



VIETNAM

Intellectual Property Guide

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Introduction

Vietnam has been a member of the World Intellectual Property Organization (the “**WIPO**”) since 1976. It has been a contracting party to a certain number of WIPO administered treaties or conventions, including the Bern Convention (since 2004), the Brussels Convention (since 2006), the Paris Convention (since 1949), the Madrid Agreement (since 1939), the Madrid Protocol (since 2006), and the Patent Cooperation Treaty (since 1993). The intellectual property (“**IP**”) legal and regulatory framework of Vietnam was overhauled and greatly improved during its preparation for WTO accession. Most importantly, Vietnam adopted the first Law on Intellectual Property in 2005 (as initially amended in 2009). The adoption of the Law on Intellectual Property was necessary to make Vietnam compliant with the WTO’s TRIPS Agreement, to which Vietnam is a party. It was also needed for Vietnam to fulfil its commitments under the bilateral trade agreement with the US.

Over more than fifteen (15) years of implementation, the Law on Intellectual Property has revealed certain deficiencies for the effective management and enforcement of intellectual property rights (“**IPRs**”). In addition, Vietnam has negotiated and signed numerous FTAs with their own specific IP commitments, especially the CPTPP, EVFTA and RCEP). Moreover, Vietnam joined the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty at the beginning of 2022. Resultingly, the Law on Intellectual Property was revised again in 2019 and 2022 to overcome deficiencies and ensure consistency with international standards.

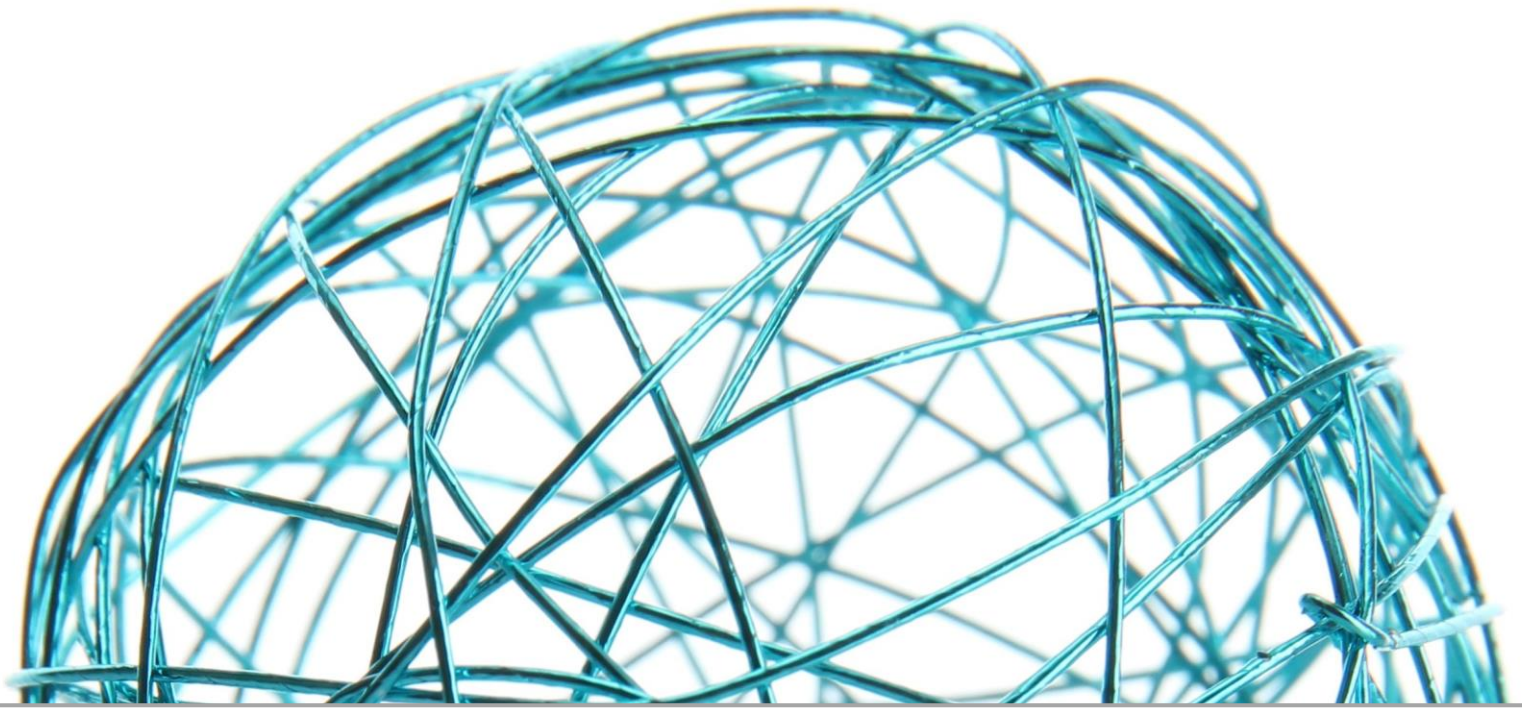
Under the 2005 Law on Intellectual Property, as amended in 2009, 2019 and 2022 (the “**IP Law**”), the IP system of Vietnam is divided into three (3) areas:

