

No. 16/2013/TT-BNNPTNT

Hanoi, February 28, 2013

CIRCULAR

ON THE PROTECTION OF PLANT VARIETY RIGHTS

Pursuant to the Government's Decree No. 01/2008/ND-CP dated January 03rd 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Agriculture and Rural development; the Government's Decree No. 75/2009/ND-CP dated September 10th 2009, amending Article 3 of the Decree No. 01/2008/ND-CP;

Pursuant to the Law on Intellectual property No. 50/2005/QH11 dated November 29th 2005; the Law No. 36/2009/QH12 on the revision of the Law on Intellectual property dated June 19th 2009;

Pursuant to the Government's Decree No. 88/2010/ND-CP dated August 16th 2010, elaborating and guiding the implementation of the Law on Intellectual property, the Law on the revision of the Law on Intellectual property applicable to the plant variety rights, and the Government's Decree No. 98/2011/ND-CP dated October 26th 2011, revising the Decrees on agriculture;

Pursuant to the Government's Decree No. 105/2006/ND-CP dated September 22nd 2006, elaborating and guiding the implementation of the Law on Intellectual property applicable to intellectual property rights and the State management of intellectual property, and the Government's Decree No. 119/2010/ND-CP dated December 30th 2010 of the Government, revising the Decree No. 105/2006/ND-CP;

At the request of the Director of the Department of Crop production;

The Minister of Agriculture and Rural development issues this Circular to guide the protection of plant variety rights.

Chapter I

GENERAL REGULATIONS

Article 1. Scope of regulation

This Circular guides the implementation of some regulations on the establishment of plant variety rights, the representation for plant variety rights, and the templates of documents about the protection of plant varieties.

Article 2. Subjects of application

This Circular is applicable to:

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals being the subjects prescribed in Clause 18 Article 1 of the Law on the revision of the Law on Intellectual property.

Article 3. Interpretation of terms

In this Circular, the terms below are construed as follows:

1. Plant breeding is the process of sexual cross-breeding, causing mutation, or applying other methods to create artificial variations, and selecting the variations suitable for the demands of the producers.
2. Detection and development of plant varieties:
 - a) Detection is the selection of natural variations existing in a population of a plant variety, or to find new genetic resources in nature;
 - b) Development is the process of propagation and assessment to select the variations or genetic resources that suit the production demand.

Article 4. Lawful representatives and authorized representatives of applicants

1. The lawful representative of an applicant prescribed in Clause 2 Article 3 of the Decree No. 88/2010/ND-CP is:
 - a) The legal representative or authorized representative of the applicant, or an organization that represents the plant variety rights under the authorization of the applicant, if the applicant is a Vietnamese organization or individual;
 - b) The manager of the representative office or branch in Vietnam, or the organization that represents the plant variety rights under the authorization of the applicant, if the applicant is a foreign organization or individual that has an office or permanent residence in Vietnam, or has premises that produce and trade plant varieties in Vietnam;
 - c) The organization that represents the plant variety rights under the authorization of the applicant, if the applicant is a foreign organization or individual that does not have an office or permanent residence in Vietnam, or nor has premises that produce and trade plant varieties in Vietnam.
2. The legal representative of the applicant shall follow the procedure for the protection of plant varieties as prescribed by laws on authorization; the letter of authorization is made according to the form in Annex 1 of this Circular.

Article 5. Resolving objections from the third party

1. From the day on which the application for protection is posted on the website of the New Plant Variety Protection Office or the Agriculture and Rural Development Magazine to the date on which the decision to grant the patent, any third party may send its objection to the Department of Crop production against the right to register, the priority, the protection conditions, and other issues related to the acceptance of the application for protection of plant varieties.
2. The objection from the third party shall be made in accordance with the template in Annex 2 of this Circular, enclosed with the explanation for the objection and the evidence (if any), and sent to Department of Crop production.
3. Order and deadline for settlement:
 - a) Within 30 working days from the day on which the objection from the third party is received, Department of Crop production shall send a notice to the applicant for the protection;

- b) The applicant shall send a written response to Department of Crop production within 30 working days from the signing date of the notice made by the Department of Crop production.
- c) Within 15 working days from the day on which the response from the applicants is received, the Department of Crop may hold a discussion between the applicant and the third party, or send the forward the response to the third party;
- d) The third party shall send a written response to Department of Crop production within 30 working days from the signing date Department of Crop production;
- dd) If there are grounds for concluding that the opinion from the third party is not reasonable, within 15 working days from the day on which the response from the third party is received, the Department of Crop production must send a rejection to the third party, with an explanation;
- e) If there are no grounds for concluding that the opinion from the third party is not reasonable, within 30 working days from the day on which the response from the third party is received, the Department of Crop production shall recommend the third party to request the Court to solve the case according to civil proceedings. Within 30 working days from the date of issue of the notice, if the Department of Crop production does not receive any written response from the third party about the submission of the petition to the court, it is considered to withdraw the objection. When receiving the response from the third party, the Department of Crop production shall delay handling the application for protection and wait for the judgment from the Court. After receiving the judgment from the Court, the application shall be handled accordingly, and the third party shall receive a notice within 15 working days.

