 192 — Obligations of owners of industrial designs~~

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~~1. The owner of an industrial design shall have the following obligations:~~

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~~(a) to comply with the provisions on protection of IPRs with regard to the IP subject matters which fall within the lawful ownership of other people and which are borne by that industrial design;~~

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~~(b) to pay remuneration to the author if he/she is not simultaneously the author of the industrial design, unless otherwise agreed between the owner and author;~~

~~(c) to use or assign the right to use an industrial design to another upon a decision of the authorized State body in accordance with the law.~~

~~2. The Government shall provide for the rate and time limit for payment of remuneration to the author of an industrial design, unless otherwise agreed between the author and owner of the industrial design.~~

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~~3. The assignment of the right to use an industrial design shall not be deemed as a use of such industrial design for the purpose of performing the obligation provided for in this Article.~~

~~The use of an industrial design property by the licensee shall be deemed as a use of such industrial design for the purpose of performing the obligation provided for in this Article.~~

~~Article 193 — Co-ownership rights to industrial designs~~

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~~All the provisions of this Law concerning the co-ownership rights to inventions/utility solutions shall also apply to industrial designs subject to appropriate changes.~~

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~~Article 194 — Infringement upon the rights to industrial designs~~

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~~The conduct by a person who is not the owner of an industrial design, of any of~~

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the acts using the industrial design during the term of its protection without the owner's consent while the person conducting that act does not have the previous right to use and those acts of use do not fall within the scope of exceptions under this Law, shall be considered as an infringement upon the ownership right of the industrial design.

2. The following acts conducted for commercial purpose shall be considered as acts of infringement upon the ownership rights of industrial designs:

a) Using a protected industrial design;

b) Using an industrial design which is not substantially different from a protected industrial design.

3. The failure of the owner of an industrial design either to perform the obligation to make remuneration to the author or to ensure the spiritual rights of the author as provided for in this Decree Law shall be regarded as an infringement of the rights of the author of the industrial design.

#### Section 6

##### Transfer of rights to industrial designs

##### Article 195 Licence of the right to industrial designs

1. The owner of an industrial design has the right to license the right to use an industrial design that falls within his/her exclusive rights to another organization/individual by way of a written contract pursuant to the legislation concerning civil and economic contracts.

2. Upon the licence of the right to use an industrial design, the licensee has the right to use such industrial design within the scope, during the term and subject to the conditions stated in the licence contract as already registered in accordance with the provisions of this Law.

— The licensee has the right to sub-license a third party subject to consent of the owner of the patent.

##### Article 196 Assignment of the right to industrial designs

1. The owner of an industrial design has the right to assign the right to his/her own industrial design to another organization/individual by way of a written contract pursuant to the legislation concerning civil and economic contracts.

2. Upon the assignment of the right to an industrial design, all rights and obligations of the owner of the industrial design patent (the assignor) arising under that patent shall be assigned in full to the receiving person (the assignee) and the assignee shall become the owner of the industrial design from the date on which the assignment contract is registered at the Industrial Design Registration Authority.

— The rights and obligations arising on the basis of the transactions between the assignor and third parties may be assigned to the assignee provided that such assignment must be specified in the assignment contract.

##### Article 197 Obligations relating to assignments

1. The assignor may only assign his/her rights which are being protected by laws

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and remain in their protection term and must ensure that the assignment shall not result in any dispute with third parties. If any dispute arises from the assignment of the industrial design, the assignor shall be liable for resolution of such dispute.

2. If the ownership right to an industrial design belongs to common owners, each of the co-owners shall only assign the part of rights that falls under his/her ownership to other persons if an approval has been obtained from all the rest owners, or in case one or several common owners disagree with the assignment, none of them agrees to take over the proportion of rights to be assigned and their disagreement is not reasonable.
3. The owner of an industrial property shall not be permitted to waive the industrial property right with respect to a licensed subject matter within the valid duration if the licensee does not agree to early terminate the licensing contract. This provision shall not be applicable in cases where one or several common owners waive their respective rights but one or some of the other common owners continue to own that subject matter.

#### ~~Article 198 — Cross licensing~~

~~All the provisions of this Law concerning cross licences applicable to inventions/utility solutions shall also apply to industrial designs subject to appropriate changes.~~

#### ~~Article 199 — Registration of licensing contracts and assignment contracts~~

1. Any assignment of the right to use or ownership right to an industrial design must be made in form of a written contract. This contract shall only take effect if it is registered with the Industrial Design Registration Authority as provided for by laws.
2. The Government shall provide for the order and procedures for registration of assignment contracts for industrial designs.

### ~~Chapter VI~~

#### ~~RIGHTS TO LAYOUT DESIGNS OF SEMI CONDUCTOR INTEGRATED CIRCUITS~~

##### ~~Section 1~~

~~Principles of establishment of rights to layout designs of integrated circuits~~

#### ~~Article 200 Layout designs of integrated circuits~~

1. The layout design of a semi conductor integrated circuit (referred to as the "layout design") mean the spatial structure of the circuit components and their connections in the semi conductor circuit.
2. A semi conductor integrated circuit means a product either finished or semi finished which comprises of a complex of components with at least one active component and several or all of their

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~~connections produced in or on a slice of semi-conductor material and is aimed at implementing electronic functions. The synonyms of "integrated circuit" includes "IC", "chip" and "electronic microchip".~~

~~Article 201 Bases that give rise to rights to layout designs~~

~~1. Rights to a layout design are established under a protection title granted in accordance with the registration procedures set out in this Chapter by the State authority authorized to register layout designs (to be referred to as Layout Design Registration Authority).~~

~~2. A protection title for a layout design shall be a layout design registration certificate which acknowledges the protected layout design, the owner (holder) of rights to that layout design and its author.~~

~~3. The registration of a layout design shall be made by way of acknowledgment of the grant of the layout design registration certificate and the whole contents of that certificate in the National Registry for Layout Designs of Semi-Conducting Integrated Circuits which registry is opened and maintained by the Layout Design Registration Authority.~~

~~Article 202 Filing of applications for registration of layout designs~~

~~1. A person seeking for entitlement to the rights to a layout design must prepare and file an application for the grant of a layout design registration certificate with the Layout Design Registration Authority (to be referred to as a Layout Design Registration Application).~~

~~2. A Vietnamese individual, legal entity or another subject may directly or through its by law or by proxy representative file a layout design registration application.~~

~~3. A foreign individual permanently residing in Vietnam or a foreign organization with an official production or business establishment in Vietnam may file a layout design registration application either directly or through its legal representative in Vietnam.~~

~~A foreign individual not permanently residing in Vietnam or a foreign organization without an official production or business establishment in Vietnam must file a layout design registration application through its legal representative in Vietnam.~~

~~Article 203 The right to file layout design registration applications~~

~~1. The right to file a layout design registration application shall belong to the following:~~

~~(a) the author of the layout design who created it by his/her efforts and expenses; or~~

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~~(b) the organization or individual who invests funds and material facilities in the form of an assignment or hiring for the author to create the layout design, unless otherwise agreed in the labor contract or hiring contract.~~

~~2. In case several organizations or individuals jointly create or jointly invest in the creation of a layout design, the right to file an application shall belong to all of those organizations or individuals and shall only be exercised subject to their consensus.~~

~~3. A person with the right to file an application may assign that right including all the filed applications to another organization or individual by way of a written assignment, inheritance or other forms of passing property-related rights provided for by laws.~~

#### ~~Article 204 Principle of co-existence of rights~~

~~If several organizations and individuals, independently from each other, create or invest in the creation of a coincidental layout design, such organizations and individuals shall all have the right to file an application and all the registration certificates issued for the layout designs of semi-conductor integrated circuits shall have independent validity.~~

#### ~~Article 205 Exploitation of layout designs for commercial purposes~~

~~Exploitation of layout designs for commercial purposes refers to all acts of distribution (including sale, lease, assignment including advertising, offering or storing of goods for that purpose) in respect of semi-conductor integrated circuits manufacturer by that layout design or in respect of goods containing semi-conductor integrated circuits manufacturer by that layout design, which acts are conducted publicly and for commercial purpose.~~

#### ~~Article 206 Statute of limitation period for filing of layout registration applications~~

~~For a layout design which has been exploited for commercial purposes as permitted by the person having the right to file an application or his/her nominee, the statute of limitation period for exercising the right to file a registration application shall be two (2) years from the date such layout design is first commercially exploited as referred to above anywhere in the world.~~

#### ~~Article 207 Temporary rights to layout designs already commercially exploited~~

~~For a layout design which has been commercially exploited before the~~

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~~date of issue of a registration certificate under a permission of the person with the right to file an application or his/her nominee and subject to a written notice by the person with the right to file an application in respect of his/her right to file an application relating to that layout design, from the date of registration of the layout design, the owner of the layout design has the right to request the person who has been using the layout design for commercial purposes since the date of notice to the date of registration of the layout design to pay a remuneration equivalent to the licensing fee with regard to that layout design.~~

#### ~~Article 208 Fees and charges related to layout design registration applications~~

~~1. A person who files a layout design registration application must pay in full and on time all the prescribed fees and charges applicable during the completion of a procedure, otherwise the relevant procedures shall be rejected.~~

~~2. The Government shall provide for types of fees and charges, their rates, payment time limits and method of using relevant fees and charges with regard to design registration applications.~~

#### ~~Article 209 Validity of the registration of layout designs; protection term~~

~~1. A layout design registration certificate shall be valid throughout the territory of Vietnam.~~

~~2. A layout design registration certificate shall be valid from the date of registration and terminates on one of the following dates whichever is the earliest:~~

~~(a) the expiry date of the 10 year period as from the date of registration;~~

~~(b) the expiry date of the 10 year period as from the date such layout design is first put out for commercial exploitation anywhere in the world as permitted by the person having the right to file an application or his/her nominee.~~

~~(c) the expiry date of the 15 year period as from the date of its creation.~~

~~3. A layout design registration certificate may be suspended or revoked in accordance with the provisions of Article ... [on suspension] or Article ... [on revocation].~~

~~4. The right of the grantee of a layout design registration~~

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~~certificate shall be protected during the valid term of such layout design registration certificate.~~

#### ~~Article 210 Suspending layout design registration certificates~~

~~1. A layout design registration certificate shall be suspended in the following circumstances:~~

~~(a) The owner of the layout design registration certificate declares to waive the whole registered rights.~~

~~(b) The owner of the layout design registration certificate no longer exists and does not have any lawful heir.~~

~~2. In the circumstance referred to in clause 1(a) of this Article, the layout design registration certificate shall be suspended from the date such declaration is made.~~

~~In the circumstance referred to in clause 1(b) of this Article, the layout design registration certificate shall be suspended from the date its owner ceases to exist.~~

~~3. The owner of a layout design registration certificate may file a request with the Layout Design Registration Authority for suspension of the layout design registration certificate for the reason referred to in clause 1(a) of this Article.~~

~~Any organization or individual may file a request with the Layout Design Registration Authority for suspension of a layout design registration certificate for the reason referred to in clause 1(b) of this Article, provided that a prescribed fee must be paid.~~

~~4. On the basis of the consideration of the request for suspension of a layout design registration certificate and opinions of related parties, the head of the Layout Design Registration Authority shall decide to suspend the layout design registration certificate or serve a notice of refusal to suspend the layout design registration certificate.~~

~~5. Procedures and order for processing requests for suspension of layout design registration certificates shall be provided for by the Government.~~

#### ~~Article 211 Revoking layout design registration certificates~~

~~1. A layout design registration certificate shall be revoked wholly in the following circumstances:~~

~~(a) The layout design registration application is not filed by the person having the right to file an application.~~

~~(b) The layout design for which protection is claimed fails to meet the protection criteria or is excluded from protection or is not a~~



~~layout design.~~

~~2. A layout design registration certificate shall be partially revoked if a relevant part fails to meet the protection criteria.~~

~~3. If a layout design registration certificate is revoked, the whole or part of the rights to such layout design is regarded as having never arisen.~~

~~4. Any organization or individual may request the Layout Design Registration Authority to revoke a layout design registration certificate in those circumstances referred to in clauses 1 and 2 of this Article, provided that a prescribed fee must be paid.~~

~~On the basis of the consideration of the request for revocation of a layout design registration certificate and opinions of related parties, the head of the Layout Design Registration Authority shall issue a decision to revoke the registration certificate either wholly or partially or shall serve a notice of refusal to revoke the registration certificate.~~

~~4. Procedures and order for processing requests for revocation of layout design registration certificates shall be provided for by the Government.~~

~~Article 212 Amending layout design registration certificates~~

~~The owner of a layout design registration certificate may request the Layout Design Registration Authority to acknowledge all changes and rectifications of errors relating to the name and address of the owner, changes of the owner and requests for curtail of the scope of the right already acknowledged in the National Registry for Layout Designs, subject to the payment of prescribed fees and charges.~~

~~Article 213 Publication of layout design registration applications and of decisions relating to rights over layout designs~~

~~1. Any valid layout design registration application shall be published by way of allowing direct access (no reproduction and photocopying is allowed) at the premises of the Layout Design Registration Authority. With regard to the confidential information contained in a layout design registration application as provided for by the Government, only authorized authorities and related parties to the process of revoking registration [certificates] or dealing with right infringements shall have the right to access.~~

~~The main information about a layout design registration application shall be published in the Layout Design Official Gazette.~~

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~~2. Any decision concerning the issue, amendment, suspension or revocation of layout design registration certificates, or assignment of rights to layout designs shall be published by the Layout Design Registration Authority on the Layout design Official Gazette within 60 days from the date of the decision.~~

~~3. Procedures, contents and forms of publication of layout design registration applications and their relevant decisions shall be provided for by the Government.~~

#### ~~Section 2~~

~~Conditions for layout designs to be issued with registration certificates~~

~~Article 214 Conditions for layout designs to be issued with registration certificates~~

~~1. A registration certificate shall be issued for a layout design if it has novelty.~~

~~2. A layout design shall be acknowledged to have novelty if it satisfies the following conditions in full:~~

~~(a) it is the result of its author's creative labour; and~~

~~(b) at the time of its creation, it has not yet been widely known among the community of layout design creators and manufacturers of semiconductor integrated circuits.~~

~~3. A layout design which is the combination of components and common connections shall only be regarded as having novelty, if such combination as a whole has novelty in accordance with clause 2 of this Article.~~

~~4. A registration certificate shall not be issued if a layout design falls within the cases referred to in Article ... [on the subject matters not to be protected].~~

~~Article 215 Subject matters not to be protected~~

~~The following subject matters are not regarded as layout designs; particularly the following subject matters shall not be issued with a registration certificate:~~

~~(a) Principles, processes, systems and methods implemented by semiconductor integrated circuits.~~

~~(b) Data and software included in a semiconductor integrated circuit.~~

#### ~~Section 3~~

~~Layout design registration applications~~

~~Article 216 Layout design registration applications~~

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~~1. A layout design registration application must include the following documents and specimen:~~

~~(a) A declaration form specifying the claim of the applicant for protection of the layout design; name and address of the applicant; full name of the author of the layout design; and providing information about the symbol, structure and electronic functions of the layout design and electronic function of IC.~~

~~(b) Materials and specimen identifying the layout design.~~

~~(c) A letter of authorization, if the application is filed through a representative.~~

~~(d) Documents proving the payment of relevant fees and charges.~~

~~2. A layout design registration application must satisfy all the requirements of the Government as to the format and contents.~~

~~Article 217 Unity of layout design registration applications~~

~~Each layout design registration application can only claim the issue of a registration certificate for a unique layout design.~~

~~Article 218 Declaration forms for layout design registration~~

~~1. A declaration form for layout design registration must be made using the prescribed form and must contain all the prescribed information as referred to in the declaration form.~~

~~2. The Government shall provide for the contents and form of the declaration form for layout design registration.~~

~~Article 219 Amending, supplementing and withdrawing applications~~

~~1. At all times before the Layout Design Registration Authority issues a notice refusing to issue a layout design registration certificate or decides to issue a layout design registration certificate, an applicant also has the right to modify or supplement his/her application provided that a prescribed fee and charge must be paid.~~

~~2. At all times before the Layout Design Registration Authority issues a notice refusing to issue a layout design registration certificate or decides to issue a layout design registration certificate, an applicant also has the right to declare in writing the withdrawal of his/her application which is filed directly by him/her or through an industrial property representation service organization if such withdrawal is specified in the letter of authorization.~~

~~3. All the procedures related to a withdrawn application shall be suspended from the time of declaration of such withdrawal; and all the~~

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~~fees and charges already paid in relation to the procedures that are not yet proceeded with shall be refunded to the applicant at his/her request.~~

#### ~~Article 220 Authorization of representatives~~

~~1. Any authorization of another person to complete relevant procedures to grant, maintain, amend, suspend or revoke a layout design registration certificate must be made in writing, to be referred to as the Power of Attorney.~~

~~2. A letter of authorization must have the following contents:~~

- ~~a) (Full) name and address of the principal;~~
- ~~b) (Full) name and address of the authorized person;~~
- ~~c) Scope of authorization which specifies the duties which the authorized person can do on behalf of the principal.~~
- ~~d) Date of the Power of Attorney.~~
- ~~dd) Signature and/or seal of the principal.~~
- ~~f) Duration of the authorization.~~

~~3. A letter of authorization which does not specify the duration of the authorization shall be regarded as having unlimited validity and shall only terminate if it is so declared by the principal.~~

#### ~~Article 221 Languages~~

~~1. Except for those documents referred to in clause 2 of this Article, a layout design registration application and all the transaction documents between the applicant and the Layout Design Registration Authority must be in Vietnamese. Any documents in other languages shall only be used for the purpose of comparison, reference or examination.~~

~~2. The following documents may be made in a language different from Vietnamese but must be translated into Vietnamese when so requested by the Layout Design Registration Authority:~~

- ~~a) Power of Attorney~~
- ~~b) Documents proving the lawful right to file an application if the applicant obtains that right from another person.~~
- ~~c) Documents proving the priority right.~~
- ~~d) Other documents subordinating the layout design registration application.~~

#### ~~Section 4~~

~~Procedures for processing layout design registration applications and issuing layout design registration certificates~~

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~~Article 222 Examination of applications~~

~~1. A layout design registration application shall be examined in respect of its format in order to determine whether it satisfies the standards applicable to a valid application.~~

~~2. A layout design registration application shall not be examined in respect of its contents, i.e. the subject matter described in the application shall not be examined in accordance with the protection criteria as referred to in Article ... [on the registration conditions] of this Chapter.~~

~~3. Procedures and the time limit for examining the format of a layout design registration application shall be provided for by the Government.~~

~~Article 223 Refusing to register a layout design~~

~~1. A layout design registration application shall be refused in the following circumstances:~~

- ~~(a) The application fails to meet the format-related requirements.~~
- ~~(b) The subject matter described in the application is not a layout design or is excluded from protection.~~
- ~~(c) The application is not filed by the person having the right to do so, even where that right is possessed by several organizations or individuals but one of them rejects such filing of the application;~~
- ~~(d) The application is filed beyond the prescribed time limit.~~
- ~~(e) The application is filed contrary to the regulations on the exercise of the right to file an application;~~
- ~~(f) The applicant fails to pay fees and charges in accordance with the law.~~

~~2. If an application falls within any of the circumstances referred to in clause 1 above, the head of the Layout Design Registration Authority shall carry out the following procedures:~~

- ~~(a) to issue a notice of intent to refuse the issue of the layout design registration certificate which must specify the reason and fix a time limit for the applicant to rectify errors or to make a complaint about that notice of intent;~~
- ~~(b) to issue a notice of refusal to grant a layout design registration certificate if the applicant fails to properly rectify the errors and does not make a reasonable complaint about the notice of intent referred to in point (a) above;~~
- ~~(c) to complete the procedures referred to in Article ... [on registration] of this Chapter if the applicant properly rectifies the~~

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~~errors or makes a reasonable complaint about the notice of intent referred to in point (a) above.~~

~~Article 224Registration; Granting layout design registration certificates~~

~~If a layout design registration application does not fall within the case referred to in clause 1 of Article ... [on refusal] or if it falls within the case referred to in clause 2(c) of Article ... [on refusal] of this Chapter and the applicant has paid the prescribed fee, the head of the Layout Design Registration Authority shall carry out the following procedures:-~~

~~(a) To issue a decision to issue the layout design registration certificate and record an entry in the National Registry for Layout designs of semi conductor integrated circuits; and~~

~~(b) To grant a layout design registration certificate to the relevant applicant.~~

~~Article 225Protesting against decisions of refusal to grant or to decisions to grant layout design registration certificate~~

~~1. The applicant and any third party having rights and interest directly relating to the grant of a layout design registration certificate is entitled to protest against a decision of refusal to grant or decision to grant the layout design registration certificate.~~

~~2. Any protest against a decision of refusal to grant or to a decision to grant a layout design registration certificate must be made in accordance with the legislation on complaints and denunciations referred to in Article ... [on complaints] of this Law.~~

~~3. If any decision to grant, or refusal to grant, a layout design registration certificate is protested against, the relevant layout design registration application shall be re-examined in respect of the issues being protested against.~~

#### ~~Section 5~~

~~Rights and obligations established under registration certificates of layout designs of semi-conductor integrated circuits~~

~~Article 226Rights of owners of registration certificates of layout designs of semi-conductor integrated circuits~~

~~The owner of a layout design registration certificate shall have the following rights, namely:-~~

~~(a) to use the layout design; and to allow or prohibit others to use such layout design;~~

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~~(b) to have the temporary right to the layout design which has been commercially exploited;~~

~~(c) to dispose of the right to the layout design by way of assignment of rights or transition of rights as a result of an event of consolidation, merger, separation etc of legal entities, by way of inheritance or waiver of the whole rights to the layout design.~~

#### ~~Article 227 Using layout designs~~

~~Using a layout design in respect of which a registration certificate has been issued means the conduct of any of the following acts for business purposes:~~

~~a) reproducing the layout design; manufacturing semi-conductor integrated circuits in accordance with the layout design;~~

~~b) distributing copies (such as sale, lease, assignment including advertising, offer or storing of goods for that purpose) of copies of the layout design, semi-conductor integrated circuits manufactured with the layout design or goods containing semi-conductor integrated circuits manufactured with the layout design;~~

~~c) importing copies of the layout design, semi-conductor integrated circuits manufactured with the layout design or goods containing semi-conductor integrated circuits manufactured with the layout design.~~

#### ~~Article 228 Restrictions to the rights to layout designs~~

~~The following acts conducted in relation to a layout design for which a registration certificate has been issued shall not be regarded as infringements upon the right of the owner of a layout design:~~

~~(a) Using the layout design for non-business purposes including for personal use, study, research, analysis, report or teaching.~~

~~(b) Distributing or importing copies of the layout design, semi-conductor integrated circuits manufactured with the layout design or goods containing semi-conductor integrated circuits manufactured with the layout design without knowing that or without a basis to know that such layout design is being subject to a registration certificate;~~

~~(c) Distributing or importing copies of the layout design, semi-conductor integrated circuits manufactured with the layout design or goods containing semi-conductor integrated circuits manufactured with the layout design which have been received or ordered without knowing that or without a basis to know that such layout design is being subject to a registration certificate; if such distribution or importation is conducted after having known or had a basis to know that the layout~~