- (i) Copyright and related rights – administered by the Copyright Office of Vietnam (the “**COV**”) under the authority of the Ministry of Culture, Sports and Tourism (the “**MOCST**”);
- (ii) Industrial property rights – administered by the Intellectual Property Office of Vietnam (the “**IP Vietnam**”) under the authority of the Ministry of Science and Technology (the “**MOST**”); and
- (iii) Rights to plant varieties – administered by the Plant Variety Protection Office (the “**PVPO**”) under the authority of the Ministry of Agriculture and Rural Development (the “**MARD**”).

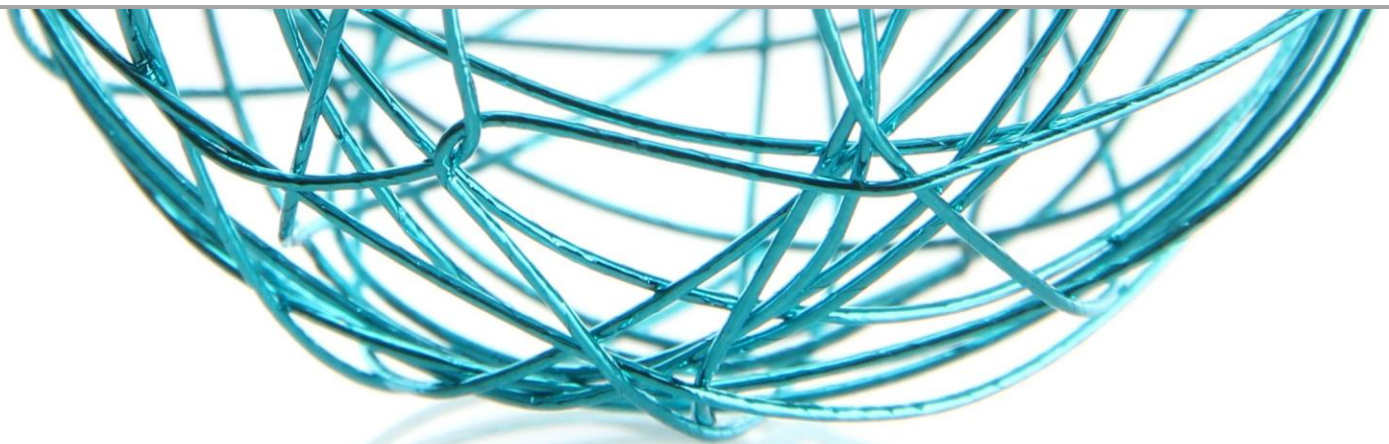
Unregistered IPRs under the IP Law comprise IPRs to copyrighted and copyright-related rights, IPRs to tradenames, and trade secrets. Registered IPRs comprise IPRs to inventions/ utility solutions, industrial designs, layout designs of semiconductor integrated circuits (the “**layout design**”), trademarks, geographical indications, and plant varieties. For registered IPRs, applications for registration of IPRs subjects shall be made to the respective administration authorities as mentioned above.

In addition, the IP Law provides for IPRs for the anti-unfair competition which shall be established on the basis of competitive activities in business.

The legal guide below provides material legal provisions on the protection of IPRs in Vietnam.



Acquisition and Maintenance / Renewal of IPRs



Patent for Invention / Utility Solution

Subject matters eligible for patentable conditions

Only technical solutions relating to a product or process aiming to solve a specific problem by utilizing the laws of nature, which comply with the patentable conditions comprising novelty, inventive nature (not required for patent for utility solution), and susceptibility of industrial application and which do not fall into the scope of subject matters excluded from patent protection, are acceptable for a grant of invention/utility solution patent in Vietnam.

