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No: 15/2004/PL-UBTVQH11

## **Seed Ordinance**

Pursuant to the Constitution of the Socialist Republic of Vietnam issued in 1992 revised and supplemented following Resolution No. 51/2001/QH10 dated on December, 25th 2001 of 10th National Assembly, 10th session;

Pursuant to the Resolution No. 21/2003/QH11 dated on November, 26<sup>th</sup> 2002 by 11th National Assembly, 4th session on the Development Program of Law and Ordinance in 2004.

This Ordinance stipulates to the plant variety.

### **Chapter I General provisions**

#### ***Article 1. Regulation scope***

This Ordinance stipulate the management and preservation rules for plant genetic resources; research, selection, breeding, evaluation, on-site inspection, seed testing, release the new variety and protection of new plant varieties; selection and certification of mother trees, seed orchards, variety garden and forest; seed production and business; quality control for the seed and seedling.

#### ***Article 2. Application***

This Ordinance applies to Vietnamese organizations and citizens; foreign citizens and organizations dealing with plant variety sector within the Vietnam's territory.

In case there is the difference between the Seed Ordinance and the International agreements which are signed by the Socialist Republic of Vietnam, the International agreements will be applied.

#### ***Article 3. Definitions***

In this Ordinance, the following terms and words are defined as follows:

1. Variety is a plant grouping which is uniform for morphology and with a certain economic value. The plant grouping can be defined by the expression of characteristics resulting from a given genotype and can be distinguished from any

other plant grouping by the expression of at least one of the characteristics, which can be inherited in the next generation

Materials used for the production of agriculture, forestry and fishery are including: seed, tuber, fruit, root, plant body, branch, leaf, seedling, node, shoot, flower, tissue, cell, spore, spawn, alga and micro-alga.

2. A New variety is a distinct, uniform and stable variety which has been bred or imported and does not exist in the List of variety for production and trading.

3. A protected new variety is a new variety which has been granted a protection certificate.

4. Plant genetic resource is whole plant or any part of plant which has genetic information able to be used in breeding a new plant variety.

5. Evaluation is a process for testing of observation and estimating in a certain conditions and time in order to examine the distinctness, uniformity, value of cultivation and use of the variety.

6. Trial production is the process of propagating new variety which are passed the fundamental testing and permitted for producing in the certain area with conditions in the farmer's field.

7. On-site inspection is a process of checking the varieties on the field, terrace-field, or garden in order to determine the purity of the variety or other plant species.

8. Seed Testing is a process of analyzing quality index of seed sample in testing laboratory.

9. Open-pollinated Variety's Seed is the seed which can be used for multiplication in the next season with stable genetic.

10. Breeder seed is the open-pollinated variety's seed that is selected and bred from breeder.

11. Pre-basic seed is the seed which is multiplied from breeder seed or recovered from the seed that is produced according to the Repurification Guidelines of pre-basic seed and has the seed quality standards required for pre- basic seed.

12. Basic seed is the seed which is multiplied from pre-basic seed and has the seed quality standards required for basic seed.

13. Certified seed is the seed that multiplied from basic seed and has the seed quality standards required for certified seed.

14. Repurification of pre-basic seed is a process which selected individuals are multiplied as specific lines to ensure the genetic purity that meets quality standards required for the pre-basic seed.

15. Mother plant is a superior forest tree which is selected from natural forest, seed forest, seed forest or seed orchard for further multiplication.
16. Clone of industrial trees, perennial fruit trees, forestry trees that are excellent trees with high yield, good quality and better resistance than ones in the collection of one variety which is selected and accredited for multiplication by vegetative propagation.
17. Clone garden of industrial trees, perennial fruit trees, forestry trees is a nursery in which these plants are propagated from the best clones by vegetative propagation in order to use for the further multiplication of that variety.
18. The garden for the varieties of forest trees is the varietals garden which planted follow a certain chart of the clones or the seedlings from the seeds which harvested from selected and released mother plants.
19. Varietals forest is a forest which planted from the seedlings of mother plants but it is not planted follow decidedly diagram, or transferred from natural or planted forests which was selected and certificated.
20. A Genetically Modified Variety is a variety that has a new combination of DNA obtained by the application of modern biological technology.
21. Main crops varieties of crop which belong to important species produced in large quantity with high economic value and are subject to strict control.
22. Disguise seed means the seed that name, origin and grade has not the same what it is written on the label; The label of plant variety are the same or similar with the labels of other protected variety leading to mistakes easily.
23. Multiplication materials are whole as plant, alga, micro-alga or any part of plant such as seed, tuber, fruit, root, plant body, branch, leaf, seedlings, grafting nodes, shoots, flower, tissue, cell, spore and spawn which can be used for the propagation.
24. Novelty of a new variety means that variety have not yet been marketed in the territory of Vietnam more than one year; or in other country six years for woody and grape, and four years for other groups of plant, before the date on which the application form for registration is submitted.
25. The second new plant variety protection certificate is the second certificate that will be given to the right's holder of the new plant variety protection certificate in case the protection certificate is lost by plausible reasons. The second new plant variety protection certificate has similar contents and equal value as the first plan variety protection certificate which has been granted before.

