

THE STATE PRESIDENT

ORDER No. 03/2004/L-CTN OF APRIL 5, 2004

ON PROMULGATION OF THE ORDINANCE OF THE NATIONAL ASSEMBLY
STANDING COMMITTEE

THE STATE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the Xth national assembly, the 10th session:

Pursuant to Article 19 of the Law on Organization of the National Assembly.

Pursuant to Article 51 of the Law on Promulgation of Legal Documents.

PROMULGATES:

The Ordinance on Plant Varieties,

Which was passed on March 24, 2001 by the Standing Committee of the Xth National Assembly of the Socialist Republic of Vietnam.

State president of the Socialist

Republic of Vietnam

TRAN DUC LUONG

ORDINANCE ON PLANT VARIETIES

(No. 15/2004/L - UBTVQH)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No.51/2001/QH10 of December 25, 2001 of the Xth National Assembly of the 10th session.

Pursuant to resolution No. 21/2003/QH10 of November 26,2003 of the XIth National Assembly of the 4th session, on the 2004 Law and ordinance making program.

This Ordinance provides for plant varieties.

Chapter I

GENERAL PROVISIONS

Article 1. - Scope of regulation

This ordinance provides for the management and conservation of plant gene sources, the research into selection, creation, assay, expertise, test, recognition and protection of new plant varieties; the evaluation, selection and recognition of maternal plants, initial plants, variety gardens, variety forests; the production and trading of plant varieties; and the management of quality of plant varieties.

Article 2. - Subjects of application

This Ordinance shall apply to Vietnamese organizations and individuals, foreign organizations and individuals operating in the domain of plant varieties in the Vietnamese territory.

Where international agreements which the Socialist Republic of Vietnam has signed or acceded to contain provisions different from those of this ordinance, such international agreements shall apply.

Article 3. - Interpretation of terms

In this Ordinance, the following terms are construed as follows:

1. A plant variety means a grouping of plants which are uniform and of a certain economic value, recognizable by the expression of the characteristics mandated by a genotype and distinguishable from any other plant groupings through the expression of at least one of the said characteristic, and heritable through repeated propagation.

Plant varieties used in agricultural production, forestry and aquaculture include seeds, tubers, fruits, roots, trunks, branches, leaves, saplings, grafts, buds, flowers, tissues, cells, spores, spawns, weeds, algae and microalgae.

2. A new plant variety means a plant variety newly selected, created or imported for the first time, which is distinct, uniform and stable but not yet on the list of plant varieties permitted for production and trading.
3. A protected new plant variety means a new plant variety which is granted the new plant variety protection title.
4. Plant gene source means whole living plants or living parts thereof carrying hereditary information, able to create, or take part in creating new plant varieties.
5. Assay of a new plant variety means the process of monitoring and assessing under given conditions and for a given period in order to determine the distinctness, uniformity, stability, the value of cultivation and use of a plant variety.
6. Trial production means the process of producing a new plant variety which has been assayed and permitted for production in a given area under mass production conditions.
7. Expertise of a plant variety means the process of examining the quality of the plant variety batch under production right on fields or gardens in order to identify the variety properness, hereditary purity and the level of mixture with another variety or plant species.
8. Test of a plant variety means the process of analyzing the quality criteria of the variety samples in laboratories.
9. Pure seeds means seeds which retain stable hereditary characteristics through repeated propagation.
10. Authored seeds mean pure seeds selected and created by an author.
11. Super-prototypal seeds mean seeds propagated from authored seeds or restored from seeds which are produced according to the super prototypal seed restoring process and satisfy the prescribed quality standards.
12. Prototypal seeds mean seeds propagated from super-prototypal seeds and satisfying the prescribed quality standards.
13. Certified seeds mean seeds propagated from prototypal seeds and satisfying the prescribed quality standards.
14. Restoration of super-prototypal seeds means the process of selecting individuals, propagating and selecting the typical lines of a variety, ensuring its hereditary purity satisfying the standards of super-prototypal seeds.
15. Maternal plants means the best forest plants selected from natural forests, planted forests, variety forests or variety gardens for propagation.
16. Initial plants of perennial industrial plants, fruit trees or forest plants mean plants of a yield, quality, and resistance markedly higher than those of other plants of a

variety grouping, which have been evaluated, selected and recognized for vegetative propagation.

17. Gardens of initial plants of perennial industrial plants, fruit trees, forest plants mean gardens vegetatively propagated from initial plants in service of variety production.

18. Gardens of forest plant varieties mean variety gardens planted according to a given plan with vegetative lines or nursed from seeds of the selected and recognized maternal plants.

19. Variety forest mean forests of variety plants propagated from maternal plants and grown not according to a given plan or transformed from natural forests or planted forests already evaluated, selected and recognized.

20. Varieties of genetically modified plants mean plant varieties bearing a new combination of genomes (ADN) obtained through the use of modern biological technologies.