Article 6. Well-known plant varieties and novelty of plant varieties

1. A plant variety of the same kind with the variety that applies for protection is considered well-known in one of the following cases:

- a) The plant varieties of which the propagating material harvested material are commonly used on Vietnam's market or in any other country when the application for protection is submitted;
- b) The plant variety is protected, experimentally propagated or officially certified, or in the List of Plant varieties permitted to be propagated and traded in Vietnam or in any other country;
- c) The plant variety is the object in the application for the protection of new plant varieties, or the application for testing, or the application for the accreditation of new plant variety in Vietnam or in any other country, if these applications are not rejected.

2. b) A plant variety is considered no longer novel and ineligible for protection after 12 months from the day on which its name is added in the List of plant varieties permitted to be propagated and traded in Vietnam.

Article 7. The templates, methods of reception, places of reception, submission date, and the dossier of plant variety right protection

1. The templates of documents about the protection of plant variety rights:

- a) The registration of the contract to transfer plant variety rights, according to the template in Annex 3 of this Circular;
- b) The request for mandatory transfer of the right to use plant varieties, according to the template in Annex 4 of this Circular;

- c) The template of the plant variety patent, according to Annex 14 of this Circular;
 - d) Other templates from Article 4 to Article 35 of this Circular.
2. The New Plant Variety Protection Office shall receive applications and documents about protection of plant varieties in one of the following ways:
- a) Direct reception;
 - b) Reception by post.
3. The results shall be given at the New Plant Variety Protection Office - Department of Crop production, at 02 Ngoc Ha – Ba Dinh – Ha Noi. Phone number: (04) 38435182, fax: (04) 37342844, email: pvpvietnam@mard.gov.vn, website: pvpo.mard.gov.vn.
4. The submission date is the date on which the application is received by the New Plant Variety Protection Office as prescribed in Clause 2 Article 175 of the Law on Intellectual property,

Article 8. Fees for the protection of plant variety rights

- a) The fees related to the protection of plant variety rights are specified in the Circular No. 180/2011/TT-BTC dated December 14th 2011 of the Ministry of Finance, on the rates, the collection, payment, management, and use of fees in crop production and forestry varieties;
- b) The participants in the training courses in representation for plant variety rights or examination of plant variety rights must pay the tuition themselves.

Chapter II

THE ESTABLISHMENT OF PLANT VARIETY RIGHTS

Article 9. The reception of applications for protection, the authority to issue and transfer patents

1. Documents in the application for protection

The documents in the application for protection prescribed in Article 174 of the Law on Intellectual property and Article 8 of the Decree No. 88/2010/ND-CP include:

- a) The written application for protection of plant varieties according to the template in Annex 5 of this Circular;
 - b) The declaration of the distinctness, uniformity and stability testing techniques (DUS testing) according to the templates in the regulation on DUS testing of each kind of plant;
 - c) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production;
 - d) The letter of authorization according to Annex 1 of this Circular (if the application is submitted by the representative);
 - dd) At least 3 pictures of the variety that demonstrates its 3 distinct characteristics, size 9 cm x 15 cm;
2. The Notice of the acceptance of the application for the protection of plant varieties according to the template in Annex 6 of this Circular.

3. The Director of the Department of Crop production shall decide the issuance of the patent and the Certificate of Registration of contract to transfer plant variety rights when the patent is transferred.

Article 10. Amending the application

1. Before the Department of Crop production rejects or accepts application, decides to issue or not to issue the patent, the applicant may request the Department of Crop production, or the Department of Crop Production may request the applicant to correct the grammatical errors of the name and address of the applicant, the breeder, the variety name, or change the name of the plant variety; amend and supplement the documents in the application, but must not change the nature of it. Where the applicant changes the nature of the application (changing the owner, the breeder, the variety), the application must be made from the beginning as prescribed.

2. The applicant that requests the amendment of the application must submit a dossier to Department of Crop production. The dossier comprises:

a) The written request for the amendment of the application according to the template in Annex 7 of this Circular;

b) The copies (authenticated or enclosed with the original for comparison) of: the Decision on changing the name, address, or the Certificate of business registration which shows the change of the name and address, or other legal documents proving the change of the name and address of the applicant, the breeder (when correcting the errors in names and addresses of the applicant and the breeder);

c) The written explanation for the change of the variety name (when changing the variety name);

d) The amended documents, enclosed with the detailed description of the amendments to the submitted documents (when amending the documents in the application);

dd) The letter of authorization according to Annex 1 of this Circular (when replacing the representative);

e) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

3. Order and deadline for settlement:

a) Within 05 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 30 working days from the day on which the Department of Crop production receives the complete and valid dossier, the Director of the Department of Crop production shall sign the Notice of acceptance of the amendments, and post it on the website of the New Plant Variety Protection Office or on the Agriculture and Rural Development Magazine within 05 working days from the day on which the Notice is signed. The refusal must be notified and explained in writing.

Article 11. Delegating the submission of the application for protection

1. If the owner of a plant variety has not applied for the protection after transferring his ownership to another organization or individual as prescribed by law, the transferee may apply for the protection as prescribed.
2. The application shall be enclosed with the documents specified in Clause 1 Article 9 of this Circular, together with the document proving the right to submit the application, being the contract to transfer the ownership of that variety (the original or authenticated copy) in Vietnamese or translated into Vietnamese. Each page must be countersigned by both parties, or bear a seal.