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~~design is being subject to a registration certificate, the user must pay the owner a sum of money equivalent to the assignment price of the right to use such layout design;~~

~~(d) Distributing or importing copies of the layout design, semi-conductor integrated circuits manufactured with the layout design or goods containing semi-conductor integrated circuits manufactured with the layout design which are brought out to the market including overseas markets by the owner, the assignee of the right to use or lawful users referred to in clause 3 of this Article.~~

~~(e) Using another layout design having novelty which is created in the basis of analysis and evaluation of the layout design referred to in clause 1 of this Article or an identical layout design which is created by another person.~~

#### ~~Article 229 Dependent layout designs~~

~~1. A dependent layout design means a layout design which is only useable subject to a condition that a layout design, invention/utility solution/invention, or an industrial design falling under the rights of another person established under an application with an earlier date of filing is also used.~~

~~2. With regard to a dependent layout design, the owner of the layout design registration certificate and the licensees are not allowed to exercise the right to use such layout design if they are not licensed to use the subject matter to which such layout design is dependent, except for the cases referred to in point (e) of Article ... (restrictions).~~

#### ~~Article 230 Obligation to pay remuneration to authors of layout designs~~

~~Unless otherwise agreed between the author of a layout design and the owner of the layout design registration certificate, the owner of the layout design registration certificate is obliged to pay remuneration to the author of the layout design at the following rate and for the following duration:~~

~~(a) The minimum rate of remuneration to the author of a layout design shall be five per cent (5%) of the revenue gained from the use of such layout design every year; or fifteen per cent (15%) of the total sum received by the owner on each occasion of receipt of payment as a result of assignment of the right to use such layout design.~~

~~(b) The remuneration must be paid to the author of a layout design no later than 60 days as from the last day of the 12<sup>th</sup> month in the year of use or no later than 30 days after receipt by the owner of the payment~~

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~~as a result of an assignment of the right to use such layout design.~~

#### ~~Article 231 Rights of authors of layout designs~~

~~1. The author of a layout design means the person who creates such layout design by his/her creative labour.~~

~~People only providing technical or material support or assistance or funds but not contributing to the creation of a layout design by their creative labour shall not be regarded as authors.~~

~~2. The author of a layout design shall have the following rights:~~

~~a) To have his/her full name stated as the author of the layout design in the National Registry for Layout Designs, in the layout design registration certificates as well as in other documents concerning the publication of such layout design.~~

~~b) To receive remuneration paid by the owner of the layout design registration certificate in accordance with Article ... of this Chapter.~~

~~3. The right of the author of a layout design to receive remuneration may be assigned to other persons including by inheritance.~~

#### ~~Article 232 Co-ownership right to layout design~~

~~1. If the rights to a layout design fall within a co-ownership, then any transfer of the right to use or assignment or mortgage of the right to such layout design to another person must be agreed upon by all co-owners.~~

~~2. If the rights to a layout design fall within a co-ownership, each of the co-owners shall have the right to use such layout design without having to obtain permission from the other co-owners, except where otherwise agreed among them.~~

#### ~~Article 233 Infringements upon the rights to layout designs~~

~~The following acts shall be considered as infringements upon the right of the owner of a layout design:~~

~~(a) Any act involving the use of the layout design which is conducted without consent of the owner of the layout design registration certificate and during the protection term and does not fall within any of the cases referred to in clause 2 of Article ... [on the restriction].~~

~~(b) Use of the layout design without paying remuneration in accordance with the provisions concerning the temporary right of the owner of layout design registration certificate which does not fall within any of the cases referred to in clause 2 of Article... [on restrictions].~~

#### ~~Article 234 Infringements upon the rights of authors of layout designs~~

~~The following acts shall be regarded as infringing upon the right of the~~

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~~author of a layout design.~~

~~(a) A failure of the owner of the layout design registration certificate to pay remuneration to the author of the layout design in accordance with the regulations.~~

~~(b) A failure by any person to ensure the exercise of the right of the author of that layout design to have his/her name stated.~~

#### ~~Section 6~~

~~Assignment or transfer of rights to layout designs~~layout designs

~~Article 235 Assignment of the right to use layout designs~~layout designs

~~1. The right to permit other people (license) to use a layout design layout design of the owner of a layout design layout design registration certificate must be made under a written contract (a licensing contract) in accordance with the legislation concerning civil and economic contracts.~~

~~2. To the extent and subject to the terms stated in a licensing contract, the licensee has the rights:~~

~~a) to use the layout design, either exclusively or non-exclusively;~~

~~b) sub-license a third party on the basis of the exclusive license subject to permission of the owner of the layout design layout design registration certificate.~~

~~3. A licensing contract shall only be valid against third parties if it is acknowledged by the Layout Design Layout design Registration Authority at the request of the contracting parties.~~

~~4. A licensing contract shall be automatically suspended or revoked upon the suspension or cancellation of the layout design layout design registration certificate of the licensor to the layout design.~~

~~Article 236 Disposal of the whole rights to layout designs~~layout designs

~~1. Rights of the owner of a layout design layout design registration certificate to transfer the whole rights to a layout design layout design must be made in writing (a transfer contract) in accordance with the legislation concerning civil and economic contracts.~~

~~2. Any transfer of the whole right to a layout design layout design in any form shall only take effect as soon as it is acknowledged by the Layout Design Layout design Registration Authority as so requested by the parties. From the date the transfer is acknowledged, the transferee shall become the owner and shall take over all the rights and obligations of the transferor as provided for in the layout design layout design registration certificate and shall also take over all the~~

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~~rights and obligations of the transferor which arise from his/her transactions with third parties, provided that this must be stated in the assignment document.~~

~~3. When a licensing contract remains in its effective term, unless consented by the licensee, the licensor who is the owner of the layout design layout design registration certificate or the grantee of an exclusive license to the layout design layout design shall not be allowed to waive his/her rights under the layout design layout design registration certificate or exclusive licence.~~

~~This provision shall not apply if only one or several co-owners waive his/their rights.~~

## ~~CHAPTER VII~~

### ~~RIGHTS TO PLANT VARIETIES~~

#### ~~Section~~

#### ~~Principles of establishing the rights to plant varieties~~

#### ~~Article 237. Plant varieties~~

~~Plant variety is a group of plants of homogeneous form, recognized through the manifestation of characteristics dictated by their gene type, and distinguished from any other group of plants through the manifestation of at least one genetic characteristic.~~

#### ~~Article 238. Grounds for generating rights to plant varieties~~

~~1. The rights to plant varieties are established under the Title of Protection of plant varieties issued by a competent State plant variety registration authority (called the plant variety registration Authority for short) in accordance with the provisions of this Chapter.~~

~~2. Title of Protection of plant varieties is the Certificate of Registration of Plant Varieties acknowledging the protection scope of plant varieties, the owner of the rights to plant varieties and the author of plant varieties.~~

~~3. The registration of plant varieties is made in the form of recording the Certificate of Registration of Plant Varieties and the entire contents of such Certificate in the National Register of Plant Varieties established and kept by the plant variety registration Authority.~~

#### ~~Article 239. Application for registration of plant varieties~~

~~1. To be granted the Certificate of Registration of Plant Varieties, the subjects entitled to make application must make and file an Application for registration of plant varieties to the Plant Variety~~

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~~Registration Authority.~~

~~2. Vietnamese individuals, organizations and other Vietnamese subjects may file the Application for registration of plant varieties directly or through their lawful representative in Vietnam.~~

~~3. Individuals and organizations of the member countries of international treaties on the protection of plant varieties to which Vietnam is a signatory; or the countries which have together with Vietnam signed the Agreements on mutual protection, or reciprocal principles, on the protection of plant varieties shall carry out the right to file the application for registration as follows:~~

~~a. Foreign individuals permanently residing in Vietnam, foreign organizations having actual business, production establishments in Vietnam may file the Application for registration of plant varieties directly or through their lawful representatives in Vietnam.~~

~~b. Foreign individuals not permanently residing in Vietnam, foreign organizations not having actual business, production establishments in Vietnam must file the Application for registration of plant varieties through their lawful representatives in Vietnam.~~

~~Article 240. Right to file application for registration of plant varieties~~

~~1. The right to file application for registration of plant varieties belongs to:~~

~~a. The author who selects and creates the plant varieties with his/her own efforts and financial sources; or~~

~~b. The individuals, organizations that invest expenditure, material facilities for author in the selecting and creating the plant varieties in form of work assignment, work for hire unless otherwise stipulated in labour contract, hire contract.~~

~~2. Where more than one individual or organization together select and create or invest in selecting and creating a plant variety, those individuals, organizations jointly have the right to file application; and such right to file application shall only be exercised upon the agreement of all those individuals, organizations.~~

~~3. The subject having the right to file application is entitled to transfer such right including the filed application to other individuals, organizations in form of written assignment, inheritance or in forms of transfer of entitlement of property in accordance with law.~~

~~Article 241. Principles of filing application~~

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~~1. Where more than one Application for registration of plant variety with respect to the same plant variety are filed on various dates, then the Certificate of registration shall only be granted to the applicant who files the application on the earliest date among those applicants.~~

~~2. Where more than one Application for registration of plant variety with respect to the same plant variety are filed on the same day, then the Certificate of registration shall only be granted to the person who first selects, creates or discovers or transforms such plant variety; or to the persons who jointly file the application with the consent of the remaining applicants if the first person who selects and creates such plant variety cannot be determined.~~

#### ~~Article 242. Priority right to application~~

~~1. The person filing the application for registration is entitled to request the priority right on the basis of the first filed application with respect to the same plant variety (the first Application) if:~~

~~a. The Application for registration is filed within 12 months after the date of filing the first application;~~

~~b. The first Application is the Application for recognition of plant variety already filed in Vietnam or the Application for registration of plant variety already filed at the member countries of bilateral or multilateral international treaties providing for priority right to which Vietnam is a signatory or a party;~~

~~c. The plant variety has been registered in the List of plant varieties permitted to be produced and traded in Vietnam or has been registered for protection overseas under the first application as referred to in point b of this clause.~~

~~2. The person requesting the priority right must clearly state the grounds for requesting the priority right, submit the written evidence of the priority right and pay fees as stipulated.~~

~~3. The Application for registration with claims of priority right has the priority date which is the date of filing the first application.~~

#### ~~Article 243. Charges and fees in relation to the Application for registration of plant varieties~~

~~The applicant for registration of plant varieties must pay charges and fees for making procedures of the Application for registration. The authority registering plant varieties will refuse to carry out the respective procedures if the charges and fees are not paid fully and in a timely manner as stipulated.~~

~~Article 244. The Certificate of registration of plant varieties~~

~~1. The Certificate of registration of plant varieties is the sole certificate of the State certifying the subject's right to be granted the Certificate of registration of plant varieties with respect to the plant varieties, the author's right to the plant varieties and the scope of protection of the plant varieties.~~

~~2. The Certificate of registration of plant varieties is to be delivered to the applicant.~~

~~Article 245. Validity of the Certificate of registration of plant varieties~~

~~1. The Certificate of registration of plant varieties is effective in the entire territory of Vietnam.~~

~~2. The valid period of the Certificate of registration of plant varieties shall be 20 years; and 25 years with respect to vine and plant varieties with wooden trunk, counting from the date of issuing the Certificate.~~

~~3. The validity of the Certificate of registration of plant varieties may be suspended or annulled in accordance with Article. . . or Article. . . of this Law.~~

~~Article 246. Suspension of the validity of the Certificate of registration of plant varieties~~

~~1. The validity of the Certificate of registration of plant varieties may be suspended by the plant variety registration Authority in the following circumstances:~~

~~a. The protected plant variety no longer meets the conditions on homogeneous and stable characteristics;~~

~~b. The holder of the Certificate fails to pay fees for maintaining the validity as stipulated;~~

~~c. The owner of the Certificate fails to provide documents, multiplying materials necessary for maintaining and storing the plant varieties as stipulated;~~

~~d. The holder of the Certificate fails to register a change of the plant varieties required by the plant variety registering Authority;~~

~~e. The holder of the Certificate no longer exists without a lawful successor.~~

~~2. With respect to the circumstances as referred to in points a, c and d of Clause 1 of this Article, the plant variety registration Authority shall issue a Decision of suspension of the registration~~

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~~Certificate on the respective dates which are the date of the document determining the plant variety no longer has the described characteristics within the scope of protection; the date of the document proving the plant variety is not stored as stipulated; and the date of requesting a change of the name of the plant variety.~~

~~3. With respect to the circumstance as referred to in point b of Clause 1 of this Article, the plant variety registration Authority shall, upon expiry of the period of paying fees for maintaining validity, issue a Decision of suspension of the Certificate on the first date of the first valid year for which the fees for maintaining validity is not paid.~~

~~5. With respect to the circumstance as referred to in point e of Clause 1 of this Article, any individuals/organizations are entitled to file an application to the plant variety registration Authority requesting suspension of the validity of the Certificate, on the condition that the prescribed fees must be paid.~~

~~Based on the consideration result of the request for suspension of the validity of the Certificate and the opinions of relevant parties, the plant variety registration Authority shall issue a Notice of refusing the suspension of the validity of the Certificate or a Decision of suspension of the validity of the Certificate on the date on which the holder of the Certificate no longer exists.~~

~~6. The procedures and orders for handling the request for suspension of the validity of the Certificate shall be stipulated by the Government.~~

~~Article 247. Annulment of the validity of the Certificate of registration of plant varieties~~

~~1. The validity of the Certificate of registration of plant varieties may be annulled by the plant variety registration Authority in the following circumstances:~~

~~a. The holder of the Certificate is not entitled to filing the application;~~

~~b. The application is not filed in accordance with regulations;~~

~~c. The plant variety does not meet the protection standards.~~

~~2. Any organizations/individuals are entitled to file an application requesting the plant variety registering Authority to annul the validity of the Certificate in the circumstances as referred to in Clauses 1 and 2 of this Article on the condition that the prescribed fees must be~~

~~paid.~~

~~Based on the consideration result of the request for annulment of the validity of the Certificate and the opinions of relevant parties, the plant variety registration Authority shall issue a Notice of refusing the annulment of the validity of the Certificate or a Decision of annulment of the validity of the Certificate.~~

~~3. The procedures and orders for handling the request for annulment of the validity of the Certificate shall be stipulated by the Government.~~

~~Article 248. Change of the contents of the Certificate of registration of plant varieties~~

~~The holder of the Certificate of registration of plant varieties is entitled to request the plant variety registration Authority to record changes, correct mistakes in relation to the name and address of the holder of the registration Certificate, change of the holder of the registration Certificate and the name of plant variety already recorded in the National Register of plant varieties on the condition that the charges and fees must be paid as stipulated.~~

~~Article 249. Announcement of Decisions relating to the rights to plant varieties~~

~~1. Any Decision relating to the establishment, modification, suspension, annulment and transfer of rights to plant varieties shall be announced by the plant variety registration Authority in the Official Gazette on plant varieties within 60 days from the date of issuing decision.~~

~~2. The procedures, contents and form of announcement shall be determined by the Government.~~

~~3. In addition to the information announced under Clause 1 of this Article, any third party is entitled to have access to more sufficient information on the plant varieties of which the Certificates of registration are granted. The plant variety registration Authority shall be responsible for meeting the above said requests for accessing information.~~

## ~~Section 2~~

~~Conditions for plant varieties to be granted Certificate~~

~~Article 250. Conditions for plant varieties to be granted registration Certificate~~

~~A plant variety shall be granted with Certificate of registration in~~

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~~case it has the new, distinctive, homogeneous and stable characteristics and an appropriate appellation.~~

~~Article 251. Plant varieties not granted with Certificate of registration~~

~~A plant variety shall not be granted with Certificate of registration if it does not belong to the List of plant species protected by the State being determined by the Government in accordance with international treaties on protection of plant varieties to which Vietnam is obliged to comply.~~

~~Article 252. Novelty of plant varieties~~

~~A plant variety shall be regarded as being new if its multiplying materials or harvested products have not been permitted to be sold or otherwise distributed by the person entitled to file application or the person authorized by the person entitled to file application for the purpose of exploiting such plant variety in the territory of Vietnam 1 year prior to the date of filing application; and outside the territory of Vietnam 4 or 6 years prior to the date of filing application with respect to vine and trees of wooden trunk.~~

~~Article 253. Distinctiveness of plant varieties~~

~~A plant variety shall be regarded as being distinctive if it has one or more principal characteristics clearly distinctive of widely known plant varieties prior to the date of filing application.~~

~~Article 254. Homogeneity of plant varieties~~

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

~~Article 255. Stability of plant variety~~

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

~~Article 256. Appropriate appellation of plant varieties~~

~~1. The appellation of a plant variety shall be regarded as appropriate if it is easily distinguishable from those of other plant varieties of the same species or similar species, which are widely known. The appellation of a plant variety shall, after being~~

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~~acknowledged, be the official appellation.~~

~~2. The following appellations shall not be regarded as appropriate:~~

~~a. Consisting of only numerals;~~

~~b. Violating social ethics;~~

~~c. Easily causing misunderstanding of the characteristics and properties of the species or the author's biography;~~

~~d. Being identical or confusingly similar to trademarks, appellations of origin registered prior to the date of filing application with respect to the product identical or similar to harvested products of such plant varieties.~~

### ~~Section 3~~

~~Application, dealing with Application and~~

~~granting Certificate of registration of plant varieties~~

#### ~~Article 257. Application for registration of plant varieties~~

~~1. The application for registration of plant varieties must be in Vietnamese language except for documents stipulated by the Government.~~

~~2. Each Application for registration of plant variety shall only be entitled to the request for granting of the Certificate of registration with respect to only one plant variety.~~

~~3. Application for registration of plant variety consists of:~~

~~a. Declaration of registration of plant variety;~~

~~b. Document describing the variety and its photo;~~

~~c. Power of attorney if filed through representative;~~

~~d. Document proving the priority right if requesting the priority right;~~

~~e. Document proving the transfer of right to file application, if the applicant is the person who is transferred with the right to file application;~~

~~f. Receipts of paying charges, fees.~~

~~4. The declaration of registration as referred to in Clause 1 of this Article must be made in the prescribed form and consist of sufficient information as specified in such form.~~

~~5. The document describing the variety and its photo as referred to in Clause 1 of this Article must fully and clearly manifest the principal characteristics of the plant variety requested for protection.~~

~~6. The protection scope of the plant variety must consist of principal characteristics and the appellation of the variety. The scope of protection must be consistent with the description and the photos.~~

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~~7. The Government shall make detailed provisions on form and content of the Application.~~

~~Article 258. Unity of Application for registration of plant variety  
Each Application for registration of plant variety shall only be entitled to request the granting of Patent of plant variety.~~

~~Article 259. Documents proving the priority right  
Documents proving the priority right to plant varieties consist of:~~  
~~a. Copy of the application or applications with certification of the application-receiving office; and~~  
~~b. Written transfer of the priority right if such right is transferred from another person.~~

~~Article 260. Authorized power of representation~~  
~~1. All the authorization for carrying out the procedures relating to the granting, maintenance, modification, suspension and annulment of the Certificate of registration of plant varieties must be made in writing called Power of attorney.~~  
~~2. A power of attorney must consist of the following main contents:~~  
~~a. Full name, address of the authorizing Party;~~  
~~b. Full name, address of the authorized Party;~~  
~~c. Extent of authority granted, including tasks that the authorized Party is permitted to perform on behalf of the authorizing Party;~~  
~~d. Date of the Power of attorney;~~  
~~dd. Signature and/or seal of the person executing the Power of attorney;~~  
~~e. Duration of the proxy.~~  
~~3. A Power of attorney without the duration of proxy shall be deemed permanent and its validity shall only terminate when the authorizing Party declares the termination of the proxy.~~

~~Article 261. Languages~~  
~~1. Except for the documents stipulated in Clause 2 of this Article, the Application for registration of plant variety and all other transaction documents between applicants and the plant variety registration Authority must be in Vietnamese. Other documents prepared in other languages shall only be used for comparison, reference and inspection.~~  
~~2. The following documents can be made in languages other than Vietnamese, but they must be translated into Vietnamese upon request by the plant variety registration Authority:~~

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~~a. Power of attorney;~~

~~b. Document proving the lawful right to file application if the applicant is transferred with the right to file application by another person;~~

~~c. Document proving the priority right;~~

~~d. Other supporting documents necessary for the Application of registration of plant variety.~~

~~Article 262. Date of filing Application for registration of plant variety~~

~~The filing date is the date on which the Application is received by the plant variety registration Authority.~~

~~Article 263. Formality examination of the Application for registration of plant variety~~

~~1. The plant variety registration Authority shall examine the Application for granting Certificate of plant variety to see whether it is eligible or not.~~

~~2. The Application for granting Certificate of plant variety shall be rejected under the following circumstances:~~

~~a. The Application does not meet the formal requirements.~~

~~b. The object referred to in the Application is not the variety or does not belong to the varieties in the List of protected plant varieties and species;~~

~~c. The Application is not filed by the person entitled to file application including the case where the right to file application jointly belongs to organizations, individuals but one person among them does not agree with the filing of the Application;~~

~~d. The Application is filed not in accordance with the regulations on filing application;~~

~~dd. The person filing application fails to pay prescribed charges and fees.~~

~~3. Where an application for granting Certificate of plant variety is subject to the circumstances as referred to in Clause 2 of this Article, the plant variety registration Authority shall carry out the following procedures:~~

~~a. Issuing a Notice of intended reject to the application clearly stating the reasons and fixing a period of rectifying the mistakes or presenting the objections by the applicant to the intended reject.~~

~~b. Issuing a Notice of reject to the application if the applicant~~

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~~fails to rectify the mistakes appropriately and does not have adequate objections to the intended reject specified in point a of this Clause;~~

~~c. Making procedures specified in Clause 4 of this Article if the applicant rectifies the mistakes appropriately or has adequate objections to the intended reject specified in point a of this Clause;~~

~~4. If the application is not subject to the circumstances as referred to in Clause 2 of this Article, or the circumstances as referred to in point c of Clause 3 of this Article, the plant variety registration Authority shall issue a Notice of acceptance to the application.~~

~~5. The period and procedures for formal examination of the application shall be prescribed by the Government.~~

~~Article 264. Publication of Application for registration of plant variety~~

~~1. All the applications for granting Certificate of registration of plant variety which have been deemed eligible shall be published by the plant variety registration Authority within 2 months from the date of accepting application.~~

~~2. The contents and form of publication of application shall be prescribed by the Government.~~

~~Article 265. Provisional rights to plant varieties~~

~~The owner of the rights over a plant variety is entitled to request a third party, who has exploited such variety for commercial purpose during a period from the date of publication of the application to the date of granting the Certificate of registration, to pay a compensation equivalent to the licensing price with respect to such plant variety if during such period the third party has been notified of the filing of the Application for registration of plant variety.~~

~~Article 266. Objections to the granting of Certificates of registration of plant varieties~~

~~1. Within 60 days from the date of publication of application, all organizations and individuals are entitled to file to the plant variety registration Authority their written objection to the granting of a Certificate of registration of plant variety in accordance with the published application, with the following reasons:~~

~~a. The plant variety in the application does not meet the conditions for granting protection Title;~~

