

## On the protection of new plant varieties

### THE GOVERNMENT

- Pursuant to the Law on the Organisation of the Government dated 30 September 1992,
- Pursuant to the Civil Code dated 28 October 1995,
- And at the proposal of the Minister of Agriculture and Rural Development, the following decree is issued.

### DECREES

#### Chapter 1 GENERAL PROVISIONS

##### Article 1: The Scope of Protection

1. This decree is issued to protect the interests of breeders or the legitimate heirs of new plant varieties on Vietnamese territory (including agricultural and forest plant varieties' hereinafter referred as new plant varieties) in order to encourage organisations and individuals of all economic sectors to invest in creating and using new plant varieties, and thereby contribute to the country's agricultural and rural development.
2. This Decree lays down the principles and conditions required for being granted titles of protection for new plant varieties (called 'protection titles' in short form), the procedures for granting protection titles and for nullifying and canceling protection titles, the rights and obligations of the protection title holders, and the State management policies and sanctions related to the protection of new plant varieties.
3. New plant varieties owned by individuals and organisations of any countries which have together with Vietnam signed or acceded to international agreements on the protection of new plant varieties, are subject to the provisions of this Decree, except where otherwise provided for in international agreements which the Socialist Republic of Vietnam has signed or acceded to.
4. When domestic breeders create new plant varieties which are important for national interests and need to be kept secret, these varieties shall be subject to separate State regulations.

##### Article 2: Definitions

For the purposes of this Decree:

1. "Plant varieties" is a plant grouping belonging to a single botanical taxon of the lowest known rank, and which meets the following conditions:
  - a. It is defined by an expression of characteristics that result from a given genotype or combination of genotypes;

- b. It is distinguished from any other plant grouping by the expression of at least one of the characteristics mentioned at point a) of this clause;
  - c. It is considered as a unit with regard to its sustainability for being propagated in an unchanged form;
2. "New plant variety" means a plant variety which is distinctive, uniform, stable and whose existence is not a matter of the common-knowledge.
3. "Protected new plant variety" means a new plant variety which has been granted a protection title.
4. "Plant varieties essentially derived from protected plant varieties" means plant varieties that have been newly created from the protected plant varieties (the initial varieties) by creative methods, e.g. variation selection (natural or artificial mutations, somatic variations, selection of individual variation from original plants), or backcrossing, and differ from the original varieties only in one or a few characteristics.
5. "Common-knowledge plant varieties", include:
  - a. New plant varieties protected by the State;
  - b. New plant varieties whose applications for protection have been filed and published by the competent bodies in a specialized journal;
  - c. Plant varieties recognised as national varieties;
  - d. Special plant varieties of localities that are recognised by the provincial/ municipal Departments of Agriculture and Rural Development;
  - e. Varieties mentioned in points a) and b) of this clause, and that come from countries that have signed agreements on the protection of new plant varieties with Vietnam.
6. "Stock" refers to whole trees or tree parts such as seeds, saplings, cuttings, grafts, tissues, cells, tuber, and trunk sections, which can be used to produce new plants.
7. "Harvested materials" are entire plant or parts of plants collected from the cultivation of the stocks of protected varieties.
8. "Breeders of new plant varieties" means individuals or a group of persons who have used a plant gene source to create or transform wild plants into new plant varieties.
9. "Protection title holders" are organisations and individuals that have been granted protection titles or are entitled to inherit protection titles or have them transferred, and who have the right to lawfully own new plant varieties.
10. "Examination of distinctiveness, uniformity and stability" (hereinafter called DUS) is a test means conducted in fields or in laboratories, according to the seed procedures, to determine the distinctiveness, uniformity, and stability of new plant varieties.
11. "Licensing" means the transfer of the right to use plant varieties to those in need of using them.

1. The State recognises and protects the rights over new plant varieties by granting protection titles.
2. All activities involving the selection, creation, production, or trading in and use of new plant varieties protected by the State have to comply with the provisions of this Decree and other relevant legal documents.
3. Titles of protection of new plant varieties shall be granted only once to those entitled to own protection titles after the formal examination and substantive examination of the applications. No re-granting shall be made.
4. Grantees of the protection of plant varieties shall have to pay an examination fee and annual fees to maintain the effect of their protection titles.