Article 12. Transferring the application

1. Before the Department of Crop production rejects or accept the application, decides to issue or not to issue the patent, the applicant may transfer the application for the protection of plant varieties to another person. The transferee shall become the applicant. The transfer of the application for protection shall be made into a contract as prescribed in Clause 2 Article 25 of the Decree No. 88/2010/ND-CP.
2. The transferor shall submit 01 dossier to traditional markets. The dossier comprises:
 - a) The registration of the contract to transfer the application for protection according to the template in Annex 3 of this Circular;
 - b) The contract (the original or authenticated copy) in Vietnamese or translated into Vietnamese; each page must be countersigned by both parties or bear the seal;
 - c) The written agreement from the owners, in case the plant variety is under a co-ownership;
 - d) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.
 - dd) Where the plant variety is created from the State budget, the documents proving the transfer must be included as prescribed in Clause 1 Article 27 of the Decree No. 88/2010/ND-CP.
3. Order and deadline for settlement:
 - a) Within 05 working days from the day on which the dossier is received, the Department of Crop production shall check the adequacy of the dossier. If the dossier is not adequate, the Department of Crop production shall issue a notice of errors, and the applicant must correct it within 30 days from the day on which the notice is sign, and send a response. If the applicant fails to correct the dossier after the deadline above, the Department of Crop production shall issue the Notice of rejection of the dossier, and provide the explanation.
 - b) Within 30 working days from the day on which the Department of Crop production receives the complete and valid dossier, the Director of the Department of Crop production shall sign the Notice of acceptance of transfer, and post it on the website of the New Plant Variety Protection Office or on the Agriculture and Rural Development Magazine within 05 working days from the day on which the Notice is signed.

Article 13. Appointment of DUS testers and inspection of activities of appointed DUS testers

1. The organizations and individuals that satisfy the conditions in Clause 1 Article 1 of the Decree No. 98/2011/ND-CP and satisfy the requirements in the regulations on DUS testing of

each kind of plant shall send 01 dossier to Department of Crop production in order to be appointed to conduct DUS tests. The dossier comprises:

- a) The written request for being appointed to conduct DUS tests according to the template in Annex 8 of this Circular;
- b) The Decision on establishment or the Certificate of Business registration or the investment license of the organization; the copy of ID card or passport of the individual (authenticated or enclosed with the original for comparison).

2. Order and deadline for settlement:

- a) Within 05 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;
- b) Within 30 working days from the day on which the Department of Crop production receives the complete and valid dossier, the Director of the Department of Crop production shall establish an Commission to assess the conditions for DUS testing on the spot;
- c) Within 10 working days from the day on which the Department of Crop production receives the assessment record from the Commission and the rectification report from the applicant, the Director of the Department of Crop production shall sign a decision to appoint the organization or individual to conduct DUS tests, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed. The refusal must be notified and explained in writing.
- d) The decision shall expire after 10 years. 90 days before the expiration date of the decision, the organization or individual wishing to be reappointed must submit an application according to the template in Annex 8 of this Circular. Based on the application and the result of the inspections during their operation, the Director of the Department of Crop Production shall sign the decision to reappoint or not to reappoint the DUS tester, and provide the explanation.

3. Inspecting the activities of appointed DUS testers

- a) Inspections shall be carried out at least twice a year, not including irregular inspections;
- b) The Director of the Department of Crop Production shall establish a Inspectorate composed on 2 – 3 persons to carry out on-the-spot inspection;
- c) The on-the-spot inspection shall be carried out at the premises of the DUS tester, and at least 01 DUS test. The inspection result is the basis for maintaining, warning, suspending, or invalidating the Decision;
- d) Inspection contents: inspecting the conformity of the DUS tester with the requirements; the conformity of the tests with the regulations on DUS testing; the documents and result of the inspection;
- d) The tester must immediately correct the mistakes (if any) and report the result to the Department of Crop production before the deadline specified in the inspection record;

The Department of Crop production shall verify the rectification according to the report submitted by the DUS tester, and carry out the on-the-spot inspection where necessary.

4. The verification record and inspection record according to the template in Annex 9; the report on the rectification according to the template in Annex 10 of this Circular.

Article 14. Rights and obligations of appointed DUS testers

1. Rights of appointed DUS testers

- a) Run tests in accordance with contracts signed with the organizations and individuals that have their plant varieties tested;
- b) Collect testing fees as prescribed by the State, or under the agreement with the organizations and individuals that have their plant varieties tested where fees are not prescribed by the State;
- c) Refuse to provide information about test results to a third party, unless it is requested by competent State agencies.