~~b. The Application is filed by a person not entitled to file application.~~

~~2. The written objection to the granting of Certificate must clearly state the reasons of objection and be attached with necessary documents and evidence.~~

~~3. The person lodging written objection is entitled to file additional documents and evidence within 90 days from the date of publication of application.~~

~~Article 267. Examination of written objection to the granting of Certificates of registration of plant varieties~~

~~1. The plant variety registration Authority shall issue a Notice requesting the applicant to provide opinions on the written objection to the granting of Certificate of registration plant variety, within 60 days from the date of issuing Notice.~~

~~2. Based on the result of considering the written objection to the granting of Certificate and the applicant's opinions, the plant variety registration Authority shall carry out the following procedures:~~

~~a. Issue a Decision of refusing the grant of Certificate if there are sufficient grounds to affirm that the reasons included in the written objection are true; or~~

~~b. Issue a Notice of refusing the reasons of objection to the grant of Certificate.~~

~~3. The procedures and orders for handling the written objection to the granting of Certificate shall be stipulated by the Government.~~

~~Article 268. Substantive examination of the Application for registration of plant variety~~

~~1. All the Application which have been accepted and deemed eligible shall be examined by the plant variety registration Authority in terms of substance for the purpose of evaluating the possible protection of the object mentioned in the application and determining the respective scope of protection except for the case that there is a written objection to the granting of Certificate filed in accordance with Article. . . and the plant variety registration Authority has issued a Decision of refusing the grant of Certificate in accordance with Article. . . (on examination of written objections) of this Law.~~

~~2. The period and procedures for substantive examination of application shall be prescribed by the Government.~~

~~Article 269. Modification of and addition to Application for registration of plant variety~~

~~1. At any time prior to issuing Notice of refusing the grant of~~

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~~Certificate or Decision of granting Certificate of registration of plant variety by the plant variety registration Authority, the applicant shall, on the condition of paying charges and fees as stipulated, have the following rights:-~~

~~a. To modify and make additions to the Application;~~

~~c. To request the recording of any change to the name and address of applicant;~~

~~d. To request the recording of any change to the applicant due to assignment of Application, transfer of rights over the Application arising from inheritance, merger, division or separation of entities, Court judgments etc. . . .~~

~~2. The modification of and addition to the application must not vary the nature of the object mentioned in the application.~~

~~Article 270. Transfer of Application for registration of plant variety~~

~~1. The applicant may transfer the filed application to another person in writing on the condition that it must pay charges and fees as prescribed.~~

~~2. The application may be transferred to a third party if there is evidence to affirm that the right to file application belongs to such third party. The third party to whom the application is transferred must pay charges and fees in accordance with regulations as applicable to the applicant.~~

~~Article 271. Technical testing~~

~~1. All the plant varieties under the applications of which pass the substantive examination shall, if meeting the standards of novelty, be tested technically.~~

~~2. The technical testing is to evaluate the distinctiveness, homogeneity and stability of the plant variety under the application.~~

~~3. The plant variety registration Authority has the right to request the applicant to provide materials necessary for the conduct of technical testing within the prescribed period.~~

~~4. The competent agencies may authorize eligible organizations, individuals to conduct the testing of plant varieties.~~

~~5. The period and methods of technical testing with respect to plant varieties shall be prescribed by the Government.~~

~~6. The charges for conducting technical testing shall be borne by the applicant.~~

~~Article 272. Testing of cultivation and use value~~

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~~1. Testing of cultivation and use value shall be conducted with respect to the plant varieties which have been tested technically for the purpose of determining whether or not such varieties may be put into use on a large scale.~~

~~2. The period and methods of testing cultivation and use value shall be prescribed by the Government.~~

~~Article 273. Recognition and use of names of plant varieties~~

~~1. The plant varieties shall be named by the applicant itself and such names shall be evaluated and recognized if meeting the requirements as specified in Article . . . of this Law.~~

~~2. The period and procedures for recognizing the names of plant varieties shall be prescribed by the Government.~~

~~3. The recognized name of a plant variety shall be the sole one used in the course of production and business of such plant variety.~~

~~4. The names of plant variety may be used together with trademarks, trade names and its similar indications if their possible recognition is clearly ensured.~~

~~Article 274. Registration of names of plant varieties; modification of names of plant varieties in the Register~~

~~1. Recognized names of plant varieties are recorded in the National Register of plant varieties established and managed by the plant variety registration Authority .~~

~~2. All organizations and individuals are entitled to submit a petition requesting the plant variety registration Authority to modify the recognized names of plant varieties if there is sufficient ground to affirm that such names are not appropriate and the use of such names shall infringe the preceding rights of a third party, on the condition that they must pay charges and fees as prescribed.~~

~~3. The plant variety registration Authority shall be responsible for considering the petitions, requiring the holders of the Certificates to modify the names of plant varieties accordingly.~~

~~4. The procedures and orders for handling the petitions for modification of names of plant varieties shall be prescribed by the Government.~~

~~Article 275. Reject of granting Certificates of registration of plant varieties~~

~~1. An Application for registration of plant variety shall be rejected in case the plant variety under the application does not meet any~~

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~~requirements as specified in Articles . . . of this Law.~~

~~2. If the application for granting Certificate of registration of plant variety is subject to the case specified in Clause 1 of this Article, the plant variety registration Authority shall carry out the following procedures:~~

~~a. Issuing a Notice of intended reject of grant of Certificate clearly stating the reasons and fixing a period of rectifying the mistakes or presenting objections by the applicant to the intended reject;~~

~~b. Issuing a Notice of reject of grant of Certificate if the applicant fails to rectify the mistakes appropriately and does not have adequate objections to the intended reject specified in point a of this Clause;~~

~~c. Carrying out procedures in accordance with Article . . . and Article . . . of this Law if the applicant rectifies the mistakes appropriately and has adequate objections to the intended reject to issue the title as specified in point a of this Clause.~~

~~Article 276. Grant of Certificates of registration of plant varieties~~

~~If the application is not subject to the circumstances as specified in Clause 1 of Article . . . of this Law or belongs to the circumstances as specified in point c of Clause 2 of Article . . . of this Law and the applicant pays fees as prescribed, the plant variety registration Authority shall carry out the following procedures:~~

~~a. Issuing Decision of granting Certificate of registration of plant variety; and~~

~~b. Issuing Certificate of registration of plant variety to the applicant.~~

~~Article 277. Storing of plant varieties of which the Certificates of registration are issued~~

~~1. Storing plant varieties is the activity of ensuring the provision of multiplying materials which are able to reproduce such varieties.~~

~~2. The holders of Certificates shall be responsible for storing the protected plant varieties during the valid term of those Certificates.~~

~~3. The holders of Certificates shall have provide relevant information and conditions required by the plant variety registration Authority to prove their responsibilities as specified in Clause 2 of this Article.~~

~~4. The condition as referred to in Clause 2 of this Article is to~~

~~include the conditions for inspecting the measures applied to store plant varieties.~~

~~Article 278. Objection to decision of reject in granting of, decision of grant of Certificate of registration of plant variety~~

~~1. Any third party having rights and interest directly relating to the grant of Certificate of registration is entitled to object the decision of grant, decision of reject of the grant of Certificate by the plant variety registration Authority~~

~~2. The objection must be made in writing clearly stating full name and address of the objector, No., date and contents of the decision to be objected; No. of relevant application for Certificate; name of protected object in the application; contents and argument proving the objection; particular suggestion on remedying or canceling the relevant decision.~~

~~Article 279. Re-examination~~

~~1. Re-examination is conducted again from the beginning of the procedures for examination of application, technical testing of plant variety referred to in the application for the purpose of inspecting the eligibility of the Decisions relating to the grant or reject of Certificates of registration of plant varieties.~~

~~2. The procedures and orders for re-examination shall be prescribed by the Government.~~

~~Section 4~~

~~Rights and obligations established under the Certificates of registration of plant varieties~~

~~Article 280. Rights of holders of Certificates of registration of plant varieties~~

~~The holders of Certificates of registration of plant varieties have the rights:~~

~~a. To use, permit or forbid others to use, the protected plant varieties in business purpose;~~

~~b. To transfer the right to use the protected plant varieties to others;~~

~~c. To request competent authorities to deal with the infringement of rights and compel the infringers to make compensation for damages caused by their infringement.~~

~~Article 281. Use of plant varieties~~

~~Using a plant variety is:~~

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~~a. Using multiplying materials of such plant variety to conduct one of the following activities:~~

~~— Production or propagation;~~

~~— Processing of varieties;~~

~~— Offers for sale ;~~

~~— Sale or other forms of business;~~

~~— Export;~~

~~— Import; and~~

~~— Storing for conducting the above activities;~~

~~b. Using harvested materials or any other products created from harvested materials to conduct activities as referred to in point a of this Article if the harvested materials are collected by using multiplying materials of the protected variety without the permission of the holder of Certificate of registration and the holder of Certificate of registration does not have reasonable conditions to exercise its right over such multiplying materials prior to the creation of harvested products.~~

~~Article 282. Restrictions of rights to plant varieties~~

~~1. The right to commercial exploitation shall only be exercised with respect to the plant varieties included in the List of plant varieties permitted for production and business.~~

~~2. The right to exploit plant varieties commercially may be banned by the Government for a prescribed period.~~

~~3. The following activities shall not be deemed to be the activities of using plant varieties:~~

~~a. Using plant varieties for personal use and non-commercial purpose;~~

~~b. Storing, using the harvested products collected from using multiplying materials of plant varieties to propagate and further cultivate varieties for the following crop on the area of land where such plant varieties have been cultivated if the using of multiplying materials is lawful.~~

~~c. Using plant varieties for the purpose of hetero transplantation and scientific research;~~

~~d. Using the materials of protected plant varieties and plant varieties as specified in Article . . . of this Law due to the fact that the holders of Certificates, the transferees of use right, the licensee do not voluntarily bring the varieties to the market including foreign markets except the activities of using plant varieties for multiplying~~

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~~and activities of export of multiplying materials to the countries which do not protect relevant lines and species for the purposes other than consumption.~~

~~— The materials of the protected plant varieties as mentioned above may be multiplying materials, harvested products or any other products directly produced from the harvested products of the protected plant varieties;~~

~~e. Using harvested products collected from the illegal use of multiplying materials for production if the producers are not aware of that matter;~~

~~Article 283. Expansion of rights over other plant varieties — ancillary plant varieties~~

~~The rights to plant varieties specified in Article . . . of this Law shall apply to the following other plant varieties — ancillary plant varieties:~~

~~a. plant varieties derivative from the protected plant varieties when such protected plant varieties themselves are not those which are derivative from other plant varieties;~~

~~b. plant varieties which are not clearly different from the protected plant varieties;~~

~~c. plant varieties the production of which requires the use of protected plant varieties many times.~~

~~Article 284. Obligations of the holders of Certificates of registration of plant varieties~~

~~The holders of Certificates have the obligations:~~

~~a. To pay remuneration to the authors as agreed. If there is no agreement on remuneration between the authors and the holders of Certificates, the rates of remuneration and period for paying remuneration must be subject to the following regulations:~~

~~— The minimum rate of remuneration paid to the authors shall be 10% of the total profits gained in each year of using the plant varieties or 15% of the total amount which the holders of Certificates receive in each payment for the transfer of the rights to use the plant varieties and exploit the protected plant varieties;~~

~~— The period of paying remuneration shall not be later than 60 days from the last day of the 12<sup>th</sup> month of each year of use or not later than 30 days from the date of receiving payment for the transfer of the use rights.~~

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~~b. To pay fees of maintaining validity of the Certificates as stipulated.~~

~~c. To store the protected plant varieties, provide multiplying materials of the protect plant varieties to competent authorities and maintain the stable characteristic of the protected plant varieties as stipulated.~~

~~d. To use the protected plant varieties in order to meet the reasonable demand of society.~~

~~d. To use the recognized name of plant varieties even if the validity of the protection Titles expires.~~

~~Article 285. Rights and obligations of the authors of plant varieties~~

~~1. The authors of plant varieties have the rights:~~

~~a. To have their names inscribed in the capacity of the authors in the Certificates of registration of plant varieties, the national Register of protected plant varieties as well as in the published documents on plant varieties;~~

~~b. To receive remuneration in accordance with Article . . . of this Law;~~

~~c. To inherit the right to remuneration;~~

~~d. To request competent authorities to deal with or take legal action against a third party who infringes the rights as specified in points a and b of this Clause.~~

~~2. The authors of plant varieties have the obligations to help the holders of Certificates of plant varieties in taking reasonable measures for the purpose of maintaining the stability of the protected plant varieties.~~

~~Article 286. Infringement of the rights to plant varieties~~

~~The following activities shall be considered to infringe the rights to plant varieties:~~

~~a. Activities pertaining to the rights to plant varieties during the valid term of the protection Titles without permission of their holders.~~

~~b. Activities of using the names of plant varieties which are identical or similar to those of the protected plant varieties of other persons for the plant varieties which belong to the same species as the protected plant varieties.~~

~~c. Activities pertaining to the provisional rights of the holders of Certificates if the compensation is not paid as prescribed;~~

~~d. Activities of not complying with the obligation to pay~~

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~~remuneration to the authors of plant varieties as stipulated or not ensuring the authors' rights to have their names inscribed.~~

#### ~~Section 5~~

~~Transfer, assignment of rights to plant varieties~~

~~Article 287. Transfer of licensing rights under contract~~

~~1. To transfer the rights to use plant varieties by a person is to permit other persons to conduct any activities which pertain to its rights to use plant varieties (licensing).~~

~~2. Where the rights to plant varieties belonging to a joint ownership, the transfer of the use rights to other persons must be subject to the consent of all the joint owners.~~

~~3. The transfer of the rights to use plant varieties must be manifested in written contract (licensing Contract) in accordance with the provisions of laws on civil and economic contracts. If the transfer of the rights to use plant varieties is part of another Contract, then the contents on the transfer of ownership of plant varieties must be made in a separate set of documents apart from the remaining part of such Contract.~~

~~5. A licensing contract shall only be valid with regard to a third party when it has been recorded by the plant variety registration Authority at the voluntary request of the signing parties.~~

~~6. A licensing contract shall be automatically suspended or considered to be void when the rights to plant varieties of the Licensor are suspended or annulled.~~

~~Article 288. Prohibitions in relation to the transfer of use rights~~

~~A licensing contract must not contain the terms which restrict unreasonably the rights of the Licensee especially the restrictive terms which do not originate from the Licensor's respective rights to plant varieties or do not aim to protect such rights.~~

~~Article 289. Compulsory contents of a licensing contract~~

~~A licensing contract must contain the following contents:~~

~~a. Full name and address of the Licensor and the Licensee;~~

~~b. Background for licensing (protection Title already granted to the Licensor; or exclusive licence Contract);~~

~~c. Scope of licence in which:~~

~~— Category of licence (exclusive, non-exclusive);~~

~~— Objects of licence being determined within the restriction of the use rights (belonging to the protected use activities) and the~~

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~~restriction of protection scope of plant varieties;~~

~~—— Restriction of territory (belonging to the territory of Vietnam);~~

~~—— term (belonging to the term of protection of plant varieties)~~

~~d. —— Licensing price;~~

~~e. —— Rights and obligations of each Party;~~

~~f. —— Conditions for modifying, terminating and invalidating the contract;~~

~~g. —— Settlement of claims, disputes;~~

~~h. —— Signing date and place;~~

~~i. —— Signatures of the Parties or authorized representatives of the Parties and full names and positions of the undersigned and confirmation of the signatures.~~

#### ~~Article 290. Rights of the Licensor~~

~~1. —— To the extent and under the conditions contained in the licence Contract, the Licensor has the rights:~~

~~a. —— To restrict the exclusive Licensee in the grant of non-exclusive licence to a third party;~~

~~b. —— To restrict the transfer of the signed licence Contract by the Licensee to a third party except for the case that the licence Contract is transferred together with the establishments of production and business of plant varieties;~~

~~c. —— To use the plant varieties of the Licensee in case of cross licensing;~~

~~d. —— To receive royalties at the rate and in the manner as agreed in the Contract by the two Parties.~~

#### ~~Article 291. Rights of the Licensee~~

~~1. —— To the extent and under the conditions contained in the licence Contract, the Licensee has the rights:~~

~~a. —— To conduct all the activities which belong to the Licensee's rights to use plant varieties (in case of exclusive licence) or conduct the activities of using plant varieties specifically defined in the Contract (in case of non-exclusive licensing);~~

~~b. —— To grant non-exclusive licence to a third party on the basis of exclusive licence if permitted by the Licensor;~~

~~c. —— To transfer the licence Contract to a third party together with its establishments of production and business of plant varieties;~~

~~d. —— To transfer the non-exclusive licence Contract to a third party with the consent of the owner of the rights to plant varieties;~~

~~e. To request the Licensor to take necessary and appropriate measures against infringing acts of third parties causing damages to the Licensee;~~

~~f. To carry out appropriate measures against the infringing acts of the third parties if the Licensor fails to execute the request as specified in point e of this Clause within a period of . . . from the date of the request.~~

#### ~~Article 292. Assignment of rights to plant varieties~~

~~1. To assign the rights to plant varieties is to transfer all the rights to plant varieties. The Assignee shall become the holder of Certificate of plant varieties after the assignment Contract is registered with the plant variety registration Authority in accordance with the prescribed procedures.~~

~~2. Where the rights to plant varieties belonging to a joint ownership, the assignment of such rights to other persons must be subject to the consent of all the joint owners.~~

~~3. The assignment of the rights to plant varieties must be manifested in written contract (assignment Contract) in accordance with the provisions of laws on civil and economic contracts.~~

~~5. An assignment contract shall only be valid with regard to a third party when it has been recorded by the plant variety registration Authority at the voluntary request of the signing parties.~~

#### ~~Article 293. Cross licence~~

~~a. Cross licence is licence with respect to which an owner of rights over a plant variety (the first plant variety) permits another owner of rights over another plant variety (the second plant variety) to use its plant variety in case the use of the second plant variety requires the use of the first plant variety and in turn, the owner of rights over the first plant variety is entitled to use the second plant variety.~~

~~b. The regulations on licensing under contract shall mutatis mutandis apply to cross licensing.~~

#### ~~Article 294. Registration of licensee contracts, assignment contracts~~

~~1. The dossiers of registration of a licensing Contract, an assignment Contract (referred to as registration Dossiers) consist of the following documents:~~

~~a. Declaration of registration of Contract containing the request for registration of Contract, full name and address of the requester, objects of the transfer of rights;~~



~~b. — 2 novels or 2 copies of the Contract including Annexes (if any); if the Contract is made in a language other than Vietnamese, the Vietnamese translation is required;~~

~~c. — The novel of the protection Title (with respect to the transfer of rights to plant varieties or the respective copy of the protection Title (with respect to the transfer of the rights to use the rights to plant varieties); if the Contract to be registered is a non-exclusive licence Contract granted by the exclusive licensee, the copy of the Certificate of registration of the exclusive licensee Contract and a document of the owner of rights permitting the transfer of licence are required;~~

~~d. — Joint owners' written agreement to the transfer of rights if the respective rights are the joint ownership; or if such agreement cannot be reached, a written explanation on the disagreement of the remaining owners is required;~~

~~d. — Receipts of Contract registration fees;~~

~~e. — Power of attorney if the Dossiers are submitted through a representative of intellectual property.~~

~~2. — The registration Dossiers shall be submitted to the plant variety registration Authority in accordance with the regulations on submission of application.~~

~~3. — The plant variety registration Authority shall be responsible for receiving the registration Dossiers if they consist of at least the following documents:~~

~~The Application for Certificate of registration of plant variety which is to be received by the plant variety registration Authority if it consists of at least the following information and documents:~~

~~a. — Request for registration of transfer Contract;~~

~~b. — Information sufficient for determining the applicant;~~

~~d. — Receipts of paying registration fees.~~

~~4. — The plant variety registration Authority shall be responsible for considering the registration Dossiers, issue Decision of acceptance, refusal of the Contract for transfer of rights to plant varieties.~~

~~5. — The procedures and orders for considering the registration Dossiers shall be prescribed by the Government.~~

#### ~~Article 295. Compulsory licence~~

~~1. — Compulsory licence is licence granted by a State authorized authority under the prescribed circumstances at the request of third parties.~~

~~2. The State authority authorized to grant compulsory licence is the Ministry of Agriculture and Rural Development.~~

~~3. Compulsory licence is non exclusive licence.~~

~~4. Compulsory licence is restricted to a scope and period sufficient for meeting the purpose of granting such licence and mainly aimed at meeting the domestic demand;~~

~~5. Compulsory licence must not be transferred to other persons except for the case that it is transferred together with the business establishments using such licence, and is not a ground for granting licence to other persons.~~

~~Article 296. Conditions for granting compulsory licence~~

~~1. Any third party is entitled to request the plant variety registration Authority to grant compulsory licence for the use of plant varieties if the owner of rights to plant varieties:~~

~~a. Decline to grant licence to such party without adequate reasons;~~  
~~or~~

~~b. Impose or lay down unreasonable conditions on granting licence.~~

~~2. The authorized authority shall involuntarily grant licence to the requester on the conditions that:~~

~~a. The granting of licence is necessary for the plant varieties to be widely used at fair price and with secure quality;~~

~~b. The requester has financial and technical ability and other conditions to use the plant varieties in accordance with the purposes as specified in Point a of this Clause.~~

~~Article 297. Procedures and orders for requesting the granting of compulsory licence~~

~~The procedures and orders for requesting the granting of compulsory licence shall be prescribed by the Government.~~

~~Article 298. Rights of the owners of rights to plant varieties in case compulsory licence is granted~~

~~In case a compulsory licence is granted by the State competent authority in accordance with prescribed regulations, the owner of rights to plant varieties (the obliged Party) has the rights:~~

~~a. To receive an amount of money corresponding to the economic value of the use rights under such licence or equivalent to the price of a licence contract having similar licensing scope and period;~~

~~b. To request the State competent authority to amend, suspend and annul the validity of, compulsory licence when the conditions resulting~~

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~~to the granting of such licence vary, do not exist or terminate provided that such amendment, suspension and annulment of validity do not cause damages to the person who is granted with compulsory licence.~~

~~Article 299. Amendment, suspension and annulment of compulsory licence  
The procedures and orders for requesting and approving the amendment, suspension and annulment of compulsory licence shall be prescribed by the Government.~~

#### ~~Chapter VIII RIGHT TO TRADEMARKS~~

##### ~~Section 1 Principles to establish right to trademarks~~

##### ~~Article 300 Trademarks~~

~~1. A mark shall be signs used to distinguish goods, services of different entities and individuals doing business.~~

~~2. A collective mark shall be a mark to be used to distinguish goods, services of members of an entity that owns the mark with goods, services of other individuals and entities doing business who are not members [of the mark owning entity].~~

~~3. A certification mark shall be signs used by the mark owner to certify specifications in relation to origin, materials, production methods of goods or services, quality, accuracy, safety or other specifications of goods, services bearing such the mark as produced or provided by other individuals, entities.~~

~~4. A mark shall be visible signs, which may be letters, words, sentences, pictures, and images, including three dimension images or the combination thereof, and shall be expressed in one or several colors.~~

##### ~~Article 301 Bases for establishment of rights to trademarks~~

~~1. The rights to trademarks shall be established on the basis of certificates of protection issued by the competent authority (hereinafter called the mark registration authority) in accordance with the laws.~~

~~2. The rights to trademarks that are registered in accordance with the international agreements of which Vietnam is a member shall be established based upon the procedures for recognition for protection of trademarks by the registration authority in accordance with the laws.~~

~~3. The rights to well known trademarks shall be established on the basis of the recognition of the mark registration authority.~~

##### ~~Article 302 Application for mark registration~~

~~1. In order to obtain the rights to a mark, the person having the right to apply set out in Article... of this Law shall file an application for mark registration to the mark registration authority. The mark registration authority shall examine an application for mark registration in accordance with the procedures and formalities set out~~

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herein. The certificate of protection shall be issued based upon the results of examination of the application. The scope, contents, duration and rights to the respective mark shall be determined based upon the issued certificate of protection and the National Mark Register (the Register).