21. Major plant varieties mean varieties of plant species commonly planted in big quantities and of a high economic value. Which need to be strictly managed.

22. Counterfeit varieties mean varieties not true to the variety names, origins and grades inscribed on their labels; with their labels being identical or similar to those of other law protected plant varieties, thereby causing confusion.

23. Propagating materials mean whole plants, weeds, algae, micro-algae or parts thereof such as seeds, tubers, fruits, roots, trunks, branches, leaves, saplings, grafts, buds, flowers, tissues, cells, spores, spawns, to be used for production of new plants.

24. Commercial novelty of plant varieties is understood as that such plant varieties have not yet been traded in the Vietnamese territory for one year, outside the Vietnamese territory for six years, for groups of timber trees and grapes, or for four years, for other plants, before the date of submission of protection registrations application.

25. Duplicates of new plant variety protection titles mean second copies granted to the owners of new plant varieties in cases where the titles of protection of new plant varieties are lost for plausible reasons. Duplicates have same contents and validity as the granted new plant variety protection titles.

Article 4. - Principles for activities related to plant varieties

1. The information of plant variety development strategies, plannings and plans must be in line with the overall socio economic development planning of the whole country and each locality.

2. The State protects the ownership and copyright over new plant varieties, promotes the autonomy and equality rights, protects the legitimate rights and interests of organizations and individuals engaged in plant variety-related activities.

3. To strictly manage the production and trading of major plant varieties.
4. To vigorously step up socialization of plant variety-related activities; ensure sufficient good quality varieties to meet the production development demands; ensure human health and protect the environment and eco-system.
5. To apply scientific and technological advances to the research into selection, creation, production and preservation of plant varieties; to combine modern technologies with people's experiences.
6. To conserve and rationally exploit plant gene sources; ensure bio-diversity; harmoniously combine short term with long-term benefits, ensure common interests of the entire society.

Article 5. - The State's policies toward plant varieties

1. To ensure the development of plant varieties along the direction of industrialization and modernization on the basis of the plant variety development strategies, plannings and plans.
2. To prioritize investment in the following activities:
 - a/ Researching into, selecting and creating new plant varieties, preserving authored seeds.
 - b/ Conserving material plants, initial plants, variety gardens and variety forests;
 - c/ Investigating, collecting and conserving gene sources of precious and rare plants.
3. To encourage and support organizations and individuals engaged in agricultural production, forestry or aquaculture to use new plant varieties of high yield, good quality and resistance to pests and unfavorable production conditions, and satisfying market demands.
4. To encourage and create conditions for organizations and individuals to invest in collecting and conserving gene sources, researching into, selecting, creating, assaying, expertising, testing, producing, and trading in plant varieties.
5. To encourage agricultural forestry and fishery promotion activities in order to quickly transfer plant variety-related technical and technological advances; to link research to production.
6. To support investment in material foundations and techniques in service propagation and preservation of super prototypal varieties, prototypal varieties, maternal plants, initial plants, forest plant variety gardens and variety forests.

Article 6. - Genetically modified plant varieties

The research into, selection, creation, experimentation, production, trading, use, international exchange of, and other activities related to, genetically modified plant varieties shall comply with the Government's regulations.

Article 7. - Responsibilities for State management over plant varieties

1. The government performs the uniform State Management over plant varieties.
2. The ministry of Agriculture and Rural Development has the responsibility to perform the State management over agricultural and forest plant varieties nationwide.

The ministry of Fisheries has the responsibility to perform the State management over aquatic plant varieties nationwide.

3. The ministries and ministerial level agencies, within the scope of their tasks and powers have the responsibility to coordinate with the Ministry of Agriculture and Rural Development or the Ministry of Fisheries in performing the State management over plant varieties.
4. The People's Committees at all levels have the responsibility to organize the performance of the State management over plant varieties in their localities.

Article 8. - Commendation

1. Organizations and individuals that record achievements in plant variety related activities or record merits in detecting or stopping acts of violation of the law provisions on plant varieties shall be commended and/or rewarded according to the law on emulation and commendation.
2. The state shall honor organizations and individuals that record outstanding achievements in the selection or creation of new plant varieties.

Article 9. - Prohibited acts

1. Trading in counterfeit varieties or plant varieties not up to the quality standards.
2. Producing, and trading in, varieties not on the list of plant varieties permitted for production and trading.
3. Destroying or misappropriating plant gene sources, illegally exporting gene sources of precious and rare plants.
4. Experimenting pests in areas under production of plant varieties.
5. Obstructing lawful activities of researching into, selecting, creating, assaying, expertising, testing, producing or trading in, plant varieties.
6. Importing gene sources, producing, trading in, plant varieties which cause harms to production, human health, the environment and ecosystem.

7. Publicizing untrue quality standards of misleading advertisements for, or false information on, plant varieties.
8. Infringing upon the rights and legitimate interests of plant variety authors or owners of new plant variety protection titles.
9. Other acts as provided for by law.