2. Obligations of appointed DUS testers:

- a) Satisfy the conditions prescribed in Article 16 of the Decree No. 88/2010/ND-CP;
- b) Run tests in accordance with the regulation on DUS testing prescribed Clause 3 Article 15 of the Decree No. 88/2010/ND-CP;
- c) Run DUS tests within the appointed range. Do not reject to run tests without legitimate reasons;
- d) Formulate an order for testing applicable to each subjects based on the regulation on testing, send it to Department of Crop production and the applicants;
- dd) Ensure the openness, transparency, independence, objectivity, accuracy, and impartiality during the tests;
- e) Send reports on to the test results to the Department of Crop production according to the template in Annex 13 of this Circular within 45 working days from the ending day of the test; report all changes that affect the appointed capacity within 15 days from the occurrence of such changes;
- g) Refund the testing fees to applicants as prescribed in Clause 4 and Clause 5 Article 15 of the Decree No. 88/2010/ND-CP;
- h) Take responsibility before law for the test results; facilitate the inspections carried out by competent State agencies.

Article 15. Warning, suspending, restoring, and invalidating the Decision on appointment

Based on the inspection result, the Director of the Department of Crop Production shall:

- 1. Issue a warning when the tester makes the mistakes that do not affect the test result.
- 2. Suspend the decision on appointment when there are rectifiable technical errors that do not lead to serious consequences:
 - a) The errors in the inspection record are not completely rectified;
 - b) The complaints about the test result due to the unrectified mistakes made by the tester;
 - c) Do not make reports as prescribed in Point e Clause 2 Article 14 of this Circular.
- 3. Restore the validity of the Decision on appointment when mistakes errors are rectified.

4. Annul the Decision on appointment when the tester makes serious mistakes, including not satisfying the conditions prescribed in Clause 3 Article 17 and Article 17 of the Decree No. 88/2010/ND-CP or announcing incorrect test result.

The tester is banned from operation for 01 year from the day on which the Director of the Department of Crop Production decides to annul the Decision on appointment. If the tester wishes to go back to practice, it must apply for the reappointment as prescribed in Clause 1 and Clause 2 Article 13 of this Circular.

Article 16. The DUS tests run by applicants

1. Apart from the documents prescribed in Article 174 of the Law on Intellectual property, the applicant that run DUS tests on their own varieties must submit the following documents to the Department of Crop production:

- a) The detailed list of conditions for testing according to the template in Annex 11 of this Circular, in accordance with the regulations on DUS testing of each kind of plants;
- b) The testing plan according to the template in Annex 12 of this Circular.

2. The Department of Crop production shall examine the documents, carry out on-the-spot inspection where necessary, and notify the applicant that they may run the test on the registered varieties in the Notice of acceptance as prescribed in Clause 2 Article 9 of this Circular.

3. Within 30 working days from the day on which the permission for testing is signed, the applicant must report the changes of the testing plan to Department of Crop production in writing.

4. Within 45 working days from the ending day of testing, the applicant shall send the Department of Crop production the report on test results according to the template in Annex 13 of this Circular.

5. On-the-spot inspection:

- a) The Department of Crop production shall establish a Inspectorate composed on 2 – 3 persons, including at least 01 expert from a DUS tester or from an agency that specifically studies that plant variety;
- b) The Inspectorate shall assess the DUS tests at least once at an appropriate time according to the regulations on DUS testing;
- c) Inspection contents: the conformity of the applicant with the conditions for testing; the conformity of the tests being run with the testing regulations and the test result;
- d) The on-the-spot inspection record is made according to the template in Annex 9 of this Circular; the inspection record is the basis for the Department of Crop production to verify the report on the DUS test result given by the applicant, and shall be kept in the dossier of DUS test result verification.

6. Handling the inspection results

- a) When mistakes are made but the test result is not affected, such mistakes must be immediately rectified and reported to the Department of Crop production according to the template in Annex 10 of this Circular;

b) When serious mistakes prescribed in Clause 4 Article 15 of this Circular are made, the tests must be terminated in order to select another method of testing on the registered varieties.

Article 17. The deadline for submitting plant variety samples, the management and use of plant variety samples

1. The deadline for submitting variety samples, the management and use of plant variety samples are specified in the Circular No. 41/2009/TT-BNNPTNT dated July 09th2009 on the management and use of plant variety samples.

2. Within 01 year from the day on which the valid application is accepted, if the applicant fails to submit the plant variety samples to the tester, the application shall be rejected.

Article 18. Amending the plant variety patent

1. The patent holder is entitled to request the Department of Crop production to correct the errors in his name and address.

2. The patent holder that requests the amendment of the patent shall submit 01 dossier or the Department of Crop production. The dossier comprises:

a) The written request for the amendment of the Patent according to the template in Annex 15 of this Circular;

b) The original Patent;

b) The copy (authenticated or enclosed with the original for comparison) of the decision to change the name or address, or the Certificate of Business registration that records the change of the name or address, or other legal documents proving the change of the name or address of the patent holder;

d) The letter of authorization (if the dossier is submitted by the representative);

dd) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

3. Order and deadline for settlement:

a) Within 03 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 15 working days from the day on which the complete and valid dossier is received, the Director of Department of Crop production shall sign the decision to amend the plant variety patent, record it to the National Register, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed, or on the Agriculture and Rural Development Magazine. The refusal must be notified and explained in writing.

4. When the plant variety patent has errors due to the mistakes of the Department of Crop production, the Department of Crop production must reissue the patent within 03 working days from day on which the request is made (do not collect fees for reissuing the patent).

