

No.: 07/2022/QH15

Hanoi, June 16, 2022

**LAW**

**AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAW ON  
INTELLECTUAL PROPERTY**

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

*The National Assembly promulgates the Law on Amending and Supplementing a Number of Articles of the Law on Intellectual Property No. 50/2005/QH11, which was amended and supplemented under Law No. 36/2009/QH12 and Law No. 42/2019/QH14.*

**Article 1. To amend and supplement a number of articles of the Law on Intellectual Property:**

1. To amend and supplement certain clauses of Article 4 as follows:

a) To amend and supplement clauses 8, 9 and 10; to supplement clauses 10a, 10b, 10c and 10d after clause 10; to amend and supplement clause 11 and to supplement clause 11a after clause 11 as follows:

“8. *Derivative work* means a work which is created based on one or more already existing works by way of translating from one language into another; or an adapted, modified, transformed, compiled, annotated or selected work.

9. *Published work, audio and visual fixation* means a work or audio and visual fixation which has been published with the permission of the copyright holder or related right holder in order to distribute it to the public in any manner in a reasonable amount.

10. *Reproduction* means the making of a copy of the whole or a part of a work or audio and visual fixation by whatever mode or in whatever form.

10a. *Royalties* means payments made for the creation or transfer of copyright or related rights to works, performances, audio and visual fixation, broadcast, including royalties, remuneration

10b. *Technological measure to protect rights* means a measure to use any technique, technology, equipment or component during normal operation with the main function to protect copyright and related rights to acts made without the permission of the copyright owner, the relevant right holder.

10c. *Effective technological measure* means a technological measure to protect the rights in which the holder of copyright and related rights controls the use of works, performances, audio

and visual fixation, broadcasts, satellite signals carrying coded programmes through access control applications, protection procedures, or copy control mechanisms.

10d. *Rights management information* means information identifying a work, performances, audio and visual fixation, broadcasts, satellite signals carrying coded programmes; authors, performers, copyright owners, related rights holders and conditions for exploitation and use; numbers and codes indicating the above information. Rights management information must be attached to a copy or appear concurrently with a work, performances, audio and visual fixation, broadcasts, when the work, performances, audio and visual fixation, broadcasts are transmitted to the public.

11. *Broadcasting* means the transmission to the public by wireless of sound or image and both, representation of sound and image of a work, performances, audio and visual fixation, broadcasts, including satellite transmission, transmission of coded signals where the means of decoding is made available to the public by a broadcasting organization or provided with consent of the broadcasting organization.

11a. *Communication to the public* means the transmission to the public of a work; sounds and images of the performance; sound, image or representation of sound or image with audio and visual fixation by any means other than broadcasting.”;

b) To supplement clause 12a after clause 12 and to amend and supplement clause 13 as follows:

“12a. *Confidential invention* means an invention identified as a state secret by a competent agency or organization in accordance with the law on protection of state secrets.

13. *Industrial design* means the external appearance of a product or part for assembly into a complex product, represented by shapes, lines, colors, or a combination of these elements, and visible in the process of exploiting the utility of a product or a complex product.”;

c) To amend and supplement clause 20 as follows:

“20. *Well known mark* means a mark widely known by the public throughout the territory of Vietnam.”.

d) To amend and supplement clause 22 and to supplement clause 22a after clause 22 as follows:

“22. *Geographical indication* means the sign used to identify geographical original of a product from a specific region, locality, territory or country.

22a. *Homophonic geographical indication* means geographical indications that have the same pronunciation or spelling.”.

2. To amend and supplement clause 2 Article 7 as follows:

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

must not breach other relevant provisions of law. Organizations and individuals exercising intellectual property rights related to the National Flag, National Emblem and National Anthem of the Socialist Republic of Vietnam must not prevent or obstruct the dissemination and use of the National Flag, National Emblem, National Anthem.”.

3. To amend and supplement clause 2 and clause 3 Article 8 as follows:

“2. To encourage and promote activities of creation and innovation, utilization of intellectual assets through financial support, tax incentives, credit and other support and investment incentives in accordance with the provisions of law in order to contribute to socio-economic development and improving the people's material and spiritual life.

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

4. To supplement Article 12a before Article 13 in Part 1 Chapter I Section 2 as follows:

**“Article 12a. Author, co-author**

1. The author is the person who directly creates the work. Where two or more people directly co-create a work with the intention that their contributions are combined as the whole, those persons are co-authors.

2. Persons who support, give comments or provide materials for other people to create works are not authors or co-authors.

3. The exercise of moral rights and property rights for a work with co-authors must be agreed by the co-authors, unless the work has a separate part that can be separated for independent use without to the detriment of other co-authors or otherwise provided for by law.”.

5. To amend and supplement Articles 19, 20 and 21 as follows:

**“Article 19. Moral rights**

Moral rights shall comprise:

1. To give titles to their works.

The authors have the right to transfer the right to give titles to their works to the organizations or individuals that receive the transfer of property rights specified in clause 1, Article 20 of this Law;

2. To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;

3. To publish their works or to authorize other persons to publish their works;
4. To protect the integrity of their works; and to forbid other persons to distort; to forbid other persons to modify, edit their works in whatever form, causing harm to the honour and reputation of the author.

## **Article 20. Property rights**

1. Property rights shall comprise of:

- a) To make derivative works;
- b) To display their works to the public, directly or indirectly, through audio and visual fixation or any other technical means in a place accessible to the public but the public cannot freely choose time and part of the work;
- c) To reproduce directly or indirectly the whole or part of the work by any means or form, except for the case specified at sub-clause (a), clause 3 of this Article;
- d) To distribute or import for distribution to the public through sale or other forms of transfer of ownership with respect to originals or copies of works in tangible form, except for the case specified at sub-clause b, clause 3 of this Article;
- dd) To broadcast, communicate their works to the public by wireless or landline means, electronic information networks or other technical means, including making the work available to the public in such a way that the public could access it at a place and time chosen by them;
- e) To lease the original or copies of cinematographic works and computer programs, except for the case that such computer programs is not a main subject matter for leasing.

2. Authors or copyright holders shall exclusively exercise the rights stipulated in clause 1 of this Article or may grant other organization or individual the right to exercise such rights pursuant to the provisions of this Law.

When any organization or individual exercises one, several or all of the rights stipulated in clause 1 of this Article and clause 3, Article 19 of this Law, such organization or individual must be permitted by the copyright holder and must pay royalties, other material benefits (if any) to the copyright holder, except for the case specified in clause 3 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law. In case of making a derivative work that affects the moral rights specified in clause 4, Article 19 of this Law, the author's written consent is also required.

3. Copyright holders have no right to prevent other organizations or individuals from taking the following acts:

- a) To reproduce the work only for the purpose of exercising other rights as provided for in this Law; to reproduce the work temporarily in accordance with a technological process, during the operation of equipment for transmission in a network between third parties through

intermediaries or legal use of the work without any stand-alone economic purpose and copies are automatically deleted and cannot be restored;

b) To make subsequent distribution, import for distribution of originals or copies of works that have been performed or permitted by the copyright owner to be distributed.

## **Article 21. Copyright in cinematographic works and dramatic works**

1. Copyright in cinematographic works is specified as follows:

a) Screenwriters, directors shall have the rights stipulated in clauses 1, 2 and 4 of Article 19 of this Law;

b) Cameramen; montage makers; music composers; art designers; studio sound, lighting and art designers; film actors and actresses and persons engaged in other creative jobs in making cinematographic works shall have the rights stipulated in clause 4 of Article 19 of this Law;

c) Organizations and individuals who invest finance or material and technical facilities in the production of cinematographic works are the owners of the rights specified in clause 3, Article 19 and clause 1, Article 20 of this Law, unless otherwise agreed in writing; are obliged to pay royalties and other material benefits (if any) under the contract with the persons specified at sub-clauses (a) and (b) of this clause;

d) Organizations and individuals who invest finance or material and technical facilities in the production of cinematographic works may reach agreement with the persons specified at sub-clause (a) of this clause on giving titles to or modifying the work;

dd) In case the script or musical work in a cinematographic work is used independently, the author or copyright holder of the script or musical work is entitled to copyright independently to such script or musical work, unless otherwise agreed in writing.

2. Copyright in dramatic works is specified as follows:

a) Authors of dramatic scripts are entitled to the rights specified in clauses 1, 2 and 4, Article 19 of this Law;

b) Authors of literary works, authors of musical works, dramatic directors, music conductors, choreographers, stage designers, costume designers and other persons engaged in other creative jobs for dramatic works shall have the rights stipulated in clause specified in clause 2, Article 19 of this Law;

c) Organizations and individuals who invest finance or material and technical facilities in the construction of dramatic works are the owners of the rights specified in clause 3, Article 19 and clause 1, Article 20 of this Law, unless otherwise agreed in writing; are obliged to pay royalties and other material benefits (if any) under the contract with the persons specified at sub-clauses (a) and (b) of this clause;

d) Organizations and individuals who invest finance or material and technical facilities in the construction of dramatic works may reach agreement with the persons specified at sub-clause (a) of this clause on giving titles and modifying the work;

dd) In case a literary work or musical work in a dramatic work is used independently, the author or copyright holder of the literary work or musical work is entitled to copyright independently with such literary or musical work, unless otherwise agreed in writing”.

6. To amend and supplement clause 1 Article 22 as follows:

“ 1. A computer program means a set of instructions expressed in the form of commands, codes, diagrams or other forms which, when incorporated in a device or equipment operated by a computer programming language, are capable of enabling such computer perform a job or achieve a particular result. Computer programs shall be protected the same as literary works, irrespective of whether the computer programs are expressed in the form of source codes or machine codes.

The author and the copyright holder of the computer program shall have the right to agree in writing with each other on the repair and upgrade of the computer program. Organizations and individuals who have the lawful right to use a copy of a computer program may make a backup copy for replacement when that copy is deleted, damaged or cannot be used but is not transferred to the other organization and individuals”.

7. To amend and supplement Article 25 and supplement Article 25a after Article 25; to amend and supplement Article 26 as follows:

**“Article 25. Exceptional cases for non-infringement of copyrights**

1. Cases where the published works could be used without obtaining permission or paying royalties but information on the author's name and the origin of the work must be published include:

a) To duplicate the works for personal scientific research or study purpose and not for commercial purposes. This provision does not apply in case the copying is made by a copying device;

b) To reasonably reproduce a part of the work using a copying device for scientific research and study of individuals and not for commercial purposes;

c) To reasonably use the works for illustration in lectures, publications, performances, audio and visual fixation, broadcasts for teaching purposes. This use may include making available on an internal computer network provided that technical measures are taken to ensure that only learners and instructors in the session have access to this work;

d) To use the works in official activities of state agencies;

dd) To reasonably cite the works without misrepresenting the authors' views for commentary or introductory or illustrative purpose in their works; for publishing articles in newspapers or periodicals, in radio or television broadcasts, or documentaries.

e) To use the works in librarianship and not for commercial purposes, including copying the work stored in the library for preservation, provided that the copy is marked as archived copy and whose access is limited to a subject matter in accordance with the law on libraries and archives; to reasonably reproduce part of the work by a copying device to others for research and study purposes; to reproduce or transmit the work archived for inter-library use over a computer network, provided that the number of readers at one time does not exceed the number of copies of the work held by such libraries, except with the permission of the right owner and not applicable for the case in which the work has been made available on the market in digital form;

g) To perform dramatic works, music, dance and other art performances in mass cultural, communication or mobilization activities and not for commercial purposes;

h) To take photograph or televise the art work, architectural, photographic, applied-art works displayed at public places for the purpose of presenting images of these works and not for commercial purposes;

i) To import copies of others' works for personal use and not for commercial purposes;

k) To reproduce by republishing in newspapers, periodicals, broadcasting or other forms of communication to the public of any lectures, speeches and other speeches presented to the public to the extent appropriate for purpose of news information, except where the author claims to hold copyright;

l) To take photographs, audio and visual recording, broadcasting of events for the purpose of news reporting, including using works which can be heard or seen in such event;

m) People with visual disabilities, print-disabled people and other disabled people who cannot access to the works to read in the usual way (hereinafter referred to as the disabled), nurturers, caregivers for the disabled people, and organizations that meet the conditions prescribed by the Government to use the works as prescribed in Article 25a of this Law.

2. The use of the works specified in clause 1 of this Article must not conflict with the normal exploitation of the works and unreasonably cause damages to the legitimate interests of the author or the copyright holder.

3. The reproduction specified in clause 1 of this Article does not apply to architectural works, art works or computer programs; collection and anthology of works.

4. The Government shall detail this Article.

#### **Article 25a. Exceptional cases for non-infringement of copyright for the disabled**

1. The disabled, nurturers, caregivers for the disabled have the right to reproduce, perform and communicate the works in a format of an accessible copy when they have legal rights to access to the original or copy of the works. A copy in an accessible format is a copy of the works rendered in another form or format for the disabled; may only be used for personal use by the disabled and may be subject to any technical adjustments which are appropriate and necessary for the disabled to access the works.

2. An organization that meets the conditions prescribed by the Government has the right to reproduce, distribute, perform, or communicate the works in the format of an accessible copy of the works when it has lawful access to the original or copy of the works and operate for non-profit purposes.

3. An organization that meets the conditions prescribed by the Government has the right to distribute or communicate a copy in an accessible format of the works to the corresponding organization in accordance with the international treaties to which the Socialist Republic of Vietnam is a member without the permission of the copyright holder.

4. An organization that meets the conditions prescribed by the Government has the right to distribute or communicate a copy in an accessible format of the works to the disabled people abroad in accordance with the international treaties to which the Socialist Republic of Vietnam is a member without the permission of the copyright holder provided that, prior to distribution or communication, this organization does not know or has no basis to know that such copy in an accessible format will be used by anyone other than the disabled.

5. The disabled, nurturers, caregivers for the disabled or organizations that meet the conditions prescribed by the Government have the right to import copies in an accessible format from their respective organizations in accordance with the international treaties to which the Socialist Republic of Vietnam is a member for the benefit of the disabled without the permission of the copyright holders.

6. The Government shall detail this Article.

## **Article 26. Restrictions on copyright**

1. Cases where the published works could be used without obtaining permission but paying royalties are required and information on the author's name and the origin of the work must be published include:

a) Broadcasting organizations who use the published works, works which have been allowed to appear on the published audio and visual fixation by copyright holders for commercial purposes in making their broadcasts, which are sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay royalties to copyright holders from the date of use. Levels of royalties and modes of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government.