The patentable conditions for invention/utility solution, i.e. having novelty, inventive nature (required for invention only) and industrial applicability are specified as follows:

- (i) An invention shall be deemed novel if (i) it was not publicly disclosed by means of use, written description or in any other way inside or outside the country, prior to the filing date or, where priority is claimed, the priority date of the patent application; and (ii) it was not disclosed in any patent application having an earlier filing date or priority date, but being published on or after the filing date or priority date of such patent application. An invention shall be deemed not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret. Exceptionally, an invention is not deemed to have lost its novelty if the person entitled to register it pursuant to Articles 86 and 86(a) of the IP Law or if the person obtaining information about the invention either directly or indirectly from the former person publicly disclosed such information, provided that a patent application is filed in Vietnam within twelve (12) months after the date of disclosure. This exception also applies to an invention disclosed in a patent application or in a patent for the invention/utility solution already published by the IP Vietnam in cases where such publication did not comply with provisions of law or the patent application was filed by a person not being entitled to register;
- (ii) An invention is deemed to be of an inventive nature if it is based on technical solutions already publicly disclosed in the form of use [or] by means of a written description or by any other form inside or outside Vietnam prior to the filing date or the priority date of a patent application in a case where such application is entitled to priority and such invention constitutes inventive progress and cannot be easily created by a person ordinarily skilled in the art. A technical solution being an invention which has been disclosed in the said exceptions as mentioned above may not be taken as the basis of grounds for assessing the inventive nature of such invention; and
- (iii) An invention shall be deemed to be susceptible of industrial application if it is possible to realize mass manufacture or production of products or repeated application of the process which is the subject matter of the invention, and to achieve stable results.

Subject matters excluded from protection as invention/utility solution patent

- (i) Discoveries, scientific theories, mathematical methods;
- (ii) Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;
- (iii) Presentations of information;
- (iv) Aesthetic solutions;

- (v) Plant varieties, animal varieties;
- (vi) Essentially biological processes for the production of plants and animals except microbiological processes; and
- (vii) Preventative, diagnostic and therapeutic methods for treatment of the human or animal body.

Patent application

- (i) Filing requirements, not exhaustive

A patent application for registration of a group of inventions/utility solutions is acceptable, provided that they have close technical association to form a single common inventive concept. Vietnam applies the Strasbourg Agreement Concerning the International Patent Classification.

For any patent application filed through a Vietnamese licensed IP agent, a power of attorney (“**POA**”) duly executed by the applicant is required. A copy of the executed POA is acceptable at the time of filing, and the original should be followed within one (1) month from the filing date.

The time limit for entering into the Vietnam National Phase under the PCT is thirty-one (31) months, computed from the earliest priority date. Meanwhile the time limit for filing subsequent patent applications in Vietnam, claiming priority under the Paris convention is twelve (12) months from the filing date of the first priority application, and in this case, a certified copy of the priority document is required.

- (ii) Examination time schedule

- Formality examination: one (1) month from the filing date. Office action: Decision on Formality Acceptance (for properly filed application) or Notification on Provisional Refusal (for improperly filed application; time limit for remedying shortcomings is two (2) months from the issuance date of the Notification on Provisional Refusal, extendable for an additional period of two (2) months);
- Publication on the National IP Gazette: nineteenth (19th) month from the filing date or priority date, where applicable (for nationally filed patent application) or second (2nd) month from the issuance date of the Decision on Formality Acceptance (for the Vietnam national phase of a PCT application);
- Substantive examination: eighteen (18) months as from the publication date or receiving date of a request for substantive examination, which is submitted within thirty-six (36) months (for utility model application) or forty-two (42) months (for patent application), subject to the later date. Office action: Notification of Grant of Patent (for patentable invention) or Notification on Provisional Refusal (for non-patentable invention; and time limit for response to the Notification on Provisional Refusal is three (3) months from the issuance date thereof, extendable for an additional period of three (3) months); and
- Grant of Patent: about two (2) months from the issuance date of the Notification of Grant of Patent, subject to the payment of granting fee.

(iii) Security control for inventions being applied abroad

In the case where an invention in the technical fields which may have affected on the Vietnam national defence and security, and are created in Vietnam and registration right for patent belongs to Vietnamese resident(s) or to an organization incorporated under Vietnamese law, the patent application for such invention in any foreign country shall be permitted only after filing patent application for the same in Vietnam.

(iv) The first-to-file principle

Where there are applications filed for the same or equivalent inventions, the patent may only be granted to the valid application submitted at the earliest filing date or priority date among applications satisfying all the conditions for the grant of a patent for invention/utility solution. In addition, where there are applications filed by different applicants for the same or equivalent inventions/utility solutions, satisfying all the conditions for the grant of a patent and having the same filing date or priority date, the patent may only be granted for the object of a single application upon the agreement of all applicants. Without such an agreement, the IP Vietnam will refuse to grant such a patent.