2. Individuals, legal persons and other persons of Vietnam may either directly proceed or authorize an Intellectual Property Service Agent to proceed with the application for mark registration and related procedures.

3. Foreign individuals residing in Vietnam, foreign entities having real production, trading establishments in Vietnam may apply the mark registration applications either directly or via their lawful representatives in Vietnam.

Foreign individuals not residing in Vietnam, foreign entities not having production, trading establishments in Vietnam may not directly apply for mark registration but through their lawful representatives in Vietnam.

4. The applicant shall ensure the accuracy of information about the right to mark registration and about the applicant set out in the application. In case where the certificate of protection is revoked as a result of false information, the owner of the certificate of protection shall be responsible for the consequences brought about by the use of the rights [to the mark].

#### Article 303 Rights to apply for mark registration

1. Individuals, entities shall be of the right to apply for registration of trademarks used for goods produced or serviced supplied by themselves.

2. Entities established in accordance with the laws, including associations, co-operatives and general corporations, etc., shall have the right to apply for registration of collective trademarks in order for their respective members to use in accordance with the relevant rules on using collective trademarks.

3. Entities that are capable of certifying and supervising the natures of the goods, services bearing a certification mark, and do not conduct production, trading activities in relation to such goods, services shall have the right to apply for registration of the certification mark.

4. Two or more individuals, entities shall have the right to jointly apply for registration of a mark in order to be the co-owners thereof provided that the use of that mark shall be on behalf of all co-owners, or that the use of that mark shall be for the goods and/or services the co-owners participate production, trading process of which and that the use of the mark shall not make the public confused and shall not be in contrary to social interests.

5. Mark owners shall have the right to apply for recognition of well-known trademarks.

#### Article 304 First to file principle

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~~1.If in relation to the same mark used on the same goods, services or similar goods, services there shall be two or more applicants filing applications on different dates, the certificate of protection shall only be issued to the applicant who is the first to file an application.~~

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~~2.If there shall be two or more applicants for the same mark on the same goods, services, and if their applications have the same priority, the competent authority shall suggest that the applicants negotiate so that there shall be only one applicant and other applicants shall withdraw on reasonable conditions, or agree to apply for the co-ownership over the mark in accordance with Article ... of this Law. If the applicants fail to agree then all applications shall be returned.~~

#### ~~Article 305 Priority~~

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~~1.A mark registration applicant may request for priority based upon a mark registration application in respect of the same subject matter of another application that has been filed earlier in another country if:~~

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~~(a)That country where the application has been filed earlier shall be a Paris Convention member or shall sign with Vietnam bilateral or multilateral international agreements that provide for priority;~~

~~(b)The applicant shall be a national, resident or a person having actual production, trading establishment in the country satisfying the conditions set out in Point (a) of this Clause; and~~

~~(c)The application for mark registration shall be filed in Vietnam within the time limit prescribed in Clause 2 of this Article.~~

~~2.The time limit for mark registration application in order for obtaining priority shall be as follows:~~

~~(a)If the applicant applying for priority pursuant to the Paris Convention, the time limit for filing a mark registration application in Vietnam shall be 6 months as from the date of the first application;~~

~~(b)If priority shall be requested pursuant to a bilateral or multilateral international agreement, the time limit for filing a mark registration application shall be in accordance with [the provisions of] that international agreement.~~

~~3.A priority mark registration application shall have the respective priority date that is the date of the first application or the date in accordance with the [relevant] bilateral [or multilateral] agreement.~~

~~4.In order to obtain priority, the applicant shall point out the [relevant] international agreement to serve as the basis for the priority and pay a fee for obtaining priority, and within 3 months as from the date of the mark registration application, send a copy of the first application certified by the authority receiving the same. If the applicant fails to submit the said documents within such a time limit, the request for priority shall not be handled.~~

#### ~~Article 306 Fees and charges in connection with mark registration applications~~

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~~1.The applicant shall pay fees and charges in relation to the relevant procedures. If [such fees or charges shall have] not paid fully or timely, the mark registration authority may reject to proceed with the relevant procedures.~~

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~~2.The Government shall specify the fees, charges, levels, time [of payment] and mechanism to use fees and charges in connection with mark registration applications.~~

#### ~~Article 307 National Mark Register (the Register)~~

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~~The relevant authority authorized to issue certificates of protection shall maintain the Register in order to record all information about all certificates of protections that have been issued before the issuing date of a certificate of protection. The Register shall be the official and novel information resource to be used for the purposes of inspection, cross check, certification, recognition, and other objectives in accordance with the [relevant] regulations.~~

#### ~~Article 308 Publication of certificates of protection~~

~~1.Within 60 days after the issuing date of a mark protection certificate, the mark registration authority shall publicize information about the certificate of protection in the Mark Official Gazette.~~

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~~2.In addition to the information referred to in Clause 1 of this Article, any interested person shall have the right to have access to more sufficient information about the objects set out in the certificate of protection.~~

~~The mark registration authority shall be responsible for satisfying the above request for information.~~

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#### ~~Article 309 Certificate of mark protection~~

~~1.A certificate of mark protection shall be the certificate of mark registration.~~

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~~2.A certificate of mark registration shall have the following main contents:~~

~~(a)Number and issuing date of the certificate;~~

~~(b)Name, address of the person to whom the certificate is issued;~~

~~(c)Number and filing date of the application for certificate of mark registration;~~

~~(d)Sample of the mark;~~

~~(e)List of the goods, services bearing the mark;~~

~~(f)Term of protection.~~

#### ~~Article 310 Validity of certificates of mark registration~~

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~~1.A certificate of mark registration shall be valid in the entire territory of the Socialist Republic of Vietnam.~~

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~~2.A certificate of mark registration shall be valid as from the issuing date until the tenth anniversary of the filing date, and may be renewed every 10 years. Within the validity term, the owner of the mark shall have the rights in accordance with the scope [of protection] set out in the relevant certificate of mark registration.~~

~~3.The certificate of mark registration shall be invalid before the expiry date or be nullified on the conditions and under the procedures set out herein.~~

#### ~~Article 311 Suspension of validity of certificates of mark registration~~

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~~The validity of a certificate of mark registration shall be suspended in the following cases:~~

~~(a)The mark owner declares to waiver the rights conferred under the relevant certificate of mark registration. In this circumstance, the validity of that certificate of mark registration shall be suspended as from the date of the declaration of waiver;~~

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~~(b)The mark owner fails to use the mark for five consecutive years before the date of the request to suspend the validity of the certificate of mark registration by another person without legitimate excuses. In this circumstance, the validity of the certificate of mark registration shall be suspended as from the first day after expiry of the said five years period.~~

~~— The date to calculate the five years un use period shall be the date of the decision to issue the certificate of mark registration. If the mark owner resumes using the mark after five consecutive years of being un used, the provision of this Point shall not be applied if the re-use starts within 3 months before the date of the request for validity suspension.~~

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~~The licensing of a mark shall not be considered as being an act of using such a mark if the licensee fails to use such a mark.~~

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~~(c)The mark owner does not exist or operate without lawful heirs. In this case, the validity of the certificate of [mark registration] shall be suspended as from the date the owner ceases to exist or operate;~~

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~~(d)The collective mark owners fail to supervise or supervise ineffectively the implementation of the relevant mark using regulations;~~

~~(e)The mark owner acknowledges violating regulations on certification of goods, services bearing the mark in accordance with the rules on using trademarks or fails to supervise or supervise ineffectively the implementation of the rules on using trademarks.~~

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#### ~~Article 312 Revocation of certificates of mark registration~~

~~1.Within 5 years as from the date of validity of the certificate of mark registration, any third person shall have the right to file an application to request the competent authority to nullify a certificate~~

~~of mark registration for the reason that such a certificate has been issued not in accordance with the laws as prescribed in Clause 2 of this Article. With regard to a certificate that has been registered due to the applicant's unhealthy motives, the time limit to exercise such right shall be the entire validity term of the certificate of mark registration.~~

~~If the results of the examination of the application confirm that the certificate of mark registration has been issued not in accordance with the laws, the relevant authority shall issue a decision to revoke the certificate of mark registration partly or wholly and publicize such a decision in the Mark Official Gazette~~

~~2.The validity of a certificate shall be wholly nullified if there are grounds to confirm that it has been issued not in accordance with the laws in effect on the issuing date in the following circumstances:~~

~~(a)The person to whom the certificate has been issued shall not have the right to apply for mark registration nor have been transferred the right to apply for mark registration by the right owner;~~

~~(b)The protected mark no longer satisfies the protection conditions.~~

~~3.The validity of a certificate shall be partly revoked if there are grounds to confirm that the relevant part [of the mark] fails to satisfy the protection conditions.~~

~~4.The rights to the relevant mark shall not be considered to be in existence in case where the certificate of mark registration is revoked.~~

~~5.The provisions of this Article shall be applicable to the appropriate revisions to the internationally registered trademarks, which have been under protection in Vietnam.~~

#### ~~Article 313 Amendments to certificates of mark registration~~

~~The mark owner shall have the right to request the relevant authority to record any amendments in relation to the name, address, and sample of the mark or list of the goods [and] services under the certificate of mark registration and the Register. The amendment to the sample of the mark or list of the goods, services under the certificate of mark registration and the Register shall be permitted if such amendments do not extend the scope of protection.~~

#### ~~Section 2 Conditions for trademark protection in Vietnam~~

##### ~~Article 314 Conditions for trademark protection~~

~~A protected trademark shall be the one that is capable of being distinctive and shall not fall into the circumstances set out in Article ... of this Law [signs that shall not be protected as trademarks].~~

##### ~~Article 315 Signs not protected as trademarks~~

~~Signs those may not be protected as trademarks shall include:~~

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~~(a) Signs those cannot be distinctive such as simple figures, geometrical figures, numbers, letters, and letters that cannot be spelled as an expression; foreign letters of unpopular languages except for signs that have been used and recognized commonly as capable of being distinctive;~~

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~~(b) Conventional signs, symbols, pictures or popular names of goods, [and] services of any languages that have been used commonly and regularly and have been known by many people;~~

~~(c) Signs of time, places, production methods, classification, quantity, quality, natures, composition, usage, or value or other features to describe goods, [and] services except for the signs capable of being distinctive by being used before the date of the mark registration application;~~

~~(d) Signs those are the common composition of trade names;~~

~~(e) Signs those mislead, make confusions or have natures to cheat customers as to the origin, functions, usage, or value or other specifications of goods or services;~~

~~(f) Signs of geographical origin of goods, [and] services, save where such signs have been commonly used and recognized or protected as collective or certification trademarks as set out in Article ... of this Law;~~

~~(g) Signs those are identical or similar to the extent they are confused with national flags, emblems of other countries;~~

~~(h) Signs those are identical or similar to the extent that they are confused with trademarks of quality, inspection trademarks, and warranty trademarks of Vietnam, foreign countries, as well as international organizations;~~

~~(i) Signs those are identical or similar to the extent that they are confused with symbols, flags, badges, and abbreviated names of Vietnamese and international organizations if not approved by the relevant authorized authorities;~~

~~(j) Signs those are contrary to public orders or social ethics or signs that are prohibited by the laws.~~

#### ~~Article 216 Distinctive natures of trademarks~~

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~~A trademarks shall be capable of being distinctive in accordance with Article 238 if satisfies all of the following conditions:~~

~~(a) Being made from one or several unique, [and] noticeable elements or from several elements combining a unique, [and] noticeable and not being [the signs that are not protected as trademarks hereunder].~~

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~~(b) Not falling into the following cases:~~

~~(i) A trademarks that is identical or similar to the extent it is confused with other persons' protected trademarks in respect of the~~

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~~identical or similar goods or services;~~

~~(ii)A trademarks that is identical or similar to the extent it is confused with trademarks set prescribed in a mark registration application of other persons that has been filed with the relevant with the earlier priority date in respect of the identical or similar goods or services (including the mark registration applications that have been filed under international agreements to which Vietnam has signed or acceded);~~

~~(iii)A trademarks that is identical or similar to the extent it is confused with a protected mark or mark prescribed under a mark registration application of earlier priority dates of another person in respect of the non identical or dissimilar goods or services, provided that the protected mark or mark prescribed in the application of earlier priority date is well known due to being commonly used in Vietnam and the use of the identical or similar mark shall prejudice the distinctiveness or reputation of the protected mark or the mark of earlier priority date or shall be for the purposes of taking advantage of reputation;~~

~~(iv)A trademarks that is identical or similar to the extent it is confused with a mark of another person that has been used and recognized commonly in respect of the similar or identical goods or services;~~

~~(v)A trademarks that is identical or similar to the extent it is confused with another person's mark in respect of the identical or similar goods or services of the list attached to the mark the validity of the certificate of registration of which has expired or has been suspended but it does not exceed 3 years from the expiration or suspension, except in the case of suspension due to the mark not having been used in accordance with Article 235 hereof;~~

~~(vi)A trademarks that is identical or similar to the extent its is confused with another person's mark, which is considered to be well-known in respect of the goods or services that are similar or identical goods or services bearing the well known mark; or in respect of non-identical or dissimilar goods or services if the use of such mark may prejudice the distinctiveness or take advantage of the well known mark;~~

~~(vii)A trademarks that is identical or similar to the extent it is confused with another person's protected name if the use of the mark may make customers confused;~~

~~(viii)A trademarks that is identical or similar to the extent it is confused with geographical indications, [and] appellation of origins under protection;~~

~~(ix)A trademarks that is identical to another person's protected industrial design, which has been applied for protection with earlier priority date;~~

~~(x)A trademarks that is identical to names or symbols of characters belonging to another person's copyrights, save where this person so permits;~~

~~(xi)A trademarks that is identical to other persons' protected plant seeds in respect of the identical or similar plant seeds or seeds or goods or services;~~

~~(xii)A trademarks that is identical or similar to the extent it is confused with names (including names, nicknames, pen names), images of Vietnamese, foreign leaders, national heroes, and famous personalities, without permission of the authorized persons.~~

#### ~~Article 317 — Conditions for recognition of well-known trademarks~~

~~The following criteria shall be evaluated upon proceeding with the procedures for recognition of a well-known mark:~~

~~(a)The number of the related customers who are aware of the mark by way of sale, purchase, use of the goods or services bearing such mark or by way of advertising;~~

~~(b)Territorial scope within which the goods or services bearing the mark are circulated;~~

~~(c)Turn-over of the sale of the goods or supply of services bearing the mark or the volume of goods sold or services supplied;~~

~~(d)The successive period of time to use the mark;~~

~~(e)Broad goodwill of the goods or services bearing the mark;~~

~~(f)Number of the countries granting protection to the mark;~~

~~(g)Number of the countries recognize the mark to be well-known;~~

~~(h)Value of the mark in the form of ownership transfer, [and] transfer of the right to use, capital contribution;~~

~~(i)Such other criteria as specified by the laws.~~

#### ~~Section 3~~

##### ~~Application for mark registration~~

#### ~~Article 318 — Application for mark registration~~

~~1.An application for mark registration shall be a package of documents expressing the applicant's request for issuance of a certificate of mark registration.~~

~~2.An application for mark registration shall include the following documents:~~

~~(a)A declaration form for a certificate of mark registration, in which there shall be the name and address of the applicant, and list of the goods, [and] services bearing the mark and attach a sample of the mark;~~

~~(b)A sample of the mark;~~

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~~(c) Rules to use the mark (in case of a request for registration of a collective mark or certification mark);~~

~~(d) Fees and charges;~~

~~(e) Such other documents as specified by the laws.~~

~~3. The documents attached to the application for mark registration shall meet the requirements as to the form and substances provided for by the Government.~~

#### ~~Article 319 — Consistency of application~~

~~An application for mark registration shall be consistent. Each application shall request for registration of a mark that is used for one or more different goods, services.~~

#### ~~Article 320 — Declaration form~~

~~1. A declaration form for mark registration shall have full of the following information:~~

~~(a) The name (full name), and address of the applicant;~~

~~(b) A sample and descriptions of the mark;~~

~~(c) Information about the Agent (if the application is filed by an Agent);~~

~~(d) Information about the application for priority (if there is a request for priority);~~

~~(e) Other information relating to the right to apply (if obtained from other persons);~~

~~(f) Such other information as specified by the laws.~~

~~2. The declaration form shall be in prescribed form. The Government shall provide for the sample of the declaration form for mark registration.~~

#### ~~Article 321 — Samples of trademarks~~

~~1. A sample of the mark attached to the declaration form and a sample of the mark attached to the application shall be clear and the size of which shall not bigger than 80mm x 80mm and shall not be smaller than 15mm.~~

~~2. The section to describe a sample of the mark shall make it clear as to the components of the mark and the comprehensive meaning of the mark (if any). If the mark bears letters, words belonging to hieroglyphic languages, such words and letters shall be transcribed phonetically. A mark bearing foreign languages shall be translated into Vietnamese.~~

#### ~~Article 322 — List of goods, services~~

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~~1. Goods and services referred to in an application for mark registration shall be classified in accordance with the International Classification of Goods and Services under the Nice Agreement. The relevant mark registration authority shall be responsible for publication of this Goods and Services Classification.~~

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~~2. The classification of goods, services referred to in Clause 1 of this Article shall not be the sole basis to determine the similarity of goods, [and] services.~~

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~~Article 323 Rules to use collective trademarks, certification trademarks~~

~~1. The rules to use collective trademarks shall have the following contents:~~

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~~(a) The mark owners;~~

~~(b) Conditions for using the mark;~~

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~~(c) Conditions to become a member of the entity owning the collective mark;~~

~~(d) Sanctions applicable to acts infringing the rules to use the mark;~~

~~(e) List of the entities, [and] individuals permitted to use the mark;~~

~~(f) Such other contents as specified by the laws.~~

~~2. The rules to use certification mark shall have the following contents:~~

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~~(a) The mark owner;~~

~~(b) Conditions for using the mark;~~

~~(c) Specifications of goods, [and] services certified by the mark;~~

~~(d) Methods to evaluate the above specifications and supervise the use of the mark;~~

~~(e) Expenses (if any) payable by the mark user for the certification mark protection, etc.;~~

~~(f) Such other contents as specified by the laws.~~

~~3. Any amendments, [and] supplementations to the rules to use collective trademarks or certification trademarks shall be registered with the mark registration authority.~~

~~Article 324 Documents to prove priority~~

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~~1. The document to prove priority shall be a copy of the application that has been firstly filed in a foreign country.~~

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~~2.The authority receiving the first application shall certify a copy of the first application.~~

#### ~~Article 325 — Power of attorney~~

~~1.All authorizations for implement the procedures relating to the issue, renewal, suspension, and revocation of a certificate of mark registration shall be in written form, called Power of Attorney.~~

~~2.A power of attorney shall have the following main contents:~~

~~(a)The name (full name), [and] address of the principal;~~

~~(b)The name (full name), [and] address of the agent;~~

~~(c)Scope of authorization, including the tasks the agent is authorized to carry out on behalf of the Principal;~~

~~(d)The date of the power of attorney;~~

~~(e)Signature and/or seal of the person issuing the power of attorney;~~

~~(f)Term of the power of attorney.~~

~~3.A power of attorney without a tenure shall be deemed to be valid forever and the validity of which shall be terminated when the principal declare to terminate the authorization.~~

#### ~~Article 326 — Languages~~

~~An application for mark registration and all communicating documents between the applicant and the relevant authority shall be made in Vietnamese. Documents in other languages shall be used for cross check, reference or inspection.~~

#### ~~Article 327 International registration of trademarks under the Madrid Treaty with designation to Vietnam~~

~~1.An application for mark registration under the Madrid Treaty with designation to Vietnam shall be examined in accordance with the procedures to substance examination in relation to the application for mark registration filed directly with the mark registration authority.~~

~~2.International registration of a mark shall have the validity term in accordance with the Madrid Treaty. The owner of an internationally registered mark shall have the same rights as owners of registered trademarks.~~

#### ~~Article 328 — International application for mark registration under Madrid Treaty originated from Vietnam~~

~~1.Vietnamese individuals, entities who have registered their trademarks in Vietnam shall have the right to file an application for registering their trademarks in the countries being members of the Madrid Treaty on International Registration of Marks.~~

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~~2.As per the applicant's request, the relevant authority shall confirm the information set out in the application for international registration and proceed with the procedures to handle the application in accordance with the provisions of the Treaty.~~

#### ~~Article 329 Application for recognition of well known trademarks~~

~~1.In order for a mark to be recognized as being well known, the mark owner shall file an application to the relevant authority. An application for a well known mark shall include the following documents:~~

~~(a)A declaration form for recognition of well known trademarks;~~

~~(b)Documents proving the well known of the mark;~~

~~(c)Fees and charges.~~

~~2.The Government shall provide for in detail the formats and substances of the documents attach to an application for recognition of a well known mark.~~

#### ~~Section 4~~

#### ~~Procedures to handle application and issue certificates of mark registration~~

#### ~~Article 330 Acceptance of application~~

~~The mark registration authority shall accept an application for mark registration if there are at least the following documents and information:~~

~~(a)A declaration form for mark registration, including information about the applicant which is sufficient to identify the applicant, a sample of the mark to be registered and a list of the goods,[and] services bearing the mark;~~

~~(b)Documents proving the payment of the application fees.~~

#### ~~Article 331 Date of application~~

~~The date of an application shall be the date on which the mark registration authority receives the documents with full of information and payable fees and charges pursuant to Article ... hereof.~~

#### ~~Article 332 Examination of application form~~

~~1.The form of an application for mark registration shall be examined in order to verify whether the application meets the qualifications of a lawful application.~~

~~2.An application for mark registration shall be rejected in the following cases:~~

~~(a)The application does not meet the format qualifications;~~

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~~(b)The subject matter of the application is not the subject matter that has the mark to be registered;~~

~~(c)The application is filed by a person who does not have the filing right;~~

~~(d)The application is filed not in accordance with the regulations on exercise of the filing right;~~

~~(e)The applicant fails to pay the prescribed fees and charges.~~

~~3.If the application for mark registration falls into Clause 2 of this Article, the mark registration authority shall carry out the following procedures:~~

~~(a)Sending a notice of the intention to reject the application, which sets out the reasons and time limit for the applicant to fix the insufficiency or object the rejection;~~

~~(b)Issuing a notice to reject the application if the applicant fails to fix the insufficiency and does not have legitimate objection to the intention to reject the application referred to in Point (a) of this Clause;~~

~~(c)Carrying out the procedures set out in Clause 4 of this Article if the applicant successfully fixes the insufficiency or has legitimate objection to the intention to reject the application for mark registration referred to in Point (a) of this Clause.~~

~~4.If the application does not fall into the circumstances set out in Clause 2 of this Article, or if the application falls into Point (c), Clause 3 of this Article, the mark registration authority shall issue a notice on acceptance of a lawful application.~~

#### ~~Article 333 Publication of trademarks~~

~~1.The relevant authority shall publicize all applications for mark registration that have been accepted within 2 months from the date of acceptance of a lawful application.~~

~~2.The Government shall provide for the forms and substances of publication of lawful applications.~~

#### ~~Article 334 Third persons' opinions~~

~~During the time to examine the substances of an application for mark registration, any third person shall have the right to opine on the issuance or rejection of the certificate mark registration in respect of a publicized application. In case where there is a third person objects the issuance of a certificate of mark registration, the third person shall provide the reasons [of the objection] together with the documents and information to prove these reasons.~~

#### ~~Article 335 Amendments and supplementations to trademarks~~

~~1.During the evaluation of an application for mark registration, the applicant shall have the right to apply for amending, supplementing,~~

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dividing, [or] transferring the application.