Broadcasting organizations who use the published works, works which have been allowed to appear on the published audio and visual fixation by copyright holders for commercial purposes

in making their broadcasts, which are not sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay royalties to copyright holders from the date of use in accordance with regulations of the Government;

b) In case the works has been permitted to be published by the copyright holders for commercial purposes, organizations or individuals may use such audio and visual fixation in their business, commercial activities without having to obtain permission but must pay royalties to the copyright holders of that works as agreed from the date of use; in case no agreement is reached, the Government's regulations shall apply. The Government shall provide detailed regulations on the business and commercial activities specified in this sub-clause .

2. The use of the works specified in clause 1 of this Article must not conflict with the normal exploitation of the works and unreasonably cause damages to the legitimate interests of the authors or the copyright holders.

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

4. Vietnamese organizations and individuals, who enjoy preferential treatment in favor of developing countries regarding the right to translate the works from foreign languages into Vietnamese and the right to reproduce the works for the purposes of teaching and research, not for commercial purposes under the international treaties to which the Socialist Republic of Vietnam is a member, shall comply with the Government's regulations.

5. Organizations and individuals wishing to exploit and use published works of Vietnamese organizations or individuals but cannot find or identify the copyright holders, shall comply with the Government's regulations.”

8. To amend and supplement Article 28 as follows:

**“ Article 28. Acts of copyright infringement**

1. To infringe upon the moral rights specified in Article 19 of this Law.

2. To infringe upon property rights specified in Article 20 of this Law.

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

4. To deliberately destroy or de-activate effective technological measures taken by authors or copyright holders to protect copyright in their works in order to commit acts specified in this Article and Article 35 of this Law.

5. To manufacture, distribute import, offer for sale, sell, promote, advertise, market, lease or possess equipment, products or components for commercial purposes, introduce or supply services when knowing or having grounds to know that such equipment, products, components or

services are manufactured or used to de-activate an effective technological measures to protect the copyright.

6. To deliberately delete, remove or change the information on management of rights without permission of the authors or copyright holders when knowing or having grounds to know that the performance of such act will incite, create the possibility and favorable condition or conceal acts of copyright infringement as prescribed by law.

7. To intentionally distribute, import for distribution, broadcast, communicate or provide to the public a copy of the works when knowing or having grounds to know that information on management of rights has been deleted, removed, or changed without the permission of the copyright holders; when knowing or having grounds to know that the performance of such act will incite, create the possibility and favorable condition or conceal acts of copyright infringement as prescribed by law.

8. Failure to comply or fully comply with the provisions to enjoy exemption from legal liability of the intermediary service provider specified in clause 3, Article 198b of this Law.”.

9. To amend and supplement Articles 29, 30, 31, 32 and 33 as follows:

**“ Article 29. Rights of performers**

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

Where the performers are not concurrently the rights holders to their performances, the performers shall have moral rights specified in clause 2 of this Article; The owners of the rights to their performances are entitled to the property rights specified in clause 3 of this Article.

2. Moral rights shall include the following rights:

a) To have the name acknowledged when performing, when distributing audio and visual fixation or when broadcasting performances;

b) To protect the integrity of the imagery of the performance, and to prevent others from modifying, editing or distorting the work in any way prejudicial to the honour and reputation of the performer.

3. Economic rights shall include the exclusive right to exercise or to authorize others to exercise the following rights:

a) To formulate a live performance on audio and visual fixation;

b) To directly or indirectly reproduce the whole or a part of their performances which has been formulated on audio and visual fixation by any means or in any manners, except for those specified in sub-clause (a), clause 5 of this Article.

c) To broadcast or to communicate to the public an unformulated performance in a manner so that it may be accessed by the public, except where such performance is intended to be broadcast;

d) To distribute, import for distribution to the public through sale or other forms of transfer of ownership rights to the original or copy of their formulated performance in tangible form, except for cases specified in sub-clause (b), clause 5 of this Article;

dd) To commercially lease to the public the original or copy of their performances which has been formulated on audio and visual fixation, even after they are distributed by performers or with their permission.

e) To broadcast and communicate to the public their unformulated performances, including making available to the public the unformulated performance in a manner accessible to the public at the place and time chosen by them.

4. Organizations and individuals, who exploit or use one, several or all of the rights specified in Clause 3 of this Article, must obtain the permission of the right holder for the performance and pay royalties, other material benefits (if any) to the owner of the right to the performance in accordance with law or pursuant to an agreement if there is no relevant provision of law, except for the cases specified in clause 5 of this Article, Articles 25, 25a, 26, 32 and 33 of this Law.

5. The owner of the right to a performance has no right to prevent other organizations or individuals from taking the following acts:

a) To reproduce the performance only to exercise other rights under this Law; temporarily reproduce the performance by using a technological process, during the operation of the devices for transmission in a network between third parties through intermediaries, or a legal use of their performances which has been formulated on audio and visual fixation, and have no independent economic purpose and the copies are automatically deleted and cannot be restored;

b) To subsequently distribute, import for distribution the original or copy of formulated performances, which have been performed or authorized by the right owner to distribute.

### **Article 30. Rights of producers of audio and visual fixation**

1. Producers of audio and visual fixation shall have exclusive right to exercise, or to authorize other organizations and individuals to exercise the following rights:

a) To reproduce a whole or a part of their audio and visual fixation by any means or in any form, except for the case specified in sub-clause (a), clause 3 of this Article ;

b) To distribute, import for distribution to the public through sale or other forms of transfer of ownership rights to their originals or copies of their audio and visual fixation in tangible form, unless otherwise specified in sub-clause (b), clause 3 of this Article;

c) To commercially lease to the public originals or copies of their audio and visual fixation, even after being distributed by the producers or with the producer's permission;

d) To broadcast and communicate to the public their audio and visual fixation, including making available to the public their audio and visual fixation in a manner accessible to the public at the place and time chosen by them.

2. Organizations and individuals, who exploit and use one, several or all of the rights specified in Clause 1 of this Article, must obtain the permission of the right owner for audio and visual fixation and pay royalties, other material rights (if any) to the owner of the right to audio and visual fixation in accordance with law or pursuant to an agreement if there is no relevant provision of law, except for the cases specified in clause 3 of this Article and Articles 25, 25a, 26, 32 and 33 of this Law.

3. Owners of rights to audio and visual fixation have no right to prohibit other organizations or individuals from taking the following acts:

a) To reproduce audio and visual fixation only to exercise other rights under this Law; temporarily reproduce audio and visual fixation in accordance with a technological process, during the operation of the devices for transmission in a network between third parties through intermediaries, or a legal use of their audio and visual fixation, and have no independent economic purpose and the copies are automatically deleted and cannot be restored;

b) To subsequently distribute, import for distribution the original or copies of their audio and visual fixation, which have been performed or authorized by the right owner to distribute.

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

1. Broadcasting organizations have the exclusive right to exercise or authorize other organizations and individuals to exercise the following rights:

a) To broadcast or re-broadcast their broadcasts;

b) To directly or indirectly reproduce all or part of their broadcast fixation by any means or in any forms, except for the case specified in sub-clause (a), clause 3 of this Article;

c) To formulate [into a fixed form] their broadcasts;;

d) To distribute, import for distribution to the public through sale or other form of transfer of ownership rights over their broadcast fixation in a tangible form, except for the case specified in sub-clause (b), clause 3 of this Article.

2. Organizations and individuals, who exploit and use one, several or all of the rights specified in clause 1 of this Article, must obtain the permission of the right owner for broadcast program and pay royalties, other material rights (if any) to the owner of the right to a broadcast program in

accordance with law or pursuant to an agreement if there is no relevant provision of law, except for the cases specified in clause 3 of this Article and Articles 25, 25a, 26, 32 and 33 of this Law.

3. Owners of rights to broadcast program have no right to prohibit other organizations or individuals from taking the following acts:

a) To reproduce broadcast program only to exercise other rights under this Law; temporarily reproduce the broadcast program in accordance with a technological process, during the operation of the devices for transmission in a network between third parties through intermediaries, or a legal use of their broadcast program, and have no independent economic purpose and the copies are automatically deleted and cannot be restored;

b) To subsequently distribute, import for distribution the broadcast program fixation, which has been performed or authorized by the right owner to distribute.

### **Article 32. Exceptional cases where related rights are not infringed**

1. Cases where it is not required to ask for permission or to pay royalties but information about performances, audio and visual fixation, broadcasts must be published when using the published performances, audio and visual fixation and broadcasts include:

a) To directly or indirectly make phonograms and video recording of part of a performance for teaching purposes, not for commercial purposes or for news reporting;

b) To reproduce on their own or assist the disabled to reproduce a part of performances, audio and visual fixation, broadcasts for personal scientific research and study purposes and not for commercial purposes;

c) To reasonably reproduce a part of a performances, audio and visual fixation or broadcasts for personal teaching and non-commercial purposes, except where such performances, audio and visual fixation, broadcasts have been published for teaching;

d) To reasonably quote [the published performances, audio and visual fixation and broadcasts] for the purpose of news reporting;

dd) The broadcasting organization makes its own temporary copies for broadcasting purpose when such organization has the broadcasting right.

2. The use of performances, audio and visual fixation and broadcasts specified in Clause 1 of this Article must not conflict with the normal exploitation of performances, audio and visual fixation, and broadcasts and does not unreasonably cause any damage to the legitimate interests of performers, producers of audio and visual fixation, or broadcasting organizations.

3. The Government shall provide detail this Article.

### **Article 33. Limitation of the related rights**

1. Cases where it is not required to ask for permission to use the published audio and visual fixation but payment of royalties is still required and information on audio and visual fixation must be published include:

a) Organizations and individuals who use the published audio and visual fixation for commercial purposes in making their broadcasts, which are sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay royalties to performers or producers of audio and visual fixation, or broadcasting organizations from the date of use. Levels of royalties and modes of payment shall be agreed upon by involved parties. If no agreement is reached, involved parties shall comply with regulations of the Government.

Organizations and individuals who use the published audio and visual fixation for commercial purposes in making their broadcasts, which are not sponsored, advertised or charged in whatever form, are not required to obtain permission but have to pay royalties to performers or producers of audio and visual fixation, or broadcasting organizations from the date of use in accordance with regulations of the Government.

b) Organizations and individuals who use the published audio and visual fixation for commercial purposes in their business and commercial activities, are not required to obtain permission but have to pay royalties as agreed to performers or producers of audio and visual fixation, or broadcasting organizations from the date of use. If no agreement is reached, involved parties shall comply with regulations of the Government. The Government shall provide detailed regulations on business and commercial activities specified in this sub-clause.

2. The use of audio and visual fixation specified in Clause 1 of this Article must not conflict with the normal exploitation of performances, audio and visual fixation and broadcasts and does not unreasonably cause any damage to the legitimate interests of performers, producers of audio and visual fixation, or broadcasting organizations.

3. Organizations and individuals wishing to exploit and use published audio and visual fixation of Vietnamese organizations or individuals but cannot find or identify the owner of the related rights, shall comply with the Government's regulations.”

10. To amend and supplement Article 35 as follows:

**“ Article 35. Acts of infringing the related rights**

1. To infringe the rights of performers specified in Article 29 of this Law.

2. To infringe the rights of producers of audio and visual fixation specified in Article 30 of this Law.

3. To infringe the rights of broadcasting organizations specified in Article 31 of this Law.

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

5. To deliberately destroy or de-activate effective technological measures taken by the owners of the related rights to protect their rights in order to commit acts specified in this Article and Article 28 of this Law.

6. To manufacture, distribute, import, offer for sale, sell, promote, advertise, market, lease or possess equipment, products or components for commercial purposes, introduce or supply services when knowing or having grounds to know that such equipment, products, components or services are manufactured or used to de-activate an effective technological measures to protect the related rights.

7. To deliberately delete, remove or change the information on management of rights without permission of the holders of the related rights when knowing or having grounds to know that the performance of such act will incite, create the possibility and favorable conditions or conceal acts of infringement on the related rights as prescribed by law.

8. To intentionally distribute, import for distribution, broadcast, communicate or provide to the public the formulated performance, a copy hereof or audio and visual fixation, broadcast program when knowing or having grounds to know that information on management of rights has been deleted, removed, or changed without the permission of the holders of the related rights; when knowing or having grounds to know that the performance of such act will incite, create the possibility and favorable condition or conceal acts of copyright infringement as prescribed by law.

9. To manufacture, assemble, change, distribute, import, export, offer for sale, sell, lease equipment, systems when knowing or having grounds to know that such equipment, systems are decrypted illegally or mainly used to enable unauthorized decoding of encrypted program-carrying satellite signals.

10. To intentionally receive or continue distributing encrypted program-carrying satellite signals when the signal has been decoded without the permission of the legal distributor.

11. Failure to comply or fully comply with the provisions to enjoy exemption from legal liability of the intermediary service provider specified in Clause 3, Article 198b of this Law.”.

11. To amend and supplement Article 36 as follows:

**“Article 36. Copyright holder**

Copyright owner means an organization or individual holding one, several or all of the rights specified in clause 3, Article 19 and clause 1, Article 20 of this Law.”.

12. To amend and supplement to the Articles 41, 42, 43, 44 and supplement Article 44a after Article 44 of Chapter III Section 2 as follows:

**“Article 41. Copyright holders being assignees of rights**

1. Any organization or individual who is contractually assigned one, several or all of the rights specified in clause 3, Article 19 and clause 1, Article 20 of this Law shall be the copyright holder.

2. Any organization and individual who is managing or receiving assignment of rights to anonymous works shall have rights of the holder until the identity of the author or co-author is identified. When the identity of the author or co-author is identified, the holder of the copyright in this work, the rights and obligations related to the copyright of the organization or individual who is managing or receiving assignment shall be determined in accordance with this Law and other relevant laws.