(v) Opposition proceedings

The time limit for submission of an opposition against the grant of patent for invention is nine (9) months as from the publication date of the patent application on the National IP Gazette. Any opposition must be made in writing and be accompanied by documents or must quote the source of information for supporting the opposition, and the opposer must pay prescribed fees or charges.

(vi) Conversion of patent application for invention into patent applications for utility solution

The applicant is allowed to convert a patent application for an invention into a patent application for a utility solution and vice versa. The conversion can be proceeded with at any time prior to any notification either for refusal or grant of a patent is made.

(vii) Provisional rights for invention/utility solution

Provisional rights are available to applicants of patent applications. Accordingly, the applicant of a patent application may notify in writing any other person (user) who has no prior user's rights (as mentioned below), but is using the same invention/utility solution for commercial purposes, clearly specifying the filing date and the publication date of the applicant's application, so that the user may consider either terminating or continuing such use. Where the user continues using such invention/utility solution, then as soon as a patent is granted to the applicant, the user may be requested to pay compensation to the patent rights owner, corresponding to the price for licensing of patent rights, the scope and duration of user's use of the patented invention/utility solution.

Granted patent for invention/utility solution

(i) Patent term and maintenance

An invention patent shall become effective on the date of issuance and end twenty (20) years from the filing date, subject to annuity payment. Meanwhile the term of an utility solution patent is ten (10) years from the filing date, also subject to annuity payment. The first annuity should be paid on the date of grant of patent while the payment of the succeeding annuities must be made within the six (6)-month period prior to the anniversary of the granting date. The grace period of six (6) months counted from the due date of annuity for the late payment of annuities is available, subject to an extra fee amounting to ten percent (10%) of the respective annuity for each month overdue.

Annuities for patents comprise the fee for maintenance of patent validity and fee for use of the patent. For pharmaceutical inventions, the fee for use of a patent will be exempted for the time of delay in procedure of granting the marketing authorization of pharmaceuticals in Vietnam for the first time for the products manufactured under the patent by the Vietnamese competent authority, provided that a confirmation of such delay by the competent authority must be submitted within twelve (12) months as from the date of obtaining the marketing authorization of products. The delay time shall be counted from the first day upon ending the period of two (2) years as from receiving date of the proper application to the issuing date of the first written notice by the competent authority.

(ii) Prior user's rights

The patent rights shall be limited by prior user's rights. In particular, where a person who, before the filing date or priority date of an application for invention/utility solution, was using or had made substantial preparation toward the use of an invention/utility solution independently created but identical with the invention/utility solution claimed in the application, the said prior user shall be entitled to continue the use after the patent is granted, within the extent and volume of use or substantial preparation toward the use already made. The prior user shall not be entitled to enlarge the extent and volume of use unless it is so permitted by the owner of the patented invention/utility solution. The prior user's right shall also not be allowed to be transferred except for the case it is transferred together with the business establishment where the prior user's right is exercised.

(iii) Obligation to use the patented invention and compulsory patent license

Patent owners are obliged to use their patented inventions, i.e. must manufacture protected products or apply protected processes in their invention, to satisfy the requirements of national defence and security, disease prevention, and treatment and nutrition of the people or to meet other urgent social needs. Non-compliance with this obligation of use of the patented invention may be grounds for the State to grant compulsory patent licenses without the consent or agreement of the owner of the patent rights. In addition, the compulsory patent license may occur in the following instances:

- Where the patented invention is used for public and non-commercial purposes, serving national defence and security, disease prevention, and treatment and nutrition of people or other urgent social needs;
- Where a person who wishes to use the patent fails to reach a patent license agreement with the holder of the exclusive rights to use the patented invention, irrespective of efforts made within a reasonable time in negotiating a mutually acceptable price and reasonable conditions. The case of licensing the rights to use of principal invention to the owner of the dependent invention may be included in this circumstance;
- Where the holder of the patent rights is deemed to perform anti-competitive practice prohibited by the Law on Competition; and
- Where the use of invention for the need of pharmaceuticals for disease prevention and treatment of other countries that are eligible for importation under treaties to which Vietnam is a contracting party.

(iv) Cases of the termination of validity of an invention/utility solution patent

- The owner fails to pay annuities;
- The owner declares relinquishment of the patent rights; and
- The owner of patent rights no longer exists and does not have a lawful heir.