#### ***Article 4. Operational Principles for the Seed Sector***

1. The establishment of the development strategy and the plan for development of plant varieties and seed must suit the overall socio-economic development planning of the whole country, and for each Provincial Government.
2. The Rights of Plant Breeders and the Holders of those rights will be protected by the State. The autonomy, equality, rights and legal benefits of the organizations and individuals will be promoted.
3. Seed production and seed business for the varieties belonging to major crops will be strictly managed.
4. The socialization for the task of variety will be strengthened; Good quality seed and seedlings for the demand of production development are as human health and the protection of environment and the eco-system will be ensured.
5. To apply scientific and technological advances to the research, selection, breeding, production and preservation of plant varieties; to combine modern technology with farmers experiences.
6. To preserve and exploit the plant genetic resources reasonably; To promote biodiversity; to combine the immediate and long-term interest in order to ensure common social benefits.

#### ***Article 5. The State policy for the seed sector***

1. To ensure that the development of the seed sector follows the direction of industrialization, modernization based on the strategy and plan for development.
2. To prioritize investment in the following activities:
  - a) Researching, selecting, breeding new plant varieties and maintaining the breeder's seed;
  - b) Preservation of mother trees, best clones, botanical gardens varietal forest;
  - c) Investigation, collection and preservation of the traditional genetic resources.
3. To encourage and support the organizations and individuals who are working in the areas of agricultural, forestry and aquatic production to use the varieties that have high yield, good quality are resistant to the diseases, pests and unfavourable conditions for meeting the market demand.
4. Organizations and individuals are encouraged and conditioned for investment in the collection, genetic preservation, researching, selecting, evaluation inspection, testing, production and business relating to the seed.

5. To encourage for the agriculture, forestry and fishery extension in order to strengthen then transfer of scientific and technology advances to the seed sector; to link research progress more closely to production.

6. To support the investment in the infrastructure and technical for propagation and stock of pre-basic seeds, basic seeds, mother trees, best clones, seedlings gardens, seedlings forest.

#### ***Article 6. Genetically-modified varieties***

The research, selection, breeding, testing, production, trading, use, international exchange and other activities on genetically-modified plants are stipulated by the Government.

#### ***Article 7. Responsibility of the State management in the seed sector***

1. The state management of seed sector belongs to the Government.

2. Ministry of Agriculture and Rural Development is responsible for the implementation of State management for the national agricultural and forestry varieties.

The Ministry of Fishery is responsible for the implementation of State management for the national aquatic resources.

3. Ministries and ministerial-level Offices, within their duties and rights, are responsible for the co-operation between the Ministry of Agriculture and Rural Development and Ministry of Fishery in carrying out the State management for the seed sector.

4. People's Committees are responsible for the implementation of State management functions for the seed sector in their provinces.

#### ***Article 8. Awards***

1. Organizations and individuals who make achievements in the seed sector or discover or prevent any violation which relates to the seed sector will be awarded according to provisions of law on award.

2. Organizations and individuals making excellent achievements by selecting and breeding new varieties will be honored by State.

#### ***Article 9. The actions will be prohibited***

1. To business the false seed or low quality seed.

2. To Propagate and purchase the seed which is not included in the List of plant varieties permitted for production and trading.
3. To destroy or to appropriate genetic resources, or export rare genetic resources illegally.
4. To carry out experiment on pests and diseases in the production area of varieties.
5. To prevent the legal activities on research, selection, breeding, evaluation, crop inspection, testing, production and business of seeds and seedlings.
6. To import genetic resources and produce or make business with plant varieties which damage the production, public health, environment and ecological system.
7. To publish or advertise untrue information relating to seed quality standard or a plant variety.
8. To violate the rights and legal interests of the plant breeder or the rights of the holder of a new plant variety certificate.
9. Any other actions are stipulated by law.

## **Chapter II**

### **Management and preservation of plant genetic resources**

#### ***Article 10. Management of the plant genetic resources***

1. Plant genetic resources are a national property which is managed by the State.
2. The exploitation and use of the plant genetic resources in the country's conservation areas requires the permission from Ministry of Agriculture and Rural Development, or the Ministry of Fishery.
3. Organizations and individuals are responsible to contribute to the management of plant genetic resources at the local level.