## **Chapter II**

### **CONDITIONS AND PROCEDURES FOR THE GRANTING OF PROTECTION TITLES**

#### **Article 4: Conditions for New Plant Varieties to be Protected**

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

1. New plant varieties must belong to the branches and species of plants on the list of protected plants which is publicized by the Ministry of Agriculture and Rural Development.
2. New plant varieties must be distinct:  
The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.
3. New plant varieties must be uniform:  
The variety shall be deemed to be uniform if, notwithstanding to the variation that may be expected of the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.
4. New plant varieties must be stable:  
The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated gamogenetic or clone propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
5. New plant varieties must be commercially new:  
A plant variety shall be deemed to be commercially new if at the time the application for its protection is filed, the propagating or harvested material of the plant variety has not been sold or otherwise disposed of to others for the purposes of exploitation of plant varieties by the person entitled to file such application or by a legitimate authorized person one year before the date the application is filed in Vietnamese territory, and six years before the date the application is filed if the territory other than that of Vietnam for trees and vines, and four years for other groups of plants.
6. New plant varieties must bear the appropriate denomination, and be easily distinguishable from those of other varieties of the same species, which are widely known. The denomination of new plant varieties shall, after

being approved in writing by the competent bodies, be the official denomination, even if after the expiry of the protection duration it shall hamper the free use of the denomination.

The following designations of denomination shall not be accepted by the State:

- a. Those consisting solely of figures;
- b. Those that violate social ethics;
- c. Those that are misleading as to the characteristics and properties of the species or the breeder's identity;
- d. Those that could easily be confused with protected trademarks, the original denomination of products or with harvested materials of such varieties.

#### **Article 5: Subjects Entitled to Request the Granting of Protection Titles**

1. Organisations that create new plant varieties with State budget financing or their own financial resources shall be entitled to file applications for protection titles.  
As for new plant varieties created by individuals (breeders) as assigned by particular organisations, such organisations shall be entitled to file applications for protection titles.
2. Breeders that create new plant varieties with their own efforts and financial resources shall be entitled to file an application for protection titles.
3. With regard to new plant varieties created under cooperation contracts between parties, the right to file an application shall be agreed upon by the parties to the contract. Where the party entitled to file an application was not specified in the contract, the party that hires persons to create new plant varieties shall be entitled to file an application.
4. Where more than one organisation or individual file an application for a protection title concerning the same new plant variety, the organisation or individual that is the first to file the application should be accepted and considered for the granting of the protection title for the new plant varieties in accordance with the provisions of this Decree.
5. Where the breeders mentioned in item 4 of this article file their applications on the same day, the application of the organisation or individual that is the first to create the new plant varieties shall be accepted and considered for the granting of the protection title. Where it is impossible to identify which organisation or individual is the first to create the new plant varieties, the competent body may refuse to accept the applications. The above organisations and individuals may seek consensus to file a sole application and be co-holders of the granted protection title.

#### **Article 6: Application for Protection Titles**

1. The applicant for a protection title shall file an application consisting of:
  - a. An application for a protection title;

- b. A document describing the variety in the set form together with its photos;  
The application must be in Vietnamese; where a foreign organisation or individual applies for a protection title, a Vietnamese-language application must be enclosed with an English-language version.
2. Organisations or individuals applying for protection titles have to directly file or authorise other representative agents or attorneys to prosecute their application to the competent bodies.
3. Foreign organisations or individuals that have lawful representatives in Vietnam may directly file or authorise other legitimate representative agents or attorneys to prosecute their applications to the competent bodies. Where foreign organisations or individuals who wish to apply for protection titles have no lawful representatives in Vietnam, they shall have to file their applications and carry out related procedures through legitimate representative agents.
4. Where the applications for protection titles are duly compliant with the provisions of clause 1 of this article, the competent bodies have to certify the filing date and clearly inscribe the application number.

**Article 7: Formality Examination of Applications for Protection Titles**

1. Within 15 days of the filing date, the competent bodies have to complete the formality examination of applications and determine the valid filing and priority dates. If the applications are considered incomplete or imperfect, the competent bodies have to notify the applicants. Within 30 days of the date of receipt of such a notice, the applicants have to confirm and give explanations or revise and make additions to their applications. Where revised or supplemented applications remain inappropriate or no revision or supplement is made, the competent bodies may decline to consider them.
2. The date of filing the valid application is defined as the date on which the application no longer contains any error or the date on which the application is completed by the applicants and accepted by the competent body.
3. Within 90 days of the date on which the applicants file valid applications, the competent bodies have to complete the 1<sup>st</sup> step of the examination of the following issues:
  - a. The eligibility of the applicants as provided for in article 5 of this Decree;
  - b. Whether or not the new plant varieties belong to the genera and species on the State's list of protected varieties as prescribed in Clause 1 of Article 4;
  - c. Whether or not the new plant varieties fall into the categories specified in Clause 3 and 4, Article 1 of this Decree;
  - d. Whether or not the new plant varieties meet the condition on commercial novelty as prescribed in Clause 5, Article 4 of this Decree;