(v) Cases of invalidation of an invention/utility solution patent

Cases of being entirely invalidated of an invention/utility solution patent:

- The patent application has been filed contrary to the regulations on security control of inventions as specified in Article 89(a) of the IP Law; and
- The patent application for the invention which is directly created based on genetic resources or traditional knowledge about genetic resources, but fails to disclose or incorrectly disclose the origin of such genetic resources or traditional knowledge about genetic resources.

Cases of being entirely or partly invalidated of an invention/utility solution patent:

- The applicant has neither had nor been assigned the registration right;
- The invention/utility solution failed to satisfy the patentable conditions;
- The amendment or supplementation to the filed patent application expands the scope of the subject matter already disclosed or make the nature of the subject matter changed;
- The disclosure of invention is not sufficient and clear to the required extent that a person having normal skill in art can perform such invention based on the disclosure;
- The patent has been granted with the scope of protection in excess of the scope of initial disclosure thereof; and
- The invention fails to satisfy the first-to-file principle as mentioned above.

The statute of limitations for exercising the right to request invalidation of a patent shall be the

whole protection term thereof.

Industrial Designs

Subject matters eligible for patentable conditions

Industrial design is defined as the outward appearance of a product or a component of assembling product embodied in three dimensional configurations, lines, colours or a combination of such elements and it is visible during the exploitation of the uses of the product or assembling product. Industrial designs that comply with the patentable conditions comprising novelty, creative nature, and susceptibility of industrial application, and do not fall into the scope of subject matters excluded from protection as industrial designs, are acceptable for grant of industrial design patent in Vietnam.

The patentable conditions for industrial design are specified as follows:

- (i) An industrial design shall be deemed to be novel if it has significant difference from other industrial designs which have been publicly disclosed by use or by means of written descriptions or in any other form either inside or outside Vietnam prior to the filing date or the priority date, as applicable, of the application for registration of the industrial design. Regarding the determination of the novelty of an industrial design, two (2) industrial designs shall not be deemed to be significantly different from each other if they are only different in features of appearance which are not easily noticeable and memorable and which cannot be used to distinguish such industrial designs overall, and an industrial design shall be deemed not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret. Following are exceptions where an industrial design shall be deemed not to have lost its novelty, provided that the industrial design application is filed within six (6) months from the date of publication: (a) it is published by another person without permission from the person entitled to register pursuant to Articles 86 and 86(a) of the IP Law; (b) it is published in the form of a scientific presentation by the person entitled to register; and (c) it is displayed by the person entitled to register at a national exhibition of Vietnam or at an official or officially recognized event;
- (ii) An industrial design shall be deemed to be creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the application for registration of the industrial design, the industrial design cannot be easily created by a person ordinarily skilled in the art; and
- (iii) An industrial design shall be deemed to be susceptible of industrial application if it can be used as a model for mass manufacture of products with the outward appearance embodying such industrial design by industrial or handicraft methods.

Subject matters excluded from protection as industrial design

- (i) Outward appearance of a product which is necessary due to the technical features of the product;
- (ii) Outward appearance of civil or industrial construction works; and

- (iii) Shape of a product which is invisible during the use of the product.

Industrial design application

- (i) Filing requirements, not exhaustive

Multi-embodiment industrial design applications are acceptable, provided that such embodiments are of an industrial design, which is based on a single common inventive concept and are not different from each other. In addition, product-set industrial design applications are acceptable, provided that such set of products consists of numerous items expressing a single common inventive concept and that are used together or serve a common purpose. Vietnam applies the Locarno Agreement Establishing an International Classification for Industrial Designs.

For any industrial design application filed through a Vietnamese licensed IP Agent, a POA duly executed by the applicant is required. A copy of the executed POA is acceptable at the time of filing, and the original should be followed within one (1) month from the filing date.

The time limit for filing subsequent industrial design applications in Vietnam, claiming priority under the Paris convention is six (6) months from the filing date of the first priority application, and in this case, a certified copy of the priority document is required.

On 30 September 2019, Vietnam deposited the instrument of accession to the Geneva (1999) Act of The Hague Agreement Concerning the International Registration of Industrial Designs, which officially took effect for Vietnam from 30 December 2019.

- (ii) Examination time schedule

- Formality examination: one (1) month from the filing date. Official action: Decision on Formality Acceptance (for properly filled application) or Notification on Provisional Refusal (for improperly filed application; time limit for remedying shortcomings is two (2) months from the issuance date of the Notification on Provisional Refusal, extendable for an additional period of two (2) months);
- Publication on the National IP Gazette: within two (2) months from the issuance of the Decision on Formality Acceptance; or later as requested by the applicant at the time of filing of the application, but not later than seven (7) months as from the filing date of the same;
- Substantive examination: seven (7) months from the publication date. Official action: Notification on Grant of Design Patent (for patentable design) or Notification on Provisional Refusal (for non-patentable design; and the time limit for response to the Notification on Provisional Refusal is three (3) months from the issuance date thereof, extendable for an additional period of three (3) months); and
- Grant of Design Patent: about two (2) months from the issuance date of the Notification of Grant of Design Patent, subject to the payment of granting fee.