#### ***Article 11. Activities for preservation of plant genetic resources***

1. To survey and collect the plant genetic resources which are valuable for characteristics as features for each plant species.
2. The genetic resources which are defined as being valuable for any feature for each species must be carried out the long-term and safe preservation.

3. The biologic features and the value of the genetic resource must be evaluated.
4. To establish the database and information system for plant genetic resources.

***Article 12. Collection and preservation of rare plant genetic resources***

1. The collection, preservation and storage of the rare plant genetic resources at localities will be invested and supported by the State.
2. All organizations and individuals have to preserve the precious plant genetic resources according to regulations of this Ordinance and relevant law.
3. Ministry of Agriculture and Rural Development and Ministry of Fishery proclaim periodically the List of precious plant genetic resources that need be preserved.

***Article 13. Exchange of precious plant genetic resources***

1. Organizations and individuals are permitted to exchange precious plant genetic resources for research, selection, breeding, production and trading of new plant varieties according to the regulations of Ministry of Agriculture and Rural Development and the Ministry of Fishery.
2. The exchange of precious plant genetic resources must be approved by Minister of Ministry of Agriculture and Rural Development or the Ministry of Fishery.

### **Chapter III**

**Research, selection, breeding, varietal evaluation, new plant variety release; selection and release mother trees, best clones, botanical gardens and forest**

***Article 14. Research, selection and breeding of new plant varieties***

1. Every Vietnamese organization and individuals are as international organizations and individuals are entitled to research, select and breed new plant varieties in the territory of Vietnam.

The research, selection and breeding of new plant varieties must followed regulations of this Ordinance, the law on science and technology and other relevant laws.

2. The scientific and technological duties on research, selection, breeding of new plant varieties that are suitable for the requirements of each period in order to improve the yield, quality and competitive ability of agricultural, forestry and

fishery products are determined by the Ministry of Agriculture and Rural Development and the Ministry of Fishery.

***Article 15. New Plant Variety Evaluation***

1. A new plant variety that has been selected, bred or imported and which has not appeared in the List of plant varieties permitted for production and business must be evaluated and released before putting in the List.

2. Types of evaluation for the new plant varieties:

a) All the new plant varieties belonging to the List of major crop which are selected and bred in Vietnam are as the imported varieties from abroad which do not exist in the List of plant varieties permitted for production and business must be evaluated by National Evaluation;

b) The varieties belonging to other species will be evaluated by breeder and Breeder will be responsible for the results.

3. Contents of evaluation include:

a) Evaluation of distinctness, uniformity and stability (DUS test);

b) Evaluation of value for cultivation and use (VCU test).

4. Orders and procedures for National Evaluation will be carried out as follows:

a) Organizations and individuals who require an evaluation of a new plant varieties must submit the dossier for evaluation to the office which is stipulated by Ministry of Agriculture and Rural Development or Ministry of Fishery for this material.

The dossier will include: application form for evaluation; a dossier of the plant variety including name, origin, quantity, economic-technological indexes of the variety and the technical guideline for the variety;

b) Organizations and individuals who require an evaluation of a new plant variety must contract the evaluation office which mentioned in clause 1 of Article 16 of this Ordinance.

5. In cases the breeder carries out the evaluation, the testing experiment must be implemented according to the technical guidelines issued by the Ministry of Agriculture and Rural Development, Ministry of Fishery, or the breeder will contract to the evaluation office mentioned in clause 1 of Article 16 of this Ordinance.

6. Organizations and individuals who are the owners of a new plant variety must pay an evaluation fee.



7. The Ministry of Agriculture and Rural Development and the Ministry of Fishery will promulgate the List of major species, the List of plant varieties for production and business.

***Article 16. New Plant Variety Evaluation Office***

1. A new plant variety evaluation office will be recognized by the Ministry of Agriculture and Rural Development, and the Ministry of Fishery when they have satisfied the following conditions:

- a) To have the register for activities relating to the evaluation of plant varieties;
- b) To have place which is suitable for the evaluation and for the growth and development requirements of each plant species, and in accordance with regulations of laws on environment protection, the laws on aquatic as plant protection and quarantine;
- c) There is enough special equipment for evaluation requirements of each plant species;
- d) There is sufficient standard varieties in the same plant species to use as check varieties for the DUS test;
- e) To have or employ technical staffs who are trained in the procedures to evaluate the plant varieties.

2. The new plant variety evaluation office will carry out the testing according to the test guidelines for each plant species that is promulgated by Ministry of Agriculture and Rural Development or the Ministry of Fishery. Furthermore they are responsible for their test results.