Chapter II

MANAGEMENT AND CONSERVATION OF PLANT GENE SOURCES

Article 10. - Management of plant gene sources

1. Plant gene sources constitute a national asset uniformly managed by the State.
2. Where there are demands for exploiting or using the plant gene sources in the State's conservation zones, permission of the Ministry of Agriculture and Rural Development or the Ministry of Fisheries must be obtained.
3. Organizations, individuals shall have to participate in managing plant gene sources in localities.

Article 11. - Contents of conservation of plant gene sources

1. Investigating, collecting gene sources suitable to the failure and characteristics of each plant species.
2. Conserving for a long time and safely gene sources already determined to be suitable to the specific biological characteristics of each plant species.
3. Evaluating gene sources according to biological criteria and use value.
4. Building databases and system of information on plant gene sources.

Article 12. - Collection and conservation of precious and rare plant gene sources

1. The state shall invest in and support the collection and conservation of the gene sources of precious and rare plants, the building of establishments for storing the gene sources of precious and rare plants, and the conservation of the gene sources and rare plants in localities
2. Organizations, individuals shall have to conserve the gene sources of precious and rare plants according to the provisions of this Ordinance and other relevant law provisions.
3. The Ministry of Agriculture and Rural Development, the Ministry of Fisheries shall periodically announce the lists of the gene sources of precious and rare plants to be protected.

Article 13. - Exchange of gene sources of precious and rare plants

1. Organizations, individuals may exchange gene sources of precious and rare plants in service of research into, selection, creation, production or trading of, new plant varieties according to the regulations of the Ministry of Agriculture and Rural Development or the Ministry of Fisheries.
2. The international exchange of gene sources of precious and rare plants must be permitted by the Minister of Agriculture and Rural Development or the Minister of Fisheries.

Chapter III

**RESEARCH INTO, SELECTION, CREATION, ASSAY, RECOGNITION OF,
NEW PLANT VARIETIES, EVALUATION, SELECTION AND
RECOGNITION OF MATERNAL PLANTS, INITIAL PLANTS, FOREST
PLANT VARIETY GARDENS, VARIETY FORESTS**

Article 14. - Research into, selection, creation of new plant variety

1. Vietnamese organizations and individuals, foreign organizations and individuals may research into, select and create new plant varieties in the Vietnamese territory.

The research into, the selection, creation of new plant varieties must comply with the provisions of this Ordinance, the legislation on science and technology, and other relevant law provisions.

2. The Ministry of Agriculture and Rural Development, Ministry of Fisheries shall identify the scientific and technological tasks relating to research into, selection, creation of, new plant varieties, which meet the requirements of each period in order to raise the productivity, quality and competitiveness of farm, forest and aquatic goods.

Article 15. - Assay of new plant varieties

1. New plant varieties which are selected, created or imported but not yet named in the list of plant varieties permitted for production and trading shall be put on this list only after they have been assayed and recognized.
2. Assay of new plant varieties may take the following forms:
 - a/ National assay of new varieties of plants on the list of major plant varieties which have been selected and created in Vietnam and of imported varieties not yet on the list of plant varieties permitted for production and trading
 - b/ Assay by authors themselves who bear responsibility for the results of assaying other plant varieties.
3. An assay covers the following contents:

a/ Assay of distinctness, uniformity and stability (DUS assay);

b/ Assay of the value of cultivation and use (VCU assay).

4. A national assay shall follow the following order and procedures

a/ Organizations, individuals wishing to have new plant varieties assayed shall submit assay registration dossiers to the assaying establishments accredited by the Ministry of Agriculture and Rural Development or the Ministry of Fisheries

An assay registration dossier consists of an assay registration application and the plant variety dossier clearly stating the name of the plant variety, its origin, quantity, techno economic norms and cultivation process and techniques,

b/ Organizations, individuals wishing to have new plant varieties assayed shall sign contracts with the accredited assay establishments as prescribed in Clause 1, Article 16 of this Ordinance.

5. Where authors conduct assays by themselves, they must observe the assay regulations promulgated by the Ministry of Agriculture and Rural Development, the Ministry of Fisheries or sign contracts with the accredited assay establishments as prescribed in Clause 1, Article 16 of this Ordinance.

6. Organizations, individuals being owners of new plant varieties registered for assay must bear all assay costs.

7. The Ministry of Agriculture and Rural Development and the Ministry of Fisheries shall issue lists of major plant varieties and list of plant varieties and permitted for production and trading.

Article 16. - New plant variety-assaying establishments

1. To be accredited by the Ministry of Agriculture and Rural Development or the Ministry of Fisheries, new plant variety-assaying establishments must fully satisfy the following conditions:

a/ Having registered plant variety assaying activities;

b/ Having locations suitable to the assay requirements and the growth and development requirements of each plant species, compliant with the law provisions on environmental protection, fisheries and plant protection and quarantine;

c/ Possessing specialized equipment and facilities satisfying the assay requirements for each plant species;

d/ Having standard varieties of plant varieties of the same species for use as control varieties in DUS assays

e/ Employing or hiring technicians who have been trained in plant variety assay;

2. New plant variety-assaying establishments must observe the assay regulations for each plant species, which are promulgated by the Ministry of Agriculture and Rural Development or the Ministry of Fisheries, and take responsibility for the obtained assay results.

