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IP Law

Protection of new varieties of plants under WTO requirements

By Ms Nguyen Nguyet Dzung

Following the country's joining the World Trade Organization ("WTO"), Vietnam became the sixty-third member of the International Union for the Protection of New Varieties of Plants ("UPOV") as of 24 December 2006. This article introduces some information on the UPOV itself and the potential influence of membership in the Convention on developing countries such as Vietnam.

UPOV is an intergovernmental organization which is based in Geneva. Set up in 1961, UPOV by its very nature, seeks to protect and strengthen research in plant genetics. Its primary aim is to promote plant breeders' rights and privileges. The purpose of the UPOV Convention is to encourage the development of new varieties of plants by granting breeders an intellectual property right on the basis of a set of clearly defined principles. To be eligible for protection, varieties need to satisfy certain conditions, such as being distinct from existing or commonly known varieties and being sufficiently uniform and stable. New varieties of plants are one of the most powerful tools to enhance food production in a sustainable way, to increase income in the agricultural sector and to contribute to overall economic and social development.

To date membership of UPOV comprises Albania, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Estonia, European Community, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan and Vietnam (as of December 24, 2006).

The main advantage of joining the UPOV Convention is the possibility of profiting from the rich experience developed under the UPOV Convention, particularly from the technical guidelines adopted, as well as from the technical assistance that the Convention could provide. The UPOV system has some undeniable benefits, if compared with the patent system. Vietnam is among the countries which signed the UPOV Act 1991. This provides an excellent basis for understanding and cooperating with other countries that want to take steps to protect breeders' rights.

However, one element that needs to be considered are the provisions regarding farmers' rights and/or farmers' privileges. Under UPOV, there are no formulations for farmers' rights but only breeders' exemptions are available. The use of farm-saved seed and non-commercial movement of seed within a community in some cases should be unrestricted or, at least not so restricted. In many developing

countries it is considered that some of the provisions of the UPOV system with regards to breeders' exemptions (mainly as specified in the UPOV Act 1991) are suitable only for countries where farm households are being increasingly replaced by large scale agri-business companies. Those breeders' exemption provisions pose a threat to countries where farming is both a way of life and the means of livelihood for millions of small families as is the case in Vietnam. Under the UPOV system, the exchange of seeds on a regular basis for propagating purposes and facilitating crop and variety rotation is limited since farmers may only propagate the protected variety *on their own holdings* being the product of the harvest which they have obtained by planting, *on their own holdings*. Thus, the system does not meet the need of seed exchange, which is a common practice in most developing countries like Vietnam.

Being an agricultural country, a *sui generis* system for plant variety protection should be developed in Vietnam in such a way as to facilitate the realization of *farmers' rights*, i.e., the privilege of farmers and their rights to exploit varieties developed, planted, and/or conserved by them. Farmers should have rights to save, use, sow/plant, re-sow/re-plant, exchange, share, and sell farm produce harvested from a protected variety except sale for commercial purposes. The concept of *farmers' rights* counterbalances to a certain extent the intellectual property rights over plant varieties (i.e. *breeder's rights*). The *breeder's rights* were designed to compensate for the latest innovations but do not give enough consideration to the fact that, in many cases, these innovations are only the last step of cumulative knowledge and inventions carried out by many generations of human beings over millennia in various parts of the world. Recognizing *plant breeder's rights*, without reciprocal recognition of *farmers' rights* and the related benefits and compensation due to countries/communities providing the biological diversity, could set up difficult barriers preventing access to genetic resources.

WTO and UPOV membership will signify the full integration of Vietnam into the world economy. But it will also undoubtedly bring changes to the economy and society to the country. Making a law comply with the international obligations is only the first step. Becoming an element of the system is the next. But implementing the law and making the system work will require considerable efforts in terms of manpower and time, as well as money. We hope that being a member of the UPOV will help Vietnam to effectively implement and enforce its breeders' right system through international cooperation and powerful technical guidelines and assistance.

Other Sectors

Taxation

- Government's Decree 24/2007/ND-CP, dated February 14, 2007, with detailed regulations on the implementation of the Law on corporate's income tax.