(iii) The first-to-file principle

Where there are applications filed for the industrial designs identical with or insignificantly different from each other, the patent may only be granted to the valid application submitted at the earliest filing date or priority among applications satisfying all the conditions for the grant of an industrial design patent. In addition, where there are applications filed by different applicants for the industrial designs are identical with or insignificantly different from each other that satisfy all the conditions for the grant of a patent and have the same filing date or priority, the patent may only be granted for the object of a single application upon the agreement of all applicants. Without such an agreement, the IP Vietnam will refuse grant of such a patent.

(iv) Opposition proceedings

The time limit for submission of an opposition against the grant of industrial design patent is four (4) months as from the publication date of the design application on the National IP Gazette. Any opposition must be made in writing and be accompanied by documents or must quote the source of information for supporting the opposition, and the opposer must pay prescribed fees or charges.

(v) Provisional rights for industrial design

Provisional rights are available to applicants of industrial design applications. Accordingly, the applicant of an industrial design may notify in writing any other person (user) who has no prior user's rights, but is using the same industrial design for commercial purposes, clearly specifying the filing date and the publication date of the applicant's application, so that the user may consider either terminating or continuing such use. Where the user continues using such industrial design, then as soon as a patent is granted to the applicant, the user may be requested to pay compensation to the industrial design rights owner, corresponding to the price for licensing of industrial design rights, the scope and duration of user's use of the patented industrial design.

Patented industrial design

(i) Protection term and renewal

The industrial design patent is effective from the granting date (or, for International Design Registration under the Hague Agreement, from the acceptance date of protection in Vietnam or the ending date of the six (6)-month period as from the publication of the International registration by the WIPO, subject to the sooner), lasts for five (5) years from the filing date (or, for International registration under the Hague Agreement, from the International registration date), and can be renewed for two (2) further five (5)-year terms, subject to payment of the renewal fee. The payment of the renewal fee must be made within the six (6)-month period prior to the anniversary of the granting date. The grace period of six (6) months counted from the due date of annuity for late payment of renewal fee is available, subject to an extra fee amounting to ten percent (10%) of the respective annuity for each month overdue.

(ii) Prior user's rights

The industrial design rights shall be limited by prior user's rights. In particular, where a person who, before the filing date or priority date of an application for industrial design, was using or had made substantial preparation toward the use of an industrial design independently created but identical with the industrial design claimed in the application, the said prior user shall be entitled to continue the use after the industrial design patent is granted, within the extent and volume of use or substantial preparation toward the use already made. The prior user shall not be entitled to enlarge the extent and volume of use unless it is so permitted by the owner of the patented industrial design. The prior user's right shall not be allowed to be transferred except for the case it is transferred together with the business establishment where the prior user's right is exercised.

(iii) Cases of the termination of validity of an industrial design patent

- The owner fails to pay the renewal fee;
- The owner declares relinquishment of the industrial design rights; and
- The owner of industrial design rights no longer exists and does not have a lawful heir.

(iv) Cases of being entirely or partly invalidated of an industrial design patent

- The applicant has neither had nor been assigned the registration right;
- The industrial design failed to satisfy the patentable conditions; and
- The amendment or supplementation to the design application expands the scope of the subject matter already disclosed or makes the nature of the subject matter changed.

The statute of limitations for exercising the right to request invalidation of an industrial design patent shall be the whole protection term thereof.

Trademarks

Types of trademarks

A trademark is defined as a sign used to distinguish the goods or services of one (1) producer/service provider from those of another. Under the IP Law, trademark types comprise:

- (i) Normal trademark;
- (ii) Collective mark which is identified as a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark; and
- (iii) Certification mark which is identified as a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods

or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the trademark.

Signs eligible for trademark registrable conditions

A mark shall be eligible for registration when it is a visible sign in the form of letters, words, drawings or images including holograms, or a combination thereof, represented in one (1) or more colours or sound signs in graphical representations and capable of distinguishing goods or services of the mark owner from those of other subjects, but does not fall into the scope of signs excluded from protection as trademark as listed below.