Article 17. - Naming of new plant varieties

1. Each new plant variety shall have only one appropriate name. After being recognized, such name shall become the sole official name to be used in activities related to such plant variety.
2. The name of a variety must be easily distinguishable from the names of other plant varieties of the same species.
3. The following naming cases shall not be accepted:
 - a/ Consisting of numerals only
 - b/ Violating social ethics
 - c/ Easily causing misunderstanding with the properties, characteristics of the plant variety concerned;
 - d/ Being identical or similar to the protected trademarks or goods origin appellations of the products or to the harvested products of the plant variety concerned.

Article 18. - Recognition of new plant varieties

1. New plant varieties used in agriculture and/or forestry shall be recognized if they meet the following requirements:
 - a/ Having the assay results of the new plant variety-assaying establishments;
 - b/ Having their trial production results, which have been accepted for mass production by the provincial/ municipal Agriculture and Rural Development Services of the localities of trial production;
 - c/ Having appropriate names as prescribed in Article 17 of this Ordinance;
 - d/ Having their assay results and trial production results already evaluated and proposed for recognition by the specialized scientific council set up by the Minister of Agriculture and Rural Development.
2. New plant varieties used in fisheries domain shall be recognized if they meet the following requirements:
 - a/ Having the assay results of the new plant variety-assaying establishments;
 - b/ Having appropriate names as prescribed in Article 17 of this Ordinance;

c/ Having their assay results already evaluated and proposed for recognition by the specialized scientific council set up by the Minister of Fisheries.

3. Based on the proposals of the specialized scientific council, the Minister of Agriculture and Rural Development or the Minister of Fisheries shall consider and decide to recognize new plant varieties.

New plant varieties may be proposed for exceptional recognition without having to go through trial production if their assay results show that they are particularly outstanding.

4. New plant varieties after being recognized, shall be put on the list of plant varieties permitted for production and trading.

Article 19. - Evaluation, selection, recognition of maternal plants, initial plants, forest plant variety gardens, variety forests

1. The recognition of maternal plants, initial plants, forest plant variety gardens, variety forests shall be affected through evaluation and selection.

2. The ministry of Agriculture and Rural Development shall organize the evaluation, selection and recognition of forest plant variety gardens.

3. The provincial Agriculture and Rural Development Services shall organize the evaluation, selection and recognition of maternal plants, initial plants and variety forests within their provinces; oversee, evaluate and guide the use and rational exploitation of the recognized maternal plants, initial plants, forest plant variety gardens and variety forests.

4. Organizations and individuals registering for evaluation and selection of maternal, initial plants, forest plant variety gardens and variety forests must pay charges according to the law provisions on charges and fees.

Chapter IV

PROTECTION OF NEW PLANT VARIETIES

Article 20. - Principles of protection of new plant varieties

1. The State protects the ownership, copyright over new plant varieties in the form of granting new plant variety protection titles.

2. The Ministry of Agriculture and Rural Development is the agency performing the State management over the protection of new plant varieties nationwide.

3. The protection of new plant varieties must comply with the provisions of this Ordinance, the legislation on intellectual property and other relevant law provisions.

Article 21. - Conditions for new plant varieties to be protected

1. Being on the list of State-protected plant varieties, promulgated by the Ministry of Agriculture and Rural Development.
2. Being distinct, uniform and stable.
3. Being commercially novel.
4. Having appropriate names as prescribed in Article 17 of this Ordinance.

Article 22. - Subjects entitled to apply for new plant variety protection titles

1. Organizations that select, create new plant varieties with the State budget capital or with capital of other sources.
2. Individuals who select, create new plant varieties with their own efforts and/or capital or with capital of other sources.
3. Contract owners that hire organizations, individuals to select, create new plant varieties, unless otherwise agreed upon in the contracts.
4. Organizations or individuals that have sufficient grounds to prove that they are the first to select, create the new plant varieties in cases where many organizations or individuals submit dossiers on the same day for the same new plant varieties, where it is impossible to determine the organization or individual that is the first to select, create such new plant variety, the involved parties may reach agreement on jointly submitting the dossier or on one party submitting the dossier, if they cannot reach such agreement, the New Plant Variety Protection Office shall be entitled to reject their dossiers.
5. Organizations, individuals being the first to submit dossiers in cases where many organizations or individuals apply for new plant variety protection titles to the same new plant varieties.