~~2.The amendment to the application shall not affect the nature of the mark referred to in the application and shall not expand the list of goods and services set out in the application.~~

~~3.In case of dividing a mark, the date of the application divided from another application shall be determined subject to the date of this application.~~

~~4.The transferee of an application shall satisfy the relevant qualifications of an applicant for mark registration set out in Article .hereof.~~

#### Article 336Withdrawal of applications

~~1.At any time before a decision to issue or reject an application for mark registration is rendered, the applicant shall have the right to declare to withdraw the application for mark registration by a written form sent to the relevant authority.~~

~~If the declaration of application withdrawal is sent via an Intellectual Property Service Agent, the [relevant] power of attorney shall specify the authorization to withdraw the application.~~

~~2.As from the date on which the relevant authority receives the declaration of application withdrawal, all further procedures relating to the application shall be suspended; any fees and charges in connection with the subsequent tasks shall be refunded to the applicant if they have already been paid.~~

~~3.The application for mark registration that has been withdrawn or deemed as being withdrawn shall not be considered as having filed with the relevant authority.~~

#### Article 337Examination of substances of applications

~~1.The substances of the applications for mark registration that have been recognized as being lawful shall be examined in order to evaluate the protection ability of the subject matter of the application pursuant to the protection conditions whereby the relevant protection scope (quantity) shall be determined.~~

~~2.The Government shall provide for the procedures of substance examination.~~

#### Article 338Rejection to issue certificates of mark registration

~~1.An application for mark registration shall be rejected in cases where the mark fails to meet the protection conditions or part of which shall be rejected if that part fails to meet the protection conditions or the mark fails to meets the protection conditions in relation to a part of the list of goods,[and] services [attached to the mark].~~

~~2.If an application for mark registration falls into the circumstances referred to in Clause 1 of this Article, the mark registration authority shall proceed with the following procedures:~~

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~~(a) Issuing a notice of intention to reject to issue a certificate of mark registration setting out the reasons of rejection and fixing the time limit for the application to object the rejection intention;~~

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~~(b) Issuing a notice of rejection to issue a certificate of mark registration if the application fails to object or fails to have legitimate objection to the rejection intention referred to in Point (a) of this Clause;~~

~~(c) Carrying out the procedures set out in Article ... of this Law if the applicant successfully fixes the insufficiency [of the application] or has legitimate objection to the intention to reject to issue a certificate of mark registration in accordance with Point (a) of this Clause.~~

~~Article 339 Records in Register, publication of certificates of mark registration~~

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~~If an application does not fall into the circumstances referred to in Clause 1 of Article [rejection to issue certificate of mark registration] of this Law, or if the application falls into the cases of Point (c), Clause 2 Article [rejection to issue [certificate of mark registration]] of this Law, and the applicant has paid the prescribed fees, the relevant authority shall carry out the following procedures:~~

~~(a) Rendering a decision to issue a certificate of mark registration and making the relevant entry into the Register; and~~

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~~(b) Issuing a certificate of mark registration to the applicant.~~

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~~(c) Publicizing the certificate of mark registration.~~

~~Article 340 Objection to issuance, rejection to issue certificates of mark registration; re-examination~~

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~~1. The applicant and any third person who have interests and rights directly relating to the issuance of or rejection to issue, a certificate of mark registration shall have the right to object such a decision.~~

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~~2. The objection to a decision to issue or reject to issue a certificate of mark registration shall be made in accordance with the provisions on dealing with complains set out in Article ... of this Law.~~

~~3. In case of an objection to a decision to issue or reject to issue a certificate of mark registration, the relevant certificate of mark registration shall be re-examined with regard to the aspects being objected.~~

~~Article 341 Extension of certificates of mark registration~~

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~~Within 6 months before expiring validity of a certificate of mark registration, the certificate owner shall apply for extension of validity of the certificate. The filing of an application for extension may be delayed but cannot be in excess of 6 months from the expiry of the corresponding validity term provided that the applicant pays a~~

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~~surcharge.~~

#### ~~Article 342 Recognition of well known trademarks~~

~~If requested, the relevant authority shall consider and issue a decision to recognize or reject to recognize well known trademarks. The Government shall provide for in detail the procedures to handle an application for recognition of a well known mark.~~

#### ~~Section 5~~

~~Rights and obligations of persons to whom certificates of mark registration are issued, rights of well known mark owners~~

#### ~~Article 343 Rights of mark owners~~

~~1. A mark owner shall have the right to:~~

~~(a) Exclusively use the mark;~~

~~(b) Transfer the ownership or the right to use the mark;~~

~~(c) Request the relevant State authorities to implement measures to fight acts of infringement of the rights to the mark.~~

~~2. In respect of a certification mark, an act of use set out in Point (a), Clause 1 of this Article shall be carried out by individuals, [and] organizations subject to approval of the mark owner in accordance with the rules to use the mark.~~

#### ~~Article 344 Rights of well known mark owners~~

~~In addition to the rights set out in Article [rights of mark owners] of this Law, a well known mark owner shall have the right to:~~

~~(a) Request for revocation of certificates of mark registration or international registration in respect of the trademarks that are identical or similar causing confusion with his/her own mark, which is used for identical or similar goods, services; or used for non-identical or dissimilar goods, [and] services but possibly making customers confused as to the origins of the goods, [and] services or possibly undermining the reputation, goodwill, distinctiveness of the well known mark.~~

~~(b) Request relevant State authorities to apply measures to fight acts of using signs that are identical or similar to the well known mark, or using the signs being translated, transcribed phonetically from the well known mark on goods, [and] services of other kinds, dissimilar goods and goods that are not related to the well known mark, if the act of use possibly makes it confused as to the origins of goods, [and] services or causes wrong impression about the relationship between the person using the sign and the person owns the mark recognized as being well known.~~

#### ~~Article 345 Use of trademarks~~

~~The following acts shall be deemed as using trademarks in accordance with Point (a), Clause 1 of Article [rights of mark owners] of this Law:~~

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~~(a)Affixing the protected mark onto goods, goods' packages, means of supplying services,[and] communicating papers in business activities;~~

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~~(b)Circulating, offering for sale, advertising for sale,[and] storing goods bearing protected trademarks;~~

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~~(c)Importing goods,[and] services bearing [protected] trademarks.~~

#### ~~Article 346 Limitations to rights of mark owners~~

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~~1.In case where a person who has used the mark referred to in an application for registration of another person in Vietnam in respect of the goods or services that are identical or similar to the goods, services set out in the application for mark registration before the application for registration of the mark has been filed provided that the filing of the application is not for the unfair competition purposes —and customers have been popularly aware of the connection between that mark with the mark user, such person shall be entitled to keep using the said mark provided the using scope is not expanded.~~

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~~2.The mark owner shall have the right to request that the person having the right to use the mark referred to in Clause 1 of this Article to supplement appropriate indications on the goods or services in order not to make it confused as to the origins of goods, services.~~

~~3.The following acts shall not be seen as infringement of the rights to trademarks:~~

~~(a)Using trademarks not for business purposes;~~

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~~(b)Circulating, using goods, services bearing trademarks provided by the mark owners or transferee of the right to use the mark to the market, including foreign market.~~

#### ~~Article 347 Obligations of collective mark owners~~

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~~The owners of a collective mark shall be responsible for supervising the compliance to the rules to use the mark of individuals; entities entitled to use such collective mark. If the collective mark owners fail to supervise or supervise ineffectively the compliance to the rules to use the mark, it may be suspended in accordance with Article ... [suspension of validity] of this Law.~~

#### ~~Article 348 Obligations of certification mark owners~~

~~The owner of a certification mark shall be obliged to comply the provisions of the rules to use the mark in certifying goods,[and] services to be qualified to bear the mark and shall be obliged to supervise the compliance to the Rule to use trademarks of individuals, entities entitled to use the relevant certification mark. If the relevant certification mark owner fails to comply with the rules in the certification process or fails to supervise or ineffectively supervise the compliance to the rules to use the mark, it may be suspended in accordance with Article ... [suspension of validity] of this Law.~~

#### ~~Article 349 Infringement of trademarks~~

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~~The following acts done by third persons without permission of the mark owner shall be considered as being infringement of a mark under protection:-~~

~~(a)Using signs those are identical to a mark under protection with respect to goods, services identical or similar to the goods, services under the list attached to the protected mark:-~~

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~~(b)Using signs those are identical to a mark under protection in respect of goods, services that are similar or related to the goods,[and] services under the list attached to the trademarks if the use of the abovementioned signs possibly makes it confused as to the origins of the goods[and] services:-~~

~~(c)Using signs those are similar to a protected mark for the goods, services identical or similar or related to the goods,[and] services under the list attached to the registered mark, if the use of the abovementioned signs possibly makes it confused as to the origins of the goods,[and] services:-~~

~~(d)Using signs those are identical or similar to a well known mark, or using signs being translated, transcribed phonetically from the well-known mark, which are dissimilar and not related to the goods,[and] services under the list of reputation goods, services bearing the well-known mark, if the use of the abovementioned signs possibly makes it confused as to the origins of the goods or causes wrong impression as to the relationship between the user of the signs and the well known mark owner.-~~

#### ~~Section 6~~

#### ~~Transfer of the right to trademarks~~

#### ~~Article 350 Trademark licensing~~

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~~1.The licensing of a trademark (licensing) shall be in written form (licensing agreement) in compliance with the form and substances set out by the Government.~~

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~~2.The licensing of trademarks may be applied to the whole or some goods or services registered together with the mark, in whole or part of the territory of Vietnam, or in respect of all or some acts of using the mark under the right of the mark owner in accordance with Article ... [using trademarks] of this Law.~~

~~3.A licensing agreement may be exclusive or non-exclusive. An exclusive licensing agreement shall be an agreement under which the licensee shall be entitled to exclusively use the mark, the mark owner shall not grant the license to any other third party nor use the mark during the licensing term. A non-exclusive licensing contract shall be a contract under which the licensor shall have the right to use the mark and grant non-exclusive licenses to other persons.~~

~~4.The exclusive licensee shall be entitled to sub-license the mark in line with the scope of the exclusive license. The non-exclusive licensee shall be entitled to sub-license the mark if it is so provided for in the licensing agreement.~~

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~~5. Collective mark owners may not transfer their collective mark to other individuals, entities.~~

#### ~~Article 351 Compulsory contents of mark licensing agreements~~

~~A mark licensing agreement shall have the following contents:~~

~~(a) Name (full name) of the licensor and licensee;~~

~~(b) Bases of the license;~~

~~(c) Licensing scope (form of the license; limitations to use; territorial limitations; licensing tenure);~~

~~(d) Rights and obligations of the parties;~~

~~(e) Conditions for amendments, termination, and invalidation of the licensing agreement;~~

~~(f) Dispute settlement;~~

~~(g) Date and place of signing;~~

~~(h) Signatures of representatives of the parties, with full names and titles of the signatories and verification of the signatures (in respect of the parties having lawful seals).~~

#### ~~Article 352 Prohibitive provisions~~

~~1. A mark licensing agreement shall not have any provision to unreasonably restrict the right of the licensee, especially restrictive provisions that are not based upon the transferor's rights to the relevant mark or do not aim to protect such rights. These provisions shall include:~~

~~(a) Provisions directly or indirectly restricting export of goods, services bearing the licensed mark to territories where the licensor is not the owner of the mark in question or the licensor has the exclusive right to import products bearing the mark;~~

~~(b) Provisions compelling the mark licensee to buy all or a given percentage of materials, accessories, components or equipment of the licensor or the persons designated by the licensor the purposes of which are not for ensuring the quality of the goods, [and] services produced or supplied by the licensee;~~

~~(c) Provisions prohibiting the licensee from filing a petition as to the validity of the rights to the mark or the right to license of the licensor.~~

~~2. The abovementioned provisions shall automatically invalid if the parties agree to incorporate them into a mark licensing agreement.~~

#### ~~Article 353 Registration of trademark licensing agreement~~

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In order to be valid, a licensing agreement shall be registered with the relevant authority. In case where the licensing agreement is registered within 6 months from the signing date, such licensing agreement shall be valid as from the signing date, except in case the parties agree on a later date. In case where the licensing agreement is registered after 6 months from the signing date, the licensing agreement shall be valid as from the date it has been registered with the relevant authority.

#### Article 354 Transfers, waivers of ownership over trademarks

1. The transfer of mark ownership shall be in written form in accordance with the form and substances specified by the Government.

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2. The mark ownership shall be transferred (assignment, inheritance, etc.) to persons qualifying for the application conditions in connection to the respective trademarks set out in Article 227 of this Law. The mark ownership assignment shall be valid only after it has been registered with the relevant authority. As from the registration date of the agreement for assignment of mark ownership or registration date of the document on the inheritance, all rights and obligations of the mark owner shall be transferred to the transferee.

3. The transfer or waiver of ownership of a mark under joint ownership shall be carried out subject to the consent of all co-owners.

4. The mark owner shall not waive the right to the trademarks under valid licensing term and the licensee does not agree to early termination of the licensing agreement.

5. The transfer of the mark ownership may or may not be associated with transfer of the business establishments of the mark owner. The transfer of the ownership over a mark shall not make it confused as to the specifications or origins of the goods, services bearing the mark.

#### Section 7

##### Right to trade names

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#### Article 355 Trade names

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1. A trade name shall be a name of an entity or individual used in business transactions in order to distinguish business persons bearing that name with other business persons of the same business sectors and geographical areas.

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2. The following things shall not be treated as being trade names:

(a) Signs those are not a combination of pronounceable letters, numbers;

(b) Names of administrative authorities, political organizations, socio-political organizations, social organizations, socio-professional organizations or persons who are not related to business activities.

3. Business territories referred to in Clause 1 of this Article shall be geographical areas where business persons have business partners, clients or reputation.

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#### ~~Article 356 Conditions for protection of trade names~~

~~1.A trade name shall be protected if it is capable of distinguishing goods, services, business activities, business establishments of persons doing business bearing the trade name with goods,[and] services, business activities,[and] business establishments of other persons doing business of the same business sector and territories.~~

~~2.The following trade names shall not be deemed as being distinctive:~~

~~(a)A trade name that does not have a proper name but the components describing the legal status, business sectors, [and] geographical origins, etc., except in case where the trade name has been popularly known due to being used;~~

~~(b)A trade name that is identical or similar to the extent that it is confused with the trade name or mark belonging to other person that has been established before the trade name was firstly used.~~

#### ~~Article 357 Principles for establishing rights to trade names~~

~~1.The rights to a trade name shall be established on a usage basis. The scope of the rights shall be determined subject to the business sector and territory in which the trade name is used in practice.~~

~~2.The owner of a trade name being an entity, individual shall carry out business activities under the trade name. In case where in one business sector and territory there are several persons using the same trade name, the right to the trade name shall belong to the person who has firstly used the trade name.~~

~~3.The rights to a trade name shall be automatically established upon satisfying all protection conditions and shall exist insofar as such conditions remain satisfied.~~

~~4.The rights to a trade name shall be established without being subject to any registration procedures.~~

~~The registration of names of persons doing business in accordance with the laws on business registration procedures, laws on operation registration procedures applicable to enterprises and other persons doing business shall only be for the purposes recognition of the intention to use persons' names and shall not have the effect to establish any right.~~

#### ~~Article 358 Rights of trade name owners~~

~~1.The trade name owner shall have the right to:~~

~~(a)Use the trade name,~~

~~(b)Authorize other persons to use or prohibit other persons from using the trade name;~~

~~(c)Dispose of the rights to the trade name.~~

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~~2. An act of using a trade name shall be the exercise of any activity for business purposes by using the trade name in business activities, express it in communicating documents, signs, products, goods, and packages and means to supplying services, [and] means of advertising.~~

~~3. The right to transfer the rights to use a trade name and all the rights to the trade name under a contract or inheritance to another person shall be carried out on the basis of the transfer of the entire business establishment and business activities bearing the trade name.~~

#### ~~Article 359 Infringement of rights to trade names~~

~~1. Any act of using any commercial indications which are identical or similar to the trade name of another person in respect of the same goods, [and] services or similar goods or services making it confused as to the persons doing business, business establishments, [and] business activities under the trade name shall be considered as being infringement of the rights to trade names.~~

~~2. The commercial indications referred to in Clause 1 of this Article shall be signs, information to provide commerciale guidelines of the goods, [and] services, including trademarks, trade names, business symbols, business mottos, [and] geographical indications, etc.~~

~~3. Acts of using trade names referred to in Clause 1 of this Article shall be the affixation of the commercial indications upon goods, packages, means to supply services, communicating documents, [and] means of advertising; sales, advertising for sales, storing for sales, [and] importing goods bearing such commercial indications;~~

#### ~~Article 360 Proving rights to trade names in case of disputes~~

~~Upon exercising the right to request for dealing with an infringement act, the trade name owner shall prove the conditions for establishment of his/her own rights and the scope thereof.~~

### ~~Chapter IX RIGHTS TO GEOGRAPHICAL INDICATIONS~~

#### ~~Section 1 Principles for establishment of rights to geographical indications~~

#### ~~Article 361 Geographical indications~~

~~1. A geographical indication shall be a name, symbol or image of an area, [or] location, which is used to indicate goods, [and] products originated from such location, [or] area and has at least one unique specification or quality or reputation relating to the natural, human conditions of such area, [or] location.~~

~~2. An appellation of origin shall be a special form geographical indication. The appellation of origin shall be the geographical name of a specific location, [or] area, country, which is used to indicate the origin of the goods from that location, [or] area provided that the goods' unique specifications, [and] quality are wholly or significantly attributable to the unique and pre-eminent geographical elements, including the natural and human elements or the combination thereof and~~

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~~the manufacturing, processing and blending of those goods are carried out in the relevant geographical area.~~

~~3.Traditional names those are geographical names or are not geographical names but used to indicate the origin of goods from a specific area or location which satisfy the conditions set out in Clauses 1 and 2 of this Article shall be protected as geographical indications.~~

~~Article 362Bases to establish rights to geographical indications~~

~~The rights to geographical indications shall be protected on the basis of registration with the relevant authority (the geographical indication registration authority).~~

~~Article 363Filing application for registration of geographical indications~~

~~1.In order for a geographical indication to be protected, the applicant entitled to file an application in accordance with Article ... of this Law shall file an application for registration of such geographical indication to the geographical indication registration authority. An application for registration of a geographical indication examined in accordance with the procedures and formalities provided for in this Law. A geographical indication shall be registered subject to the results of the examination of the relevant application. The scope, substances and validity term of the rights to the geographical indication shall be determined pursuant to the decision to register such geographical indication.~~

~~2.Individuals, entities and other persons of Vietnam may on their respective behalf, or authorize Intellectual Property Service Agents to, file applications for registration of geographical indications and carry out related procedures.~~

~~3.Foreign individuals residing in Vietnam, foreign organizations real having productions, business establishments may file an application for geographical indication registration directly or through a lawful agent in Vietnam.~~

~~Foreign individuals not residing in Vietnam, foreign organizations not having real production, business establishments in Vietnam shall not file applications for registration of geographical indications directly but via their lawful agents in Vietnam.~~

~~4.The applicant shall ensure the genuine of the information relating to the right to file an application for registration of geographical indication, [and] the applicant referred to in the application.~~

~~Article 364Right to file applications for registration of geographical indications~~

~~1.Individuals, organizations producing products bearing geographical indications, collective organizations representing such individuals, [or] organizations or the local administrative authority of the location of the geographical indication shall be entitled to file an application for registration of the relevant geographical indication.~~

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~~2. In respect of a geographical indication having foreign origin, the persons entitled to file an application in Vietnam shall be the individuals, [or] organizations having the right to use such geographical indication in the country of such geographical indication or the individuals, organizations having the right to file an application in the country of such geographical indication.~~

~~Article 365 National Register of Geographical Indications (the Register)~~

~~The geographical indication registration authority shall maintain a Register in order to record all information about all registered geographical indications. The Register shall be the official information source about the rights to geographical indications for the purposes of inspection, cross check, confirmation, [and] recognition and other purposes in accordance with the [relevant] regulations.~~

~~Article 366 Publication of decision to register geographical indications~~

~~1. Within 60 days after the date of registration of a geographical indication, the relevant authority shall publicize information relating to the decision to register the geographical indication in the Official Gazette of Geographical Indications.~~

~~2. In addition to the information to be publicized under Clause 1 of this Article, any interested persons shall be entitled to have access to more sufficient information sources about the related rights.~~

~~The geographical indication registration authority shall be responsible for satisfying the above requests for information.~~

~~Article 367 Term of protection of geographical indications~~

~~A geographical indication shall be protected forever as from the date of registration with the relevant authority and the validity thereof may be suspended in accordance with the provisions of this Law.~~

~~Article 368 Main contents of decision to register geographical indications~~

~~A decision to register a geographical indication shall have the following main contents:~~

~~(a) The name and address of the applicant;~~

~~(b) Number and date of registration;~~

~~(c) Number and date of the application for registration;~~

~~(d) The name of the Intellectual Property Service Agent (if any);~~

~~(e) The name of the geographical indication to be protected;~~

~~(f) The scope and term of protection (the unique elements in connection with the geographical conditions and unique specifications, quality, [and] goodwill of the products bearing the geographical indication; [and] the map of the geographical area corresponding to the geographical~~

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indication).

(g) A list of the persons having the right to use the geographical indication (if any).

#### Article 369 Suspension of protection of geographical indications

Any third person shall be entitled to file an application to the geographical indication registration authority to request for suspension of protection of a geographical indication for the reason that the unique geographical specifications creating the unique specifications, [or] quality or reputation of the products bearing such geographical indication have been changed so that those specifications, [or] quality are no longer unique or the reputation is undermined.

#### Article 370 Amendments to description sheets

During the protection term of a geographical indication, the Description Sheet referred to in Article 302 of this Law may be amended to be in line with the scientific and technological developments in order to re-determine the geographical areas. Such amendment shall be permitted on the condition that the relevant geographical indication shall satisfy the relevant protection conditions after the Description Sheet has been amended.

