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## Legal news

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## INDUSTRIAL PROPERTY

### Legislators Approve Law On Intellectual Property

*By Vu Thi Hong Yen*

On November 19, 2005 at its 8<sup>th</sup> Session, the National Assembly passed the Law on Intellectual Property, marking a new phase in the development of intellectual property protection in Vietnam. The new unified Law on Intellectual Property shall become full force on July 1, 2006.

The Law on Intellectual Property (IP) is expected to meet the “sufficiency”, “comprehension” and “effectiveness” requirements of an IP law system, as required in the TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement, and enhance the enforcement of IP rights in the context of domestic high-speed socio-economical development and Vietnam’s greater international and regional integration.

The introduction of Law on Intellectual Property would greatly contribute to the promotion of technological innovation and to the transfer and dissemination of technology in Vietnam as well as to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare.

The passage of the Law on Intellectual Property would also complete the country’s preparation in terms of legal instruments in the field of intellectual property for the bidding to join World Trade Organization (WTO) in the near future.

Before the Law on Intellectual Property, the IP legal system is poorly organized, and enforcement of protecting intellectual property rights (“IPR”) has been ineffective in recent years. Those profiting from IPR violation have reaped the benefits in the confusion surrounding the conflict, loopholes and inconsistencies of legal documents concerning IPR.

The Law on Intellectual Property is comprised of 6 parts with 18 chapters and 222 articles. Generally seen, the Law on Intellectual Property comprehensively and adequately stipulates copyrights, neighbouring rights (related rights), industrial property rights, plant varieties right and the protection of those. Besides, the Law also regulates the matter of IP Representative, organization providing consultancy of and services pertaining to copyrights and neighbouring rights as well as the matter of collective management of copyrights and neighbouring rights.

The Law on Intellectual Property does more than simply bringing together current IP provisions which are scattered across a numerous laws and regulations. There are indeed laudable amendments and supplements in the Law on Intellectual Property in comparison with current IP provisions. The notable amendments can be seen in provisions of protection of copyrights, neighbouring rights, plant varieties rights, geographical indications and some other provisions. The Law on Intellectual Property also regulates limits to IPR in order to minimize the abuse of IPR by their owners.

Remarkably, the Law on Intellectual Property focuses on provisions of protection of IPR (basically akin enforcement of IPR) that are grouped in a separate part, the Part Fifth in the Law on Intellectual Property, with 3 chapters and 21 articles.

In Vietnam, counterfeiting appears in almost business sectors. A broad range of products is now being targeted by counterfeiters, from simple consumable products to hi-tech apparels, especially electronics, foodstuffs, pharmaceuticals, cosmetic products, and toys. Foreign-invested businesses are favourite targets for counterfeiters due to their high-quality products with attractive designs and famous brands. A majority of more than 400 cases of IP violations brought to the National Office of Intellectual Property of Vietnam ("the NOIP") in the year 2004 were related to foreign-invested enterprises' products. Of these 65 percent violated trademark rights, 25 percent on industrial design rights and 10 percent on other IP rights<sup>1</sup>.

It is undoubted that provisions on protection of IPR receive a special attention from IP community throughout the 10 drafts of the Law on Intellectual Property. These provisions are varied in each draft of Law on Intellectual Property and the legislators can only mould them in the two nearest drafts.

Noteworthy, the Law on Intellectual Property focuses on reinforcing various enforcement measures to ensure the effective protection of IP rights, namely civil procedures and remedies, provisional measures and introduces for the first time the administrative preventive measures.

Previously, civil procedures and remedies of protection of civil rights as well as provisional measures, which are regulated in Civil Procedures Code, are similarly applied as civil procedures and remedies for protection of IP rights. In accordance with the Law on Intellectual Property, civil procedures and remedies and provisional measures are adapted so as to be effectively applied in the settlement of IP infringement. Accordingly, IPR holders can initiate a lawsuit with the Courts against infringements and the following civil remedies can be applied by the Courts to sanction infringers and deter further infringements:

- Compelling desist of the infringing act;
- Compelling public rectification and apology;
- Compelling fulfilment of civil obligations;
- Compelling payment of damages; and
- Compelling destroying or compelling distribution or put into use for non-commercial purpose of goods, materials and implements used for creating intellectual property right infringing goods.

In case where there is likelihood that infringement may cause unrecoverable damages to IPR holders or there is an urgent needs to timely prevent infringed articles or evidences from being dispersed or destroyed by infringers, IPR holders, during the course of or at the time of commencement of civil proceedings, can request the Courts to apply provisional measures. Such provisional measures, however, could be applied *ex officio* by the Courts in a case it deems appropriate. Of note, apart from provisional measures

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<sup>1</sup> Source: The presentation of the NOIP's Deputy Director at the first meeting of the Vietnam Anti-Counterfeiting and Intellectual Property Protection Association of Foreign-Invested Enterprises (VACIP) on April 12, 2005 in Hanoi.

provided in the Law on Intellectual Property, IPR holders can request the Courts to apply provisional measures stipulating in the Civil Procedures Code.

In case IP infringements caused damages to IPR holders, the latter can request the Courts to order infringers to pay compensation. The requester shall have an obligation of providing evidences enabling the determination of actual damages, comprising material damage and moral damage (if any) that caused by infringements. However, the Law on Intellectual Property caps the low level of compensation payable for IPR holders whose IP rights are infringed, with the amount of 500 million VND in case of material damage which can not be determined by IPR holders or 50 million VND in case of moral damage. It is evident that in some cases, it may not be fair to compensate for IPR holders with such a small amount while the prestige and fame, which has been built up for decades or even centuries, associated with their IP valuable assets are actually spoiled.