Article 23. - Dossiers of application for new plant variety protection titles

1. To apply for new plant variety protection titles organizations, individuals must directly submit or authorize organizations or individuals to act as their representatives to submit, dossiers to the New Plant Variety Protection Office.
2. A dossier of application for a new plant variety protection titles consists of:
 - a/ The application for a new plant variety protection title;
 - b/ A written description of the plant variety, made according to a set form, together with photos.

Dossiers must be made in Vietnamese. Where foreign organizations or individuals apply for new plant variety protection titles, they must submit the Vietnamese language dossiers together with the English language dossiers.

3. Where a dossier application for a new plant variety protection title complies with the provisions of Clause 2 of this Article, the New Plant Variety Protection Office must give certification of the date of submission of the dossier, clearly writing the dossier's serial number.

Article 24. - Order and procedures for granting new plant variety protection titles

1. The New Plant Variety Protection Office shall evaluate the dossiers, organize the evaluation of the new plant varieties applied for protection titles according to the provisions of Articles 25 and 26 of this Ordinance and propose the Minister of Agriculture and Rural Development to grant new plant variety protection titles.

2. The Minister of Agriculture and Rural Development shall consider and decide to grant new plant variety protection titles when such new plant varieties fully satisfy the conditions specified in Articles 21, 22, 23, 25 and 26 of this Ordinance.

At the requests of the owners of new plant variety protection titles, the Minister of Agriculture and Rural Development shall consider and grant duplicates of their new plant variety protection titles.

Article 25. - Evaluation of dossiers of application for new plant variety protection titles

1. Within fifteen days as from the date of receiving the dossiers of application for new plant variety protection titles, the New Plant Variety Protection Office must certify the validity of such dossiers, where a dossier is not valid, it must notify the submitter thereof. Within thirty days as from the date of receiving notice that his/her/ its dossier is not valid, the submitter must complete his/her/ its dossier as required; if such dossier remains invalid, the New Plant Variety Protection Office shall refuse to accept it. The date of submission of a valid dossier is the date the New Plant Variety Protection Office accepts to receive the dossier.

2. The New Plant Variety Protection Office must complete the evaluation of dossiers within ninety days as from the date the valid dossiers of application for new plant variety protection titles are submitted.

The evaluation of a dossier covers:

- a/ Determining the eligibility of the dossier submitter;
- b/ Determining the compatibility of the new plant variety with the list of State-protected plant varieties as prescribed in Clause 1, Article 21 of this Ordinance;
- c/ Determining the compliance of the new plant variety to be protected in Vietnam with international agreements which Vietnam has signed or acceded to;
- d/ Determining the compliance of the new plant variety with the law provisions on protection of State secrets;

e/ Determining the commercial novelty of the plant variety;

f/ determining the appropriateness of the plant variety's name as prescribed in Article 17 of this Ordinance.

3. In the course of evaluating the dossiers, the New Plant Variety Protection Office may request the dossier submitters to correct mistakes; if the dossiers are not corrected, the New Plant Variety Office may reject them.

4. After evaluating the dossiers, if finding that they are valid the New Plant variety Protection Office shall accept them in writing, notify such acceptance in a specialized journal and to the submitters for carrying out the procedures for new plant variety assay and evaluation as prescribed in Article 26 of this Ordinance.

Article 26. - Assay, evaluation of new plant varieties applied for new plant variety protection titles

1. Within fifteen days as from the date receiving the New Plant Variety Protection Office's notices on its acceptance of the Valid dossiers, the submitters of the dossiers of application for new plant variety protection titles must submit the variety samples to the new plant variety-assaying establishments.

2. The new plant variety-assaying establishments must assay the distinctness uniformity and stability (DUS) of the new plant varieties according to the assay regulations on each plant species promulgated by the Ministry of Agriculture and Rural Development.

3. The New Plant Variety Protection Office shall evaluate the DUS assay results of the new plant variety-assaying establishments

4. After receiving the assay results, the New Plant Variety Protection Office shall have the following responsibilities:

a/ To notify its intention to grant new plant variety protection titles in a specialized journal for three successive issues;

b/ Within thirty days as from the date the notice on its intention to grant new plant variety protection titles is published for the last time in the specialized journal, if there is no written protest to carry out the procedures to propose the Minister of Agriculture and Rural Development to grant new plant variety protection titles. Where there is a protest, within thirty days as from the date of receiving the protest, the New Plant Variety Protection Office must look into it and make conclusions thereon.

c/ In cases of refusing to grant new plant variety protection titles, to notify such and clearly state the reasons therefore to the dossier submitters; and at the same time notify its refusal in the specialized journal for three successive issues.

5. Within thirty days as from the date of receiving the notices stated at Point b, Point c, Clause 4 of this Article, the dossier submitters may send written complaints to the Minister of Agriculture and Rural Development about not being granted the new plant variety protection titles.

6. After the Minister of Agriculture and Rural Development issues decision to grant new plant variety protection titles, the New Plant Variety Protection Office shall notify the new plant varieties granted the new plant variety protection titles in the specialized journal.