#### Article 371 Persons having the right to use geographical indications

A geographical indication shall be an asset belonging to the right to jointly use of the community of persons having producing and trading products satisfying the standards in connection with the unique specifications, [or] quality in the geographical area corresponding to the geographical indication in the relevant geographical area.

#### Section 2

#### Conditions for geographical indications to be protected in Vietnam

#### Article 372 Conditions for protection of geographical indications

A geographical indication shall be registered for protection if it satisfies the conditions set out in Article 286 hereof.

#### Article 373 Things not protected as geographical indications

The following things shall not be protected as geographical indications:

(a) Names, indications that have become common names of goods in Vietnam at the time of the request for registration;

(b) Geographical indications that shall not be protected or shall no longer be protected or have not been used in the country having such geographical indication.

#### Article 374 Unique specifications, reputation of products bearing geographical indications

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~~1.The unique specifications, quality of a product shall be expressed in one or several elements such as quantitative, qualitative norms or physical,[or] chemical, microbiological sensations and these elements shall be capable of being inspected by technical means or experts using testing methods that have been determined in advance.~~

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~~2.Reputation, goodwill of a product bearing a geographical indication shall be expressed on the basis that such product has been known popularly by customers of the related products through the whole time of existence and development of the product.~~

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#### ~~Article 375 Unique specifications of geographical conditions~~

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~~1.The unique specifications in connection with the natural conditions shall be expressed through the unique elements of climate, hydrography, geology, terrain, [and] ecological system and other natural conditions.~~

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~~2.The unique specifications in connection with human conditions shall be expressed through the unique elements of skills,[and] expertise of producers, including the traditional production process of local people if that process is the factor creating and maintaining the quality and reputation of the products bearing the geographical indication.~~

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#### ~~Article 376 Geographical areas of geographical indications~~

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~~1.The geographical area of a geographical indication shall have the boundary determined accurately by words and in maps.~~

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~~2.In case where the processing, blending of the product bearing the geographical indication is not carried out in the area of the geographical indication, the boundary of the area where the processing, blending of the product shall also be determined in accordance with Clause 1 of this Article.~~

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~~3.A geographical area may be a national administrative area, a geographical area belonging to one or several administrative units or the entire territory of a country. In case where the geographical area does not belong to an administrative unit or units, the area map shall be made on the basis of the area where the product bearing the geographical indication is practically produced and certified by the relevant management authority of such geographical area.~~

#### ~~Section 3~~

#### ~~Application for registration of geographical indication~~

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#### ~~Article 377 Application for registration of geographical indications~~

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~~1.An application for registration of a geographical indication shall be a package of documents requesting for registration of such geographical indication. Each application shall request for registration of one geographical indication.~~

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~~2.An application for registration of a geographical indication shall have the following contents:~~

~~(a)Declaration form for registration of the geographical indication;~~

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~~(b)Description sheet of the unique specifications and quality, the reputation of the product bearing the geographical indication and unique elements of the natural conditions creating the unique specifications and quality, and reputation of the product (the Description Sheet);~~

~~(c)Map of the geographical area corresponding to the geographical indication;~~

~~(d)Documents proving the geographical indication is under protection in the country of such geographical indication if the same has foreign origin;~~

~~(e)Such other documents as specified by law.~~

~~3.The Description Sheet shall include the following contents:~~

~~(a)The geographical indication to be registered;~~

~~(b)Name of the products bearing the geographical indication;~~

~~(c)Descriptions of the relevant products, including raw materials (if any), and physical, chemical, [and] biological and sensation elements of the products;~~

~~(d)Methods to determine the geographical area corresponding to the geographical indication;~~

~~(e)Evidence proving that the products originate from such geographical area, with the corresponding meanings referred to in Clauses 1 and 2 of Article ... [concept of geographical indications] of this Law;~~

~~(f)Descriptions of the methods to produce the products and local and stable production methods;~~

~~(g)Information about the relationship between the unique specifications and quality or reputation of the products with the natural conditions in the meanings set out in Clauses 1 and 2 of Article ... [concept of geographical indications] of this Law;~~

~~(h)Information about the self inspection of the unique specifications and quality of the products.~~

~~Article 378 Determination and recognition of unique specifications, quality of productions bearing geographical indications of Vietnam~~

~~1.The application shall determine the unique specifications and quality of the products bearing Vietnamese geographical indications.~~

~~2.The line ministries of these products shall recognize the unique specifications and quality of the products bearing the geographical indications set out in Clause 1 of this Article.~~

~~Article 379 Authorized representation~~

~~1.All authorized representation to carry out the procedures in relation to registration, amendments and suspension of protection of geographical~~

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~~indications shall be made in written form, called as a power of attorney.~~

~~2.A power of attorney shall include the following main contents:~~

~~(a)Name (full name), [and] full address of the principal;~~

~~(b)Name (full name),[and] full address of the agent;~~

~~(c)Scope of authorization, including the tasks to be carried out by the agent on behalf of the principal;~~

~~(d)Date of the power of attorney;~~

~~(e)Signature and/or seal of the person issuing the power of attorney;~~

~~(f)Tenure of the power of attorney.~~

~~3.A power of attorney that does not specify the tenure shall be valid forever and the validity thereof shall be terminated when the principal declares to terminate the authorization.~~

~~Article 380 Languages~~

~~An application for registration of a geographical indication and all communicating documents between the applicant and the relevant authority shall be made in Vietnamese. Documents in other languages shall be used only for reference, cross check or inspection purposes.~~

~~Section 4~~

~~Procedures to handle application for registration of geographical indications~~

~~Article 381 Acceptance of application~~

~~The relevant authority shall accept an application for registration of a geographical indication if the relevant declaration form has at least the following information and documents:~~

~~(a)Request for registration of a geographical indication;~~

~~(b)Full information to identify the applicant;~~

~~(c)The geographical indication to be registered and the products bearing the geographical indication;~~

~~(d)Documents describing the unique specifications of the geographical conditions and the products bearing the geographical indication;~~

~~(e)Geographical map corresponding to the geographical indication;~~

~~(f)Receipts of the payment of the application fees.~~

~~Article 382 Examination of the form of application~~

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The form of an application for registration of a geographical indication shall be examined. The examination of the application form shall be for the purposes of making sure whether it satisfies the conditions required by law.

#### Article 383 Publication of application

1. The geographical indication registration authority shall publicize applications for registration of geographical indications satisfying the format requirements in the Official Gazette of Geographical Indications.

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2. As from the date of publication of the decision for registration of a geographical indication, any third person shall have the right to have written opinions about the publicized application for registration of the geographical indication. The person having the above written opinions shall not have to pay fees and charges and his opinions shall be taken into account by the geographical indication registration authority during the application substance examination process.

#### Article 384 Examination of substances of application

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The geographical indication registration authority shall examine the substances of the applications for registration of geographical indications satisfying the format requirements. The substance examination shall be to evaluate the ability to be protected of the subject matter of the application in accordance with the protection conditions and to determine the relevant scope of protection.

#### Article 385 Amendments and supplementations to application

During the examination period of an application for registration of a geographical indication, the applicant shall be entitled to amend and supplement to the documents attached to the application.

#### Article 386 Withdrawal of application

1. At any time before the decision for registration of, or rejection to register, a geographical indication, the applicant shall have the right to declare to withdraw the application for registration of the geographical indication in written form sent to the geographical indication registration authority.

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If the declaration to withdraw the application for registration of the geographical indication sent by an Intellectual Property Service Agent, the authorization to withdraw the application shall be set out in the relevant power of attorney.

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2. As from the geographical indication registration authority receives the withdrawal declaration, all further procedures in connection with the application shall be suspended; all fees and charges relating to further steps if have been paid shall be refunded to the applicant.

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#### Article 387 Decisions to register, reject to register, publication; records in the Register

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1. In case where a geographical indication meets the protection conditions and the applicant has paid the prescribed fees and charges in



~~full, the relevant authority shall render a decision to register application for registration of the geographical indication. The decision to register the geographical indication shall set out the name, [and] address of the applicant, number and date of the application, name of the Intellectual Property Service Agent (if any), name of the protected subject matter, and the term and scope of protection.~~

~~2. In case where the geographical indication fails to meet the protection conditions, the relevant authority shall issue a notice to reject the registration of that geographical indication, which notice shall specify the reasons thereof.~~

~~3. The geographical indication that has been registered shall be recorded in the Register. The Government shall provide for the form and substances of the Register.~~

~~4. The decision to register the geographical indication shall be publicized in the publication referred to in Article ... of this Law. The Government shall provide for the substances of the decision to be publicized.~~

#### ~~Section 5~~

#### ~~Rights and obligations of geographical indication users~~

#### ~~Article 388 Rights of geographical indication users~~

~~1. Geographical indication users set out in Article ... of this Law shall be entitled to conduct the following acts of using geographical indications:~~

~~(a) Affixing geographical indications under protection to goods and goods packages;~~

~~(b) Circulating, offering for sale, advertising for sale, and storing goods bearing protected geographical indications;~~

~~(c) Importing goods bearing geographical indications under protection.~~

~~2. Persons entitled to use geographical indications shall have the right to request that relevant State authorities apply measures to fight acts of infringement of the right to use geographical indications.~~

#### ~~Article 389 Obligations of geographical indication users~~

~~Individuals, [and] organizations entitled to use geographical indications shall have the following responsibilities:~~

~~(a) Ensuring unique specifications, quality, [and] reputation of the products bearing registered geographical indications;~~

~~(b) Carrying out [relevant] requirements and creating favorable conditions for the relevant State authorities to inspect the unique specifications and quality of goods, [and] for organizations to inspect such unique quality and specifications of the products bearing geographical indications where necessary.~~

#### ~~Article 390 Rights to non-transferred geographical indications~~

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~~The rights to the geographical indications being national assets may not be transferred in any form.~~

#### ~~Article 391 Organizations collectively managing geographical indications~~

~~1. An organizations collectively managing geographical indications (hereinafter called "Collectively managing organizations" shall be an organization functioning as representative of the local People's Committee to manage and protect Vietnamese geographical indications in accordance with the laws.~~

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~~2. The collectively managing organization shall be established or appointed by the Provincial People's Committee to exercise the functions set out in Clause 1 of this Article.~~

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~~2. Individuals, organizations using geographical indications shall have the right to request the Chairman of the Provincial People's Committee to establish or appoint the collectively managing organization in respect of these geographical indications.~~

~~3. The Government shall provide for the principles for operation, functions and duties of collectively managing organizations.~~

#### ~~Article 392 Infringement of right to geographical indications~~

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~~The following acts shall be considered as being infringement of the rights to geographical indications:~~

~~(a) Using a geographical indication under protection for goods, which do not satisfy the unique natures and quality that have been registered in relation to that geographical indication;~~

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~~(b) Using a geographical indication under protection for goods, which are similar to the goods registered as to that geographical indication or using the geographical indication for the purposes of taking advantage of the reputation and goodwill of the protected geographical indication;~~

~~(c) Using any commercial indication that is similar to the protection geographical indication causing wrong impression about the geographical origin of goods, including the case where the true origin of goods is stated or the geographical indication is translated into foreign languages or the geographical indication is used with such words as "kind", "type" or "adapted", or such similar words;~~

~~(d) Using geographical indications of various kinds of wines for wines that are not originated from the territories corresponding to these geographical indications or using geographical indications for various kinds of brandy that are not originated from the territories corresponding to these geographical indications, including the case where the true origin of goods is stated or the geographical indication is translated into foreign languages or the geographical indication is used with such words as "kind", "type", or "adapted" or similar words;~~

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~~(c) Any other acts that possibly mislead customers as to the origins of products.~~

#### ~~Article 393 Limitations to rights to geographical indications~~

~~1. An act of circulating and using products bearing a geographical indication brought to market by the person having the right to use that geographical indication shall not be deemed as being an act infringing the right to that geographical indication.~~

~~2. Registration of geographical indication shall not affect the registration eligibility or validity of protected trademarks for the reason that the said mark is identical or similar to the geographical indication, if:~~

~~(a) An application for mark registration has been filed or the mark has been registered for protection in a goodwill manner before the date of validity of this Law; or~~

~~(b) Before the geographical indication in question has been protected in the country of that geographical indication.~~

~~The registration of geographical indication for wines or brandy shall not affect the right of any third persons having an act of using, or using that geographical indication in a similar way, if these persons have used the geographical indication consecutively in Vietnam for goods or services of the same kinds for at least 10 years before 15 April 1994, or have used the same in a goodwill manner before that date~~

### ~~Chapter X~~

#### ~~RIGHTS OVER BUSINESS SECRETS AND~~

#### ~~RIGHTS AGAINST UNFAIR COMPETITIONS~~

##### ~~Section 1~~

##### ~~Rights over Business Secrets~~

#### ~~Article 394. Terms and concepts~~

~~"Use of business secrets" is construed as the acts of using business secrets for the purpose of conducting activities of manufacturing products, providing services, trading in goods; selling, advertising and storing for sale of, importing, the products manufactured using such business secrets.~~

~~1. "Lawful controllers of business secrets" consist of the owners of business secrets, persons who are legally transferred with the rights to use business secrets, persons who manage business secrets.~~

~~2. "Pharmaceutical products" are construed as a substance or compound for human use in the purpose of prevention, treatment and diagnosis of~~

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~~diseases or adjustment of the physiological functions (Note: Pharmaceutical products also mean "Medicine" in accordance with the provisions of the Law on Pharmaceutics; if the Law on Pharmaceutics is promulgated prior to this Law, the term "Medicine" in the Law on Pharmaceutics will be cited).~~

#### ~~Article 395. Protected business secrets~~

~~Protected business secrets are information which is in tangible or intangible form, obtained from financial and/or intellectual activities and fully satisfy the following conditions:~~

- ~~a. Being those other than general knowledge and not easily obtained;~~
- ~~b. Being applicable to business activities, and when being used, such information may render advantages to their holders over those who do not hold or use such information;~~
- ~~c. Being kept secret by their owners with necessary measures so that such information shall neither be disclosed nor easily accessible.~~

#### ~~Article 396. Objects not protected as business secrets~~

~~The following business secret shall not be protected as business secrets:~~

- ~~1. Personal status secrets~~
- ~~2. State management secrets.~~
- ~~3. Security and national defense secrets.~~
- ~~4. Other business secret irrelevant to business.~~

#### ~~Article 397. Principles generating the rights to business secrets~~

~~The rights to business secrets shall be automatically established when the information fully satisfies the conditions on protection as specified in Article . . . of this Law without registration.~~

#### ~~Article 398. Protection term~~

~~The rights to business secrets shall be protected as long as such business secrets fully satisfy the conditions on protection as specified in Article . . . of this Law.~~

#### ~~Article 399. Owners of business secrets~~

- ~~1. The owners of business secrets are organizations, individuals that have lawfully invested in obtaining or creating the information being business secrets.~~
- ~~2. In case where a business secret is created or acquired by an employee or a contract performer while performing his/her/its assigned tasks, such business secret shall be under the employer's or assignor's ownership unless otherwise agreed by the involved parties.~~

~~Article 400. Rights of the owners of business secrets~~

~~The owners of business secrets shall have the following rights:~~

- ~~1. To possess, use and dispose of such business secrets.~~
- ~~2. To request, or request a State competent authority to oblige, a person who has acts of infringing their rights as specified in Article . . . of this Law to terminate such infringing acts and make compensation for damage.~~

~~Article 401. Transfer of rights to business secrets~~

- ~~1. The owners of business secrets are entitled to transfer the right to use, assign or leave inheritance of, business secrets in accordance with provisions of laws.~~
- ~~2. The transfer, assignment of business secrets must be conducted in form of written contract.~~
- ~~3. The contents of the contracts for transfer/assignment of business secrets shall be prescribed by the Government.~~

~~Article 402. Obligations of the owners of business secrets~~

~~Upon exercising the rights as specified in Clause 2 of Article . . . of this Law, the owners of business secrets shall have the following obligations:~~

- ~~1. To prove the conditions for establishing the rights to business secrets, acts infringing the rights to business secrets and extent of damage, in case of requesting compensation for damage.~~
- ~~2. To ensure the truthfulness of information and evidence which are used as ground for proving the conditions for establishing the rights to business secrets and acts of infringing the rights to business secrets.~~

~~Article 403. Acts of infringing the rights to business secrets~~

~~The acts of infringing the rights to business secrets consist of:~~

- ~~1. Accessing or gathering information on business secrets by taking acts against secret keeping measures of lawful controllers of business secrets.~~
- ~~2. Disclosing or using information on business secrets without permission of owners of such business secrets.~~
- ~~3. Breaching secret keeping contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of, persons in charge of keeping secret in order to access, gather or disclose information on such business secrets.~~
- ~~4. Getting access to and/or gathering information on business secrets of others, when such business secrets are filed in accordance with~~

~~procedures for granting business-related permits or permits for circulation of products by taking acts against secret keeping measures of competent authorities.~~

~~5. Using and/or disclosing information on business secrets, whether having known or being obliged to know that such business secrets gathered by others are relating to one of the acts as referred to in Clauses 1 to 4 of this Article.~~

~~Article 404. Secret keeping obligations of the State authorities~~

~~1. In case where the laws provide that the applicants for permits of manufacturing, exporting, importing or circulating pharmaceutical and agro-chemical products must provide testing results or other secret data being gathered by investing their substantial efforts and money, and the applicants request the keeping of secret of such information, then the relevant competent authorities shall have obligations to carry out necessary measures so that such data are not used for unfair commercial purposes and not disclosed except the case where the disclosure is necessary for protecting public interests.~~

~~2. The State competent authorities must not grant permits to others for manufacturing, exporting, importing or circulating pharmaceutical or agro-chemical products when their applications for permits use the secret data of the applicant as referred to in Clause 1 of this Article for a period of five years from the date when the applicant as referred to in Clause 1 of this Article is granted with permit for manufacturing, exporting, importing or circulating pharmaceutical, agro-chemical products unless otherwise agreed by the applicant.~~

~~Article 405. Acts not considered as infringing the rights over business secrets~~

~~1. Disclosing or using business secrets gathered when not knowing or having no ground to know (except the case of having obligation to know) that such business secrets are gathered illegally by others.~~

~~2. Disclosing secret data specified in Clause 1 of Article . . . of this Law by competent authorities for the purpose of protecting public interests.~~

~~3. Using secret data specified in Clause 1 of Article . . . of this Law not for commercial purposes.~~

~~4. Disclosing or using business secrets created independently.~~

~~5. Disclosing or using business secrets created from analyzing and/or evaluating legally distributed products, provided that the analyzers~~

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~~and/or evaluators do not have other agreement with owners of business secrets or sellers.~~

## ~~Section 2~~

### ~~Rights against unfair competition~~

#### ~~Article 406. Acts of unfair competition~~

~~1. The following acts are deemed to be acts of unfair competition:~~

~~2. Using commercial indications to mislead the perception and information about business subjects, business activities, commercial origin of goods and services.~~

~~3. Using commercial indications to mislead the perception and information about the origin, manufacturing method, feature, quality, quantity or other characteristics of goods and services; and about the conditions for provision of goods and services.~~

~~4. Directly or indirectly giving incorrect information damaging the commercial prestige and reputation of others.~~

~~5. Using commercial indications which are identical or confusingly similar to the trademarks protected in a member country of Paris Convention or an international treaty to which Vietnam is a party or a signatory, which contains provisions similar to Article 6 septies or provides for the application of Article 6 septies of Paris Convention on the condition that within one year prior to the date of beginning to use such commercial indications, the person conducting such act was a representative or agent of the owner of such trademark in Vietnam and such use is without the consent of the owner of such trademark or without adequate reason.~~

~~6. Manufacturing, assembling, selling, offering, advertising for sale, storing for sale, importing, exporting and/or leasing facilities including equipment attached with facilities which are mainly used to assist in counteracting technological measures commercially used to control sound listening, image watching; computer program running; sound, images and computer program recording (except for the technological measures used by persons other than the lawful controllers of such sound, images and computer programs); or acts of manufacturing, assembling, selling, offering, advertising for sale, storing for sale, importing, exporting and/or leasing computer program records, computer program storing equipment which have the function of counteracting the above said technological measures, including the cases where those computer programs contain other programs; or acts of providing such~~

~~computer programs via electronic information network.~~

~~7. Selling, handing over, displaying for sale and assigning to, importing and exporting for, undesignated persons or leasing to such persons, facilities including equipment attached with facilities which are mainly used to assist in counteracting technological measures commercially used by the lawful controllers of sound, images and computer programs to control sound listening, image watching, computer program running; sound, images and computer program recording or computer program records, computer program storing equipment which have the function of counteracting the above said technological measures, including the cases where those computer programs contain other programs.~~

~~In this Article, the following terms are construed as follows:~~

~~8. "Commercial indications" are signs and information to provide commercial instructions to goods and services including trademarks, commercial names, business logos, business slogans, indications of origin, geographical indications, goods packing designs, goods labels etc...;~~

~~9. "Use of commercial indications" are acts of affixing such commercial indications on goods, goods packing, service means, business transaction papers, advertising means; selling, advertising for sale, storing for sale and importing goods affixed with such commercial indications;~~

~~10. "Designated persons" are persons who have lawful rights to the control of sound, images and computer programs which permit the assessing of such sound, images and computer programs.~~

~~Article 407. Right to request the handling of acts of unfair competition~~

~~1. Organizations and individuals that suffer or are likely to suffer from damage caused by acts of unfair competition as specified in Article . . . of this Law shall be entitled to request the State competent authorities to force persons who commit acts of unfair competition to stop such acts and make compensation for such damage.~~

~~2. Collective organizations which represent organizations and individuals and legally established are entitled to represent their members to exercise the right as referred to in Clause 1 of this Article.~~

~~Article 408. Burden of Proof~~

~~Organizations and individuals that exercise the right to request the~~

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~~handling of acts of unfair competition as specified in Article . . . of this Law shall be obliged to provide to the State competent authorities evidence on the acts of unfair competition, persons committing acts of unfair competition, legitimate rights and interest of themselves or of those organizations and individuals they are representing which are infringed or in danger of being infringed; and level of damages (if compensation for damages is required) by acts of unfair competition.~~

## ~~Chapter XI~~

### ~~RIGHTS OVER INNOVATIONS~~

#### ~~Section 1~~

##### ~~Principles of establishing rights over innovations~~

##### ~~Article 409. Innovations~~

~~Innovations are technical solutioninventions or solutions of production organization for solving a certain issue within an organization or unit.~~

##### ~~Article 410. Principle generating rights over innovations~~

~~1. The rights over innovations shall arise from the basis of a Notice of acceptance of registration issued by any organization or unit.~~

~~2. Notice of acceptance of registration of innovation shall be valid within the organization or unit that issues such Notice.~~

##### ~~Article 411. Request for registration of innovation~~

~~To be entitled to an innovation, the person who has the right to register innovation shall have to submit a Request for registration of innovation to the organization, unit in accordance with the regulations of this Chapter.~~

##### ~~Article 412. Rights and obligations to submit the request for registration of innovation~~

~~1. The right to submit request for registration of innovation shall belong to:~~