- e. Whether or not the denomination of the new plant varieties comply with Clause 6, Article 4 of this Decree. In case the denominations of the new plant varieties do not comply, the competent bodies have to notify the applicants. The applicants will then have to give new denominations and submit these to the competent bodies within 15 days of the receipt of the latter's notice. If the varieties' new denominations still fail to comply, the competent bodies may decline to consider the applications.
4. In the process of substantive examinations, the competent bodies may request the applicants to correct errors related to the content and formality of their applications. If the applicants do not supplement or revise them, the competent bodies may reject the applications.
5. If the competent bodies accept in writing the applications after finishing the 1<sup>st</sup> step of the examination, they shall publish the notices in a specialized journal and inform the applicants to carry out the procedures for the 2<sup>nd</sup> step of examination.

**Article 8: Substantive Examination of Applications for Protection Titles**

1. Within 15 days of receiving of the notices provided for in Clause 5, Article 7 of this Decree, the applicants have to submit their variety sample to the DUS testing agency.
2. DUS tests are conducted according to test guidelines applicable to each new plant species. These guidelines are issued by the Ministry of Agriculture and Rural Development. The competent bodies shall conduct the 2<sup>nd</sup> step of the examination of the distinctiveness, uniformity and stability of the new plant varieties on the basis of the test agency's DUS test results.
3. After the results of the 2<sup>nd</sup> step of examination are made available, the competent bodies have to:
  - a. Publish in a specialized journal their intention to grant the protection titles if the new plant varieties comply with the provisions of Clause 2,3 and 4, Article 4 of this Decree.
  - b. Grant the protection titles within 30 days of the day the competent bodies publish notices of their intention to grant the protection titles in a specialized journal. If there are no opinions against such notices they shall complete the procedures for granting the protection titles. If there are opinions against such notices, within 30 days of receiving such opinions, the competent bodies have to consider them and make a decision;
  - c. Reject the applications and notify the applicants if, after undergoing the 2<sup>nd</sup> step of examination, the applications are found to not be compliant with the provisions of Clause 2,3 and 4, Article 4 of this Decree. This result also has to be published in a specialized journal.
4. If the applicants disagree with the rejection of their applications, they may lodge a written complaint with the Minister of Agriculture and Rural Development within 30 days of receiving the rejection notices.

5. If the varieties are qualified, the Minister of Agriculture and Rural Development shall sign the decisions to grant the protection titles. The Ministry of Agriculture and Rural Development may grant copies of the protection titles to their holders if the latter can give plausible reasons for doing so.

#### **Article 9: The Term of Protection of New Plant Varieties**

From the date of the granting of the protection titles, the term of protection is 20 years for new plant varieties, and 25 years for trees.

Term of protection of new plant varieties shall be computed as being from the date of the granting of the protection titles to the end of the expiry date of the effective period of the protection titles or to the date of termination of the effect of the protection titles thereof.

#### **Article 10: Priority Right**

1. The applicants for protection titles for new plant varieties may request the right of priority if they file their second application for the protection of the plant varieties in Vietnam's territory, within 12 months of filing their first application in the countries which have, together with Vietnam, signed or acceded to international agreements on the protection of new plant varieties.
2. Within 90 days of filing the second application, organizations and individuals that wish to enjoy the right of priority have to submit to the competent bodies the copies of the first applications, the certifications issued by the bodies that received them, and samples and other evidence that proves that the new plant varieties are the same in the two applications.
3. The applications for the protection titles that enjoy the right of priority shall have a corresponding priority date that is the date of filing of the first valid application.