Article 19. Reissuance of the plant variety patent

1. The patent holder is entitled to request the Department of Crop production to reissue the patent in the following cases:

- a) The patent is lost;
- b) The patent is damaged or smudged or faded so that it cannot be used.

2. The patent holder that requests the reissuance of the patent shall submit 01 dossier or the Department of Crop production. The dossier comprises:

- a) The written request for the reissuance of the Patent according to the template in Annex 16 of this Circular;
- b) The letter of authorization (if the dossier is submitted by the representative);
- c) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production;
- d) The damaged or smudged or faded patent.

3. Order and deadline for settlement:

- a) Within 03 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;
- b) Within 15 working days from the day on which the complete and valid dossier is received, the Director of Department of Crop production shall sign the decision to reissue the plant variety patent, record it to the National Register. The refusal must be notified and explained in writing.

Article 20. Suspending the plant variety patent

1. Before the expiration date of the patent, a third party may submit 01 dossier to request the suspension of the patent to the Department of Crop production, for the reason that the protected plant variety no longer fulfills the uniformity and stability criteria as it did when the patent is issued as prescribed in Point a Clause 1 Article 170 of the Law on Intellectual property. The dossier comprises:

- a) The written request for the suspension of the Patent according to the template in Annex 17 of this Circular;
- b) The documents proving that the plant variety no longer fulfills the uniformity and stability criteria as it did when the patent is issued;
- c) The photocopies of the testing fee receipts and the faxes of the papers proving that money has been sent to the account of the Department of Crop production.

2. Order and deadline for settlement:

- a) Within 30 working days from the day on which the request for the suspension of the plant variety patent made by the third party is received, the Department of Crop production shall finish verifying the information in the request, and send a Notice of suspension to the patent holder if the request is reasonable; or notify the third party of the unreasonability. The request for the suspension of the plant variety patent must be made in writing, enclosed with the proof that the plant variety no longer fulfills the uniformity and stability criteria as it did when the patent is issued; the fees for retesting must be paid;

b) If the patent holder does not raise any objection within 30 working days from the day on which the notice of the suspension is made by the plant variety protection agency, the Department of Crop production shall sign the decision to suspend the plant variety patent, and notify it to the third party. The suspensions begins on the signing date of the decision to suspend the patent, and shall be posted on the website of the New Plant Variety Protection Office or on the Agriculture and Rural Development Magazine;

c) Where the plant variety patent holder lodges an objection, within 30 working days from the day on which the objection is received, the Department of Crop production shall request the patent holder to follow the procedure for retesting as prescribed in Clause 4 Article 15 of the Decree No. 88/2010/ND-CP; the retesting shall be conducted by the testers prescribed in Point a Clause 1 Article 15 of the Decree No. 88/2010/ND-CP.

If the retesting result shows that the plant variety is no longer uniform or stable as it was when the patent is issued, within 30 working days from the day on which the retesting result is given, the Department of Crop production shall initiate the procedure for suspension as prescribed in Point b of this Clause, and refund the retesting fees to the person that requested the suspension of the patent.

If the retesting result shows that the plant variety is still uniform or stable as it was when the patent is issued, within 15 working days from the day on which the retesting result is given, the Department of Crop production shall notify such result to the third party.

Article 21. Restoring the plant variety patent

1. Within 30 working days from the day on which the Director of the Department of Crop Production signs the Notice of suspension of the patent, the patent holder may send the Department of Crop production 01 dossier to request the restoration of the patent. The dossier comprises:

- a) The written request for the restoration of the Patent according to the template in Annex 18 of this Circular;
- b) The proof that the patent holder has eliminated the causes of suspension;
- c) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Deadline for settlement:

a) If the suspension is imposed because the fee for maintaining the validity is not paid, the plant variety name is not changed, to documents and propagating material are not provided: within 05 working days from the day on which the proof that the patent holder has made the rectification is provided, Director of the Department of Crop Production shall sign the decision to restore the meeting minutes, record it to the National Register, and post it on the website of the New Plant Variety Protection Office or on the Agriculture and Rural Development Magazine within 05 working days from the signing day of the decision;

b) If the suspension is imposed because the plant variety no longer fulfills the uniformity and stability criteria as it did when the patent is issued as prescribed in Point Clause 1 Article 170 of the Law on Intellectual property: within 10 working days from the day on which the patent proves that the plant variety has fulfilled the uniformity and stability criteria, Director of the Department of Crop Production shall sign the decision to restore the patent, record it to the

National Register, and post it on the website of the New Plant Variety Protection Office or on Agriculture and Rural Development Magazine within 05 working days from the signing date of the decision.

Article 22. Invalidating the plant variety patent

1. Before the expiration date of the patent, a third party may send the Department of Crop production 01 dossier to request the invalidation of the patent if there are signs of violations as prescribed in Clause 1 Article 171 of the Law on Intellectual property. The dossier comprises:

- a) The written request for the invalidation of the Patent according to the template in Annex 17 of this Circular;
- b) The proof of the reasons for requesting the invalidation;
- c) The photocopies of the testing fee receipts and the faxes of the papers proving that money has been sent to the account of the Department of Crop production (applicable to Point b and Point c Clause 1 Article 171 of the Law on Intellectual property).