~~a. The author who has created the innovation with his/her own efforts and expenses~~

~~In case the innovation is created by way of work assignment or provision of expenditure and material facilities to the author by the organization, the author shall be entitled to submit the request for registration to other organizations, units on the conditions that the permission of the organization assigning work or providing expenditure or material facilities is obtained.~~

~~b. The individual who invests capital and material facilities for the~~

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~~author of innovation in form of job assignment, employment unless otherwise agreed in labour contract or employment contract.~~

~~2. The right to submit request for registration of innovation may be transferred to other individuals.~~

~~3. The author has the obligation to submit the request for registration of innovation to the organizations that assign work, provide expenditure and/or material facilities for the creation of innovation.~~

## ~~Section 2~~

### ~~Conditions for innovations to be registered~~

#### ~~Article 413. Conditions for innovations to be registered~~

~~An innovation shall be registered if it has novelty, is applicable and brings practical effects.~~

#### ~~Article 414. Innovations not to be registered~~

~~The following objects must not be registered as innovation:~~

- ~~a. The intellectual property objects that are being protected;~~
- ~~b. The solutions of others that have been registered as innovations or applied at other organizations, units.~~
- ~~c. Other objects that are specified by the organizations, units receiving request for registration.~~

#### ~~Article 415. Novelty of innovation~~

~~An innovation shall be regarded as being new if it is not identical to those registered with the organizations, units prior to the date of the request for registration of such innovation:~~

- ~~a. Not yet applied by organizations, units; not yet put into application plan or not yet stipulated as obligatory performance measures.~~
- ~~b. Not yet described to the extent that it can be applied using the sources of information to which organizations, units are able to access.~~

#### ~~Article 416. Applicability of innovations~~

~~An innovation shall be considered to be applicable if:~~

- ~~a. It satisfies the production tasks and activities of organizations, units.~~
- ~~b. It conforms to economic and technical conditions of organizations, units at the time of registration.~~
- ~~c. It can be applied repeatedly upon demand and bring effect as described in the request for registration.~~

#### ~~Article 417. Possible generation of practical benefits of innovation~~

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~~A innovation shall be considered to be possible to generate practical benefits if the economic and technical effects or social benefits gained from the application of such innovation shall be higher than the application of technical or production conditions of organizations, units prior to applying such innovation.~~

### ~~Section 3~~

~~Request for registration of innovation, dealing with request for registration of innovation~~

~~Article 418. Request for registration of innovation~~

~~1. A request for registration of innovation must be made in writing and consist of at least the following information:~~

~~a. Full name and address of the requester; full name of the author of innovation;~~

~~b. Information describing the innovation; and argument attached with evidence proving the novelty, applicability and practical benefits of the innovation;~~

~~c. Documents proving the right to submit request for registration if the requester is not the subject entitled to the transferred rights as specified in Article . . . of this Law.~~

~~2. The person submitting the request for registration shall be able to give oral explanation to organizations, units on the information specified in Clause 1 of this Article.~~

~~3. The form and contents of Request for registration of innovation shall be stipulated in accordance with the provisions of this Law.~~

~~Article 419. Handling of Request for registration of innovations~~

~~1. Organizations and units shall receive the Request for registration of innovation only when being provided with minimum information as specified in Article . . . of this Law.~~

~~2. Organizations and units shall be responsible for considering the Request for registration of innovation in accordance with the following provisions:~~

~~a. Issuing a Notice of acceptance of innovation if the Request for registration of innovation satisfies the prescribed provisions, and the innovation satisfies the conditions for registration and is not subject to the objects which are not registered in accordance with the provisions of Articles . . . of this Law;~~

~~b. Issuing a Notice of refusing registration of innovation, and notifying the same to the requester if one of the conditions specified~~

~~in Point a of this Clause is not satisfied.~~

~~3. The procedures and order for submission and consideration of the Request for registration of innovation shall be promulgated by organizations and units in accordance with the regulations of this Law.~~  
~~Article 420. Notice of acceptance of the Request for registration of innovation~~

~~A Notice of acceptance of the Request for registration of innovation must consist of the following principle contents:~~

- ~~a. Name of innovation;~~
- ~~b. Name and address of the owner of innovation;~~
- ~~c. Name and address of the authors of innovation;~~
- ~~d. No. of the Request for registration of innovation;~~
- ~~e. Date of submitting the Request for registration of innovation;~~
- ~~f. Date of acceptance of the registration of innovation;~~
- ~~g. Brief description of the nature of innovation;~~
- ~~h. Name of the accepting organization, unit.~~

~~Article 421. Announcement of registered innovation~~

~~1. Organizations, units which accept the registration of innovation shall be responsible for announcing the information on the innovation accepted by them for registration at the request of the innovation owner.~~

~~2. The owners of innovation as referred to in Clause 1 of this Article are organizations, individuals that have invested financial sources and means in the creation of innovation.~~

~~3. An organization which is able to get access to the announced information shall be deemed to have got accessed to the innovation from the date of announcing such innovation.~~

~~Section 4~~

~~Rights and obligations established under Notice of accepting registration of innovation~~

~~Article 422. Rights and obligations of organizations and units which accept the registration of innovation~~

~~1. The organizations and units which accept the registration of innovation are entitled to be given priority to the use of innovation on the basis of an agreement with the owner or author of such innovation.~~

~~2. Within 1 year from the date of accepting the registration of innovation, the organizations, units that accept the registration of innovation shall be obliged to agree with the owner or author of~~

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~~innovation on the use of, or non-use of the innovation.~~

~~Article 423. Rights and obligations of the owner of innovation~~

~~1. An owner of innovation has the rights:~~

~~a. To use its innovation;~~

~~b. To request organizations, individuals using the innovation to pay the use fees if having ground to affirm that such organizations, individuals have got access to information sufficient for using the innovation, and such use is exercised within 5 years from the date of accepting the registration of innovation. The innovation use fees shall be agreed by the involved parties. Where no agreement is made, the rates and period of paying the innovation use fees must conform to the following provisions:~~

~~— The innovation use fees shall be 50% of the profits that the organizations/individuals gained by using the innovation from each year of use;~~

~~— The period of paying the fees shall not be later than 60 days from the last day of the 12<sup>th</sup> month of each year of use.~~

~~c. To give, donate, transfer or render inheritance of, the rights over innovation to others;~~

~~d. To request the competent authorities to deal with acts of infringing its rights.~~

~~2. An owner of innovation shall be obliged to pay remuneration to the author of such innovation as agreed. Where no agreement is made, the rates and period of paying the remuneration must conform to the following provisions:~~

~~— The minimum remuneration payable to the author of innovation shall be 10% of the profits gained from each year of using such innovation, or 15% of the total amount received in each receipt of payment for the transfer of the innovation use rights;~~

~~— The period of paying the fees shall not be later than 60 days from the last day of the 12<sup>th</sup> month of each year of use, or not later than 30 days from the date of receipt of payment for the transfer of the innovation use rights.~~

~~Article 424. Restrictions of rights of the owners of innovation~~

~~1. An owner of innovation shall only be entitled to exercise its rights when complying with the regulations on protection of intellectual property rights.~~

~~2. The transfer of innovation to other organizations, individuals for~~

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~~their use shall only be conducted after 12 months from the date of accepting the registration of such innovation if no agreement is made during such period between the organizations, individuals accepting the registration of innovation and the owner of innovation, or the signed agreement does not provide for any restriction of the transfer of innovation.~~

~~Article 425. Rights and obligations of the authors of innovation~~

~~1. An author of innovation has the rights:~~

~~a. To submit the Request for registration of innovation in accordance with Article . . . of this Law;~~

~~b. To use the innovation if the owner of innovation fails to exercise its use right for a period of 1 year from the date of accepting the registration of innovation;~~

~~c. To request the owner of innovation or the organizations, individuals using the innovation pay remuneration at the rates and period as agreed. Where no agreement is made, the rates and period of paying the remuneration must conform to the following provisions:~~

~~— The minimum remuneration payable to the author of innovation shall be 10% of the profits gained from each year of using such innovation, or 15% of the total amount received in each receipt of payment for the transfer of the innovation use rights;~~

~~— The period of paying the fees shall not be later than 60 days from the last day of the 12<sup>th</sup> month of each year of use, or not later than 30 days from the date of receipt of payment for the transfer of the innovation use rights.~~

~~2. An author of innovation has the obligations:~~

~~a. To notify the individual being the owner of innovation of the innovation which has been created by the author.~~

~~b. To submit the Request for registration of innovation in accordance with Article . . . of this Law.~~

~~c. To pay remuneration to the person who assist him/her in creating the innovation as agreed. Where no agreement is made, the following provisions must be complied with:~~

~~— The remuneration shall be 25% of the remuneration received by the author from the owner of innovation;~~

~~— The period of paying the fees shall not be later than 30 days from the date of receipt of remuneration paid by the owner of innovation to the author.~~

~~Article 426. Rights and obligations of organizations, individuals using innovation~~

~~1. Organizations, individuals using innovation are entitled to the enjoyment of preferential policies as organizations, individuals engaged in scientific and technological activities in accordance with the regulations of laws on science and technology.~~

~~2. Organizations, individuals using innovation shall be responsible to pay use fees to the owners of innovation as agreed if using the innovation within a 5-year period from the date of registration of the innovation except the case where they can prove that the innovation is not new or it is created by themselves prior to the date they get access to information on such innovation~~

~~3. Where no agreement on innovation use fees is made, the payment of use fees must comply with the following provisions:~~

~~—— The minimum remuneration shall be 50% of the profits gained from each year of use of such innovation. In case where the interests obtained from using innovation cannot be calculated on a pecuniary basis, the rate of fees shall be determined by the Government based on the social effects brought in by such innovation.~~

~~—— The period of paying the fees shall not be later than 60 days from the last day of the 12<sup>th</sup> month of each year of use of the innovation.~~

~~Article 427. Infringement of rights over innovation~~

~~The following acts shall be considered to be infringing the rights over innovation:~~

~~a. The author fails to comply with the provisions on rights and obligations in relation to request for registration of innovation, fails to pay fees to his assistants as stipulated.~~

~~b. Owner of innovations fails to pay remunerations to the author as provided, fails to comply with provisions on transfer of innovations.~~

~~c. Organization, units accepting the registration of innovation fail to enter into an agreement on using the innovation with the owner of innovation.~~

~~d. Organizations, individuals using the innovation fail to pay innovation use fees to the owner of innovation as prescribed.~~

~~Chapter XII~~

~~INTELLECTUAL INDUSTRIAL PROPERTY REPRESENTATIVES~~

~~Section 1~~

~~Intellectual Property Representative Services~~

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~~Article 428. Concept~~

~~The following concepts used in this Law are construed as follows:~~

~~“Intellectual Property Representative Service Agency” is an organization which is qualified for conducting intellectual property representative service business in accordance with the regulations in Article . . . of this Law.~~

~~“Intellectual Property Agent” is a member of the Intellectual Property Representative Service Agency who is qualified for practising intellectual property representative services in accordance with the regulations in Article . . . of this Law.~~

~~“Intellectual Property Representative” refers to the Intellectual Property Representative Service Agency collectively and/or Intellectual Property Agent.~~

~~Article 429. Rights of the Intellectual Property Representative~~

~~1. In the activities of intellectual property representative service, the Intellectual Property Representative shall have the civil rights in conformity with civil laws.~~

~~2. The Intellectual Property Representative shall have the rights to conduct the following service activities:~~

~~a. Representing other persons before the State Authority authorized to establish and protect intellectual property rights;~~

~~b. Representing other persons before the State Authority authorized to institute legal proceedings;~~

~~c. Advising on issues related to the procedures for establishment and protection of intellectual property rights;~~

~~d. Other services concerning the procedures for establishment and execution of intellectual property rights;~~

~~3. The provision in clause 2.b of this Article shall only apply to the persons who practise as a lawyer.~~

~~4. The Intellectual Property Representative Service Agency shall be entitled to provide services within the scope of authorization and can re-delegate to another Intellectual Property Representative Service Agency only with the written consent of the authorizing person.~~

~~5. The Intellectual Property Representative Service Agency shall be entitled to abandon its intellectual property representative activities if it can legally pass all pending representative work to another Intellectual Property Representative Service Agency.~~

~~Article 430. Obligations of the Intellectual Property Representative~~

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~~1. In the activities of intellectual property representative service, the Intellectual Property Representative shall have the civil obligations in conformity with civil laws.~~

~~2. The Intellectual Property Representative shall have the following specific obligations:~~

~~a. To notify in details the national fees and the amount of each kind of fee related to the procedures for establishment and protection of intellectual property rights, as well as the service fees and the amount of each kind of service fee of the Organization in accordance with the Tariff registered at the competent State Authority.~~

~~b. To keep confidential all the information and documents they receive with respect to the case(s) they represent;~~

~~c. To report truthfully and fully all notifications, requirements of the competent State Authority; deliver in time the Protection Title and other decisions to the represented party;~~

~~d. To protect the interests of the represented party by meeting in a timely manner the requirements of the competent State Authority in respect of the represented party;~~

~~e. To notify the competent State Authority of all changes to the name, address and other information of the represented party, if necessary.~~

~~3. The Intellectual Property Agent shall only acts for the Intellectual Property Representative Service Agency of which he/she is a member.~~

~~The Organization and Intellectual Property Agent providing services shall be responsible for all the issues in relation to such representation.~~

~~4. The Intellectual Property Representative must not conduct the following activities:~~

~~a. Acting on behalf of the competent State Authority to carry out the powers of such Authority.~~

~~b. Representing conflicting parties at the same time;~~

~~c. Withdrawing the application for the Protection Title, declaring the abandonment of protection, withdrawing the appeal against the establishment of intellectual property rights if not clearly stated in the Power of Attorney.~~

~~d. Deceiving or forcing their clients to enter into contracts for provision of intellectual property representative services.~~

~~e. Disclosing information on national security and interests when carrying out representative activities.~~

~~Article 431. Conditions for conducting, practising business of intellectual property representative service~~

~~1. Those individuals who meet the following criteria shall be recognized as the Intellectual Property Agent and granted the Certificate of Practising as an Intellectual Property Representative:~~

~~a. Being a Vietnamese citizen, having full capacity for civil acts;~~

~~b. Permanently residing in Vietnam;~~

~~c. Having obtained a university degree;~~

~~d. Having working experience in the field of intellectual property; having been directly involved in the legal work on intellectual property for 5 consecutive years or more; or having been directly involved in the work of examination of intellectual property applications at national or international intellectual property offices for 5 consecutive years or more;~~

~~e. Having obtained a certificate of graduation from the laws and intellectual property training course under the prescribed programs, which was issued by the competent State Authority;~~

~~f. Not being a public servant, official who is working for State management authorities authorized to establish and ensure the execution of intellectual property rights.~~

~~2. Those organizations which meet the following conditions shall be recognized as the Intellectual Property Representative Service Agency and permitted to conduct the business of intellectual property representative service:~~

~~— Being a business operating in accordance with the Law on State Enterprises, Law on Enterprises; or being a law office, an associate law firm established and operating in accordance with the Ordinance on Lawyers; or a scientific and technological service organization established and operating in accordance with the Law on Science and Technology;~~

~~— Having the function to conduct intellectual property representative services recorded in the business registration certificate of the business, certificate of registration of scientific and technological activities with respect to scientific and technological service organization (collectively referred to as Operation Registration Certificate);~~

~~Head of the Organization or the person authorized by the Head of Organizations satisfies the conditions with regard to the Intellectual Property Agent as specified in Article . . . of this Law.~~

~~Article 432. Training and examination of professional knowledge on intellectual property; granting of Certificate of practising as an intellectual property representative~~

~~1. The training programs on laws and professional knowledge on intellectual property shall be prescribed by the Government.~~

~~2. In order to be granted the Certificate of graduation from the law and intellectual property training course, the individuals who need to meet the conditions for being an Intellectual Property Representative must attend a test on laws on intellectual property in force of Vietnam.~~

~~3. The testing contents consist of theoretical knowledge of, and the ability of applying, in the practice of intellectual proper representative services, provisions of laws on intellectual property in force of Vietnam (including international treaties to which Vietnam is a signatory or a party) in relation to all the intellectual property objects being protected in Vietnam.~~

~~4. The Government shall make detailed provisions on the examination and granting of the Certificate of graduation from laws and intellectual property profession training course and the Certificate of practising as intellectual property representative.~~

~~Article 433. Recognition, deletion, abandonment of conducting business of, and practising intellectual property representative service~~

~~1. The Intellectual Property Representative Service Agency and the Intellectual Property Agent that meet the conditions for conducting business of, practising intellectual property representative service shall be published in the Official Gazette and recorded in the National Register of intellectual property representatives.~~

~~2. The authorities authorized to grant the Operation Registration Certificate shall revoke the Operation Registration Certificate or delete the business line of intellectual property representative service (if the Organization also conducts other business activities in other fields) in the circumstances prescribed by laws on the activities of enterprises, law offices and scientific and technological organizations, and in the following circumstances:~~

~~a. The Intellectual Property Representative Service Agency declares its abandonment of business activities of intellectual property~~

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~~representative service;~~

~~b. The Intellectual Property Representative Service Agency violates the provisions of Article. . . of this Law;~~

~~c. The Intellectual Property Agent of the Organization makes serious mistakes on professional skill while practising, violates the provisions of this Law damaging service users and others; or causes adverse effect to the reputation of State authorities.~~

~~The authorities authorized to grant the Operation Registration Certificate must notify the competent State Authority of the revocation in order to delete the name of the Organization of which the Operation Registration Certificate is revoked, in the National Register .~~

~~3. The Decision of revoking the Operation Registration Certificate and the Decision of deleting the business (activities) of intellectual property representative service shall be published in the Official Gazette on intellectual property.~~

~~— In case the Operation Registration Certificate of the Intellectual Property Representative Service Agency is revoked, all the pending work performed by this Organization shall be entitled to be either interrupted and to be continued within a 3 month period from the date of publishing the Decision of revoking the Operation Registration Certificate in the Official Gazette of intellectual property representatives.~~

~~4. The Organization of which the Operation Registration Certificate is revoked, the business (activities) of intellectual property representative service is deleted, or which declares its abandonment of business activities in intellectual property representative service shall be responsible for notifying the termination of its business (activities) and transferring documents and information in relation to such pending procedures to the subject they represented or at the request of such subject, to other Intellectual Property Representative Service Agency.~~

## ~~Section 2~~

~~Organization for collective management of copyright~~

~~Article 424. Establishment of organization for collective management of intellectual property rights~~

~~The organization for collective management of intellectual property rights is a non-profit organization which is established under the agreement of the owners of intellectual property rights, or at the~~

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~~request of the owners of intellectual property rights asking the State competent authority to appoint an appropriate agency or organization to carry out the management over their intellectual property rights.~~

~~Article 435. Duties and powers of the Organization for collective management of intellectual property rights.~~

~~1. Preparing the Charter of organization and operation and submitting it to the competent authority for approval or recognition;~~

~~2. Organizing the collective management of intellectual property rights on autonomous basis, and being self-responsible for their activities in accordance with the provisions of laws;~~

~~3. Participating in the protection of interests of the holders of intellectual property rights; being entitled to take initiative in carrying out necessary measures as prescribed by laws to prevent illegal use of intellectual property rights;~~

~~4. Taking measures for developing the reputation and value of assets of the intellectual property rights;~~

~~5. Registering, coordinating and assisting the owners of intellectual property rights in registering for the protection of intellectual property rights;~~

~~6. Being entitled to other rights and obligations in accordance with laws.~~

~~Article 436. Conditions for operation of the Organization for collective management of intellectual property rights~~

~~The Organization for collective management of intellectual property rights must satisfy the following conditions:~~

~~1. Established legally and operating in accordance with the provisions of laws;~~

~~2. Ensuring the objectiveness, truthfulness and fairness with respect to all the participants;~~

~~3. Having employees with professional degree and technical means necessary for performing the tasks required by the Organization.~~

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~~Chapter XIII~~

~~ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS~~

~~Section 1~~

~~Basic principles~~

~~Article 437 Right to request for protection of lawful rights and~~

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benefits

~~1. An intellectual property right holder or his or her representative is entitled to initiate legal proceedings at a court with the appropriate jurisdiction to request the court to take measures against individuals or organizations committing an infringement of intellectual property rights to protect his or her lawful rights and interests.~~

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~~2. An intellectual property right holder, his or her representative or any other person with related rights or interests is entitled to petition the court to resolve the dispute relating to intellectual property to protect his or her lawful rights and interests.~~

~~3. Any person shall be entitled to petition the authorized state authority to take administrative measures against individuals or organizations committing a violation of the intellectual property law.~~

~~Article 438 Right to be free to determine and decide~~

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~~1. An intellectual property right holder is entitled to decide to or not to initiate legal proceedings against the infringement of his or her [intellectual property] rights, a person with related rights and interests is entitled to decide to or not to petition the court to resolve the dispute relating to intellectual property, [the intellectual property right holder and the person with related rights and interests is entitled] to decide to present claims for measures and level of sanction, including compensation for damages.~~

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~~During the resolution of a case against intellectual property right infringement(s), the plaintiff or the petitioner is entitled to change the claims or to terminate the case.~~

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~~2. The court will accept to resolve a dispute relating to intellectual property only in case there is a complaint or a petition [filed] and will resolve the disputes within the scope [of claims] set out in the complaint or the petition.~~

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~~Article 439 The obligation to prove and to provide evidence of proof of the plaintiff and the petitioner~~

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~~1. Proof of the right to initiate legal proceedings:~~

~~a) the person who initiates legal proceedings against an infringement of intellectual property rights shall have to prove his or her right to initiate legal proceedings at the court.~~

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~~b) in legal cases against infringements of rights regarding inventions, utility solutions, industrial designs, layout designs of transistORIZED~~

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~~integrated circuits, plant varieties, trademarks and geographical indication, the person initiating legal proceedings shall have to provide lawful copies of certificates of protection and extracts from Register of intellectual property rights respective to the certificates of protected [granted] by the authorized state authority.~~

~~e)in legal cases against infringements of copyrights, related rights, rights regarding business secret, rights regarding tradename, the person initiating legal proceedings shall have to provide required evidence to prove the grounds from that his or her [respective] intellectual property rights have arisen.~~

~~2. Proof of the grounds for the claims:~~

~~a)the person who initiates legal proceedings, the person who petitions for the resolution of the case of infringement of intellectual property rights shall have to provide evidence relevant to the content, the scope, the place, time [of the infringing act] and the person who committed the infringing act.~~

~~b)in case the person initiating legal proceeding or the person petitioning for the resolution of the case of infringement of intellectual property rights requests the court to order provisional measures, he or she shall have to prove that the application of provisional measures is necessary and that the failure to apply these provisional measures will cause irreparable harm to him or her or where there is a risk of evidence being destroyed. The applicant for provisional measures shall have to provide a security or equivalent assurance to compensate the person subject to the application of provisional measures where the provisional measures are wrongly or unnecessarily carried out.~~

~~c)in case the person initiating legal proceeding or the person petitioning for the resolution of the case of infringement of intellectual property rights claims for compensation, he or she shall have to prove that damages have actually occurred and to demonstrate the extent of damages and the grounds for calculation of the damages.~~