***Article 17. Naming of the new plant varieties***

1. Each variety will be named with one eligible name. When that name is approved, it will become the official and unique name for use in all activities dealing with such variety.

2. The name of the variety must be distinguished easily from names of other varieties in the same species.

3. The following ways to name are not accepted:

- a) Using numbers only;
- b) Violating the social morality;

- c) Easily causing misunderstanding of specifications and characteristics of the plant variety;
- d) Being the same or similar to the trade mark as original names which are protecting for products or harvested products of such varieties.

***Article 18. Releasing new plant varieties***

1. New plant varieties used for the agriculture and forestry sectors will be released if they satisfy the following conditions:

- a) There is test report from the new plant variety evaluation office;
- b) There is a trial production result accepted by Department of Agriculture and Rural Development in province where the trial was carried out;
- c) The variety shall be designated by a denomination as stipulated in Article 17 of this Ordinance;
- d) The test and trial results will be examined and approved by a Specialized Scientific Council established by the Minister of Agriculture and Rural Development.

2. Aquatic varieties of plant will be released if they satisfy the following conditions:

- a) To have the test results of New Plant Variety Evaluation Office;
- b) The denominations are acceptable according to the Article 17 of this Ordinance.
- c) The test and trial results are examined and released by the Special Science Council established by the Minister of Fishery.

3. Based on the proposal of the Special Science Council, the decision for releasing the variety will be approved by the Minister of Agriculture and Rural Development or the Minister of Fisheries.

Exceptionally, new plant varieties will be able to be offered for release without carrying out trial production if the test results show that such varieties are excellent.

4. New plant varieties that are released will be entered in the List of plant varieties permitted for production and business.

***Article 19. Selection for and release the mother trees, best clones, varieties garden and variety forest***

1. Releasing the mother trees, best clones, variety garden and variety forest are implemented by the selection.

2. The selection and releasing variety forestry is organized by Ministry of Agriculture and Rural Development.
3. Implementing the selection and release the mother trees, best clones and variety forestry in the provinces as well as to observe, evaluate, guide the eligible use and exploitation of mother trees, best clones, variety forestry and garden are organized by Provincial Departments of Agriculture and Rural Developments.
4. Organizations and individuals who register to select mother trees, best clones, variety forestry have to pay the fee according to regulations on fee.

## **Chapter IV**

### **New plant variety protection**

#### ***Article 20. The principles for protection of a new plant variety***

1. The right Holder and Plant Breeder's Right for new plant varieties under granting a new plant variety protection certificate protected by State.
2. The State management for the protection of the new plant variety is conducted by the Ministry of Agriculture and Rural Development.
3. The protection for a new plant variety must comply with regulations of this Ordinance, the law on intellectual property and other relevant laws.

#### ***Article 21. Conditions for new plant varieties to be protected***

1. The variety belongs to one of the species in the List of protected species promulgated by Ministry of Agriculture and Rural Development.
2. Distinct, Uniform and Stable.
3. Novelty in commerce.
4. The denomination complies with Article 17 of this Ordinance.

#### ***Article 22. The person who has the right to request the granting of a protection certificate***

1. Organizations who selected and bred the new plant varieties using State budget funding or other sources.
2. Individuals who selected and bred the new plant varieties by their own efforts and financial source or other sources.

3. Persons who employed organizations or individuals to select and breed new plant varieties if the contract has no other agreements.

4. The first Organization or individual who selected and bred the new plant variety in case there are many organizations or individuals submit the dossier for protection in the same day.

In case it is impossible to identify which organization or individual is the first one who selected and bred the new plant variety, the above organizations and individuals may agreed on together or one of them submit the dossier. If they can not get agreement, the New Plant Variety Protection Office may refuse the request.

5. The first Organization or individual who submits the dossier in case there are many organizations and individuals submitting the new plant variety protection certificate for the same variety.

***Article 23. Dossier for requesting the new plant variety protection certificate***

1. The dossier for asking the new plant variety protection certificate must be submitted to the New Plant Variety Protection Office directly or it is authorized to other organizations or individuals who are their representatives.

2. The dossier for requesting a new plant variety protection certificate include:

a) The application form for a new plant variety protection certificate;

b) Documents which described the characteristics of the variety following to the format and its photo.

The dossier must be written in Vietnamese. For the foreigner organizations or individuals, the Vietnamese and English dossier must be submitted together.

3. The date for the submission and application form's number will be certified by the New Plant Variety Protection Office in case the dossier are suitable for the regulations of clause 2 in this Article,.

***Article 24. Order and procedures for granting of the new plant variety protection certificate***

1. The examination of the dossier and organizing the variety examination for the New Plant Variety Protection Certificate will be carry out by New Plant Variety Protection Office following the regulations stipulated in Article 25 and Article 26 of this Ordinance, then requesting the Minister of Agriculture and Rural Development to grant the certificate.