### **Chapter III**

## **RIGHTS AND OBLIGATIONS OF PROTECTION TITLE HOLDERS AND BREEDERS OF NEW PLANT VARIETIES**

#### **Article 11: The Rights of Protection Title Holders**

1. The holders of the titles of protection of new plant varieties may permit or not permit the use of the stocks of the protected varieties, or the products harvested from the cultivation of the stocks of the protected varieties in the following activities:
  - a. The production or multiplication of the stocks for business purposes;
  - b. The processing of varieties of the stocks for business purposes;
  - c. The offering of the stocks for sale;
  - d. The sale or marketing of the stocks;
  - e. The exporting of the stocks;

- f. The Importing of the stocks;
  - g. The storing for the conducting activities specified in points a, b, c, d, e or f of this Clause.
2. During the period from the valid filing date to the date of being granted a protection title for a new plant variety, the protection title holders may request other organizations and/ or individuals to pay compensation for damage caused by unauthorized acts related to the protected plant varieties' stocks and harvested materials according to the provisions of Clause 1 of this Article.
3. The rights the holders of protection titles over the activities specified in Clauses 1 and 2 of this Article shall also apply in the following cases:
  - a. When new plant varieties are essentially derived from protected varieties that are not themselves essentially derived from another protected variety;
  - b. When new plant varieties are not clearly distinguishable from protected varieties;
  - c. When there are new plant varieties whose propagation requires repeated use of protected varieties.
4. The holders of protection titles may themselves exploit or transfer the right to exploit new plant varieties to other organizations and/ or individuals. Contracts for the transfer of the right to exploit new plant varieties shall be made in writing and registered with competent bodies.
5. The holders of protection titles may inherit and transfer the right to own the protection titles according to the rules of laws.
6. The holders of protection titles may request the competent bodies to handle the infringing acts and request the infringers to pay compensation for damages.
7. The holders of protection titles for plant varieties may not enjoy the right to have their varieties protected in the following cases:
  - a. The varieties are used for personal purposes and for non-commercial purposes;
  - b. The stocks of the protected varieties are used by farmers who cultivate the harvested products as strains for subsequent crops on their own holdings or for exchange among farming households;
  - c. The varieties used for crossbreeding to create other new plant varieties, except where such varieties are actually originated from the protected varieties.

#### **Article 12: Obligations of the Holders of Protection Titles**

The holders of protection titles shall have the following obligations:

1. To personally preserve or authorise other persons to preserve the stocks of the protected varieties and to supply such stocks at the request of competent bodies so they can be held at the gene bank, or used as standard samples for cultivation so as to allow for the inspection of the distinctiveness, uniformity and stability of the protected varieties;

2. The Vietnamese holders of protection titles have to pay remuneration to the breeders stated in Article 5 of this Decree. If there is no other agreement between the breeders and the holders of protection titles, the minimum remuneration level shall not be lower than 20% of the profits carried by the protection title holders from the exploitation of the new plant varieties each year; or 30% of the total payment the protection title holders receive from each sale of license or from the compensation for the granting of non-voluntary licenses;
3. To pay fees for the formality and substantive examination of application for protection titles when filing the applications and pay annual fees from the year they are granted the protection titles so as to maintain the effect of such protection titles;
4. Vietnamese organisations and individuals may transfer the right to own the titles of protection of new plant varieties to foreign organizations and individuals when permitted by the Ministry of Agriculture and Rural Development.

**Article 13: Restrictions on the Rights of the Holders of Protection titles**

1. The holders of the protection titles of new plant varieties may exercise the right to exploit the new plant varieties for mass production on Vietnamese territory only when such new plant varieties are recognized as national varieties according to the regulations of the Ministry of Agriculture and Rural Development.
2. In the national or public interests, the competent bodies may issue decisions to grant non-voluntary licenses to exploit the protected new plant varieties. The granting of non-voluntary licenses shall be affected only under the conditions specified in Article 80 of the Civil Code.

The Ministry of Agriculture and Rural Development is the State body responsible for considering and issuing decisions to grant non-voluntary licenses to exploit the protection of plant varieties.

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

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

**Article 14: Rights and Obligations of the Breeders of New Plant Varieties**

1. The breeders of new plant varieties, who are specified in Clauses 1, 2 and 4, Article of this Decree, have the following rights:
  - a. To have their names inscribed on the titles of protection of new plant varieties and the national register of new plant varieties;

- b. To receive remuneration from the holders of protection titles in accordance with the provisions of Clause 3, Article 12 of this Decree;
  - c. To request the competent bodies to handle or initiate lawsuits against the infringers of their rights as specified in Points a and b of Clause 1 of this Article.
2. The breeders of new plant varieties have the duty to help the holders of protection titles to preserve the stocks of the protected new plant varieties.

## **Chapter IV**

### **NULLITY AND CANCELLATION OF PROTECTION TITLES**

#### **Article 15: The Nullification of Protection Titles**

1. The protection titles shall be nullified when one of the following violations is committed:
  - a. The holders of the protection titles fail to perform the obligations specified in Article 12 this Decree;
  - b. The plant varieties do not meet the uniformity or stability requirements at the time the protection titles are granted.
2. Any third party may send written requests to the competent bodies to consider the nullification of the effect of the protection titles for the reasons specified in Clause 1 of this Article.
3. The protection titles shall resume their effect when the holders have performed any unfulfilled obligations specified in Article 12 or restored the uniformity and stability of the plant varieties as required at the time the titles were granted.