Article 27. - Rights of owners of new plant variety protection titles

1. To allow or disallow the use of propagating materials of the protected plant varieties, the products harvested from the cultivation of propagating materials of the protected plant varieties in the following activities:

a/ Variety production or propagation;

b/ Variety processing;

c/ Sale offer;

d/ Sale or other forms of exchange;

e/ Export;

f/ Import;

g/ Storing for the purposes of carrying out the activities stated at Points a, b, c, d, and e of this Clause.

2. To request competent bodies to handle acts of infringing upon their ownership of the new plant variety protection titles.

3. Apart from the rights defined in Clause 1 and clause 2 of this Article, the owners of new plant variety protection titles shall also enjoy benefits on the following cases

a/ Plant varieties created by anyone from their protected varieties provided that their protected varieties are not created from other protected plant varieties;

b/ Plant varieties created by anyone which are not clearly distinct from their protected plant varieties;

c/ Plant varieties created by anyone, the production of which requires the use of propagating materials of their protected plant varieties

d/ Using the propagating materials of their protected plant varieties for producing varieties for commercial purposes in other countries where such plant varieties are not yet protected.

4. To exploit by themselves or transfer under contracts the right to exploit new plant varieties to other organizations and individuals. Contracts on transfer of the right to exploit new plant varieties must be made in writing and registered at the New Plant Variety Protection Office.

5. To bequeath or transfer the right to their own new plant variety protection titles according to law provisions in cases where they are concurrently authors; to transfer the right to own new plant variety protection titles in cases where there are not concurrently authors.

Article 28. - Restriction of the rights of owners of new plant variety protection titles

1. The owners of new plant variety protection titles may exercise the right to commercially exploit the new plant varieties when such plant varieties are on the list of plant varieties permitted for production and trading.

2. For the interests of the nation or community, the Minister of Agriculture and Rural Development shall issue decisions to force the transfer of the protected new plant varieties and add names of such plant varieties to the list of plant varieties permitted for production and trading if such plant varieties are not yet included in this list.

Organizations, individuals being transferees of the right to exploit new plant varieties must pay royalties as contracted to the owners of new plant variety protection titles.

Article 29. - Cases where royalties are not required to be paid to owners of new plant variety protection titles.

1. Organizations, individuals using the protected plant varieties shall not have to pay royalties to the owners of new plant variety protection titles in the following cases:

a/ Using them for hybridization to create new plant varieties or for scientific research,

b/ Using for personal needs for non-commercial purposes;

c/ The new plant varieties or propagating materials thereof have been sold on the market by the owners of new plant variety protection titles.

2. Households, individuals using the propagating materials of the protected plant varieties for propagation for subsequent crops in the land or water surface areas under their use right.

Article 30. - Obligations of owners of new plant variety protection titles

1. To preserve directly or through other authorized persons, the propagating materials of the protected varieties and supply such propagating materials at the request of competent state bodies

2. To pay charges and fees for new plant variety protection according to the law provisions on charges and fees.

3. To pay remunerations to the authors in cases where the authors are not also owners, unless otherwise agreed upon by the owners and authors. Where the owners of new plant variety protection titles are foreign organizations or individuals having registered for protection in Vietnam. The payment for remunerations to authors shall comply with the laws of the countries of such foreign organizations or individuals.

Article 31. - Rights and obligations of author of new plant varieties

1. The authors of new plant varieties who are also owners of the protection titles of such new plant varieties shall have the following rights and obligations

a/ To have their names inscribed in the new plant variety protection titles;

b/ To enjoy the rights of new plant variety protection title owners as prescribed in Article 27 of this Ordinance;

c/ To fulfill the obligations of new plant variety protection title owners as prescribed in Clause 1 and Clause 2, Article 30 of this Ordinance.

2. The authors of new plant varieties, who are not concurrently owners of the protection titles of such new plant varieties, shall have the following rights and obligations;

a/ To have their names inscribed in the new plant variety protection titles;

b/ To receive remunerations paid by the owners of the new plant variety protection titles as prescribed in Clause 3, Article 30 of this Ordinance.

c/ To request competent bodies to handle infringements of the rights prescribed at Point a, Point b of this Clause.

d/ To assist the owners of new plant variety protection titles in performing the obligation of preserving the propagating materials of the protected new plant varieties.

Article 32. - Priority right to determine the date of submission of valid dossiers.

1. If the owners of new plant varieties, that have submitted dossiers of registration for protection of such new plant varieties in the countries which have, together with Vietnam signed or acceded to the international agreements on protection of new plant varieties, submit, within twelve months as from the date of submission of dossiers in the foreign countries, dossiers of registration for protection of such plant varieties in Vietnam, they shall enjoy the priority right to determine the date of submission of valid dossiers.

2. Within ninety days as from the date of submission of dossiers in Vietnam, the owners of new plant varieties must submit the copies of the first dossiers of registration for protection in foreign countries, with the certification of the dossier receiving agencies, and the samples of the plant varieties as evidences to prove that the new plant varieties in the two dossiers are the same. The dossiers of registration

for protection of new plant varieties in Vietnam must contain the request to enjoy the priority right to determine the date of submission of valid dossiers.