2. The consideration for granting the Protection Certificate will be decided by Minister of Agriculture and Rural Development if the variety satisfies all the conditions of Articles 21, 22, 23, 25 and 26 in this Ordinance.

According to the request of owner of new plant variety protection certificate, Ministry of Agriculture and Rural Development will consider and decide to grant a second one in the new plant variety protection certificate.

***Article 25. Examination of the dossier for a new plant variety protection certificate***

1. Within 15 days from the date on which the dossier for new plant variety protection certificate was submitted, the New Plant Variety Protection Office must determine the validity of the dossier; if the dossier are not valid, the Office must notify the applicant. Within 30 days from the date of receiving such notice, the applicant must complete the dossier in accordance with regulations; if the dossier is still not valid, the New Plant Variety Protection Office will not accept it.

The date of submission of a valid dossier is the date on which the dossier is accepted by New Plant Variety Protection Office.

2. The dossier will be examined by New Plant Variety Protection Office within 90 days from the date on which the applicant submitted.

The activities for examination of the dossier will include:

- a) To determine the eligibility of the applicant;
- b) To determine the eligibility of new plant variety within the List of protected plant species are stipulated in clause 1 of Article 21 of this Ordinance; c) To determine the suitability of the variety to the international treaties which signed or joined by Socialist Republic of Vietnam;
- d) To examine the suitability of the variety for the regulations of law in the field of secret which stipulated by the State;
- e) To determine the commercial novelty in of the plant variety;
- f) To determine the denomination of variety according to the regulations in Article 17 of this Ordinance.

3. The New Plant Variety Protection Office can ask the Applicant to make an amendment during the process of examination; The dossier may be rejected if the corrections are not done as requested given by New Plant Variety Protection Office.

4. The valid dossier will be published in the specialized journal as well as informed to the applicant to send the propagated material to the evaluation office which is regulated in Article 26 of this Ordinance.

***Article 26. Evaluation and Examination of the new plant variety for granting a protection certificate***

1. The applicant must submit the propagation material to the evaluation office within 15 days from the date of receiving a notice by the New Plant Variety Protection Office.
2. The DUS test will be carried out by the evaluation office follow the Test Guidelines of each species which are promulgated by Ministry of Agriculture and Rural Development.
3. The DUS test results form evaluation office will be examined by the New Plant Variety Protection Office.
4. After finishing the examination of DUS test results, the New Plant Variety Protection Office will be responsible for:
  - a) Announcing their intention to grant a new plant variety protection certificate in the specialized journal on three successive editions;
  - b) To complete the procedures for advising the Minister of Agriculture and Rural Development to grant a new plant variety protection certificates within 30 days after the date of announcing their intention to grant a new plant variety protection certificate on the third specialized journal, if there are no objections against such notices in a written document. If there are objection against, within 30 days from the date of receiving such objections, the New Plant Variety Protection Office must consider them and declare the conclusions;
  - c) In case there are not sufficient basis for granting a protection certificate, the New Plant Variety Protection Office will publish this in the specialized journal in three times and inform the applicant of the reasons.
5. Within 30 days after the date of receiving the notices mentioned in item b and c of clause 4 in this Article, the applicants can appeal in writing to the Minister of Agriculture and Rural Development for their new plant variety protection certificate are not granted.
6. Varieties which receive a protection certificate will be published on the specialized journal by New Plant Variety Protection Office after the decision of Minister of Agriculture and Rural Development.

***Article 27. Scope of the Holder's Right of new plant variety protection certificate***

1. To permit or forbid the use of their multiplication materials of the protected variety, or harvested products resulting from the protected varieties in the following activities:

- a) Production or multiplication of varieties;
- b) Processing of varieties;
- c) Offering for sale;
- d) Selling or other forms of exchange;
- e) Exporting;
- f) Importing;
- g) Stocking in order to implement activities mentioned in a, b, c, d and e of this item.

2. Acts which violate the rights of the Protection Certificate Holder will be punished by the authorized office.

3. Outside the rights of the certificate holder Which are stipulated in Item 1, 2 of this Article, the Holder of the right for a protection certification also has the right for benefits in the following cases:

a) A certain plant variety is bred from protected varieties of the protection certificate holder by any person in case variety of the protection certificate holder are not bred from other protected variety;

b) A plant variety is bred by any person which is not clearly distinct from protected variety of protection certificate holder;

c) A plant variety is bred by any person in which the production of such variety requires repeated use of multiplication materials of protected varieties of the protection certificate owners;

d) Use multiplication materials of protected varieties of new plant variety protection certificate owners to produce variety for commercial purpose in another country where such variety does not hav protection.