#### **Article 42. Copyrights and related rights holder being the State**

1. The State is the representative of copyright and related rights holders in the following cases:

a) Works, performances, audio and visual fixation and broadcasts created for orders, task assignment or bidding by an agency using the state budget;

b) Works, performances, audio and visual fixation, broadcasts that the holders of copyright, holders of related rights, co-holders of copyright and co-holders of related rights transfer the copyrights, related rights to the State;

c) Works, performances, audio and visual fixation, broadcasts during the term of protection in which the copyright holders, related rights holders, co-holders of copyrights, co-holders of the the related right has died without leaving an heir; the heir renounces the inheritance or is deprived of the right to inherit;

2. The State is the representative to manage the copyright, related rights in the following cases:

a) Works, performances, audio and visual fixation, broadcasts of which the copyright holders, related right holders, co-holders of the copyright can not be found or identified in accordance with this Law;

b) Anonymous works until the identity of the author, co-author, copyright holders and co-holders are identified, except for the cases specified in clause 2, Article 41 of this Law. .

3. Agencies that use state budget to order, assign tasks, and bid for the creation of works, performances, audio and visual fixation and broadcasts are the State representative to exercise the rights of copyright holders and related rights holders in the case specified in sub-clause (a), clause 1 of this Article.

The state management agency in charge of copyright and related rights is the State representative to exercise the rights of copyright and related rights holders in the cases specified in sub-clauses (b) and (c), clause 1 and clause 2 of this Article.

4. The Government shall detail clauses 1 and 2 of this Article; prescribe the rates and payment method of royalties in the cases specified in clauses 1 and 2 of this Article.

#### **Article 43. Works, performances, audio and visual fixation and broadcasts belonging to the public**

1. Any works whose term of protection has expired pursuant to clause 2, Article 27 of this Law and the performance, audio and visual fixation or broadcasts whose term of protection has expired as prescribed in Article 34 of this Law shall belong to the public.

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

3. The Government shall issue detailed regulations governing the use of works, performance, audio and visual fixation or broadcasts belonging to the public.

#### **Article 44. Related right holders**

1. Related right holders include:

a) The performers who use their time and make a financial investment in or use their material and technical facilities to give a performance shall be the holders of rights to such performance unless otherwise agreed with the related parties;

b) Producers of audio and visual fixation who use their time and make a financial investment in or use their material and technical facilities to produce audio and visual fixation are the rights holders to the audio and visual fixation, unless otherwise agreed with the related parties;

c) Broadcasting organizations shall be the owners of their broadcasts unless otherwise agreed with the related parties.

2. The related right holder who is an organization that assigns tasks to an organization or individual of its organization to perform performances, audio and visual fixation or broadcasts, is the owner of the corresponding rights specified in clause 3, Article 29, clause 1, Article 30 and clause 1, Article 31 of this Law, unless otherwise agreed.

3. The related right holder who is an organization or individual that enters into a contract with another organization or individual to perform performances, audio and visual fixation or broadcasts, is the owner of corresponding rights specified in clause 3, Article 29, clause 1, Article 30 and clause 1, Article 31 of this Law, unless otherwise agreed.

4. Organizations and individuals that inherit related rights in accordance with the law on inheritance are owners of the respective rights specified in clause 3, Article 29, clause 1, Article 30 and clause 1, Article 31 of this Law.

5. Organizations and individuals that are assigned one, several or all of the rights as agreed in the contract are the owners of one, several or all of the corresponding rights specified in clause 3, Article 29, clause 1, Article 30 and clause 1, Article 31 of this Law.

## **Article 44a. Principles of determination and allocation of royalties**

1. Co-holders of copyright and co-holders of related rights shall agree on the ratio of the royalties to be divided according to the level of creative participation for the entire work, performance, audio and visual fixation, broadcasts, capital contribution and suitable to the form of their exploitation and use.

2. The ratio of royalties allocation when audio and visual fixation are used as prescribed in clause 1, Article 26 and clause 1, Article 33 of this Law shall comply with the agreement of copyright holders, performers, related right holders to such audio and visual fixation; in case no agreement is reached, the Government regulations shall comply with.

3. Royalties are determined according to a range and rates based on the type, form, quality, quantity or frequency of exploitation and use; in harmonization with the interests of creators, organizations and individuals exploiting and using them and the public enjoying them, suitable with socio-economic conditions according to the time and place where the exploitation and use takes place.”.

13. To amend and supplement clause 1 and clause 2 Article 47 as follows:

“1. Assignment of a copyright or a related right is an act by which the holders of such copyright or related right allows another organization or individual to use one, several or all of rights specified in clauses 1 and 3 of Article 19, clause 1 of Article 20, clause 3 of Article 29, clause 1 of Article 30 and clause 1 of Article 31 of this Law for a definite term.

2. Authors shall not not be permitted to assign moral rights specified in Clauses 2 and 4, Article 19 of this Law. Performers shall not be permitted to assign moral rights specified in Clause 2, Article 29 of this Law.”.

14. To amend and supplement Article 49 and Article 50 as follows:

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

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

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

3. Organizations and individuals who are granted copyright registration certificate or related rights registration certificate shall not bear the burden of proving such copyright or related rights in a dispute, unless there is contradicting proof.

4. Organizations and individuals must pay fees and charges when making procedures for registration of copyright and related rights for the grant, re-grant, renewal and cancellation of effectiveness of copyright registration certificate or a related rights registration certificate.

5. The Government shall issue detailed regulations governing the conditions, order and procedures for granting copyright registration certificate or a related rights registration certificate.

#### **Article 50. Applications for registration of copyright or related rights**

1. Authors, copyright holders and related rights holders may directly file or may authorize other organizations and individuals to file applications for registration of copyright or related rights directly or through the postal service or through the online public service portal of the state management agency in charge of copyright and related rights.

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

a) Registration form of copyright and related rights.

The form must be made in Vietnamese with full information about the applicant, the author, the copyright holder or the related right holder; time of completion; a summary of the works, performance, audio and visual fixation or broadcasts; the name of the author, the copyright holder, the works used as a derivative works if the registered works is a derivative works; time, place and form of publication; information on the re-grant, renewal (if any), and an undertaking accepting liability for the information set out in the form. The form is signed or fingerprinted by the author, copyright holder, or related right holder, except cases of physical incapacity to sign or fingerprint.

The Ministry of Culture and Information shall regulate the registration form of copyright or related rights;

b) Two copies of the works applying for copyright, or two copies of the formulated object applying for related rights;

c) A letter of authorization if the applicant is an authorized person;

d) Documents evidencing that the holder of the right creates it by himself or is assigned to create, enters into a contract to create, is inherited or transferred the right;

dd) Written consent of co-authors, if the works has co-authors;

e) Written consent of the co-holders, if the copyright and related rights are jointly owned.

3. The documents stipulated in sub-clauses (c), (d), (dd) and (e) of clause 2 of this article must be in Vietnamese. In case such documents are in a foreign language, they must be translated into Vietnamese.”.

15. To amend and supplement Article 52 as follows:

**“Article 52. Time-limit for granting copyright registration certificates and related rights registration certificates**

Within fifteen (15) working days from the date of receipt of a valid application, the state administrative body in charge of copyright and related rights shall be responsible to grant a copyright registration certificate and related rights registration certificate to the applicant or shall notify the applicant in writing in a case of refusal to grant a copyright registration certificate and related rights registration certificate, and clearly state the reasons for the refusal.”.

16. To amend and supplement Article 55 as follows:

**“Article 55. Re-grant, renewal and cancellation of effectiveness of copyright registration certificates and related rights registration certificates**

1. Where a copyright registration certificate or related rights registration certificate is lost or damaged, the competent State body specified in clause 2, Article 51 of this Law shall conduct procedures for the re-grant of such certificates within seven working days from the date of receipt of a valid application. Where there is a request for change of copyright holder or related right holder; information about the work, the author, the copyright holder; information about the subject matter of related rights and the holder of related rights, the competent state body specified in clause 2, Article 51 of this Law shall conduct procedures for renewal of a copyright registration certificate or related rights registration certificate within twelve working days from the date of receipt of valid application.

In a case of refusal to re-grant or renew the copyright registration certificates and related rights registration certificates, the state administrative body in charge of copyright and related rights must notify the applicant in writing and clearly state the reasons.

2. Where the grantee of the copyright registration certificate and related rights registration certificate is not the author, copyright holder or related rights holder; or where the registered works, audio and visual fixation or broadcasts are ineligible for protection, the competent State body stipulated in clause 2, Article 51 of this Law shall cancel the effectiveness of the copyright registration certificate and related rights registration certificate.

3. Any organization or individual who discovers that the grant of a copyright registration certificate or related right registration certificate is contrary to this Law shall be entitled to request the State administrative body for copyright and related rights cancel the effectiveness of such certificate.

4. Within fifteen working days from the date of receipt of the following documents, the competent State body shall issue a decision to cancel the effectiveness of the copyright registration certificate and related rights registration certificate:

a) An effective judgment or decision of a Court or a decision of a competent State body to handle acts of infringement of intellectual property rights specified in Article 200 of this Law on cancellation of the effectiveness of the copyright registration certificate and related rights registration certificate;

b) A written request by the organization or individual that has been granted the copyright registration certificate and related rights registration certificate to cancel the effectiveness of the granted copyright registration certificate and related rights registration certificate.

5. The Government shall detail this Article.”.

17. To amend and supplement the name of Chapter VI in the second Section as follows:

## **“Chapter VI**

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

18. To amend and supplement Article 56 as follows:

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

1. An organization acting as the collective representative of copyright or related rights means a voluntary, self-financed and non- profit making organization established pursuant to an agreement among authors, copyright holders or related right holders and operating in accordance with the laws to perform the trust of copyright and related rights, subject to the state management of the Ministry of Culture, Sports and Tourism on collective representation of copyright and related rights.

2. An organization acting as the collective representative of copyright or related rights may conduct the following activities pursuant to authorization from authors, copyright holders or related right holders:

- a) Manage copyright or related rights; conduct negotiations for licensing; and collect and distribute royalties, other material benefits from the permitted exercise of authorized rights;
- b) Protect the legitimate rights and interests of its members; organize a conciliation if a dispute arises.

3. An organization acting as the collective representative of copyright or related rights shall have the following rights and duties:

- a) To ensure publicity and transparency in the management and administration activities of the organization acting as collective representative of copyright and related rights with competent State body; authorized author, copyright holders, related rights holders; organizations and individuals who exploit and use [copyright and related rights];
- b) To make a list of authorized authors, copyright holders and related rights holders; works, performances, audio and visual fixation and broadcasts that are being managed by an organization acting as the collective representative of copyright and related rights; scope of authorization; the validity of the authorization contract; the plan and results of the collection and distribution of royalties;

c) To make a schedule and payment methods of royalties for submission to the Minister of Culture, Sports and Tourism for approval. The Minister of Culture, Sports and Tourism shall approve the schedule and payment methods of royalties based on the principles specified in clause 3, Article 44a of this Law;

d) To collect and distribute royalties in accordance with the charter of the organization and the written authorization of the author, copyright holder and related right holder with an agreement on the rate or percentage, method and timing of the distribution of royalties; in accordance with the principles of publicity and transparency as prescribed by law.

The collection and distribution of royalties from respective foreign or international organizations shall comply with the law on foreign exchange control;

dd) To retain an amount of the total royalties collected to pay for the performance of the organization's tasks pursuant to an agreement between the authorized author, the copyright holder, related right holder. The retained amount is adjusted pursuant to the agreement of the authorized author, the copyright holder, the related right holder and may be determined as a percentage of the total proceeds;

e) To distribute the collected royalties from licensing the exploitation and use to authors, copyright holders and related rights holders after deducting the expenses specified at sub-clause dd of this clause;

g) To annually and irregularly report on collective representation activities to competent state body; subject to inspection and examination by competent state body;

h) To carry out activities to support cultural development, encourage creativity and other social activities;

i) To cooperate and sign reciprocal representative agreements with respective organizations of international organizations and countries in the protection of copyright and related rights;

k) To establish the organizational structure of the organization acting as collective representative of copyright and related rights, to ensure that the authorized author, copyright holder and related rights holder is entitled to standing for election and election to the positions of leadership, management, and control of the organization.

4. Where a works, audio and visual fixation or broadcasts is related to the rights and interests of many organizations acting as the collective representative of copyright and related rights authorized for management, organizations may agree on the appointment of an organization to negotiate the licensing of the use, collection and distribution of the royalties on their behalf in accordance with the organization's charter and written authorization.

5. Where an organization acting as the collective representative of copyright and related rights, has searched for distribution of the collected royalties for five years, but has not found or contacted the author, co-author, copyright holder and related rights holder, authorized copyright

co-holders, related rights co-holders, it shall hand over this amount of money to a competent state body for management after deduction of management expenses and search fees in accordance with this Law and other relevant laws.

After receiving the hand-over, the competent state body shall continue to search for a period of five years. Upon expiry of this period, if the competent state body still cannot find or contact the author, co-author, copyright holder and related rights holder, copyright co-holders, related rights co-holders, persons with related rights and obligations as prescribed by law, this amount of money shall be used for activities to encourage creative, propaganda and enforcement of protection of copyright and related rights. Within the aforesaid time limits, if the author, co-author, copyright holders, related rights holders, copyright co-holder, related rights co-holder, persons with related rights and obligations as prescribed by law are found or contacted, this amount, after deducting expenses for management and search, shall be paid to the above-mentioned persons in accordance with law.

6. The Government shall detail this Article.”.

19. To amend and supplement clause 1 Article 60 as follows:

“1. An invention shall be deemed novel if it does not fall into one of the following cases:

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

b) It has been disclosed in another inventory registration application with an earlier filing date or priority date but published on or after the filing date or priority date of such application.”.

20. To amend and supplement clause 1 Article 72 as follows:

“1. It is a visible sign in the form of letters, words, drawings or images, holograms, or a combination thereof, represented in one or more colours or audio signal represented in the graphic forms;”.