2. Order and deadline for settlement:

- a) Within 05 working days from the day on which the dossier is received, the New Plant Variety Protection Office shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;
- b) IF the invalidation of the patent is requested because the plant variety does not fulfill the novelty criteria, or the patent holder is not entitled to apply: within 30 working days from the day on which the complete dossier is received, Director of the Department of Crop Production shall sign the decision to invalidate the patent, record it to the National Register, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed, or on the Agriculture and Rural Development Magazine.
- b) IF the invalidation of the patent is requested because the plant variety does not fulfill the distinctness or uniformity or stability criteria: within 10 working days from the end of verification of test results, the Director of the Department of Crop Production shall sign the decision to invalidate the patent, record it to the National Register, or reject the request for the invalidation, provide explanation, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed, or on the Agriculture and Rural Development Magazine.

Chapter III

REPRESENTATION FOR PLANT VARIETY RIGHTS

Article 23. Training in representation for plant variety rights

1. The training in representation for plant variety rights consists of 02 parts:

- a) The laws on plant variety rights, including the Vietnam's laws, International Agreements and bilateral agreements to which Vietnam is a signatory;
- b) The skills in representation for plant variety rights, including the application of law to making, submitting, and monitoring the application for plant variety rights; the general regulations on DUS testing; the skills in searching and gathering information about protection of plant varieties.

2. Director of the Department of Crop Production shall approve the training program for the representation for plant variety rights, including the training contents and period, the demands on lecturers, and the tests on the skills in representation for plant variety rights.

3. The persons that complete the training courses in laws on plant variety rights shall be issued with the Certificate of training in plant variety rights. The persons that complete the training courses in laws on representation for plant variety rights and pass the tests are considered to be proficient in representation for plant variety rights.

4. Running training courses in representation for plant variety rights:

a) The Department of Crop production shall notify the training contents, time, location, and expense to the learners;

b) The Department of Crop production shall run training courses in representation for plant variety rights and test the skills in representation for plant variety rights according to the program approved by the Director of the Department of Crop Production;

c) The Director of the Department of Crop Production shall issue the Certificates of training in plant variety rights, approve the list of people that pass the tests on representation for plant variety rights, and announce it on the website of New Plant Variety Protection Office.

Article 24. Issuance of License to represent plant variety rights

1. The persons that satisfy the conditions in Point 5 and Clause 21 Article 1 of the amended Law on Intellectual property and wish to be issued with the License to represent plant variety rights (hereinafter referred to as License for representation) shall submit 01 dossier to the Department of Crop production. The dossier comprises:

a) The written request for issuing the License for representation according to the form in Annex 19 of this Circular;

b) The photocopy of the ID card;

c) The copy of the Bachelor's degree (authenticated or enclosed with the original for comparison);

d) The photocopy of the Certificate of training in plant variety rights, or the original copy of one of the following documents: The written certification made by the training institution that the applicant has completed the undergraduate or postgraduate dissertation on plant variety rights, or the copy of the dissertation enclosed with the original for comparison; the written certification made by a competent agency that the applicant has directly verified the applications for protection in a national or international plant variety right agency, or has worked in laws on plant variety rights for at least 05 consecutive years.

dd) 02 3x4 pictures;

e) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Order and deadline for settlement:

a) If the dossier is inadequate, the Department of Crop production shall notify it to the applicant within 03 working days from the day on which the dossier is received.

b) Within 10 working days from the day on which the complete and valid dossier is received, the Director of Department of Crop production shall sign the decision to issue the License to the person that submitted the valid dossier and is in the list of people that pass the test on representation for plant variety rights, record it to the National Register of representation for plant variety rights, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed. The refusal must be notified and explained in writing.

Article 25. Revoking the License for representation

1. The License shall be revoked in the following cases:

a) The License holder violates the regulations in Clause 2 Article 38 of the Decree No. 88/2010/ND-CP or other law regulations, and competent agencies request the revocation of his License;

b) There is proof that the License is issued illegally, and its holder does not satisfy the requirements in Point 5 Clause 21 Article 1 of the Law on the revision of the Law on Intellectual property.

2. When there are grounds for revoking the License as prescribed in Clause 1 of this Article, the New Plant Variety Protection Office shall:

a) Request the Director of the Department of Crop Production to issue the Decision to revoke the License for representation at the request of the competent agency as prescribed in Point a Clause 1 of this Article;

b) Remove the name of the License holder from the National Register;

c) Announce the revocation on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed.

Article 26. Reissuance of License for representation

1. When the License is lost, damaged, smudged, or faded so that it cannot be used, or expired after 03 years, the holder may apply for the reissuance of the License as prescribed in Point a Clause 1 Article 25 of this Circular.

2. The applicant for the reissuance of the License shall submit 01 dossier or the Department of Crop production. The dossier comprises:

a) The written request for the reissuance of the License according to the template in Annex 20 of this Circular;

b) 02 3x4 pictures;

c) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

3. Order and deadline for settlement:

a) Within 03 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 10 working days from the day on which the Department of Crop production receives the complete and valid dossier, the Department of Crop production shall reissue the License for representation.