A mark shall be deemed to be distinctive if it consists of one (1) or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into any of the following cases:

- (i) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages (such as, Arabian, Chinese, Japanese, Korean, Thai, etc.), except where such sign has been widely used and recognized as a mark before the filing date of the trademark application;
- (ii) Conventional signs or symbols, pictures, common names in any language of goods or services, the usual shape of the goods or part of the goods, the usual shape of the package or container of the goods that have been regularly used and widely known before the filing date of the trademark application;
- (iii) Signs indicating time, place and method of production; category, quantity, quality, properties, ingredients, use, value or other characteristics descriptive of goods or services or signs with which the value of goods is significantly increased, except where such sign has acquired distinctiveness by use before the filing date of the trademark application;
- (iv) Signs describing the legal status and business sector of business entities;
- (v) Signs indicating the geographical origin of goods or services, except where such sign has been widely used and recognized as a mark before the filing date of the trademark application or registered as a collective mark or certification mark as stipulated in the IP Law;
- (vi) Signs identical with or confusingly similar to trademark of another organization or individual that is protected for identical or similar goods or services on the basis of applications for registration with earlier filing dates or priority dates, as applicable, including international trademark registration under the Madrid System, except where the trademark registration is terminated on basis of non-use for five (5) consecutive years or is invalidated in prescribed cases;
- (vii) Signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;
- (viii) Signs identical with or confusingly similar to a trademark of another organization or individual that is protected for identical or similar goods or services, the registration validity of which has terminated within the last three (3) years, except where the trademark registration is terminated on basis of non-use for five (5) consecutive years or is invalidated in prescribed cases;

- (ix) Signs identical with or confusingly similar to a trademark of another person recognized as well-known before the filing date of the trademark application, applied for goods or services identical or similar to ones bearing well-known trademarks, or applied for different goods or services, but the use of such applied trademark may affect the distinctiveness of the well-known mark or the trademark registration was aimed at taking advantage of the reputation of the well-known mark;
- (x) Signs identical with or similar to another person's trade name currently in use if the use of such sign may cause confusion to consumers as to the origin of goods or services;
- (xi) Signs identical with or similar to a protected geographical indication if the use of such sign may mislead consumers as to the geographical origin of goods;
- (xii) Signs identical with, containing or being translated or transcribed from protected geographical indications for wines or spirits if such sign has been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
- (xiii) Signs identical with or insignificantly different from another person's industrial design which has been or is being protected on the basis of an application for registration of an industrial design with a filing date or priority date earlier than that of the application for registration of the mark;
- (xiv) Signs identical with or confusingly similar to the name of a plant variety which has been or is being protected in Vietnam if such signs are registered for the goods being plant varieties of the same or similar species or goods harvested from plant varieties; and
- (xv) Signs identical with or confusingly similar to the name, image of characters, in copyrighted work of other person, that were widely known before the filing date of the trademark application, except for the cases of having consent from work's owner.

Subject matters excluded from protection as trademarks

- (i) Signs identical with or confusingly similar to National Flags, National Emblems, Anthems of Vietnam and other countries;
- (ii) Signs identical with or confusingly similar to the symbols, flags, armorial bearings, abbreviated names or full names of Vietnamese State bodies, political organizations, socio-political organizations, socio-political professional organizations, social organizations or socio-professional organizations or with international organizations, unless permitted by such bodies or organizations;
- (iii) Signs identical with or confusingly similar to real names, aliases, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries;
- (iv) Signs identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by such organizations;
- (v) Signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services;
- (vi) Signs are the inherent shape of the goods or are required by the technical characteristics of the goods; and
- (vii) Signs containing the copy of a copyrighted work, except for the cases of having consent from the work's owner of such works.

Trademark application

(i) Filing requirements, not exhaustive

Multi-class trademark applications are acceptable, and Vietnam applies the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

For any trademark application filed through a Vietnamese licensed IP Agent, a POA duly executed by the applicant is required. A copy of the executed POA is acceptable at the time of filing, and the original should be followed within one (1) month from the filing date.

The time limit for filing subsequent trademark applications in Vietnam, claiming priority under the Paris convention is six (6) months from the filing date of the first priority application, and in this case, a certified copy of the priority document is required.

Vietnam is a member of both the Madrid Agreement Concerning the International Registration of Marks (since 1939) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (since 2006).