21. To amend and supplement a number of clauses of Article 73 as follows:

a) To amend and supplement clause 1 as follows:

“1. Signs identical with or confusingly similar to national flags or national emblems, national anthem of the Socialist Republic of Vietnam and of other countries and international anthems;”;

b) To supplement clauses 6 and 7 after clause 5, Article 73 as follows:

“6. Signs are the inherent shape of the goods or are required by the technical characteristics of the goods;

7. Signs containing a copy of a works, except with the permission of the owner of that works. "

22. To amend and supplement a number of sub-clauses of clause 2 Article 74 as follows:

a) To amend and supplement sub-clauses (a), (b) and (c) as follows:

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

b) Conventional signs, symbols, drawings, common names of goods or services in any language, the common shape of the goods or part of the goods, the common shape of the package or container of the goods that have been regularly used and widely recognized before the filing date;

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

b) To amend and supplement sub-clause (d) and sub-clause (e) as follows:

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

e) Signs are identical with or confusingly similar to the marks of other organizations or individuals who are protected for identical or similar goods or services on the basis of applications for registration with earlier filing dates or priority dates, as applicable, including applications for registration of marks filed pursuant to a treaty to which the Socialist Republic of Vietnam is a member, except where such mark registration is invalidated under sub-clause (d), clause 1, Article 95, or cancelled the effectiveness in accordance with Article 96 with the procedures specified in sub-clause (b), clause 3, Article 117 of this Law;”;

c) To amend and supplement sub-clause (h) and sub-clause (i) as follows:

“h) Signs identical with or confusingly similar to the mark of another organization or individual that has been protected for identical or similar goods or services, the registration certificate of which has been invalidated for no more than three years, except where such mark registration is invalidated pursuant to sub-clause (d), clause 1, Article 95 with the procedures specified in sub-clause (b), clause 3, Article 117 of this Law;

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

d) To amend and supplement sub-clause (n) and supplement sub-clause (o), sub-clause (p) after sub-clause (n) as follows:

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

o) Signs identical with or confusingly similar to the name of a plant variety that has been protected in Vietnam if such signs are registered for goods being a plant variety of the same or similar species or a product harvested from plant varieties;

p) Signs identical with or confusingly similar to names and images of characters and images in the works within scope of copyright protection of another person that were widely known before the filing date, except with the permission of the owner of that works”.

23. To amend and supplement the first paragraph of Article 75 as follows:

“Some or all of the following criteria shall be selected when considering and evaluating whether a mark is well-known:”

24. To amend and supplement Article 79 as follows:

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

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

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

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

2. A homonymous geographical indication that satisfies the conditions specified in clause 1 of this Article is protected if such geographical indication is actually used in a manner that does not cause confusion among consumers about its geographical origin of products bearing such geographical indication and ensuring the principle of fair treatment among organizations and individuals producing products bearing such geographical indication”.

25. To amend and supplement Article 86 and add Article 86a after Article 86 as follows:

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

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

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

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

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

3. Organizations and individuals who have the registration right as stipulated in this article may assign such right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, even where a registration application has already been filed.

**Article 86a. Right to register inventions, industrial designs and layout designs as a result of scientific and technological tasks using state budget**

1. For inventions, industrial designs and layout designs that are the results of scientific and technological tasks using all state budget, the registration right of inventions, industrial designs and layout designs is assigned to the presiding organization automatically and without reimbursement, except for the case specified in clause 3 of this Article.

2. For inventions, industrial designs and layout designs that are the results of scientific and technological tasks invested by various capital sources, including part of the state budget, part of the registration right of inventions, industrial designs, layout designs in proportion to the part of the state budget is allocated to the presiding organization automatically and without reimbursement, except for the case specified in clause 3 of this Article.

3. The registration right of inventions, industrial designs and layout designs as a result of scientific and technological tasks in the field of national defense and security shall be exercised as follows:

a) Where scientific and technological tasks are fully funded by the state budget, the registration right of inventions, industrial designs and layout designs shall belong to the State;

b) Where scientific and technological tasks are invested by many capital sources, including part of the state budget, part of the registration right of inventions, industrial designs, layout designs in proportion to the part of the state budget shall belong to the State;

c) The State owner's representative shall exercise the registration rights specified in sub-clauses (a) and (b) of this clause.

4. The Government shall detail this Article.”.

26. To amend and supplement Article 88 as follows:

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

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

2. Foreign organizations and individuals who are rights holders of geographical indications in accordance with the law of the country of origin have the right to register such geographical indications in Vietnam.”.

27. To supplement Article 89a after Article 89 as follows:

**“ Article 89a. Security control of inventions before filing applications abroad**

1. Inventions in technical sectors which have an impact on national defense and security, are created in Vietnam and under the registration right of an individual being a Vietnamese citizen and permanently residing in Vietnam or of an organization established under Vietnamese law may only file an invention application abroad if they have already filed an invention application in Vietnam to carry out security control procedures.

2. The Government shall detail clause 1 of this Article.”.

28. To amend and supplement clause 2 Article 92 as follows:

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

29. To amend clause 8 and clause 9 after clause 7 Article 93 as follows:

"8. International registration of marks under the Madrid Protocol and Agreement on international registration of marks designating Vietnam takes effect from the date on which the State administrative body in charge of industrial property rights issues a decision on acceptance of the protection for the marks in such international registration or from the date following the expiration of the twelve month period from the date on which the International Bureau issues the notice of international registration of such mark designating Vietnam, whichever is earlier. The validity period of an international registration of a mark is calculated in accordance with the Madrid Protocol and Agreement.

9. International registration of industrial designs under the Hague Agreement on international registration of industrial designs designating Vietnam takes effect from the date on which the

State administrative body in charge of industrial property rights issues a decision on acceptance of protection for the industrial design in such international registration or from the date following the expiration of the six month period from the date on which the International Bureau announces the international registration of such industrial design, whichever is earlier. The validity period of an international registration of an industrial design is calculated in accordance with the Hague Agreement.”.

30. To amend and supplement Article 95 and Article 96 as follows:

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

1. The validity of a protection title shall be terminated in whole or in part in the following cases:

- a) The owner fails to pay the stipulated validity maintenance or extension fee;
- b) The owner declares relinquishment of the industrial property rights;
- c) The owner no longer exists, or the owner of a certificate of registered mark is no longer engaged in business activities and does not have a lawful heir;
- d) The mark has not been used by its owner or the licensee of the owner without justifiable reason for five (5) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (3) months before the request for termination;
- dd) The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;
- e) The owner of a certificate of registered certification mark violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;
- g) The geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products.
- h) The use of a protected mark for goods or services by the mark owner or by a person authorized by the mark owner causes consumers to misunderstand the nature, quality or geographical origin of such goods or service;
- i) The protected mark becomes the common names of the goods or services registered for such mark;
- k) The foreign geographical indication is no longer protected in the country of origin.

2. Where the owner of an invention patent or a utility solution patent fails to pay fees and charges to maintain its validity within the stipulated period, upon the expiration of such period, the protection title will be automatically invalidated from the date commencing the first effective year for which fees and charges for maintenance are not paid.

Where the owner of protection title of a mark or industrial design fails to pay fees or charges for extension of validity within the stipulated period, upon the expiration of such period, the protection title will be automatically invalidated from the date commencing the next period of validity for which the fees and charges for extension are not paid.

The State administrative body in charge of industrial property rights shall record the invalidation of a protection title in the National Industrial Property Registry and publish it in the Official Gazette of Industrial Property.

3. Where the owner of a protection title declares waiver of the industrial property rights specified in sub-clause (b), clause 1 of this Article, the State administrative body in charge of industrial property rights shall consider and decide the invalidity of such protection title.

4. Organizations and individuals have the right to request the state administrative body in charge of industrial property rights for invalidation of a protection title for the cases specified in sub-clauses (c), (d), (dd), (e), (g), (h), (i) and (k) clause 1 of this Article provided that the fees and charges must be paid.

5. Based on the results of considering the request for invalidity of a protection title for the cases specified in clauses 3 and 4 of this Article, and opinions collected from related parties, the state administrative body in charge of the industrial property rights shall notify its refusal of invalidity of the protection title or its decision to invalidate the protection title in whole or in part.

6. For the cases specified in sub-clauses (c), (d), (dd), (e), (g), (h) and (i), clause 1 of this Article, the protection title shall be invalidated from the date on which the state administrative body in charge of industrial property rights issues a decision to invalidate the protection title.

For the case specified in sub-clause (k), clause 1 of this Article, the protection title shall be invalidated from the date on which the geographical indication is no longer protected in the country of origin.

Where the state administrative body in charge of industrial property rights issues a decision to invalidate a protection title in accordance with clause 3 of this Article, the protection title shall be invalidated from the date on which the State administrative body in charge of industrial property rights receives a written declaration from the owner of such protection title.

7. The provisions of clauses 1, 2, 3, 4, 5 and 6 of this Article shall also apply to the invalidity of international registration of marks and industrial designs.

#### **Article 96. Cancellation of effectiveness of protection titles**

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

a) The applicant registers the mark with malicious intention;

b) The application for registration of an invention is filed contrary to the regulations on security control of inventions specified in Article 89a of this Law;

c) Patent applications for inventions which are directly created based on genetic resources or traditional knowledge associated with genetic resources but fail to disclose or incorrectly disclose the origin of genetic resources or traditional knowledge associated with genetic resources in the application.

2. A protection title shall be partly or wholly invalidated if a part or the whole of which fails to satisfy the provisions of this Law on registration rights, protection conditions, amendments and supplements to the patent application, invention disclosure, and first-to-file principle in the following cases:

a) The applicant for registration has neither had nor been assigned the right to register the invention, industrial design, layout design or mark;

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

c) The amendments or supplements of an application for registration of industrial property expand the scope of objects disclosed or stated in the application or change the nature of the object of registration as stated in the application;

d) The invention has not been disclosed in a manner clear and complete for it to be carried out by persons with an average knowledge in the technical sectors.

dd) The patent invention goes beyond the scope of disclosure of the initial description in the application for registration of the invention;

e) The invention does not satisfy the First-to-File Principle as specified in Article 90 of this Law.

3 . If a protection title is invalidated in whole or in part as specified in clauses 1 and 2 of this Article, such wholly or partly invalidated part of such protection title shall not take effect from the time of granting such protection title.

4 . Any organization or individual may request the State administrative body for industrial property rights to invalidate a protection title in the cases specified in clauses 1 and 2 of this article, provided that such applicant pays fees and charges.

The statute of limitations for exercising the right to request invalidation of a protection title shall be the whole protection term of the protection title, except for the case of requesting for invalidation of a protection title for a mark for the reasons specified in clause 2 of this Article, where statute of limitations shall be five (5) years from the grant date or from the effective date of the international registration of the mark in Vietnam.

5. Based on the result of the examination of a request for invalidation of a protection title and the opinions of the parties involved, the State administrative body for industrial property rights shall issue a decision on invalidation of the protection title or shall notify its refusal to invalidate it.

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

7. The Minister of Science and Technology shall detail clauses 1 and 2 of this Article.”.

31. To amend and supplement clause 1 and clause 2 Article 97 as follows:

“1. The owner of a protection title, organizations and individuals exercising the right to register geographical indications as prescribed in Article 88 of this Law may request the State administrative body for industrial property rights to make amendments to the following information in such protection title, provided that the prescribed fees and charge are paid:

a) Changes of, and corrections of errors to the name and nationality of the author or name and address of the protection title owner, organization managing geographical indications;

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

2. At the request of the owner of a protection title, organizations and individuals exercising the right to register geographical indications, the State administrative body for industrial property rights shall be responsible for correcting errors caused by its fault in such protection title. In such case the protection title owner, organizations and individuals exercising the right to register geographical indications shall not be liable to pay fees and charges.”.

32. To supplement sub-clause (dd1) after sub-clause (dd) clause 1 Article 100 as follows:

“dd1) Documents explaining the origin of genetic resources or traditional knowledge associated with genetic resources in the application for registration of inventions, inventions directly created based on genetic resources or traditional knowledge associated with genetic resources; ”.

33. To amend and supplement Article 103 as follows:

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

1. Documents identifying an industrial design which needs to be protected in an application for registration of an industrial design shall include a set of photos or drawings of such industrial design and a description of such industrial design shown in such set of photos or drawings.

2. The set of photos and drawings of the industrial design must show the design features of the industrial design requested for protection in a manner complete to be identified by a person with average knowledge in the respective sector.

3. The industrial design description shown in the set of photos and drawings must list the order of the photos and drawings in the set of photos and drawings and the design features of the industrial design.” .

34. To amend and supplement clause 2 Article 105 as follows:

"2. The trademark template must be described to clarify the constituting elements of the mark and the overall meaning of the mark (if any); if the mark contains words or phrases of figurative language, those words and phrases must be transcribed; if the mark contains words or phrases in a language other than Vietnamese, it must be translated into Vietnamese; if the mark is an audio, the mark template must be an audio file and a graphical representation of that sound.”.

The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in a language other than Vietnamese, such words or phrases must be translated into Vietnamese; if the mark is an audio, the sample of the mark must be an audio file and a graphical representation of that sound.”.

35. To supplement sub-clause (e) after sub-clause (dd) clause 1 Article 106 as follows:

“e) For homonymous geographical indications, documents explaining the conditions for use and method of presenting the geographical indication to ensure the distinction between geographical indications.”.

36. To supplement clause 3 after clause 2 Article 108 as follows:

“3. An application for registration of confidential inventions shall be made in accordance with the Government's regulations.”.

37. To amend and supplement sub-clause dd and supplement sub-clause (e) after sub-clause (dd) Clause 2 Article 109 as follows:

“dd) The applicant fails to fully pay the prescribed fees and charges;

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

38. To amend and supplement titles of some Articles and some clauses of Article 110 as follows:

a) To amend and supplement the titles of some Articles as follows:

**“ Article 110. Publicity of trademark registration applications; publication of applications for registration of industrial property”**

b) To supplement clause 1a before clause 1 as follows:

“1a. Applications for registration of marks which have not been accepted as being valid by the State administrative body in charge of industrial property rights shall be made public immediately upon receipt.”;

c) To amend and supplement clause 3 as follows:

“3. Applications for registration of industrial designs, marks or geographical indications shall be published within two months as from the date such application is accepted as being valid. Applications for registration of industrial design may be published at a later date at the request of the applicant at the time of filing but not later than seven months from the filing date.”.

39. To amend and supplement Article 112 and supplement Article 112a after Article 112 as follows:

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

As from the date an application for registration of industrial property is published in the Official Gazette of Industrial Property up until prior to the date of issuance of a decision on grant of a protection title, any third party shall have the right to express an opinion to the State administrative body for industrial property rights on whether granting or not granting protection title for such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

The written opinions of a third party are considered as information for a reference for processing application for registration of industrial property.