Article 33 - Duration of protection of new plant varieties.

1. The duration of protection of new plant varieties is twenty years for timber trees and twenty five years for the grapes.
2. Protection shall start from the date dossiers of application for new plant variety protection titles are accepted as being valid by New Plant Variety Protection Office.

Article 34 - Suspension of new plant variety protection titles.

1. The Minister of Agriculture and Rural Development may suspend new plant variety protection titles.
2. New plant variety protection titles shall suspend in one of the following cases:
 - a/ The plant varieties no longer satisfy the uniformity and stability standards as when being granted the protection titles;
 - b/ The owners of new plant varieties fail to supply documents and propagating materials necessary for the preservation and storage of such new plant varieties at the request of competent State bodies.
 - c/ Past three months counting from the prescribed date of subsequent payment of fees, the owners of new plant variety protection titles fail to pay fees for maintaining the validity of their new plant variety protection titles.
3. In the duration when their new plant variety protection titles are suspended, the owners of new plant varieties shall not have the rights prescribed in Article 27 and Clause 1, Article 28, of this Ordinance.
4. The new plant variety protection titles shall be considered for validity resumption when their owners remedy the causes of suspension prescribed in this Article.

Article 35 - Cancellation of new plant variety protection titles.

1. The Minister of Agriculture and Rural Development may cancel new plant variety protection titles .
2. New plant variety protection titles shall be cancelled in one of the following cases.
 - a/ The owners of new plant variety protection titles voluntarily propose the cancellation.
 - b/ There are evidences to prove that the owners of new plant variety protection titles are not eligible for being granted the new plant variety protection titles as prescribed by law.

c/ The plant varieties are not commercially novel, not distinct as determined at the time of being granted the new plant variety protection titles.

Chapter V

PRODUCTION, TRADING OF PLANT VARIETIES

Article 36. - Conditions for production, trading of major plant varieties.

1. In-order to produce major plant varieties for commercial purposes, organizations and individuals must fully satisfy the following conditions.
 - a/ Having the certificates of registration for plant variety business.
 - b/ Having locations for production of plant varieties, which are in line with the planning of the agriculture service or the fisheries service and suitable to the production requirements of each variety, each variety grade, ensure the environmental standards according to the law provisions on environmental protection, plant protection and quarantine and fisheries;
 - c/ Having material foundations and technical equipment suitable to the production process and techniques of each variety, each variety gradually promulgated by the Ministry of Agriculture and Rural Development, the Ministry of Fisheries.
 - d/ Having or hiring technicians who have been trained in techniques of cultivation, aquaculture, plant protection.
2. In order to trade in major plant varieties, organizations and individuals must fully satisfy the following conditions:
 - a/ Having the certificates of registration for trading of commodities including plant varieties.
 - b/ Having business locations, material and technical foundations suitable to the trading of each variety, each variety grade.
 - c/ Having technicians who are capable of identifying the traded varieties and firmly grasp the plant variety preserving techniques.
 - d/ Having or hiring staff and equipment for testing the quality of the traded varieties.
3. Households and individuals producing and trading in major plant varieties, which are not required to make business registration, shall now have to comply with the provisions of Clause 1 and Clause 2 of this Article but they must ensure the plant variety quality and environmental sanitation standards according to the law provisions on plant protection and quarantine, environment protection and fisheries.

Article 37. - Production of pure seeds.

1. Pure seeds of major agricultural plants shall be produced in four grades. The grade of authorized seeds, the grade of super-prototypal seeds, the grade of prototypal seeds, and the grade of certified seeds. Seeds of a lower grade are propagated from seeds of a higher grade according to the process of production of seeds of each grade, promulgated by the Ministry of Agriculture and Rural Development.

Where there exist no authored seeds for propagation of super-prototypal seeds, the production of super-prototypal seeds shall comply with the process of restoring super-prototypal seeds.

2. The Ministry of Agriculture and Rural Development shall promulgate the standards of each grade of seeds and the process of restoring super-prototypal seeds.

Article 38. - Production of perennial industrial plants and fruit trees, forest trees, ornamental plants and other plants.

1. Organizations and individuals producing perennial industrial plants and fruit trees, forest trees by the vegetative propagation method must propagate varieties from initial plants or from gardens of initial plants.

2. Organizations and individuals sowing and nursing forest trees must use seeds from maternal plants, variety gardens or variety forests, which have been evaluated, selected and recognize it.

3. Organizations and individuals producing short-term industrial plants, fruit trees, ornamental plants and other plants by the vegetative propagation method must follow the process promulgated by the Ministry of Agriculture and Rural Development or the Ministry of fisheries.

Article 39. - Labels of plant varieties.