4. To exploit the new plant variety or transfer such right to other organizations or individuals through the contract by their-self. The contract of exploitation transfer of new plant variety must in writing and registered at the New Plant Variety Protection Office.

5. To inherit and transfer the Right's Holder of a new plant variety protection certificate according to regulations of law in case the Holder is a breeder; To transfer the Right's Holder of new plant variety protection certificate in case the Holder is not a breeder.

***Article 28. Limitations of the Right's Holder of a new plant variety protection certificate***

1. A new plant variety protection certificate holder can use exploitation right for commercial purpose only when such variety belongs to the List of plant varieties for production and business.

2. For the benefit of National or public, Minister of Agriculture and Rural Development makes a decision for a compulsory license for the new plant variety that is protected, and adds the variety to the List of plant varieties for production and business if it did not exist in this List before.

Organizations and individuals who receive the right of exploitation for the new plant variety by transfer must pay an exploitation fee to the new plant variety protection holder according to the contract.

***Article 29. Cases of not paying to the Right's Holder of new plant variety protection***

1. Organizations and individuals using protected variety do not have to pay the fee to Right's Holder of new plant variety in the following cases:

a) Breeding for the purpose of scientific research;

b) Use for personal needs without commercial purpose;

c) Seed or propagation materials which is sold in the market by the new plant variety protection certificate holder.

2. Households and individuals using propagation materials of the protected variety to multiply the variety by themselves in order to plant that variety for the next season in their land or water area.

***Article 30. Obligations of new plant variety protection certificate owners***

1. To maintain the multiplication materials of protected varieties and provide such materials upon request of authorized office in directly or authorize to another person to do this.

2. To pay the fees and annual fee for protection of new plant variety according to the regulations.

3. To pay the compensation to the breeder in case the breeder themselves are not owner and if there is no any agreement between the owner and the breeder. If the owner are foreign organization or individual who registers for protection in Vietnam, paying compensation to the breeder will be implemented according to the regulations of such foreign country.



***Article 31. Rights and obligations of new plant variety breeder***

1. A new plant variety breeder who themselves are new plant variety protection certificate owners will have the following rights and obligations:

- a) To be named in the new plant variety protection certificate;
- b) To have the rights of new plant variety protection certificate owner are mentioned at Article 27 in this Ordinance;
- c) To have obligations of new plant variety protection certificate owner those stipulated at clause 1 and clause 2 of Article 30 in this Ordinance.

2. A new plant variety's breeder who is not a new plant variety protection certificate owner will have the following rights and obligations:

- a) To be named as a breeder on new plant variety protection certificate;
- b) To get compensation from new plant variety protection certificate owner according to the regulations at clause 3 of Article 30 in this Ordinance;
- c) To request to the authorization to settle for the infringements stipulated in item a and b in this paragraph;
- d) To help the protection certificate owner to implement their obligations of maintaining multiplication materials of protected new plant variety.

***Article 32. Priority rights of determining the date for submitting a valid dossier***

1. The owner of a new plant variety who submits an application form for new plant variety protection at a foreign country which has signed or joined the international treaty together with Vietnam on protection of new plant variety, within 12 months from the date on which they submit the dossier in such country, they submit the application form in Vietnam will have the priority right to be determined by the date of submitting the valid dossier.

The date of submitting valid dossier in foreign countries is the date of submitting valid files in Vietnam.

2. Within 90 days from submitting dossier in Vietnam, the new plant variety owner must provide the copy of the first application form that were submitted for protection in foreign countries with by the authorization office that received them, plant variety samples and other evidence to prove that the variety is the same in the two application forms. In the dossier submitted in Vietnam, there must be the request of priority rights for determining the date of submitting the valid dossier.

***Article 33. Duration of the Breeder's Right***

1. Duration for protection is 20 years for the new plant varieties, 25 years for woody plants and grapes.

2. Duration for protection is from the date which the dossier for new plant variety protection certificate are accepted as a valid dossier by the New Plant Variety Protection Office.

***Article 34. Cancellation of the effectiveness for a new plant variety protection certificate***

1. The effectiveness for new plant variety protection certificate is cancelled by Minister of Agriculture and Rural Development.

2. The effectiveness for new plant variety protection certificate will be cancelled when there is one of the following cases:

a) The Uniformity and Stability did not meet the standard at the date when the protection certificate was granted;

b) The documents and propagation material for maintaining and stocking the variety are not supplied by right holder when requested by the authority;

c) After three months from the date on which the next fee has to be paid, the new plant variety owner does not pay the fee to maintain the effectiveness of protection certificate.