**Article 112a. Objection to industrial property registration applications**

1. Prior to the date of issuance of a decision on grant of a protection title, within the following time limits, any third party has the right to object to the grant of a protection title:

a) Nine months from the date on which the application for registration of invention is published;

b) Four months from the date on which the application for registration of industrial design is published;

c) Five months from the date on which the application for registration of the mark is published;

d) Three months from the date on which the application for registration of the geographical indication is published.

2. Objections specified in clause 1 of this Article must be made in writing, and be accompanied by documents or must quote the source of information, and fees and charges must be paid.

3. The State administrative body in charge of industrial property rights shall handle objections specified in Clause 2 of this Article according to the order and procedures prescribed by the Minister of Science and Technology.”.

40. To supplement clauses 3 and 4 after clause 2 Article 114 as follows:

“3. The State administrative body in charge of industrial property rights may use the results of substantive examination of an application for registration of an invention which is identical with the protection-requested invention and is conducted by a foreign patent office during the assessment process of ability to protect.

4. The Minister of Science and Technology shall detail the use of results of substantive examination of an application for registration of an invention specified in Clause 3 of this Article.”.

41. To amend and supplement clause 2 Article 116 as follows:

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

42. To amend and supplement a number of clauses of Article 117 as follows:

a) To amend and supplement clause 1 and supplement clause 1a after clause 1 as follows:

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

- a) There are grounds to affirm that the subject matter stated in the application does not fully satisfy the conditions for protection;
- b) There are grounds to affirm that the applicant is not entitled to register the industrial design or registers the mark with malicious intention;
- c) The application satisfies the conditions for the grant of a protection title but does not have the earliest filing date or priority date as in the case stipulated in clauses 1 and 2 of Article 90 of this Law;
- d) The application falls into case stipulated in clause 3 of Article 90 of this Law but fails to have the consensus of all applicants.
- dd) The amendments or supplements of an application expand the scope of objects disclosed or stated in the application or change the nature of the object of registration as stated in the application;

1a. Apart from cases specified in Clause 1 of this Article, an application for registration of invention shall be refused to grant a protection title in the following cases:

- a) The patent invention goes beyond the scope of disclosure of the initial description in the application for registration of the invention;
- b) The invention has not been disclosed in a manner clear and complete in its description so that based on it persons with an average knowledge in technical sectors could conduct such invention.

c) For inventions which are directly created based on genetic resources or traditional knowledge associated with genetic resources, the application for registration of invention does not disclose or incorrectly discloses the origin of genetic resources or traditional knowledge associated with genetic resources;

d) The application for registration of an invention is filed contrary to the regulations on security control of inventions specified in Article 89a of this Law;

b) To amend and supplement clause 3 as follows:

“3. Where an application for registration of industrial property falls into the cases stipulated in clauses 1, 1a and 2 of this Article, the competent State administrative body for industrial property rights shall carry out the following procedures:

a) Notify the examination results of the contents, clearly stating an intended refusal to grant a protection title and reasons and setting a time-limit for the applicant to make an objection to such intended refusal;

b) Suspend the examination process of the application in case the applicant submits a request to suspend the examination of the application and requests the invalidation or cancellation of effectiveness of the mark registration certificate in accordance with the exemption cases specified in sub-clauses e and h, Clause 2, Article 74 of this Law. Based on the settlement results of a request for invalidation or cancellation of effectiveness of the mark registration certificate, the State administration body in charge of industrial property rights shall continue the application examination process;

c) Suspend the examination process of the application if it receives a copy of the notice of acceptance of the case by a competent court about a lawsuit filed by a third party related to the right to register an industrial property object or trademark registered with malicious intention. Based on the result of the court's settlement, the State administrative body in charge of industrial property rights shall continue the application examination process;

d) Decide to refuse to grant a protection title if the applicant has no objections or unwarranted objections about the intended refusal specified in sub-clause (a) of this clause.”.

43. To amend and supplement Article 118 as follows:

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

1. Where an application for registration of industrial property does not fall into the cases of refusal to grant protection titles stipulated in clauses 1, 1a and 2, sub-clause (d), clause 3 of Article 117 of this Law or the applicant has warrantable objections to an intended refusal as specified in sub-clause (a) clause 3 Article 117 of this Law, the State administrative body for industrial property rights shall carry out the following:

a) Notify the examination results of the contents, clearly stating the intention to grant a protection title for the whole or part satisfying the protection conditions and setting a time limit for the applicant to pay fees or charges or have objections to the examination results;

b) Decide to grant a protection title and record it in the National Register of Industrial Property if the applicant has paid the fees and charges.

2. Where an objection is made to the examination results, the relevant application for registration of industrial property shall be re-examined with regard to the matters about which the objection is made.”.

44. To supplement Article 119a after Article 119 of Section 3 Chapter VIII as follows:

**“ Article 119a. Complaints and settlement of complaints related to industrial property procedures**

1. The applicant and the organization or individual having rights and interests directly related to the decision or settlement notice of the application for registration of creating the rights, maintaining, extending, amending or terminating, cancelling effectiveness of the protection titles, registering contracts of transferring industrial property rights issued by the State administrative body in charge of industrial property rights, have the right to complain to the state administrative body in charge of industrial property rights or initiate a lawsuit at court in accordance with this Law and other relevant laws.

2. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production and business establishments in Vietnam shall file complaints directly or through their lawful representatives in Vietnam. Foreign individuals without permanently residing in Vietnam, foreign organizations and individuals without production or business establishments in Vietnam shall file complaints through their lawful representatives in Vietnam.

3. The contents of complaint must be stated in a complaint form, clearly stating full name and address of the complainant; reference number, signing date, content of the complained decision or notice; complaint content, arguments and evidence to prove the complaint; specific proposal to correct or rescind the relevant decision or notice. Complaints are filed in paper format or electronic form in the online filing system.

4. Where the complaint is related to the right of registration or other matters requiring re-examination, the complainant must pay the re-examination fee.

5. The time-limit for settlement of complaint shall comply with the law on complaints. In case the State administrative body in charge of industrial property rights re-examines the cases specified in Clause 4 of this Article or the complainant amends and supplements the complaint dossier, the time-limit for re-examination, the time-limit for amending and supplementing the complaint dossier shall not be included in the time-limit for settlement of complaint under the law on complaints.

The time-limit for re-examination shall comply with clause 3, Article 119 of this Law.

6. Complaints and settlement of complaints not specified in this Article shall comply with the law on complaints.”.

45. To amend and supplement a number of clauses of Article 121 as follows:

a) To amend and supplement clause 1 as follows:

“1. Owner of an invention or layout design is an organization or individual that has been granted a protection title by a competent authority for respective industrial property objects.

Industrial design owner means an organization or individual that has been granted an industrial design protection title by a competent authority or has an internationally registered industrial design recognized by a competent authority.

The owner of an invention, layout design means an organization or individual who is granted a protection title for the respective industrial property object by the competent body.

The owner of an industrial design means an organization or individual who is granted a protection title for such industrial design by the competent body or who has an internationally registered industrial design recognized by the competent body.

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

b) To amend and supplement clause 4 as follows:

“4. The owner of a geographical indication of Vietnam is the State.

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

The Government shall issue detailed regulations on the exercise of the right to manage geographical indications.”.

46. To amend and supplement clause 2 Article 123 as follows:

“2. Organizations and individuals that are granted the right to use or are granted the right to manage geographical indications under the provisions of clause 4, Article 121 of this Law or under the law of the country of origin of the geographical indication have the right to prohibit other people from using such geographical indication as prescribed in sub-clause (b), clause 1 of this Article.”.

Organizations and individuals who are granted by the State the right to use or the right to manage geographical indications according to the provisions of clause 4 of Article 121 of this Law or under the law of the country of origin of the geographical indication have the right to prohibit other people from using such geographical indication as specified in sub-clause (b), clause 1 of this Article.”.

47. To amend and supplement sub-clause (b), clause 5, Article 124 as follows:

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

48. To amend and supplement sub-clause (b), clause 2, Article 125 as follows:

“b) Circulating, importing, exploiting utilities of products which were put on the market, including the foreign market, by the owner, transferee of the rights to use, including transfer of rights to use under a compulsory decision, the person having the prior right to use the object of industrial property in accordance with this Law;”.

49. To amend and supplement Article 128 as follows:

**“ Article 128. Obligation to protect test data**

1. Where the law requires applicants for licences for circulating pharmaceuticals or agro-chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.

2. For pharmaceuticals, from the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a five year period as from the date the applicant is granted a licence, such body must not grant licences to any later applicants if the applications use the said secret data without the consent of data submitters, except for the cases stipulated in sub-clause (d) clause 3 of Article 125 of this Law.

3. Where the competent body licensing the circulation of pharmaceuticals allows the later applicant to rely on a pharmaceutical product that has been licensed for circulation or data proving the safety and effectiveness of a pharmaceutical product that has been licensed for circulation to apply for licensing the circulation of another pharmaceutical product, the licensing body must publish on its portal or website the information of the later applicants within five months before the pharmaceutical product in such later applicants is licensed for circulation, unless the licensing for circulation needs to be done earlier as required by other relevant laws.

4. For agro-chemical products, from the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a ten year period as from the date the applicant is granted a licence, such body must not grant licences to any later applicants who use the said secret data in their applications or base on the fact that secret data submitters are

licensed to circulate them without the consent of such data submitters, except for the case specified in sub-clause (d), clause 3, Article 125 of this Law or the licensing is necessary to ensure national defense, security, nutrition for the people or to meet other urgent needs of the society.”.

50. To amend and supplement sub-clause (d) clause 1 Article 130 as follows:

“d) Possessing, using domain names identical with, or confusingly similar to, protected trade names or marks of others, or geographical indications without having the right to use with malicious intention, prejudicing the reputation and popularity of the respective mark, trade name or geographical indication in order to gain illicit profits”.

51. To supplement Article 131a after Article 131 of Section 1 Chapter IX Part III as follows:

**“Article 131a. Compensation to invention owners for delay in licensing the circulation of pharmaceutical products**

“1. When carrying out the procedure for maintaining the validity of a patent, the patent holder is not required to pay a fee to use the protection title for the period during which the registration of initial circulation of the pharmaceutical product manufactured under such patent in Vietnam is delayed.

2. The registration of circulation of a pharmaceutical product is deemed to be delayed if, at the end of two years from the date of receipt of a complete application for registration of circulation, the competent licensing body in charge of pharmaceutical product has not responded in writing for the first time to the application. The delayed period is counted from the first day after the end of two years from the date on which the competent licensing body of pharmaceutical product receives the complete application until there is the first written response.

3. The delayed period due to the fault of the applicant or beyond the control of the competent state body shall not be included in the period specified in clause 2 of this Article.

4. Where the patent owner has paid the fee for using the protection title for the period which is deemed to be delayed, the paid fee will be deducted from the next period of validity or refunded.

5. In order not to have to pay the fee for using the protection title as prescribed in clause 1 of this Article, within twelve months from the date on which the pharmaceutical product is licensed for circulation, the patent owner must submit to the competent State body in charge of industrial property rights an instrument issued by the competent licensing body in charge of pharmaceutical product certifying that the procedure for registration of circulation of such pharmaceutical products has been delayed.

6. The Government shall detail this Article. ” .

52. To supplement Article 133a after Article 133 as follows:

**“ Article 133a. The State’s rights to inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the state budget**

1. The representative of the state owner shall publicly notify the organizations and individuals in demand within ninety days to assign the right to register an invention, industrial design or layout design as a result of a scientific and technological task funded by the state budget in the following cases:

a) The organization in charge of the scientific and technological tasks fails to fulfill the notification obligation as prescribed in clause 1, Article 136a of this Law;

b) The organization in charge of the scientific and technological tasks shall submit to the state owner's representative a written report which states that it does not have a demand for registration;

c) The organizations in charge of scientific and technological tasks fail to submit applications for registration of inventions, industrial designs or layout designs within the time-limit specified in clause 2, Article 136a of this Law.

2. Where the right to registration cannot be assigned to any organizations or individuals in demand as prescribed in Clause 1 of this Article, the representative of the state owner shall publicly announce on the portal or website of the managing body of the scientific and technological tasks on the contents of inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the state budget.

3. The competent State body permits other organizations and individuals to use inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the state budget without consent of the holder of the exclusive right to use in the following cases:

a) The holder of exclusive right to use does not, within a reasonable time, take effective measures to use the invention, industrial design or layout design as a result of scientific and technological tasks that the State funded more than 30% of the total capital;

b) The use is for public, non-commercial purposes, serving national defense and security, disease prevention and treatment, ensuring nutrition for the people or meeting other urgent needs of the society.

4. The payment of compensation to the holder of the exclusive right which a competent state body permits other organizations or individuals to use the invention, industrial design or layout design as prescribed in clause 3 of this Article shall be made as follows:

a) For inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the entire state budget, organizations and individuals are permitted to use without paying compensation;

b) For inventions, industrial designs and layout designs resulting from scientific and technological tasks invested with many capital sources, including part of the state budget, organizations and individuals are permitted to use without paying compensation for the portion of the use right corresponding to the state budget investment, but must pay compensation for the portion of the use right corresponding to the remaining investment capital. The amount of compensation paid to the holder of the exclusive right to use is determined in accordance with sub-clause (d), clause 1, Article 146 of this Law.

5. The Government shall detail this Article.”.

53. To amend and supplement Article 135 as follows:

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

1. Except for the case specified in Clause 2 of this Article, owners of inventions, industrial designs and layout designs shall be obliged to pay remuneration to the authors as agreed; if there is no agreement, level of remuneration payable to an author shall be regulated as follows:

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

b) 15% of the total amount received by the owner in each payment from transferring the right to use the invention, industrial design or layout design before paying tax as prescribed.

2. For an invention, industrial design or layout design resulting from scientific and technological tasks funded by the state budget, the remuneration payable to an author shall be regulated as follows:

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

b) A minimum of 15% and a maximum of 20% of the total amount received by the owner in each payment from transferring the right to use an invention, industrial design, or layout design before paying tax as prescribed.

3. Where an invention, industrial design or layout design is jointly created by more than one author, the remuneration level provided for in clauses 1 and 2 of this article shall be applicable to all co-authors. The co- authors shall agree among themselves on the division of the remuneration paid by the owner.