1. For plant varieties put up in packings for trading, their packings must have labels containing the following details:

a/ The name of the plant variety;

b/ The name and address of the producing and/or trading establishment responsible for the plant variety.

c/ The quantification of the plant variety;

d/ Major quality standards;

e/ The date of manufacture, the expiry date;

f/ Preservation and use instructions.

g/ The country of manufacture for imported plant varieties.

2. For plant varieties but up in packings or with their labels not fully inscribed with the details prescribed in Clause 1 of this Article, all of these details must be printed on paper sheets accompanying the plant varieties when sold out.

Article 40. - Export of plant varieties.

1. Organizations and individuals may export plant varieties not on the lists of plant varieties banned from export, promulgated by the Ministry of Agriculture and Rural Development or the Ministry of Fisheries.

2. If organizations, individuals need to exchange with foreign countries plant varieties on the lists of plant varieties permitted for production and trading for research, assay, trial production or in other special cases, they must obtain the permission of the Minister of Agriculture and Rural Development or the Minister of Fisheries.

Chapter VI

MANAGEMENT OF THE QUALITY OF PLANT VARIETIES

Article 42. - Principles of management of the quality of plant varieties.

Organizations and individuals producing and/or trading in plant varieties must bear responsibility for the quality of the plant varieties they produce and/or trade in through publicizing the quality standards and the conformity of the quality of plant varieties with the standards.

Article 43. - Quality standards of plant varieties.

1. The system of quality standards of plant varieties consist of:

a/ Vietnamese standards,

b/ Branch standards,

c/ The unit's standards,

d/ International standards, regional standards, foreign standards applied in Vietnam.

2. The competence to promulgate the lists of plant varieties subject to the application of standards is prescribed as follows:

a/ The Ministry of Science and Technology promulgate the list of plant varieties subject to the application of Vietnamese standards;

b/ The Ministry of Agriculture and Rural Development, the Ministry of Fisheries promulgate the lists of plant varieties subject to the application of branch standards.

Article 44. - Publicization of quality standards of plant varieties

1. Organizations and individuals producing or trading in plant varieties on the lists stated to Point a, Point b, Clause 2, Article 43 of Ordinance must publicize the quality standard of the plant varieties which they produce and/or trade in, the publicized standards must not be lower than the standards prescribed at Point a, Point b, Clause 1, Article 43 of this Ordinance.

a/ The quality certification results of the expertising, testing establishments, for plant varieties on the lists of plant varieties subject quality standard conformity certification prescribed in Clause 2, Clause 3 of this Article;

b/ The results of evaluation by the organization, individuals themselves or the results of evaluation by the expertising, testing establishments, for plant varieties not on the list of plant varieties subject quality standard conformity certification prescribed in Clause 2, Clause 3 of this Article.

2. The Ministry of Science and Technology shall promulgate the list of plant varieties subject to certification of quality conformity with Vietnamese standards.

3. The Ministry of Agriculture and Rural Development, the Ministry of Fisheries shall promulgate the list of plant varieties subject to certification of quality conformity with branch standards.

4. The order and procedures for publicizing the quality standard conformity of plant varieties shall comply with the law provisions on goods quality.

Article 43. - Expertising, testing of the quality of plant varieties.

1. The expertising, testing of the quality of plant varieties shall be conducted by the establishments providing expertising, testing services.

2. The establishments providing plant variety quality-expertising, testing services must fully satisfy the following conditions:

a/ Having adequately equipped expertising laboratories satisfying the plant variety-expertising-testing requirements.

b/ Having equipment and facilities for controlling environmental conditions satisfying the plant variety-expertising, testing requirements,

c/ Having or hiring technicians who have been granted the certificates of training in expertising, testing plant varieties.

3. The establishments providing plant variety quality-expertising, testing services must bear responsibility for the results of expertise, tests conducted by themselves.

4. The expenses for expertising, testing shall be paid by the expertise, testing requesting organizations, individuals.

5. The Ministry of Agriculture and Rural Development, the Ministry of Fisheries shall recognize and manage the establishment providing plant variety quality-expertising, testing services.

Article 47. - Quarantine of plant varieties

Organizations and individuals selecting, creating, producing, trading in, and using plant varieties must comply with the law provisions plant protection and quarantine.

Chapter VII

INSPECTION AND SETTLEMENT OF DISPUTES

Article 48. - Plant variety inspectorate.

The organization and operation of the specialized plant variety inspectorate shall comply with the law provisions on inspection.

Article 49. - Settlement of disputes on copyright of plant varieties, protection of new plant varieties.

Disputes over copyright of plant varieties protection of new plant varieties shall be settled in the People's Courts according to the law provisions.

Chapter VIII

IMPLEMENTATION PROVISIONS

Article 50. - Implementation effect

This Ordinance takes effect as from July 1, 2004.

Article 51. - Implementation guidance

The Government shall detail and guide the implementation of this Ordinance.

On behalf of the National Assembly Standing Committee

Chairman

NGUYEN VAN AN