#### **Article 16: Cancellation of Protection Titles**

Protection titles shall be cancelled in the following cases:

1. When the plant varieties no longer maintain the inherent characteristics and properties they had when the protection titles were granted.
2. When the holders of the protection titles of new plant varieties voluntarily request a competent body to cancel the protection titles.
3. When it is detected that the holders of protection titles are not eligible subjects as described in Article 5 of this Decree.

#### **Article 17: The Effects of the Nullification and Cancellation of Protection Titles**

1. When the protection titles of new plant varieties are cancelled, their holders have to return all or part of the expenses to the license purchasers to exploit the new plant varieties or to the transferees of the right to own such protection titles.
2. The decision to nullify or cancel the protection titles ahead of time shall not affect the previous decisions of the courts or the Minister of

- Agriculture and Rural Development regarding the consequences of acts of infringement upon the rights of holders of protection titles.
3. During the time that protection titles are nullified, their holders shall not enjoy the rights specified in Article 11 of this Decree.
  4. If the holders of protection titles disagree with the decisions to suspend or cancel the effect of their protection titles, they may lodge a complaint and will have the complaint settled according to the Law on Complaints and Denunciations.

## **Chapter V**

### **STATE MANAGEMENT OF THE PROTECTION OF NEW PLANT VARIETIES**

#### **Article 18: The Tasks and Responsibilities of the Ministry of Agriculture and Rural Development in the State Management of the Protection of New Plant Varieties**

1. To perform the State's management of the protection of new plant varieties, the Ministry of Agriculture and Rural Development shall assume the responsibility for:
  - a. Promulgating legislation on protection of new plant varieties via competent State bodies or according to its own relevant legal documents;
  - b. Granting or withdrawing protection titles;
  - c. Organizing the personnel training to meet the requirements for the protection of new plant varieties;
  - d. Supervising, inspecting and handling violations of the protection of new plant varieties;
  - e. Settling complaints and denunciations related to the protection of new plant varieties.
2. The Ministry of Agriculture and Rural Development shall assign a competent agency to perform the State's management of the protection of new plant varieties, and shall assign it with the task of organizing and guiding the compilation, receipt and examination of applications and of submitting these applications to the Ministry's leadership for the granting, nullification, cancellation or withdrawal of the titles of protection of new plant varieties.

#### **Article 19: The Responsibilities of the People's Committees of the Provinces and Cities under Central Government.**

The People's Committees of the provinces and centrally run cities shall perform the function of the State's management of activities relating to protecting new plant varieties in their respective localities and shall be responsible for :

1. Organizing the management of new plant varieties within their respective localities under the guidance of the Ministry of Agriculture and Rural Development.
2. Inspecting and handling acts of infringement of the new plant varieties' copyrights in their respective localities.

## **Chapter VI**

### **THE HANDLING OF VIOLATIONS**

#### **Article 20: The Handling of Violating Organizations and Individuals**

Organizations and individuals that commit acts that violate the legal provisions on the protection of new plant varieties shall, depending on the nature and seriousness of their violations, be sanctioned or examined for penal liability according to the law. If they have caused serious damage, they will have to pay compensation in accordance with the law's provisions.

#### **Article 21: The Handling of Persons in Positions of Power Who Commit Violations**

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

## **Chapter VII**

### **THE IMPLEMENTATION OF PROVISIONS**

#### **Article 22: Entry into Force**

This Decree takes effect 15 days after the signing day. All previous provisions contrary to the Decree will be null and void.

#### **Article 23: Implementing Provisions**

1. The Ministry of Agriculture and Rural Development shall, in coordination with the Ministry of Science, Technology and Environment, assume the responsibility for guiding the implementation of this Decree.
2. The Ministry of Finance will have to coordinate with the Ministry of Agriculture and Rural Development to guide the rates and use of charges and fees for the protection of new plant varieties.
3. The Ministers, the Heads of the Ministerial-level agencies, the Heads of the agencies subordinate to the Government and the Chairmen of the People's Committees of the provinces and centrally-run cities will all be responsible for implementing this Decree.

**For the Government**  
**Prime Minister**

(Signed and sealed)

**PHAN VAN KHAI**