Finance - Banking

- Decree 27/2007/ND-CP, dated February 23, 2007 on electronic transactions in financial activities.
- The Government issued Decree 35/2007/ND-CP, on March 08, 2007, on electronic transactions in banking activities.
- Circular 01/2007/TT-NHNN, dated March 7, 2007, of the State Bank of Vietnam guiding the implementation of Decree 161/2006/ND-CP, dated December 28, 2006 regulating the payment in cash.

Securities

- On March 08, 2007, the Government issued Decree 36/2007/ND-CP dealing with administrative violations in the field of securities and securities market.
- Decision 12/2007/QD-BTC, dated March 13, 2007 of the Ministry of Finance stipulating Regulations of corporate governance applied to enterprises listed in Stock Exchange/Securities Trading Centres.
- On March 13, 2007, the Ministry of Finance issued Circular 18/2007/TT-BTC guiding the purchase and resale of shares and some cases of additional issuance of shares by public companies.

Insurance

- Decree 45/2007/ND-CP, dated March 27, 2007 providing detailed guidelines on the implementation of a number of articles of the Law on Insurance Business.
- On March 27, 2007, the Government promulgated Decree 46/2007/ND-CP regulating the financial regime for insurance enterprises and enterprises of insurance mediation.

Trading

- Decision 26/2007/QD-TTg, dated February 15, 2007 providing detailed guidelines on the implementation of the Law on Electronic Transactions in relation to digital signature and certification service for digital signature.
- On February 15, 2007, the Prime Minister issued Decision 27/2007/QD-TTg on the approval of projects in respect of the development of domestic trading to 2010 and orientation to 2020.
- Decision 11/2007/QD-NHNN, dated March 15, 2007, of the State Bank of Vietnam on the amendment of and supplement to Decision 3/2006/QD-NHNN, dated January 18, 2006, of the Governor of the State Bank of Vietnam on trade in gold in off-shore accounts.

Import - Export

- On March 16, 2007, the Government issued Decree 40/2007/ND-CP regulating the determination of customs values for imported and exported goods.
- Decision 09/2007/QD-BTC, dated March 6, 2007, of the Ministry of Finance providing the rates of import duty applied to a number of items subject to Code 2710 in the List of preferential import duties.
- On February 1, 2007, the Ministry of Trade issued Decision 05/2007/QD-BTM on amendment of Annex 3 of Regulations on the grant of Vietnam's Certificates of Origin – Form D to enjoy incentives according to “treaty on Common Effective Preferential Tariff - CEPT for the establishment of ASEAN free trade area”, which is attached to Decision 1420/2004/QD-BTM, dated October 4, 2004, of the Minister of Trade.
- Interministerial Circular 12/2007/TTLT-BTC-BTM-BCA, dated February 28, 2007, of the Ministry of Finance, Ministry of Trade and Ministry of Public Security guiding the regime of invoices and records for imported goods circulating in Vietnam's markets.

Health - Cosmetics

- On January 30, 2007, the Ministry of Health issued Decision 13/2007/QD-BYT on the amendment of Article 2 in Decision 35/2006/QD-BYT, dated November 10, 2006, of the Minister of Health stipulating Regulations on cosmetics management.
- Circular 01/2007/TT-BYT, dated January 17, 2007, of the Ministry of Health guiding the management of drugs for humans circulated via non-trading import and export.
- On January 24, 2007, the Ministry of Health issued Circular 02/2007/TT-BYT providing detailed guidelines for the implementation of a number of articles on conditions of drug trade as provided by the Law on Pharmaceuticals and Decree 79/2006/ND-CP, dated August 9, 2006 regulating in detail the implementation of a number of articles of the Law on Pharmaceuticals.

Construction

- Decree 29/2007/ND-CP, dated February 27, 2007 on the management of urban architecture.
- The Government issued Decree 41/2007/ND-CP, on March 22, 2007, on the subterranean urban construction.

- On January 23, 2007, the Ministry of Construction issued Decision 07/2007/QD-BXD stipulating Construction standards of Vietnam 386:2007 “Experimentation of fire prevention capacity, doors and anti-fire doors”.
- Circular 02/2007/TT-BXD, dated February 14, 2007, of the Ministry of Construction guiding some contents on preparation, assessment and approval of project investing in construction of works, construction licence and managing organization of project investing in construction of works as provided for in Decree 16/2005/ND-CP, dated February 7, 2005 and Decree 112/2006/ND-CP, dated September 29, 2006.