4. The obligation to pay remuneration to the author of the invention, industrial design or layout design shall remain throughout the term of protection of the invention, industrial design or layout design.”.

54. To supplement Article 136a after Article 136 as follows:

**“Article 136a. Obligations of the organization in charge of inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the state budget**

1. To notify the representative of the state owner within thirty days from the date on which the invention, industrial design or layout design resulting from scientific and technological tasks funded by the state budget is created.

2. To submit an application for registration of creating the rights to an invention, industrial design or layout design resulting from scientific and technological tasks funded by the state budget in Vietnam within six months from the date on which the notice is sent to the state owner's representative.

3. To pay remunerations to authors of inventions, industrial designs and layout designs in accordance with Article 135 of this Law.

4. For scientific and technological tasks for which the State funds up to 30% of the total capital, the after-tax profit gained from the use, transfer of the right to use, transfer of rights, and capital contribution made by inventions, industrial designs and layout designs corresponding to the State's capital contribution ratio after paying remuneration to the authors may be used in accordance with the financial management regulations of the presiding organization.

5. For scientific and technological tasks for which the State funded more than 30% of the total capital, the distribution of after-tax profits gained from the use, transfer of use rights, transfer of rights, and capital contribution made by inventions, industrial designs and layout designs as the results of scientific and technological tasks funded by the state budget after paying remunerations to the authors shall be regulated as follows:

a) To pay the broker (if any) in accordance with the brokerage contract but not more than 10%;

b) Where scientific and technological tasks are fully funded by the state budget, 50% of the remaining profits shall be used to invest in scientific and technological activities; the remaining profits shall be used according to the financial management regulations of the presiding organization;

c) Where scientific and technological tasks are invested with multiple capital sources, the remaining profit shall be divided among the parties in proportion to the ratio of capital contributed to such scientific and technological task. The portion of profits corresponding to the State's capital contribution ratio shall be used by the presiding organization in accordance with sub-clause b of this Clause.

6. The presiding organization granted with a protection title for an invention, industrial design or layout design which is registered under Clauses 1 and 2, Article 86a of this Law is obliged to exercise the industrial property rights as prescribed, take protective measures, submit annual reports on the exercise of rights, protection measures and the distribution of profits to the management body of scientific and technological tasks.

7. The Government shall detail this Article.”.

55. To supplement clause 6 after clause 5 Article 139 as follows:

“6. Rights to inventions, industrial designs and layout designs resulting from scientific and technological tasks funded by the state budget may only be assigned to organizations established under Vietnamese law, individuals being Vietnamese citizens and permanently residing in Vietnam. Organizations and individuals receiving the assignment of ownership must perform the respective obligations of the presiding organization in accordance with this Law.”.

56. To supplement sub-clause dd after sub-clause (d) clause 1 Article 145 as follows:

“dd) The inventions is used to meet the needs of pharmaceutical products for disease prevention and treatment of other countries eligible for import under international treaties to which the Socialist Republic of Vietnam is a member.”.

57. To amend and supplement a number of sub-clauses of clause 1 Article 146 as follows:

a) To amend and supplement sub-clause (b) as follows:

“b) Such licensed use right is only limited to a scope and duration sufficient to achieve the licensing objectives, and largely for the domestic market, except for the case stipulated in sub-clause d clause 1 of Article 145 of this Law. For an invention in semi-conducting technology, licensing shall be only for public and non-commercial purposes or for dealing with anti-competitive practices prohibited by the law on competition;”;

b) To amend and supplement sub-clause (d) and supplement sub-clause (dd) after sub-clause (d) as follows:

“d) The licensee must pay the holder of the exclusive right to use the invention the compensation as agreed, where the agreement is not reached, the Government’s regulations shall be complied with, except where the right to use the invention is licensed under a mandatory decision to import pharmaceuticals under the mechanism of an international treaty to which the Socialist Republic of Vietnam is a member and the compensation for the use of an invention licensed under a mandatory decision has been paid in the country of export;

dd) The licensed right to use is mainly to supply the domestic market, except for the cases specified in sub-clauses (d) and (dd), clause 1, Article 145 of this Law.”.

58. To amend and supplement clause 1 Article 147 as follows:

“1. The Ministry of Science and Technology shall issue a decision on licensing an invention based on consideration of requests for licensing in the cases stipulated in sub-clauses (b), (c) and (d) clause 1 Article 145 of this Law.

Ministries and ministerial equivalent level bodies shall, after consulting the opinion of the Ministry of Science and Technology, issue decisions on licensing inventions in sectors under

their respective management in the case stipulated in sub-clauses (a) and (dd) clause 1 Article 145 of this Law.”.

59. To amend and supplement Clause 1 Article 153 as follows:

“1. Industrial property representatives shall have the following responsibilities:

a) To notify fee and charge amounts and rates related to procedures for establishment and enforcement of industrial property rights to customers;

b) To keep confidential information and documents related to cases in which they act as representatives;

c) To truthfully and fully inform represented parties of all notices and requests from the State body competent to establish and enforce industrial property rights; to deliver on time to the represented parties protection titles and other decisions;

d) To promptly satisfy all requests regarding represented parties from the State body competent to establish and enforce industrial property rights to protect legitimate rights and interests of the represented parties;

dd) To notify the State body competent to establish and enforce industrial property rights of all changes in the names, addresses of and other information about the represented parties when necessary.”.

60. To amend and supplement Article 154 as follows:

**“Article 154. Conditions applicable to industrial property representation service business**

1. Enterprises, cooperatives, law-practising organization, scientific and technological service organizations established and operating in accordance with laws and having at least an individual possessing industrial property representation service practising certificate, may provide the industrial property representation services in the name of an industrial property representation service organization, except for the case specified in clause 2 of this Article.

2. Foreign law-practising organizations practicing in Vietnam may not provide industrial property representation services.”.

61. To amend and supplement clause 2 and supplement clause 2a after clause 2 Article 155 as follows:

“2. Any individual who satisfies the following conditions shall be granted an industrial property representation service practising certificate, except for the case specified in clause 2a of this Article:

a) Being a Vietnamese citizen with full capacity for civil acts;

b) Residing permanently in Vietnam;

c) Having a university degree or equivalent qualification for practice in marks, geographical indications, trade names, anti-unfair competition, trade secrets; university degree or equivalent qualification in a natural science or technical science for practice in the invention, industrial design or layout design;

d) Having been engaged directly in industrial property law for five consecutive years or more, or in the examination of assorted industrial property registration applications at national or international industrial property offices for five consecutive years or more, or having graduated from a training course on industrial property law recognized by the competent body;

dd) Not being a civil servant, employee working in the State body competent to establish and enforce industrial property rights;

e) Having passed an examination on the industrial property representation profession organized by the competent body.

2a. Vietnamese citizens who are lawyers licensed to practice under the Law on Lawyers and permanently residing in Vietnam shall be granted an industrial property representation service practising certificate in marks, geographical indications, trade names, anti-unfair competition, trade secrets if they have graduated from a training course on industrial property law recognized by the competent body.”.

62. To amend and supplement clause 2 Article 156 as follows:

“2. Where an industrial property representative no longer satisfies the business or practising conditions stipulated in Articles 154 and 155 of this Law, the State administrative body for industrial property rights shall withdraw the industrial property representation service practising certificate, delete the name of such industrial property representative in the National Register of Industrial Property and publish such deletion in the Official Gazette of Industrial Property.”.

63. To amend and supplement clause 2 Article 157 as follows:

“2. Organizations and individuals defined in clause 1 of this Article shall include Vietnamese organizations and individuals; foreign organizations, foreign individuals being citizens of the member countries of international associations for protection of new plant varieties or countries having concluded agreements on the protection of plant varieties with the Socialist Republic of Vietnam; and foreign individuals with permanent residential addresses in Vietnam or with establishments producing or trading in plant varieties in Vietnam; foreign organizations with establishments producing or trading in plant varieties in Vietnam; organizations and individuals with permanent residential addresses in Vietnam or with establishments producing or trading in plant varieties in the territory of the member countries of international associations for protection of new plant varieties.”.

64. To amend and supplement Article 158 as follows:

**“Article 158. General conditions for plant varieties to be eligible for protection**

Plant varieties eligible for protection mean plant varieties which have been selected and bred or discovered and developed, new, distinct, uniform, stable and designated by proper denominations.

65. To amend and supplement a number of sub-clauses and clauses of Article 163 as follows:

a) To amend and supplement clause 1 as follows:

“1. Organizations and individuals registering the rights to plant variety must designate a proper denomination for a plant variety with the State administrative body of the rights to plant variety, such denomination must be identical with that registered for protection in any country which is the member countries of international associations for protection of new plant varieties and countries having concluded agreements on the protection of plant varieties with the Socialist Republic of Vietnam.”;

b) To amend and supplement sub-clause (a), clause 3 as follows:

“a) They consist of numerals only, except where such numerals are relevant to characteristics or the breeding of such variety or including names of species of such variety;”;

c) To amend and supplement sub-clause (c), clause 3 as follows:

“c) They may easily mislead about features or characteristics, values of such variety.”;

d) To supplement clause 6 after clause 5 as follows:

“6. Where denominations of plant varieties registered for protection do not meet requirements of clauses 2 and 3 of this Article, the State administrative body of rights to plant varieties shall refuse such denominations and request the registrant to designate another denomination within thirty days from the date of the notice. The State administrative body of rights to plant varieties shall record the official denominations of the plant variety from the granting of the plant variety protection certificate.”.

66. To amend and supplement Article 164 and Article 165 as follows:

**“Article 164. Registration of rights to plant varieties**

1. In order to obtain protection of rights to plant varieties, an organization or individual must file an application for registration for protection with the State administrative body for rights to plant varieties.

2. Organizations and individuals having the right to register plant varieties for protection (hereinafter referred to as registrants) shall include:

a) Breeders who have personally selected and bred or discovered and developed the plant variety by their own efforts and at their own expense;

b) Organizations and individuals who fund breeders to select and breed or discover and develop the plant variety by job assignment or hiring, unless otherwise agreed or the case specified in clauses 3 and clause 4 of this Article;

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

3. For plant varieties which are selected and bred or discovered and developed resulting from scientific and technological tasks fully funded by the state budget, the rights to register such plant varieties shall be assigned to the organization in charge of such tasks automatically and without reimbursement.

4. For plant varieties which are selected and bred or discovered and developed resulting from the scientific and technological tasks invested by various sources of capital including a part of the state budget, the part of rights to register such plant varieties in proportion to the part of the state budget shall be assigned to the organization in charge of such tasks automatically and without reimbursement.

### **Article 165. Representation of rights to plant varieties**

1. Any Vietnamese organizations or individuals; or foreign organizations or individuals with permanent residential address in Vietnam or who have a plant variety production or trading establishment in Vietnam may file an application for registration of rights to a plant variety either directly or through representation of rights to a plant variety; other organizations and individuals as prescribed in Article 157 of this Law may file an application through plant variety representation services organization.

2. Organizations that satisfy the following conditions may trade in plant variety rights representation services in the name of rights representation service organizations:

a) Being Vietnamese enterprises, cooperatives, law- practising organizations, scientific and technological service organizations established and operating in accordance with law, except for foreign law-practising organizations practicing in Vietnam;

b) Having at least an individual possessing plant varieties representation service practising certificate.

3. The plant variety rights representation services include: representing organizations, individuals before competent state body to establish and protect rights to plant varieties; advising on procedures for establishing and protecting rights to plant varieties; Other services related to the procedures for establishing and protecting the rights to plant varieties.

4. The representatives of rights to plant varieties shall have the following responsibilities:

a) To notify fee and charge amounts and rates related to procedures for establishment and enforcement of industrial property rights to customers;

- b) To keep confidential information and documents related to cases in which they act as representatives;
- c) To truthfully and fully inform represented parties of all notices and requests from the State body competent to establish and enforce rights to plant varieties; to deliver on time to the represented parties protection titles and other decisions;
- d) To promptly satisfy all requests regarding represented parties from the State body competent to establish and enforce rights to plant varieties to protect legitimate rights and interests of the represented parties;
- dd) To notify the State body competent to establish and enforce rights to plant varieties of all changes in the names, addresses of and other information about the represented parties; changes of name, address, representative of the parties representing;
- e) A plant variety rights representation service organization shall bear civil liability to the person performing the act of representing rights to a plant variety on its behalf.

5. An individual is permitted to practice the service of representation of rights to plant varieties if he/she meets the following conditions:

- a) Having a plant varieties representation service practising certificate;
- b) Being engaged in a plant varieties representation service organization.

6. Any individual who satisfies the following conditions shall be granted a plant varieties representation service practising certificate:

- a) Being a Vietnamese citizen with full capacity for civil acts;
- b) Residing permanently in Vietnam;
- c) Having a university degree or equivalent qualification;
- d) Having been engaged directly in legal sector on rights to plant varieties for five consecutive years or more, or in the examination of assorted applications for registration of rights to plant varieties at national or international offices of rights to plant varieties for five consecutive years or more, or having graduated from a training course on law of rights to plant varieties recognized by the competent body;
- dd) Not being a civil servant, employee working in the State body competent to establish and enforce of rights to plant varieties;
- e) Having passed an examination on the profession of representation of rights to plant varieties organized by the competent body.

7. The Government shall issue detailed regulations on the training program on the law on rights to plant varieties, the examination of profession of the representation of rights to plant varieties, and issuance of a plant varieties representation service practising certificate”.

67. To supplement clause 6 after clause 5 Article 170 as follows:

“6. The Government shall issue detailed regulations on the order and procedures for suspension, restoration and invalidation of plant variety protection certificates.”.

68. To amend and supplement sub-clause (a), clause 1, Article 171 as follows:

“a) An application for registration of plant variety protection made by a person who is not entitled to exercising the rights of registration”.

69. To supplement clause 3 after clause 2 Article 172 as follows:

“3. The Government shall issue detailed regulations on the order and procedures for amending and re-granting the protection title of a plant variety.”.

70. To amend and supplement sub-clause (d) clause 3 Article 176 as follows:

“d) Notify the acceptance of the application where such application is valid or where the registrant has properly corrected the errors or made a justifiable opposition to the notice stipulated in sub- clause b of this clause, requesting the registrant to supply samples of the plant variety to the testing institution for performance of technical tests within thirty days prior to the first planting season from the date of issuing the notice of the acceptance of the application for registration of protection of a plant variety, except plant varieties which are tested by the registrant as prescribed in clause 2, Article 178 of this Law.”