4. In case the License for representation is incorrect due to a mistake made by the Department of Crop production, it must reissue the License free of charge within 03 working days from the day on which the request is received.

Article 27. Registration of plant variety right representation service providers

1. The organization wishing to apply for the registration of the plant variety right representation service provider (hereinafter referred to as representation service provider) shall submit 01 dossier to the Department of Crop production. The dossier comprises:

a) The application for the registration of representation service providers according to the template in Annex 21 of this Circular;

b) The list of members that hold the License for representation, including the director of the organization or the director of the authorizing organization;

c) The authenticated copy of the Certificate of Business registration or Certificate of Operation registration;

d) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Order and deadline for settlement:

a) Within 05 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 15 working days from the day on which the complete and valid dossier is received, the Director of Department of Crop production shall issue the Notice of the registration of the representation service provider in the National Register of representation for plant variety rights, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed, or on the Agriculture and Rural Development Magazine. The refusal must be notified and explained in writing.

Article 28. Registration of the change of information about representation service providers

1. The representation service provider wishing to register the change of its name, address or members in the list of plant variety right representatives shall submit 01 dossier to the Department of Crop production. The dossier comprises:

a) The written request for the registration of the changes of information about the representation service provider according to template 22 of this Circular;

b) The authenticated copy of the amended Certificate of Business registration or Certificate of Operation registration of the representation service provider;

c) The decision on employment or termination of labor contracts of the members in the list of plant variety right representatives;

d) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Order and deadline for settlement:

a) Within 03 working days from the day on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 10 working days from the day on which the complete and valid dossier is received, the Director of Department of Crop production shall sign the Notice of the registration of the change of information about the representation service provider in the National Register of representation for plant variety rights, and post it on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed, or on the Agriculture and Rural Development Magazine. The refusal must be notified and explained in writing.

Article 29. Removing representation service providers

When a representation service provider violates the regulations in Clause 2 Article 37 of the Decree No. 88/2010/ND-CP and competent agencies request the removal of its name, the New Plant Variety Protection Office shall:

1. Request the Director of the Department of Crop Production to issue a decision to remove the representation service provider;
2. Remove its name from the National Register of representation for plant variety rights;
3. Announce this removal on the website of the New Plant Variety Protection Office within 05 working days from the date on which the decision is signed, or on the Agriculture and Rural Development Magazine.

Chapter IV

EXAMINATION OF PLANT VARIETY RIGHTS

Article 30. Training in examination of plant variety rights

1. The training in examination of plant variety rights consists of 02 parts:
 - a) The laws on plant variety rights, including the Vietnam's laws, International Agreements and bilateral agreements to which Vietnam is a signatory;
 - b) The skills in examination of plant variety rights, including the application of law to the determination of the protection range; the violations of the plant variety rights; the differences between considered varieties and protected varieties; the value of plant variety rights, and the damage.
2. Director of the Department of Crop Production shall approves the training program for examination of plant variety rights, including the training contents and period, the demands on lecturers, and the tests on the skills in examination of plant variety rights.
3. The persons that complete the training courses in examining plant variety rights and pass the tests are considered to be proficient in examination of plant variety rights.
4. Running the courses in examination of plant variety rights:

- a) The Department of Crop production shall notify the training contents, time, location, and expense to the learners.
- b) The Department of Crop production shall run the training courses in examination of plant variety rights and test the skills in examination of plant variety rights according to the program approved by the Director of the Department of Crop Production;
- c) The Director of the Department of Crop Production shall approve the list of people that pass the tests on the examination of plant variety rights, and announce it on the website of New Plant Variety Protection Office.

Article 31. The issuance of the plant variety right examiner's license

1. A Vietnamese citizen, capable of civil acts, reside in Vietnam, and pass the test on examination of plant variety rights, has not been penalized for the violations against the laws on intellectual property, has not violated the professional ethics, is not liable to criminal prosecution, nor convicted without having the criminal record deleted, may apply for the plant variety right examiner's license (hereinafter referred to as examiner's license)

2. The applicant prescribed in Clause 1 of this Article shall submit 01 dossier to the Department of Crop production. The dossier comprises:

- a) The written application for the examiner's license according to the template in Annex 23 of this Circular;
- b) The photocopy of the ID card;
- c) A copy (authenticated or enclosed with the original for comparison) of the Bachelor's degree in farming, agriculture, or a discipline related to plant variety;
- d) The documents, certified by competent agencies, certifying that the applicant has worked on plant varieties for at least 05 years;
- dd) 02 3x4 pictures;
- e) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

3. Order and deadline for settlement:

a) If the dossier is inadequate, the Department of Crop production shall notify it to the applicant within 05 working days from the day on which the dossier is received.

b) Within 15 working days from the day on which the complete dossier is receive, the Director of the Department of Crop Production shall issue the examiner's license according to the template in Annex 24 enclosed with this Circular, record it to the National Register of plant variety right examination; and post it on the website of the New Plant Variety Protection Office within 05 working days from the date of issue. The refusal must be notified and explained in writing.