3. During the time of cancellation of the effectiveness of the certificate, the new plant variety owner will not have the rights stipulated at Article 27 and clause 1 of Article 28 in this Ordinance.

4. The effectiveness of a new plant variety protection certificate will be recovered if the owner overcomes the reasons for cancellation stipulated in this Article.

***Article 35. Nullity the effectiveness of new plant variety protection certificate***

1. Minister of Agriculture and Rural Development has the right to nullify the effectiveness of a new plant variety protection certificate.

2. The effectiveness of new plant variety protection certificate will be nullified when one of the following cases apply:

a) The new plant variety protection certificate owner request by himself for nullification;

b) There is any evidence to prove that the new plant variety protection certificate owner is not an eligible person who has the right for granting the protection certificate according to regulations of law;

c) At the date on which the protection certificate was granted, the plant variety was not novelty for commercially or was not distinct.

## **Chapter V**

### **Production and business of plant varieties**

#### ***Article 36. Conditions for production and business of the major plant species***

1. Organizations and individuals who would like to produce the major crops for commercial purposes must satisfy the following conditions:

- a) To have the register for business on plant variety;
- b) To have the production location that is eligible to the planning of agriculture and fishery sectors. Furthermore it must be suited to the production demand of each variety as well as the level of the variety and in accordance with regulations of law on environment protection, the law on plant protection and quarantine, or the law on fishery;
- c) To have enough facilities and technical equipment that are eligible with the technical process for production of each variety type of variety grade promulgated by Ministry of Agriculture and Rural Development, Ministry of Fishery;
- d) Have or employ technical staffs who are trained on technical of plant cultivation, plant protection or fishery.

2. Organizations and individuals who would like to make business for the major crops must satisfy the following conditions:

- a) To have the business license in which including the plant variety;
- b) To have the place for trading, facilities and technical equipment that are eligible with the trade of each variety type and variety grade;
- c) To have capable technical staffs who can identify the types of trading varieties and have good skill at technical on seed preservation;
- d) Having or employ the testing staffs and equipment for testing of quality of trading for variety.

3. Households or individuals who produce and trade in major crops and do not belong to a person that has to register for business do not have to obey regulations stipulated in clause 1 and clause 2 of this Article, but must ensure the quality of plant variety and environmental sanitation according to regulations of the law on

plant protection and quarantine, the law on environment protection and the law on fishery.

***Article 37. Production for the seed of open-pollinated variety***

1. Open-pollinated varieties of major crops in agriculture sector are produced according to the system of 4 seed grades: breeder seed, pre-basic seed, basic seed and certified seed. Lower grade seed must be propagated from higher grade seed according to the guidelines for production of each grade which are stipulated by Ministry of Agriculture and Rural Development.

The production of pre-basic seed will be implemented by the guideline for restoring pre-basic seed in case no breeder seed exists to multiply pre-basic seed.

2. The criteria for standards of seed grades and guidelines for multiplication and restoring pre-basic seed will be issued by Ministry of Agriculture and Rural Development.

***Article 38. Production of industrial trees, perennial fruit trees, forestry trees, ornamental and other plants***

1. Organizations and individuals who produce industrial trees, perennial trees, forestry trees and forestry trees by non-sexual methods must propagate from best clones or botanical gardens.

2. Organizations and individuals who plant and sowing for forestry seedlings must use seeds of mother trees, seed orchards or seed stands that were selected and released.

3. Organizations and individuals who produce the industrial trees, short- duration fruit trees, ornamental and other plants by non-sexual methods must follow the guidelines promulgated by the Ministry of Agriculture and Rural Development or the Ministry of Fishery.

***Article 39. Seed and seedlings Label***

1. For the seed which is included in bag for trading must be labeled with the following information:

- a) Variety name;
- b) Name and address of the seed producer who is responsible for the plant variety;
- c) Quantity;
- d) Major quality norms;

- e) Date of production, and deadline of use;
- f) Guidance on preservation and use;
- g) Country of origin for imported seed.

2. This information must be written in documents enclosed with the seed or seedlings in case the seed or seedlings are not contained in a bag for trading or if the information mentioned in clause 1 of this Article is not written fully on the label.

#### ***Article 40. Exportation of Plant variety***

1. Organizations and individuals are allowed to export the plant variety that do not exist in the List of export-prohibited plant varieties promulgated by the Ministry of Agriculture and Rural Development or the Ministry of Fishery.

2. Organizations and individuals who would like to exchange plant varieties that exist in the List of export-prohibited plant varieties to foreign countries for research purpose or other special purposes must be authorized to do so by Minister of Agriculture and Rural Development or the Minister of Fishery.

#### ***Article 41. Importation of Plant variety***

1. Organizations and individuals are allowed to import plant varieties which exist in the List of plant varieties for production and business.