71. To amend and supplement clause 2 Article 180 as follows:

“2. From the moment a registrant withdraws an application for registration for protection, all subsequent procedures related to such application shall be terminated.”.

72. To amend and supplement Article 183 as follows:

### **“Article 183. Issuance of plant variety protection certificates**

Where an application for registration for protection is not rejected as provided for in Article 182 of this Law and the registrant pays the fee, the State administrative body for rights to plant varieties shall issue a decision granting a plant variety protection certificate and shall record it in the National Register of Protected Plant Varieties.

The person who registers the rights to a plant variety under Article 164 of this Law and is granted a plant variety protection certificate by a competent state agency is the owner of right to the plant variety.”.

73. To amend and supplement clause 2 Article 189 as follows:

“2. Where the registrant is aware of the fact that certain acts towards the plant variety registered for protection has been performed by another person as prescribed in Articles 186 and 187 of this Law, from the time the application is published and accepted as valid, the plant variety protection registrant may notify such user in writing of the fact that an application for registration for

protection of the plant variety has been filed, clearly specifying the filing date and the date of publication of such application, so that the user may either stop using or continue using the plant variety.”.

74. To amend and supplement Article 191 and supplement Articles 191a, 191b after Article 191 of Section 2 Chapter XIV Part IV as follows:

**“Article 191 . Obligations of plant varieties protection certificate holders**

1. Except for the case specified in clause 2 of this Article, the plant variety protection certificate holder is obliged to pay remuneration to the breeder of the plant variety as agreed upon; in the absence of such agreement, the level of remuneration paid to the breeder shall be regulated as follows:

- a) 10% of the pre- tax profit earned by the plant variety protection certificate holder from using the protected plant variety for production and business;
- b) 15% of the total amount received by the plant variety protection certificate holder in each payment from the transfer of the right to use the plant variety before paying tax as prescribed;
- c) 35% of the total amount received by the plant variety protection certificate holder from the first transfer of the right to a plant variety before paying the regulatory tax and is not entitled to remuneration for the subsequent transfer and remuneration as prescribed in sub-clause (a) and (b) of this clause.

2. For plant varieties resulting from scientific and technological tasks funded by the state budget, the plant variety protection certificate holder shall pay remuneration to the breeder as follows:

- a) A minimum of 10% and a maximum of 15% of the pre-tax profit earned by the plant variety protection certificate holder from using the protected plant variety for production and business;
- b) A minimum of 15% and a maximum of 20% of the total amount received by the plant variety protection certificate holder in each payment from the transfer of the right to use the plant variety before paying tax as prescribed;
- c) A minimum of 20% and a maximum of 35% of the total amount received by the plant variety protection certificate holder from the first transfer of the right to a plant variety before paying the regulatory tax and is not entitled to remuneration for the subsequent transfer and remuneration as prescribed in sub-clauses (a) and (b) of this clause .

3. Where a plant variety is jointly created by more than one breeder, the remuneration level provided for in clauses 1 and 2 of this Article shall be applicable to all co-breeders. The co-breeders shall agree between themselves on the division of the remuneration paid by the plant variety protection certificate holder.

4. The obligation to pay remuneration to the breeder shall remain throughout the term of protection of the plant variety.”.

5 . To pay the fee for maintaining the validity of the plant variety protection certificate to the plant variety protection agency within three months after the date of grant of the plant variety protection certificate for the first effective year and in the first month of the subsequent effective year for the following years.

6 . To preserve protected plant varieties, provide information and reproductive materials of protected plant varieties at the request of the plant variety protection agency; To maintain the stability of the protected plant variety according to the characteristics described at the time of granting the plant variety protection certificate.

**Article 191a. Obligations of the presiding organization for plant varieties which are selected and bred or discovered and developed as a result of scientific and technological tasks funded by the state budget**

1. To submit an application for registration of rights to a plant variety within twelve months from the date on which the scientific and technological task is accepted.

2. To pay remunerations to plant variety breeders under Article 191 of this Law.

3. For scientific and technological tasks for which the State funded up to 30% of the total capital, the after-tax profit gained from the use, transfer of the right to use, transfer of rights, and capital contribution made by the plant varieties corresponding to the State’s capital contribution ratio after paying remuneration to the breeders may be used in accordance with the financial management regulations of the presiding organization.

4. For scientific and technological tasks for which the State funded more than 30% of the total capital, the distribution of after-tax profits gained from the use, transfer of use rights, transfer of rights, and capital contribution made by the plant varieties as the results of scientific and technological tasks funded by the state budget after paying remunerations to the breeders shall be regulated as follows:

a) Where scientific and technological tasks are fully funded by the state budget, a minimum of 50% of the remaining profits shall be used to invest in scientific and technological activities; the remaining profits shall be used according to the financial management regulations of the presiding organization;

b) Where scientific and technological tasks are invested by multiple capital sources, the remaining profit shall be divided among the parties in proportion to the ratio of capital contributed to such scientific and technological task. The portion of profits corresponding to the State's capital contribution ratio shall be used by the presiding organization in accordance with sub-clause (a) of this clause.

5. The presiding organization granted with a plant varieties protection certificate which is registered under clauses 3 and 4, Article 164 of this Law is obliged to exercise the rights to plant varieties as prescribed, take protective measures, submit annual reports on the exercise of rights, protection measures and the distribution of profits to the management body of scientific and technological tasks.

7. The Government shall detail this Article.”.

**Article 191b. The State’s right to plant varieties that are selected and bred or discovered and developed as a result of scientific and technological tasks funded the state budget**

1. The representative of the state owner shall make a public notification to organizations and individuals in demand within ninety days to assign the rights to register a plant variety that is selected and bred, or discovered and developed as a result of a scientific and technological task funded by the state budget in the following cases:

a) The organization in charge of the scientific and technological tasks fails to fulfill the notification obligation as prescribed in clause 1, Article 191(a) of this Law;

b) The organization in charge of the scientific and technological tasks shall submit to the state owner's representative a written report which states that it does not have a demand for registration;

2. Where the right to registration cannot be assigned to any organizations or individuals in demand as prescribed in clause 1 of this Article, the representative of the state owner shall publicly announce on the portal or website of the managing body of the scientific and technological tasks on the contents of the plant variety that is selected and bred, or discovered and developed as a result of a scientific and technological task funded by the state budget.

3 . The competent State body permits other organizations and individuals to use the plant variety that is selected and bred, or discovered and developed as a result of a scientific and technological task funded by the state budget without consent of the holder of the exclusive right to use in the following cases:

a) The holder of exclusive right to use does not, within a reasonable time, take effective measures to use the plant variety that is selected and bred, or discovered and developed as a result of a scientific and technological task that the State funds more than 30% of the total capital;

b) The use is for public, non-commercial purposes, serving national defense and security, disease prevention and treatment, ensuring nutrition for the people or meeting other urgent needs of the society.

4. The payment of compensation to the holder of the exclusive right which a competent state body permits other organizations or individuals to use the plant variety prescribed in clause 3 of this Article shall be made as follows:

a) For the plant variety that is selected and bred, or discovered and developed as a result of a scientific and technological task fully funded by the state budget, organizations and individuals are permitted to use without paying compensation;

b) For the plant variety that is selected and bred, or discovered and developed as the result of scientific and technological tasks invested with many capital sources, including part of the state budget, organizations and individuals are permitted to use without paying compensation for the portion of the use right corresponding to the state budget investment, but must pay compensation for the portion of the use right corresponding to the remaining investment capital. The amount of compensation paid to the holder of the exclusive right to use is determined in accordance with sub-clause (d), clause 3, Article 195 of this Law.

5. The Government shall detail this Article.”.

75. To amend and supplement clause 4 and supplement clause 5 after clause 4 Article 194 as follows:

“4. The rights to plant varieties which is selected and bred or discovered and developed as a result of scientific and technological tasks funded by the state budget may only be transferred to organizations established under Vietnamese law, individuals being Vietnamese citizens and permanently residing in Vietnam. Organizations and individuals receiving ownership transfer must perform the respective obligations of the presiding organization in accordance with this Law.

5. The Government shall detail this Article.”.

76. To amend and supplement a number of clauses of Article 198 as follows:

a) To amend and supplement sub-clauses (a) and (b), clause 1 as follows:

“a) To apply technological measures to protect rights, publish information on management of rights or apply other technological measures to prevent acts of infringement of intellectual property rights;

b) To request any organization or individual who commits an act of infringement of the intellectual property rights of the holder to terminate such act, remove and delete infringing contents on the telecommunications network and the Internet, make a public apology or rectification, and pay damages;”;

b) To supplement clause 1(a) after clause 1 and amend and supplement clauses 2 and 3 as follows:

“1a. Intellectual property right holders may authorize other organizations or individuals to apply the measures specified in clause 1 of this Article to protect their intellectual property rights.

2. Organizations and individuals that suffer from damages due to acts of infringing upon intellectual property rights or find acts of infringing upon intellectual property rights cause

damage to consumers or to society have the right to request the competent State body to handle acts of infringing upon intellectual property rights in accordance with this Law and other relevant laws.

Organizations and individuals that have inherited copyright and/or performer's rights have the right to request the competent State body to handle acts of infringing upon rights specified in clause 4, Article 19 and sub-clause (b), clause 2, Article 29 of this Law.

3. Organizations and individuals that suffer from damages or are likely to suffer from damages due to acts of unfair competition have the right to request the competent State body to take civil measures specified in Article 202 of this Law”.

77. To supplement Article 198a and Article 198b after Article 198 as follows:

**“ Article 198a. Assumptions about copyright and related rights**

In civil, administrative and criminal proceedings on copyright and related rights, if there is no evidence to the contrary, the copyright and related rights are assumed as follows:

1. Individuals and organizations named in the normal manner who are authors, performers, producers of audio and visual fixation, broadcasting organizations, producers of cinematographic works, publishers shall be considered as the holder of right to such works, performance, audio and visual fixation or broadcasts;

2. Naming in the normal manner as prescribed in clause 1 of this Article is construed as being named in the original copy of the works, the first fixation of the performance, audio and visual fixation, broadcasts and other relevant materials (if any) or in the relevant copies which are duly published in case the original copy of the works, the first fixation of the performance, the audio and visual fixation, broadcasts and other materials no longer exist;

3. Individuals and organizations specified in clause 1 of this Article are entitled to corresponding copyright or related rights.

**Article 198b. Liability for copyright and related rights for enterprises providing intermediary services**

1. An enterprise providing intermediary services means an enterprise which provides technical means for organizations and individuals to use the service to psot digital information into the telecommunications network and the Internet; provides online connectivity for the public to access and use digital information content on the telecommunications network and the Internet environment.

2. An enterprise providing intermediary services is responsible for implementing technical measures and coordinating with competent state body and rights holders to take measures for protection of copyright and related rights in the telecommunications network and Internet environment.

3. An enterprise providing intermediary services is exempt from legal liability for acts of infringing upon copyright and related rights in the telecommunications network and Internet environment related to the supply or use of services in the following cases:

- a) Only transmit the digital information or provide access to the digital information content;
- b) When performing the function of buffer storage in the process of information transmission, the enterprise providing intermediary services must perform it automatically and temporarily for the purpose of transshipment of information and making the transmission of information more efficiently with the following conditions: to change information only for technological reasons; to comply with the conditions of access and use of digital information content; to comply with the prescribed rules for updating digital information in a manner that is widely recognized and used by the industry; not to prevent the lawful use of technology that is widely recognized in the industry to obtain data on the use of digital information content; to remove digital information or to deny access to digital information content when knowing that such digital information content has been removed at the originating source or the originating source has canceled access to such digital information content;
- c) Store digital information content of service users at the request of service users with the following conditions: not knowing that such digital information content infringes the copyright and related rights; taking prompt action to remove or prevent access to such digital information content upon knowing that such digital information content infringes upon the copyright or related rights;
- d) Other cases as specified by the Government.

4. An enterprise providing intermediary services being exempt from legal liability as prescribed in clause 3 of this Article shall not supervise its own services or actively seek any proofs for infringements.

5. Contents of digital information specified in this Article are the works and subject matters of protected related rights under this Law expressed in digital form.

6. The Government shall detail this Article.”.

78. To amend and supplement a number of clauses of Article 201 as follows:

- a) To amend and supplement clause 1 and supplement clause 1(a) after clause 1; to amend and supplement clause 2 and supplement clause 2(a) after clause 2 as follows:

“1. Intellectual property assessment means the use of professional knowledge and expertise by organizations or individuals specified in clauses 2 and 3 of this Article to make assessment of and conclusions on matters related to the intellectual property rights. The judicial assessment of intellectual property shall comply with the provisions of the law on judicial assessment.

1a. Intellectual property assessment includes:

- a) Assessment of copyright and related rights;
- b) Assessment of industrial property rights;
- c) Assessment of rights to plant varieties.

2. Enterprises, cooperatives, non-business units, law-practicing organizations established and operating in accordance with law, having at least an individual possessing an intellectual property assessor's card, shall be permitted to conduct assessment of intellectual property, except for the case specified in clause 2a of this Article.

2 a. Foreign law-practicing organizations practicing in Vietnam are not allowed to provide intellectual property assessment services.”;

b) To amend and supplement clause 4 and clause 5 as follows:

“4. Assessment conducting principles include:

- a) To comply with the law and comply with the order and procedures of assessment;
- b) Honesty, accuracy, objectivity, impartiality and timeliness;
- c) Only to make professional conclusions on issues within the required scope;
- d) To take responsibility before law for assessment conclusions;
- dd) The cost of assessment is determined according to the agreement between the person requesting the assessment and the organization or individual carrying out assessment.

5. The conclusions of assessment are one of evidence sources for competent body to handle and settle the case. The assessment conclusions do not conclude on the acts of infringement upon intellectual property rights or the dispute.”.

79. To amend and supplement Articles 212, 213 and 214 as follows:

**“Article 212. Acts of infringement of industrial property rights subject to criminal penalties**

Any individuals and commercial legal entities who commit an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.

**Article 213. Intellectual property counterfeit goods**

1. Intellectual property counterfeit goods regulated in this Law comprise of goods bearing counterfeit marks and goods bearing counterfeit geographical indications, pirated goods defined in clauses 2, 3 and 4 of this Article.