Science and Technology

- On March 2, 2007, the Government issued Decree 31/2007/ND-CP dealing with administrative violations in the field of management of dangerous chemicals.
- Circular 02/2007/TT-BKHCN, dated March 12, 2007, of the Ministry of Science and Technology guiding the implementation of a number of articles of Decree 127/2004/ND-CP, dated May 31, 2004 dealing with administrative violations in the field of science and technology.
- On February 14, 2007, the Ministry of Science and Technology issued Circular 01/2007/TT-BKHCN guiding the implementation of Decree 103/2006/ND-CP, dated September 22, 2006 providing detailed regulations and guidelines on the implementation of a number of articles of the Law on Intellectual Property in relation to intellectual property.

Miscellaneous

- Decree 28/2007/ND-CP, dated February 26, 2007 providing detailed regulations and guidelines on the implementation of a number of articles of the Law on Lawyers.
- On March 01, 2007, the Government issued Decree 30/2007/ND-CP regulating the lottery business.
- Decree 37/2007/ND-CP, dated March 9, 2007 providing detailed regulations and guidelines on the implementation of a number of provisions on transparency of property and income.
- On February 27, 2007, the Ministry of Natural Resources and Environment issued Decision 07/2007/QD-BTNMT stating the economic-technical norm in respect of registration of the land-use rights, filing of land surveying dossiers and grant of certificates of land-use right.

- Decision 05/2007/QD-BGTVT, dated February 2, 2007, of the Ministry of Circulation and Transport providing the speed and distance of vehicles used on roads.
- On March 6, 2007, the Ministry of Industry issued Decision 12/2007/QD-BCN on the amendment of and supplement to a number of articles of Regulations on examination of power activities and power use and settlement of dispute arising from or relating to power purchasing contracts.
- Decision 39/2007/QD-TTg, dated March 21, 2007, of the Prime Minister on the management of fees for post and telecom services.
- The Ministry of Finance issued Decision 18/2007/QD-BTC, on March 22, 2007, on the print, issue, use and management of electronic air tickets.
- Interministerial Circular 02/2007/TTLT-BCA-BNG, dated January 30, 2007, of the Ministry of Public Security and Ministry of Foreign Affairs on the amendment of and supplement to a number of provisions of Interministerial Circular 04/2002/TTLT/BCA-BNG, dated January 29, 2002 guiding the implementation of Decree 21/2001/ND-CP, dated May 28, 2001 providing in detail the implementation of the Ordinance on entry, exit and residence of foreigners in Vietnam.
- On February 27, 2007, the Ministry of Planning and Investment, Ministry of Finance and Ministry of Public Security issued Interministerial circular 02/2007/TTLT/BKH-BTC-BCA guiding the coordination of the bodies handling business registration, tax registration and grant of seal making permits for enterprises established and operating in accordance with the Law on Enterprises.

Contact Details

Hanoi Head Office

Mr. Pham Nghiem Xuan Bac

Managing Partner

Mr. Pham Minh Hai

Partner, Consulting Practice

Ms. Le Quynh Anh

Partner, Legal Practice

Ms. Le Thi Kim Dzung

Partner, Intellectual Property Practice

Unit 308-310, 3rd Floor, Hanoi Towers

49 Hai Ba Trung Street, Hanoi, Vietnam

Tel: 84-4 934-0629 / 826-4797 Fax: 84-4 934-0631

E-mail: vision@hn.vnn.vn

Ho Chi Minh City Office

Mr. Luu Tien Ngoc

Partner, HCMC office

Mr. Andrew Hilton

Foreign Lawyer

Unit 1801, 18th Floor, Saigon Trade Centre

37 Ton Duc Thang Street, District 1, Ho Chi Minh City, Vietnam.

Tel: 84-8 823-6495 Fax: 84-8 823-6496

E-mail: hcmvision@hcm.vnn.vn

www.vision-associates.com