2. Organizations and individuals who would like to import a plant variety that does not exist in the List of plant varieties for production and business for research, examination, trial production or other special cases must be permitted by the Minister of Agriculture and Rural Development or the Minister of Fishery.

## **Chapter VI**

### **Seed and seedlings quality management**

#### ***Article 42. Principles for management of the seed and seedlings quality***

Organizations and individuals who produce and trade the seed are responsible for quality of the seed by declaring the quality standards and seed quality that comply with the standard criteria.

#### ***Article 43. Seed Quality Standard***

1. The seed quality standard system includes:
  - a) Vietnamese standards;
  - b) Professional standards;
  - c) Standards of the producer;
  - d) International standards, regional standards and foreign standards which applied in Vietnam.
2. The authorization for promulgating the List of plant varieties that must apply standards are stipulated as follows:
  - a) The List of plant varieties that must apply Vietnam standards is issued by Ministry of Science and Technology;
  - b) The List of plant varieties that must apply sector standards is promulgated by Ministry of Agriculture and Rural Development or the Ministry of Fishery.

***Article 44. To publish the seed quality standard***

1. Organizations and individuals who produce and trade the seed that exist in the List stipulated in item a and item b of clause 2 of Article 43 of this Ordinance must publish the quality standards of such varieties; the declared standards must not be lower than standards stipulated in item a and item b of clause 1 of Article 43 of this Ordinance.
2. Organizations and individuals who publish the quality standards of plant varieties those do not exist in the List which stipulated in item a and item b of clause 2 of Article 43 of this Ordinance by themselves are encouraged by the State.
3. Order and procedures for publishing of plant variety quality standards must be done according to the regulations of law on goods quality.

***Article 45. To publish the seed quality which in accordance to the standard***

1. The promulgation for the seed quality which in accordance to the standard is done by the organizations and individuals who produce and trading plant variety must be based on one of the following foundations:
  - a) Results of quality certification by inspecting and testing agencies for plant varieties existing in the List of plant varieties those must be certificated in accordance to the standards stipulated in clause 2 and clause 3 of this Article.

b) Test Results of the organizations and individuals which they evaluate by themselves or inspection and testing agencies for plant varieties that do not exist in the List of plant varieties, must be certificated that they are in accordance with the standards stipulated in clause 2 and clause 3 of this Article.

2. The List of plant varieties must be certificated that they are in accordance with the Vietnamese standards promulgated by the Ministry of Science and Technology.

3. The List of plant varieties which must be certificated as meeting the professional standards shall be promulgated by the Ministry of Agriculture and Rural Development and the Ministry of Fishery.

4. Order and procedures for publishing plant variety quality is in accordance with the standards must be done according to the regulations of the law on goods quality.

***Article 46. The On-site Inspection and testing of plant variety quality***

1. The on-site inspection and testing of the quality for plant variety are carried out by the on-site inspection and testing service agencies.

2. The on-site inspection and testing service agencies on plant varieties must satisfy the following conditions:

a) Have the laboratory with equipments that satisfies requirements for the on-site inspection and testing plant varieties;

b) Have the equipments which can control environment conditions and safety requirements for inspection and testing plant variety;

c) Having or employ technical staffs who are trained and hold a certificate for on-site inspection and testing plant variety.

3. The on-site inspection and testing service agencies on plant variety must be responsible for their results of on-site inspection and testing.

4. Fees for on site inspection and testing plant variety quality are paid by organizations or individuals who requested for on-site inspection and testing.

5. The certification and management for the agencies who are responsible for on-site inspection and testing services will be implemented by the Ministry of Agriculture and Rural Development or the Ministry of Fishery.

***Article 47. Plant variety quarantine***

Organizations and individuals who select, breed, produce, trade and use plant varieties must comply with the regulations of the law on plant protection and quarantine.

## **Chapter VII**

### **Inspection and solving conflict**

#### ***Article 48. Seed Inspection***

Seed Inspection is professional inspection.

Organization and activities of the professional inspection on plant variety must comply with the regulation of the law for inspection.

#### ***Article 49. To solve the conflict on Plant Breeder's Right***

Any conflict for Plant Breeder's Right is solved by the Peoples Court according to the regulations of law.

## **Chapter VIII**

### **Implementation provisions**

#### ***Article 50. Implementation effectiveness***

This Ordinance will be effective from 1st July 2004.

#### ***Article 51. To guide the implementation***

The detail stipulations and arrangement for the implementation of this Ordinance will be carried out by the Government.

Hanoi, 24th March 2004

On behalf of National Assembly Standing Committee

**Chairman**

**Nguyen Van An**

(Signed)