Article 32. The revocation of the examiner's license

1. The examiner's license shall be revoked in the following cases:

- a) The holder of the examiner's license violates the regulations in Article 52 of the Decree No. 105/2006/ND-CP or other law regulations, and competent agencies request the revocation of the examiner's license;

b) There is proof that the examiner's license is issued illegally, and its holder does not satisfy the requirements in Clause 12 Article 1 of the Decree No. 119/2011/ND-CP and Clause 1 Article 30 of this Circular;

c) The holder of the examiner's license resigns.

2. Procedure for revoking the examiner's license:

Where there are grounds for revoking the examiner's license as prescribed in Clause 1 of this Article, the Director of the Department of Crop Production shall:

a) Sign the decision to revoke the examiner's license;

b) Remove the examiner's name from the National Register;

c) Announce the revocation on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed.

Article 33. The reissuance of the examiner's license

1. When the examiner's license is lost, damaged, smudged, or faded so that it cannot be used, or the revocation period is passed, its holder may apply for the reissuance of the examiner's license and submit 01 dossier to the Department of Crop production. The dossier comprises:

a) The application for the reissuance of the examiner's license according to the template in Annex 25 of this Circular;

b) The examiner's license (where it is damaged);

c) 02 3x4 pictures;

d) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Order and deadline for settlement:

a) Within 05 working days from the date on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;

b) Within 10 working days from the day on which the Department of Crop production receives the complete and valid dossier, the Department of Crop production shall reissue the examiner's license. The refusal must be notified and explained in writing.

3. In case the examiner's license is incorrect due to a mistake made by the Department of Crop production, it must reissue the examiner's license free of charge within 03 working days from the day on which the request is received.

Article 34. The Certificate of eligibility for examining plant variety rights

1. When an organization that satisfies the conditions in Clause 10 Article 1 of the Decree No. 119/2010/ND-CP wishes to be issued with the Certificate of eligibility for examining plant variety rights (hereinafter referred to as Certificate) shall submit 01 dossier together with the fee to the Department of Crop production. The dossier comprises:

a) The application for the Certificate according to the template in Annex 26 of this Circular;

- b) The copy (authenticated or enclosed with the original for comparison) of the Decision on employment or the labor contract signed with the examiner;
- c) The copy (authenticated or enclosed with the original for comparison) of the Certificate of Business registration and Certificate of science and technology activity registration or certificate of operation registration of the law-practicing organization, specifying that it is licensed to examine plant variety rights;
- d) The statistics on the premises, equipment, and database necessary for examination (the list of permissible varieties, the list of protected varieties, the technical regulations of UPOV and Vietnam);
- dd) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. Order and deadline for settlement:

- a) Within 05 working days from the date on which the dossier is received, Department of Crop production shall check the adequacy of the dossier, and request the supplementation if the dossier is not adequate;
- b) Within 15 working days from the date on which the complete and valid dossier is received, the Director of Department of Crop production shall issue the Certificate to the organization eligible for examining plant variety rights according to Annex 27 enclosed with this Circular, record it to the National Register of plant variety right examination, and post it on the website of the New Plant Variety Protection Office within 05 working days from the date on which the decision is signed. The refusal must be notified and explained in writing.

Article 35. Registering the change of information about organizations the examine plant variety rights (hereinafter referred to as examining organizations)

1. An examining organization wishing to register the change of its name, address or members in the list of examiners shall submit 01 dossier to the Department of Crop production. The dossier comprises:

- a) The written request for the registration of the change of information about the examining organization according to the template in Annex 28 of this Circular;
- b) The amended Certificate of Business registration;
- c) The decision on employment or termination of labor contracts of the members in the list of examiners;
- d) The photocopies of the receipts, or the fax of the papers proving that money has been transferred to the account of the Department of Crop production.

2. The order and deadline for changing the information about examining organizations are similar to that prescribed in Clause 2 Article 28 of this Circular.

Article 36. Removing examining organizations

1. An examining organization shall be removed when:

- a) It commit violations as prescribed in Article 52 of the Decree No. 105/2006/ND-CP and competent agencies request its removal;

b) There are grounds to assert that the Certificate of eligibility for examining plant variety rights is issued illegally and its holder does not satisfy the conditions in Clause 10 Article 1 of the Decree No. 119/2010/ND-CP;

c) The examining organization resigns.

2. The procedure for removing examining organizations

Where there are grounds for removing a examining organization as prescribed in Clause 1 of this Article, the Director of the Department of Crop Production shall:

a) Sign the decision to remove the examining organization;

b) Remove its name from the National Register of plant variety right examination;

c) Announce the revocation on the website of the New Plant Variety Protection Office within 05 working days from the day on which the decision is signed.

Chapter V

REGULATIONS ON THE IMPLEMENTATION

Article 37. Regulations on the implementation

1. This Circular takes effect on April 13th 2013.

2. The Director of the Department of Crop Production, the Chief of the Ministry Office, Directors of Ministerial units, relevant organizations and individuals are responsible for the implementation of this Circular.

3. Organizations and individuals are recommended to report the difficulties arising during the course of implementation to the Ministry of Agriculture and Rural development (the Department of Crop production) for resolution./.

**PP THE MINISTER
DEPUTY MINISTER**

Bui Ba Bong