Apart from enforcing IP rights by civil procedures and remedies, IPR holders can enforce their rights by administrative procedures and measures, and if necessary request State competent enforcement authorities other than the Courts to apply administrative preventive measures in the following cases, namely (i) there exists a risk that infringement acts may cause serious damages to consumers or the public; (ii) there exists a risk that infringing articles may be dispersed or destroyed by infringers; or (iii) to ensure the enactment of administrative sanctions. These administrative preventive measures are quite similar to provisional measures that are applied only by the Courts.

In order to well implement the Law on Intellectual Property, a numerous of sub-laws such as Decree, Circular guiding and interpreting the Law are expected to be issued in the coming time, replacing current IP legal instruments.

## Other Sectors

### Accounting – Auditing

- On November 24, 2005, the Ministry of Finance issued Circular 103/2005/TT-BTC, guiding the standards and conditions of accounting software.
- Decision 87/2005/QD-BTC, dated December 01, 2005, of the Ministry of Finance, promulgating the moral code for accounting, auditing profession in Vietnam.

### Finance

- On November 23, 2005, the Government issued Decree 146/2005/QD-CP, on financial rules applicable to credit organizations.
- Decision 4526/QD-BTC, dated December 07, 2005, of the Ministry of Finance, on publicly release of data relating to state budget estimates in the Year 2006.
- Decision 92/2005/QD-BTC, dated December 09, 2005, of the Ministry of Finance, regulating the collection rate, the policy of collection, payment, management and use of fees for granting the multi-level sale organisation registration certificate.

### Banking

- On December 01, 2005, the State Bank of Vietnam issued Decision 1746/QD-NHNN, on the adjustment of rediscount interest rate, recapitalisation interest rate, and basic interest rate.
- The State Bank of Vietnam issued together with Decision 1789/2005/QD-NHNN, dated December 12, 2005, the policy on bank's accounting vouchers.

### Trading

- Decision 2772/2005/QD-BTM, dated November 21, 2005, of the Ministry of Trade, on decrease of petrol price.
- Circular 1059/TM-DM, dated November 25, 2005, of the Ministry of Trade, guiding the registration for manufacturer code for garment and textile items exported to the US market.

### Taxation

- The Ministry of Finance issued Circular 106/2005/TT-BTC, dated December 05, 2005, guiding the collection, payment, and refund of anti-dumping and anti-subsidy taxes.
- On December 08, 2005, the Government issued Decree 149/2005/ND-CP, guiding implementation of the Law on export and import duties.
- Circular 111/2005/TT-BTC, dated December 13, 2005, of the Ministry of Finance, guiding the value added tax and corporate income tax regarding insurance business.
- The Government's Decree 156/2005/ND-CP, dated December 15, 2005, on amendment of and supplementation to Decrees detailing implementation of the Law on special consumption tax and the Law on value added tax.

### Insurance

- On November 28, 2005, the Prime Minister issued Decision 310/2005/QD-TTg, approving the equitization plan on Vietnam Insurance Corporation and pilot establishment of Bao Viet Insurance – Finance Group.

### Customs

- Circular 102/2005/TT-BTC, dated November 21, 2005, of the Ministry of Finance, guiding the implementation of Regulation on operation of customs officers.
- The Government's Decree 154/2005/ND-CP, dated December 15, 2005, detailing some articles of the Customs Law relating to custom formalities, custom check and supervision.
- On the same day, the Government issued Decree 155/2005/ND-CP, on determination of customs value for imported, exported commodities.

- On December 19, 2005, the General Department of Customs issued Decision 1952/QD-TCHQ, on granting priority card on custom formalities for enterprises.

### Healthcare

- The Ministry of Health issued Decision 4472/QD-BYT, on November 23, 2005, promulgating the list of foreign enterprises, which are granted the operation licence on medicine, medicine materials.

### Labor

- On December 07, 2005, the Ministry of Internal Affairs issued Circular 130/2005/TT-BNV, guiding the retrenchment and training cost compensation rules for officials as stipulated in Decree 54/2005/ND-CP, dated April, 19, 2005.

### Transportation

- Circular 18/2005/TT-BCA-A11, dated November 23, 2005, of the Ministry of Police, guiding the implementation of a number of articles of Decree 09/2005/ND-CP, dated January 27, 2005, on sanction against administrative violation in the domain of in-land water traffic.
- The Government issued Decree 152/2005/ND-CP, on December 15, 2005, dealing with administrative violation in the field of road traffic.

### Miscellaneous

- Decision 305/2005/QD-TTg, dated November 24, 2005, of the Prime Minister, promulgating national statistical standard system.
- On November 30, 2005, the Government issued Decree 148/2005/ND-CP, on the organization and operation of Planning and Investment Inspectorate.
- Decision 330/2005/QD-TTg, dated December 13, 2005, of the Prime Minister, promulgating the Regulation on auction of state companies.
- The Government's Decree 153/2005/ND-CP, dated December 15, 2005, on the organization and operation of Agriculture and Rural Development Inspectorate.
- The Prime Minister issued Decision 337/2005/QD-TTg, dated December 19, 2005, promulgating the sample of working regulation of Ministries, Governmental Agencies.

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