~~d)in case the person initiating legal proceeding or the person petitioning for the resolution of the case of infringement of intellectual property rights request the court to order the infringer to produce the evidence, the person initiating legal proceeding [or the person petitioning for the resolution of the case of infringement of intellectual property rights] shall have to guarantee that he or she~~

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~~knows for sure that the evidence is being under the control of the infringer and the infringer is not willing to provide that evidence.~~

~~Article 439 The rights and obligations to prove and to provide evidence of proof of the defendant and the person being petitioned for sanction~~

~~1. The defendant in a case against infringement of intellectual property rights, the person being petitioned for sanction in a court case regarding intellectual property and the person being petitioned for administrative sanction for infringement of intellectual property law shall have the right to present arguments and grounds and provide evidence to substantiate their arguments and grounds.~~

~~2. The defendant in a case against infringement of the rights regarding invention or utility solution or the person being petitioned for sanction for unauthorised use of a patented invention which is a process for obtaining a product shall be entitled to prove that the process to obtain his or her product is different from the process of the protected invention or utility solution.~~

~~3. In case the product referred to in Clause 2 of this Article is a new product, and is naturally deemed to be within the scope of protection for the patented process to obtain that product, and that the patent right holder has been unable to determine the process actually used by the defendant or the person being petitioned for sanction to obtain the product, the burden of proof as provided in Clause 2 of this Article shall be on the defendant or the person being petitioned for sanction.~~

~~Article 441 Right to be notified in writing:~~

~~The plaintiff in a case against infringement of intellectual property rights, the person being petitioned for sanction shall have the right to be notified by the Court or the State authority responsible for handling the case with respect to the case, including the grounds for initiating legal proceedings or petitioning for administrative sanction and to be provided with the judgement or decision of settlement.~~

## ~~Section 2~~

~~Enforcement of intellectual property rights through civil proceedings~~

~~Article 442 Infringer of intellectual property rights~~

~~1. Within the term of protection and in the territory of protection of the intellectual property right, any person, other than the holder of the intellectual property right and the person that is permitted by this Law or by the holder of the intellectual property right, who conducts~~

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~~act(s) of using the protected intellectual property rights shall be considered as the infringer of intellectual property rights. This unauthorised use of intellectual property rights shall be considered as an act of infringement of intellectual property rights.~~

~~2. The person who does not directly conduct the act of infringement of intellectual property right but assigns, hires or orders other person to conduct that act shall be considered as the infringer of intellectual property rights.~~

~~Article 443 Measures for settlement that may be requested by the plaintiff~~

~~1. When initiating legal proceeding against the infringement of intellectual property rights, depending on the decree of the infringement, the plaintiff shall be entitled to request the court to decide to apply one of the following measures for settlements:~~

~~(a) to compel the infringer to desist from the infringement. In case of import of goods that involve the infringement of intellectual property rights, the infringer shall be compelled to suspend the importation. If Customs clearance is completed for the concerned infringing goods, the infringer shall be compelled to suspend the entry of the goods into the channels of commerce.~~

~~(b) to compel the infringer to pay damages to the holder of the IPR to cover the loss caused by the infringement upon the IPRs including proceeding fees and reasonable attorney expenses.~~

~~(c) to compel the infringer to rectify and make public apology.~~

~~(d) to apply provisional measures if the person who initiates an case against an infringement upon IPRs has reason to think that, in the absence of such provisional measure, the infringer cannot pay the damages or that the evidence of the infringement shall be destroyed.~~

~~2. In addition to those set out in clause 1 of this Article, a person initiating a case against an infringement upon IPRs may request the court to take the following measures to prevent further infringements or avoid losses to third parties:~~

~~(a) bringing the infringing goods into use for non-commercial purposes or destroy them;~~

~~(b) bringing into use for non-commercial purposes infringing materials, equipments, components or means used for making infringing goods;~~

~~Article 444 Principles of determination of levels of loss~~

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~~1. The loss caused to the holder of IPR by an infringement comprises both physical and spiritual loss.~~

~~(a) Physical losses comprise actual tangible and intangible loss which may be valued in cash.~~

~~Actual tangible loss includes loss to property, decreased income and profits and preventative and rectification expenses and other physical loss.~~

~~Actual intangible loss includes loss in respect of business opportunities, decrease in the business reputation and other intangible loss.~~

~~(b) Spiritual loss comprises of loss to the dignity, honour, prestige and other spiritual loss.~~

~~2. The level of loss shall be determined on the basis of the actual losses incurred by the holder of IPRs due to the infringement upon such IPRs.~~

#### ~~Article 445 Bases for determination of losses~~

~~1. If the person who initiates a case succeeds in proving that an infringement upon IPRs has been actually committed and caused loss to the holder of the IPRs, he/she shall have the right to ask for damages on one of the following bases:-~~

~~(a) The total physical loss as determined in cash plus the in-case damages for the spiritual losses in accordance with clause 2(b) of this Article including the profits gained by the infringer of the IPRs if such profits have not yet been included in the total physical loss.~~

~~(b) The value of transfer of the IPR subject matter with the assumption that the infringer has been licensed by the IPR holder to use that subject matter to the extent equivalent to the act of infringement committed.~~

~~(c) The rate of damages prescribed by the court in accordance with clause 2(a) of this Article.~~

~~2. Where it is impossible to determine the level of loss in accordance with clauses 1(a), (b) or (c) of this Article, the court shall, on the basis of the request of the person initiating the case and the seriousness of the infringement, fix the rate of damages as follows:-~~

~~(a) Damages for physical losses shall vary from five (5) million to two hundred (200) million Vietnamese dong;~~

~~(b) Damages for spiritual losses shall vary from five (5) million to fifty (50) million Vietnamese dong;~~

#### ~~Article 446 Dealing with other IP cases~~

~~1. Any individual/organization including any organization representing consumers' rights shall have the right to request the court to deal with IP cases as referred to in clause 2 of this Article in order to protect lawful rights and interests of its own or others.~~

~~2. The IP cases which the court is competent to deal with as referred to in clause 1 of this Article comprise the following:~~

- ~~a) applications for dealing with IPR infringements;~~
- ~~b) applications for dealing with infringement upon the right to previously use inventions/utility solutions, industrial designs and plant varieties;~~
- ~~c) applications for resolution of disputes on the payment of remuneration/royalties to the author;~~
- ~~d) applications for resolution of disputes on the performance of contracts for transfer or assignment of IPRs, capital contribution by way of IPRs;~~
- ~~e) applications for resolution of disputes on passing of IPRs by inheritance and donation of IPRs.~~

~~3. The provisions from Article [ ] to Article [ ] shall also apply to other IP cases referred to in this Article.~~

#### ~~Article 447 Application of the Civil Procedure Code~~

~~All the provisions concerning the jurisdiction of the court, procedures and order for carrying out civil proceedings which are applicable when a court hears a case or another IP case and which are not referred to in this Law shall be subject to the Civil Procedure Code.~~

#### ~~Section 3~~

~~Enforcement of IPRs by administrative measures and border measures for IPR control on respect of imports and exports~~

#### ~~Article 448 Principles of dealing with administrative offences~~

~~1. Option 1: Any organization or individual committing a breach of the regulations on state administration of IPR; producing or trading counterfeit goods in infringement of IP or taking other acts to intentionally infringe upon IPRs and consequently cause affect to social security, order and safety which is not regarded as a crime, shall be to subject to administrative penalties in accordance with this law and other related legislation concerning administrative penalties.~~

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~~Option 2: Any organization or individual committing an act of infringement of IPRs in respect of which the holder does not initiate a case shall be subject to administrative penalties.~~

~~Option 3: In all cases, counterfeit goods shall be subject to administrative penalties.~~

~~2. Any administrative offence in the IP sector must be promptly detected and dealt with.~~

~~Article 449 Method and procedures for imposing penalties~~

~~Method and procedures for imposing administrative penalties shall comply with the provisions of laws on dealing with administrative offences.~~

~~Article 450 Right to request for the application of border measures of IPR control in respect of imports and exports~~

~~1. An IPR holder has the right to request the Customs authority to take the measure of temporary suspension of customs clearance and/or apply provisional measures in accordance with the law against imports/exports containing indication of infringement upon IPRs~~

~~2. The person who requests the customs authority to take any measure referred to in clause 1 of this Article shall bear the burden of proof in respect of his/her claim and must pay a deposit in accordance with the law.~~

~~3. The customs authority shall take the measure referred to in clause 1 of this Article on the basis of the evidence supplied by the requester and shall not be held responsible for investigation into, and detection of, infringing goods.~~

~~Article 451 Responsibilities of IPR border control authority in respect of imports/exports~~

~~1. Within the scope of its functions, duties and powers, the IPR border control authority in respect of imports/exports, where necessary, shall take the lead in investigating and detecting in order to prevent imports/exports infringing upon IPRs in order to protect national security and social order and safety.~~

~~2. The customs authority has the right to request the IPR holder and related persons to provide necessary information and evidence to deal with the infringement.~~

~~3. If a person authorized to take measures to deal with infringements upon IPRs by imports/exports intentionally conducts any act contrary to the provisions of law shall, depending on the nature and seriousness of the breach, be disciplined, prosecuted for criminal liability and must~~

~~pay compensation as provided for by law.~~

~~Article 452 Handling measures and methods~~

~~The procedures for making requests and method of taking IPR border control measures in respect of imports and exports shall be in accordance with the customs legislation.~~

~~Section 4~~

~~Enforcement of IPRs by way of criminal measures~~

~~Article 453 Prosecution for criminal liability~~

~~An individual conducting any act to intentionally breach the provisions of IP legislation which contains sufficient factors to create a crime shall be prosecuted for criminal liability.~~

~~Article 454 Criminal measures and procedures~~

~~Criminal measures and procedures shall be applied in accordance with the criminal legislation.~~

~~Chapter XIV~~

~~The sixth part~~

~~IMPLEMENTATION PROVISIONS~~

~~Article 455 Transitional provisions~~

~~...~~

~~Article 456 Implementing guidelines~~

~~The Government shall be responsible for implementing this Law.~~

~~Article 457 Effectiveness~~

~~This law becomes effective from ..... Section 3. .... Invention registration applications~~

~~Article 99 Invention registration applications~~

~~An invention registration application must contain the following documents:-~~

~~(a) A declaration form for registration of the invention which specifies the request for the grant of an invention patent, name and address of the applicant, and full name of the author of the invention.~~

~~(b) A descriptive document of the invention including a description section and the protection claims.~~

~~(c) A summary of the invention.~~

~~(d) A letter of authorization, if the application is filed by a~~

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~~representative.~~

~~(dd) Documents proving the priority right, in case the entitlement to the priority right is sought.~~

~~(e) Documents proving the payment of fees and charges.~~

~~Article 100 The unity of invention registration applications~~

~~Each invention registration application may only claim protection for one and only invention or combination of inventions with relevant technical connection and common and unique creative idea.~~

~~Article 101 Declaration forms for registration inventions~~

~~1. A declaration form for registration inventions must be made by using the prescribed form and must be filled in fully.~~

~~2. The Government shall provide for the contents and forms of declaration forms for registration inventions.~~

~~Article 102 Description of the invention~~

~~The description of the invention must meet the following conditions:~~

~~(a) it must expose the nature of invention to such a clear and sufficient extent that it can serve the basis for an average man in a relevant technical sector to implement such invention;~~

~~(b) it must briefly explain the invention together with its drawings (in case it is required to do so to more clarify the nature of the invention); and~~

~~(c) it must clarify the novelty, non obviousness, not too obviousness and capability of industrial application of the invention.~~

~~Article 103 The scope of protection of inventions~~

~~The scope of protection of an invention must be expressed in form of series of technical indications to such a sufficient extent to identify the scope of protection of that invention, and must be pursuant to the description of the invention and its drawings.~~

~~Article 104 Abstract of the invention~~

~~The summary of an invention must disclose the basic features of the nature of the relevant invention.~~

~~Article 105 Documents proving the priority right~~

~~Documents proving the priority right with regard to an invention registration application comprise the following:~~

~~(a) Copies of the application or the first applications with certification of the agency that received the application.~~

~~(b) Assignment document in respect of the priority right if it is obtained from another person.~~

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#### Article 106 Authorization of representatives

1. Any authorization of another person to complete relevant procedures to grant, maintain, amend, suspend or revoke an invention patent must be made in writing, to be referred to as the Power of Attorney.

2. A letter of authorization must have the following contents:

- a) (Full) name and address of the principal;
- b) (Full) name and address of the authorized person;
- c) Scope of authorization which specifies the duties which the authorized person can do on behalf of the principal.
- d) Date of the Power of Attorney.
- dd) Signature and/or seal of the principal.
- Duration of the authorization.

3. A letter of authorization which does not specify the duration of the authorization shall be regarded as having unlimited validity and shall only terminate if it is so declared by the principal.

#### Article 107 Languages

1. Except for those documents referred to in clause 2 of this Article, an invention registration application and all the transaction documents between the applicant and the Invention Registration Authority must be in Vietnamese. Any documents in other languages shall only be used for the purpose of comparison, reference or examination.

2. The following documents may be made in a language different from Vietnamese but must be translated into Vietnamese when so requested by the Invention Registration Authority:

- a) Power of Attorney
- b) Documents proving the lawful right to file an application if the applicant obtains that right from another person.
- c) Documents proving the priority right.
- d) Other documents subordinating the invention registration application.

#### Article 108 PCT Applications

An invention registration application under the Patent Cooperation Treaty (to be referred to as PCT Application) shall include the following:

- (a) a PCT application designating or selecting Vietnam, which is an application for registration of an invention in Vietnam which is filed in another PCT member country.

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~~(b) a PCT application originating from Vietnam, which is an application for registration of an invention in a PCT member country which is filed in Vietnam.~~

~~Article 109 PCT applications designating Vietnam~~

~~For PCT applications designating Vietnam, in order to enter into the National Phase, within 31 days from the date of filing of the international application or from the priority date, as the case may be, the applicant must produce the following to the Invention Registration Authority:-~~

~~(a) a declaration form for registration of the invention;~~

~~(b) a copy of an international application if the application is filed during the national Phase before the date of international publication;~~

~~(c) the Vietnamese translation of the international application: the descriptive document, description section, the scope of protection, notes to drawings and the summary (the published version or the novelty filed version, if the application is not yet published, and revised version and explanatory document thereof if the PCT application is revised under Article 19 of the PCT Treaty);~~

~~(d) The descriptive document and summary already revised.~~

~~(dd) National fees and charges.~~

~~Article 110 PCT applications selecting Vietnam~~

~~For PCT applications selecting Vietnam, in order to enter into the National Phase, within 31 days from the date of filing of the international application or from the priority date, as the case may be, the applicant must produce the following to the Invention Registration Authority:-~~

~~(a) a declaration form for registration of the invention;~~

~~(b) the Vietnamese translation of the international application: the descriptive document, description section, the scope of protection, notes to drawings and the summary (the published version or the novelty filed version, if the application is not yet published, and revised version and explanatory document thereof if the PCT application is revised under Article 19 and/or Article 34.2(b) of the PCT Treaty);~~

~~(c) The descriptive document and summary already revised.~~

~~(d) the Vietnamese translation of appendices to the International Preliminary Examination Report (in case of a request for examination of the contents of the application).~~

~~(dd) National fees and charges.~~



~~Article 111 Priority right to PCT applications~~

~~In order to be entitled to the priority right to a PCT application, the applicant must confirm his request for the entitlement of the priority right in the National Phase and must pay a fee for making such request; and at the request of the Invention Registration Authority must submit Vietnamese translations of the documents already filed with the International Office under Rule 17.1(a) of the Rules implementing the Treaty.~~

~~Article 112 PCT applications originating from Vietnam~~

~~1. A PCT application originating from Vietnam must be made in accordance with the provisions of the PCT Treaty.~~

~~2. A PCT application originating from Vietnam must be made in English or Russian.~~

~~Article 127 Processing PCT applications originating from Vietnam~~

~~1. The Invention Registration Authority shall be the authority in charge of receiving PCT applications in Vietnam and has the following responsibilities:~~

~~(a) Receiving PCT applications originating from Vietnam.~~

~~(b) Collecting fees and transferring relevant fees to the International Office and the International Agency in compliance with PCT Treaty.~~

~~(c) Checking whether prescribed fees are paid in time;~~

~~(d) Examining and processing PCT applications originating from Vietnam in accordance with the Treaty.~~

~~(dd) Identifying the subject matter for which the protection is claimed: if the subject matter stated in the application falls within the category of State secrets, the following works shall not be carried out and relevant fee amounts shall be reimbursed to the applicant.~~

~~(e) Sending a copy (of the file documents) of the PCT application originating from Vietnam to the International Office and one copy (of the Reference Document) to the International Agency.~~

~~(f) Sending and receiving correspondences to and from the applicant and international agencies.~~

~~2. The International Agency and the International Preliminary Examination Agency which have jurisdiction over the PCT Application originating from Vietnam shall be provided for by the Government.~~

~~Article 128 Processing PCT applications designating or selecting Vietnam~~

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~~1. For PCT applications designating or selecting Vietnam, the Invention Registration Authority shall be the designated agency or selected agency.~~

~~2. The processing of a PCT application designating Vietnam or selecting Vietnam in the National Phase shall start from the first day of the 32<sup>nd</sup> month as from the date of filing of the international application, if the applicant does not request in writing for early processing of his/her application.~~

~~3. An international application designating or selecting Vietnam shall be processed in accordance with the procedures set out in this Chapter including publication.~~

~~4. The temporary rights to an invention stated in a PCT Application shall only arise after the time such application is published under clause 3 of this Article.~~

~~5. An international application designating or selecting Vietnam shall be regarded as being withdrawn in the following circumstances:~~

~~(a) upon the failure to pay the prescribed national fee;~~

~~(b) upon the failure to file on time the Vietnamese translation;~~

~~(c) in other circumstances provided by the PCT Treaty and its implementing Rules.~~

## **Part Six**

### **PROVISIONS OF IMPLEMENTATION**

#### **Article 258. Appeals, denunciations**

- ~~1. Organizations and individuals shall be entitled to appeal administrative decisions, administrative acts of the state administration authorities, of the competent officials thereof where they have ground to believe that this decisions, acts violate the intellectual property laws and regulations and infringe upon their legitimate rights and interests.~~
- ~~2. Organizations and individuals shall be entitled to denounce to competent authorities, organizations or individuals the violations of intellectual property laws and regulations, committed by any other authorities, organizations, individuals, that cause, or are liable to cause, damage to the state's interests, legitimate rights and interests of individuals, authorities, organizations.~~
- ~~3. The procedures of appeal and denunciation in respect of intellectual property shall be in accordance with the appeal and denunciation laws and regulations.~~

#### **Article 259. Transitional provisions**

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1. Any copyright or related right protected under the laws and provisions applicable before the effective date of this Law shall continue to be protected under this Law if it remain in term of protection on that date.
2. Any applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, marks (previously trademarks), appellations of origin, layout-designs, new plant varieties which have been filed with competent authorities before the effective date of this Law under the Civil Code and its implementation regulations, including those filed by mail with a postmark prior to that date, shall be handled in accordance with those legal instruments.
3. All rights and obligations conferred by Protection Titles granted under the provisions applicable before the effective date of this Law and procedures for maintenance, renewal, correction, license, assignment, disputes concerning these protection titles shall be subject to this Law. Distinctively, the grounds for invalidation of a Protection Title shall be subject to the provisions applicable at the time of its grant.
4. Trade secrets and trade names which have been existing and protected under Decree 54/2000/ND-CP dated October 3, 2000 of the Government on the protection of industrial property rights with regard to trade secrets, geographical indications, trade names and the protection of rights against industrial property related unfair competition shall be continued to be protected under this Law.
5. From the effective date of this Law, geographical indications, including those protected under the Decree referred in clause 4 of this Article, shall only be protected if they are registered with the state administration authority of industrial property.

#### **Article 260. Guidance of implementation**

The Government shall be in charge of guiding the implementation of this Law.

#### **Article 261. Effectiveness**

This Law shall enter into force as from ...

### **Part six**

## **IMPLEMENTATION PROVISIONS**

#### **Article 258. Appeals, denunciations**

1. Organizations and individuals are entitled to appeal administrative decisions, administrative acts of the state administration bodies, of the competent officials of these bodies when proving these decisions, acts contrast the intellectual property legislation, infringe their rights and legal benefits.
2. Organizations and individuals are entitled to denounce to the competent bodies, organizations, individuals on the infringement of the intellectual

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~~property legislation of any bodies, organizations, individuals who damage or are in danger of damage the state's benefits, rights and legal benefits of nationals, bodies, organizations.~~

~~3. The appeal and denunciation procedures on intellectual property are carried out under the provisions of appeal, denunciation legislation.~~

~~**Article 259. Transitional Provisions**~~

~~1. If terms of protection of author's rights, related rights protected under the legislation before the effective date of this Law which is still effective on the effective date of this Law, shall be protected by this Law.~~

~~2. Applications for registration of author's rights, related rights, inventions, utility solution, industrial designs, trade marks (referred to goods' marks before), appellations of origin, layout designs, new plant varieties based on the Civil Code and implementing guideline documents which have been lodged with competent authorities before the effective date of this Law, including those lodged by post earlier as detained by the postmark, shall be further processed in accordance with the above documents.~~

~~3. All the rights and obligations under a protection title granted by provisions of the legislation before the effective date of this Law and procedures for maintaining, extending, amending, transferring, assigning, resolving of disputes on protection titles shall be in accordance with this Law. In respect of the basis of cancellation of the validity of a protection title shall be in accordance with the provisions of laws applicable as at the time such protection title is granted.~~

~~4. Trade secrets and trade names which already existed, protected pursuant to the Decree No. 54/2000/ND-CP dated 03 October 2000 on the protection of industrial property rights regarding trade secrets, geographical indications, trade names and rights against unfair competition related to industrial property, shall be protected under this Law~~

~~5. From the effective date of this Law, geographical indications, including those protected pursuant to the Decree that mentioned in paragraph 4 of this Article, shall actually be protected after registering with the state management agency on industrial property.~~

~~**Article 260. Implementing guidelines**~~

~~The Government shall be in charge of instructing the implementation of this Law.~~

~~**Article 261. Effectiveness**~~

~~This Law comes into force as from ...~~

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Normal, Level 2, Indent: Left: 0 cm, Hanging: 3.17 cm, Space Before: Auto, After: Auto, Line spacing: Multiple 1.2 li, Tab stops: Not at 0.63 cm + 1.27 cm + 1.59 cm

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Indent: Hanging: 0.63 cm, Space After: 0 pt, Tab stops: Not at 1.27 cm

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Tab stops: 0.63 cm, Left + 1.27 cm, Left + 1.59 cm, Left

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Space After: 0 pt, Tab stops: 1.59 cm, Left

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Indent: Hanging: 0.63 cm, Space After: 0 pt, Tab stops: 0.63 cm, Left + 1.59 cm, Left

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Normal, Indent: Left: 0.63 cm, Space After: 0 pt, Tab stops: 0.63 cm, Left + 1.59 cm, Left

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Indent: Left: 0 cm, Hanging: 2.86 cm

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0.26 cm, Tab stops: Not at 3.5 cm

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