2. Counterfeit mark goods means goods or their packages bearing a mark or sign or stamps, labels containing signs which are identical or similar to the extent that they are indistinguishable from mark currently protected for those goods without permission from the mark owner.

3. Geographical indication counterfeit goods means goods or their packages bearing a sign or stamp, label containing signs which is identical or similar to the extent that they are indistinguishable from geographical indication currently protected for those goods, and affixture of such signs is conducted by organizations or individuals without having rights to use geographical indication as specified in clause 4, Article 121 of this Law or in accordance with the law of the country of origin of such geographical indication.

4 . Pirated goods is a copy produced without the permission of the copyright or related rights holders.

#### **Article 214. Forms of administrative penalty and measures for remedying consequences**

1. Organizations and individuals that commit acts of infringing of intellectual property rights specified in clause 1, Article 211 of this Law shall be subject to sanctions and measures for remedying consequences in accordance with the law on handling of administrative violations.

2. In addition to the sanctions and measures for remedying consequences stipulated by the law on handling of administrative violations, any organization or individual who infringes intellectual property rights may also be subject to measures for remedying consequences being compulsory distribution or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials and materials, and facilities used mainly for production or trading of such intellectual property counterfeit goods, provided that the exploitation of rights by intellectual property right holders shall not be affected and other conditions shall be satisfied as regulated by the Government.

3. The amount of monetary fine and authority for imposing the penalties for administrative violations for acts of infringing of intellectual property rights shall be in accordance with law on handling of administrative violations.”.

80. To amend and supplement a number of clauses of Article 216 as follows:

a) To amend and supplement clause 2 as follows:

“2. Suspension of customs procedures for goods suspected of infringing intellectual property rights means a measure taken in the following cases:

a) At the request of an intellectual property right holder in order to collect information and evidence on the goods consignment in question so that the intellectual property right holder may exercise the right to request that the infringing act be dealt with and to request the application of injunctive measures, preventive measures and/or measures to secure enforcement of administrative penalties.

b) The customs authority shall take the initiative in implementation if, during inspection, supervision and control, there are clear grounds to suspect that exported or imported goods are intellectual property counterfeit goods”;

b) To supplement clause 5 after clause 4 as follows:

“5. The Government shall detail sub-clause (b), clause 2 of this Article.”.

81. To supplement clause 4 after clause 3 Article 218 as follows:

“4. Where the customs authority actively suspends customs procedures, the customs authority must immediately notify the intellectual property right holder if there is any information of the contacts and the importer or exporter about the suspension.

Within ten working days from the date of notification, if the intellectual property right holder does not initiate a civil lawsuit and the customs authority does not make a decision on acceptance of the case in accordance with the procedures for handling administrative violation, the customs authority is responsible for continuing to conduct customs procedures for the shipment.”.

82. Replace or delete words or phrases in a number of articles as follows:

a) To replace the phrase “Plastic art works” with the phrase “fine art work” in sub-clause (g), clause 1, Article 14;

b) To replace the phrase “performances” with the phrase “related rights” and delete the phrase “clause 1” in clause 2, Article 16 ;

c) To replace the phrase “Article 86” with the phrase “Article 86, Article 86a” in clause 3 Article 60, and clause 2 Article 71;

d) To replace the phrase “a validity maintenance fee” with the phrase “charge and fee for maintaining validity” in clause 1, Article 94;

dd) To replace the phrase “a validity extension fee” with the phrase “charge and fee for validity extension” in clause 2, Article 94 ;

e) To replace the word “fee” with the phrase “charge and fee” in clause 3, Article 94 ;

g) To replace the phrase “filing fee” with the phrase “charge and fee” in sub-clause (c), clause 1, Article 108;

h) To replace the phrase “ensuring enforcement” with the word “protection” in sub-clause (a), clause 1, Article 151;

i) To replace the word “enforcement” with the word “protection” in sub-clauses (b) and (c), clause 1, Article 151;

k) To replace the word “vines” with the phrase “wooden vines” in Article 159 and clause 2 of Article 169;

l) To delete the phrase “sub-clause (b) and” in sub-clause (a), clause 3, Article 176;

m) To delete the phrase “sub-clause (a) clause 1” in clause 2 Article 185;

n) To delete the phrase “in Article 79” in clause 1, Article 203;

o) To delete the phrase “in clause 1, Article 122” in clause 1, Article 209;

p) To delete the phrase “in Chapter VIII, Part I” in Article 210 ;

q) To delete the phrase “and Article 215” in clause 4, Article 216 and Article 219.

83. To cancel clause 19 Article 4, Article 5, clause 3 Article 51, clause 4 Article 117, sub-clause (b) clause 2 Article 176 and Article 215 .

## **Article 2. Amendment and supplementation of a number of articles of other relevant laws**

1. To amend and supplement a number of articles of the Customs Law No. 54/2014/QH13 which have been amended and supplemented with a number of articles under Law No. 71/2014/QH13 and Law No. 35/2018/QH14 as follows:

a) To amend and supplement the title of Section 8 Chapter III as follows:

### **“Section 8”**

#### **INSPECTION, SUPERVISION, SUSPENDING CUSTOMS PROCEDURES FOR EXPORTED AND IMPORTED GOODS RELATED TO INTELLECTUAL PROPERTY RIGHTS”;**

b) To amend and supplement clause 2, Article 73 as follows:

“2. Customs authorities may decide to postpone customs procedures for imported or exported goods when an intellectual property rights holder or lawfully authorized person has an application and shows evidence of their lawful holding of intellectual property rights and evidence of infringements thereupon and has paid a deposit or produced documents on guarantee by credit institutions as security for payment of damage compensation and expenses as prescribed which may arise due to wrong requests for postponement of customs formalities. The customs authority shall proactively postpone customs procedures if, during the course of inspection, supervision and control, there are clear grounds to suspect that imported or exported goods are intellectual property counterfeit goods”.

2. To amend and supplement a number of articles of the Law on Science and Technology No. 29/2013/QH13 which has been amended and supplemented with a number of articles under the Law No. 28/2018/QH14 as follows:

a) To amend and supplement Article 41 as follows:

**“Article 41. Ownership or use right of results from scientific research and technological development**

1. Organizations, individuals that provide finance and material and technical bases for the implementation of science and technology tasks shall be owners of results from scientific research and technological development unless otherwise agreed by the parties in the contract for scientific research and technological development.

2. For results from state budget-based scientific research and technological development, the representatives of state ownership are prescribed as follows:

a) The Minister of Science and Technology shall be owner’s representative of results from science and technology tasks at national level;

b) Ministries, ministerial-level agencies, Governmental agencies, other central state agencies and presidents of People’s committees of provinces shall be owner’s representatives of results from ministerial, provincial or grassroots science and technology tasks they approve;

c) Heads of agencies, organizations not prescribed in sub-clauses (a) and (b) of this clause shall be owner’s representatives of results from science and technology tasks they approve.

3. State ownership representatives as prescribed in clause 2, this Article are entitled to assign part or whole of the ownership or right of use of results from state-funded scientific research and technological development according to the Government’s regulations to the organizations that preside over the implementation of science and technology tasks or other organizations, individuals wishing to use and exploit results from such scientific research and technological development, except the case specified in clause 4 of this Article.

4. Where inventions, industrial designs, layout designs, plant varieties are results of state-funded scientific research and technological development, the rights to register such inventions, industrial designs, layout designs, plant varieties are automatically assigned to the presiding organization and without reimbursement or assigned to other organizations or individuals in accordance with the Intellectual Property Law. When being granted a protection title, the presiding organization is the owner of the respective inventions, industrial designs, layout designs and plant varieties.

5. The Government shall detail the ownership or right of use of results of scientific research and technological development as prescribed in this Article.”;

b) To amend and supplement Article 43 as follows:

**“Article 43. Distribution of profits from use, transfer of right of use, transfer of capital, contribution of capital in the form of results of state-funded scientific research and technological development**

1. At least 30% of profits earned from the use, transfer of the right to use, transfer of right, contribution of capital in the form of results of state-funded scientific research and technological development shall be divided to the author and the remaining profits shall be distributed among

the owner, the presiding agencies and the broker according to the Government's regulations, except for the case specified in clause 2 of this Article.

2. The distribution of profits earned from the use, transfer of the right to use, transfer of rights, capital contribution in the form of inventions, industrial designs, layout designs, plant varieties which are results of state-funded scientific research and technological development shall have intellectual property rights protected in accordance with the provisions of the Law on Intellectual Property.”.

3. To amend and supplement sub-clause (a), clause 4, Article 105 of the Law on Management and Use of Public Property No. 15/2017/QH14 which has been amended and supplemented under Law No. 64/2020/QH14 as follows:

“a) Transferring the property ownership or the right to use the property to the organization in charge to develop results of tasks or using the property to commercialize results of scientific and technological research, except in case the results of scientific and technological tasks are inventions, industrial designs, layout designs or plant varieties, the transfer of rights shall comply with the provisions of the Intellectual Property Law;”.

4. To amend and supplement a number of articles of the Law on Price No. 11/2012/QH13, which has been amended and supplemented with a number of articles under Law No. 61/2014/QH13 and Law No. 64/2020/QH14 as follows:

a) To supplement sub-clause (d) after sub-clause (c) clause 1 Article 19 as follows:

“d) Works, audio and visual fixation in case of limitation of copyright or related rights in accordance with the Intellectual Property Law.”;

b) To amend and supplement sub-clause (c), clause 3, Article 19 as follows:

“c) Defining price frame and specific price levels for:

- Land, surface water, underground water, forest belonging to the public which the State is the owner representative and clean water for living;

- Price of leasing, hire-purchasing for social houses, houses of public services which are built using state budget; selling prices or leasing prices for houses belonging to the state;

- Services of medical examination and treatment and services of education, training at medical examination and treatment establishments, training and education facilities of the State;

- Royalties when exploiting and using works, audio and visual fixation in case of limitation of copyright or related rights in accordance with the Intellectual Property Law;”;

c) To supplement sub-clause (d) after sub-clause (c) clause 1 Article 22 as follows:

“d) Price frame and price levels for royalties when exploiting and using works, audio and visual fixation in case of limitation of copyright or related rights in accordance with the Intellectual Property Law.”.

### **Article 3. Effectiveness**

1. This Law shall be of full force and effect as from January 1, 2023, except for the cases specified in clauses 2 and 3 of this Article.
2. Regulations on protection of marks as a sign of sound shall be of full force and effect as from January 14, 2022.
3. The regulations on protection of test data for agrochemical products shall be of full force and effect as from January 14, 2024.

### **Article 4. Transitional provisions**

1. Copyright and related rights are protected before the effective date of this Law and shall continue to be protected if they remain within the term of protection on the effective date of this Law.
2. Applications for registration of copyright, related rights, which were filed with the competent bodies before the effective date of this Law shall continue to be processed in accordance with the provisions of the legal instruments effective at the time of filing of such applications.
3. Applications for registration of inventions, industrial designs, marks or geographical indications submitted to the state administrative body in charge of industrial property rights before the effective date of this Law shall continue to be processed in accordance with the provisions of the legal instruments effective at the time of filing of such applications. except for the following cases:
  - a) Regulations in clause 13, Article 4 of the Intellectual Property Law as amended and supplemented under sub-clause (b), clause 1, Article 1 of this Law are applied to applications for registration of industrial design filed from August 1, 2020 but has not been issued a decision on granting or refusing to grant a protection title before the effective date of this Law;
  - b) Regulations in sub-clauses (e) and (h), clause 2, Article 74, sub-clause (e), clause 1, Article 106, sub-clause (b), clause 3, Article 117 of the Intellectual Property Law as amended and supplemented under sub-clauses (b) and (c), clause 22, and 35 and sub-clause (b), clause 42, Article 1 of this Law shall apply to applications for registration of industrial property but has not been issued a decision on granting or refusing to grant a protection title before the effective date of this Law;
  - c) Security control for an invention in an application for registration of invention which has not been issued a decision on granting or refusing to grant a protection title before the effective date of this Law shall comply with the provisions of Article 89a as amended and supplemented under clause 27, Article 1 of this Law;
  - d) Provisions of Article 118 of the Intellectual Property Law as amended and supplemented according to clause 43, Article 1 of this Law shall apply to applications for registration of

industrial property which have not yet been notified of the results of substantive examination before the effective date of this Law.

4. The provisions of Articles 86, 86a, 133a, 135, 136a, 139, 164, 191, 191a, 191b and 194 of the Intellectual Property Law as amended and supplemented according to clauses 25, 52, 53, 54, 55, 66, 74 and 75, Article 1 of this Law applicable to inventions, industrial designs, layout designs and plant varieties resulting from scientific and technological tasks funded by the state budget shall apply to the assigned scientific and technological tasks from the effective date of this Law.

5. Rights and obligations to an industrial design that is a part of a product assembled into a complex product according to a protection title granted on the basis of an application before August 1, 2020 shall follow the provisions of legal instruments effective before the effective date of this Law.

Grounds for invalidation of a protection title shall follow provisions of the legal instruments in effect for the consideration of grant of such protection title.

6. Individuals who are granted industrial property representation service practicing certificates before the effective date of this Law shall be permitted to continue practising in accordance with the granted certificates. Individuals who pass the professional examination on industrial property representation organized by a competent body before the effective date of this Law shall be granted an industrial property representation service practice certificate under the Law on Intellectual Property No. 50/2005/QH11 which has been amended and supplemented with a number of articles under the Law No. 36/2009/QH12 and Law No. 42/2019/QH14.

7. Application for registration of plant variety rights protection which has been filed with a competent body before the effective date of this Law shall continue to be processed in accordance with the provisions of the legal instruments effective at the time of filing of such applications. Individuals who are granted plant varieties representation service practice certificate before the effective date of this Law shall continue to practice in accordance with the granted certificates.

8. Cases of infringement of intellectual property rights that have been accepted by a competent body before the effective date of this Law but have not yet been settled shall be subject to provisions of the Law on Intellectual Property No. 50/2005/QH11 as amended and supplemented with a number of articles under Law No. 36/2009/QH12 and Law No. 42/2019/QH14 for settlement.

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

**PRESIDENT OF NATIONAL ASSEMBLY**

**Vuong Dinh Hue**