(ii) Examination time schedule

- Formality examination: one (1) month from the filing date. Official action: Decision on Formality Acceptance (for properly filed application) or Notification of Provisional Refusal (for improperly filed application, and time limit for remedying shortcomings is two (2) months from the issuance date of the Notification of Provisional Refusal, extendable for an additional period of two (2) months);
- Publication on the National IP Gazette for properly filed application: within two (2) months from the issuance of the Decision on Formality Acceptance;
- Substantive examination: nine (9) months from the publication date. Official action: Notification of Grant of Certificate (for trademark complying with the registration conditions) or Notification of Provisional Refusal (for trademark not complying with the registration conditions; the time limit for responding to the Notification of Provisional Refusal is three (3) months from the issuance date thereof, extendable for an additional period of three (3) months); and
- Grant of Certificate: about two (2) months from the issuance date of the Notification of Grant of Certificate, subject to the payment of granting fee.

(iii) The first-to-file principle

Where there are trademark applications filed by different persons for registration trademarks which are identical or confusingly similar to each other for identical or similar goods or services, or where there are applications filed by the same person for registration of identical marks for identical goods or services, the trademark registration certificate may only be granted for the mark in the valid application submitted at the earliest priority or filing date among applications satisfying all the conditions for the grant of a trademark registration. In addition, where there are applications filed by different

applicants for registration of trademarks which are identical or confusingly similar to each other for identical or similar goods or services, satisfying all the conditions for the grant of a trademark registration and having the same priority or filing date, the registration may only be granted for the object of a single application upon the agreement of all applicants. Without such an agreement, the IP Vietnam will refuse the grant of trademark registration.

(iv) Opposition proceedings

The time limit for submission of an opposition against the grant of Certificate of trademark registration is five (5) months as from the publication date of the trademark application on the National IP Gazette. Any opposition must be made in writing and be accompanied by documents or must quote the source of information for supporting the opposition, and the opposer must pay prescribed fees or charges.

Well-known Trademarks

A well-known trademark is defined as a trademark widely known by the relevant public in the territory of Vietnam. Criteria for consideration of a well-known trademark in Vietnam comprise a certain or all of the followings:

- (i) The number of relevant consumers who were aware of the mark by purchase or use of goods services bearing the mark, or from advertising;
- (ii) The territorial area in which goods or services bearing the mark are circulated;
- (iii) Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods or services provided;
- (iv) Time period of continuous use of the mark;
- (v) Wide reputation of goods or services bearing the mark;
- (vi) Number of countries protecting the mark;
- (vii) Number of countries recognizing the mark as a well-known mark; and
- (viii) Assignment price, licensing price, or investment capital contribution value of the mark.

Under the IP Law, rights to well-known trademarks shall be established on the basis of use and shall not be dependent on registration. The well-known marks, which are recognized under civil procedures or by the IP Vietnam's decision shall be recorded in the list of well-known marks established by and kept at the IP Vietnam.

Granted trademark registration

(i) Protection term and renewal

A certificate of trademark registration shall be effective from the granting date (or, for International Trademark Registration under the Madrid Protocol and Agreement, from the date of the notification on registration acceptance in Vietnam or the date right following the ending date of the twelve (12)-month period as from the issuing date of the notification of Vietnam designation by WIPO in respect of such International Trademark Registration, subject to the sooner) and last for ten (10) years from the filing date (or, for

International Trademark Registration, from the International registration date), and can be renewed for indefinite times, each of ten (10)-year period. The payment of the renewal fee must be made within the six (6)-month period prior to the anniversary of the granting date. The grace period of six (6) months counted from the due date of the annuity for late payment of renewal fee is available, subject to an extra fee amounting to ten percent (10%) of the respective annuity for each month overdue.

(ii) Obligation to use registered trademark, and the risk of cancellation on a non-use basis

A registered trademark shall be used continuously by the trademark owner or its licensee under a trademark license agreement. Where a registered trademark has not been used for five (5) consecutive years or more, the validity of such trademark registration may be cancelled at a third party's request in accordance with Article 95 of the IP Law.

(iii) Cases of termination of validity of trademark registration

- The owner fails to pay the renewal fee;
- The owner declares relinquishment of the trademark rights;
- The owner of trademark rights no longer exists and does not have a lawful heir;
- The trademark has not been used by its owner or the licensee of the owner without justifiable reason for five (5) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (3) months before the request for termination;
- The owner of a certificate of a registered collective mark fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;
- The owner of a certificate of registered certification mark violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;
- The use of the registered trademark by or under authorization of the trademark owner causes misleading to consumers as to about the nature, quality, or geographical origin of the goods or services bearing such trademark; and
- The registered trademark becomes the common name of registered goods or services itself.

(iv) Cases of being entirely or partly invalidated of a trademark registration

- The applicant has registered the trademark with bad intention (bad-faith filing);
- The applicant has neither had nor been assigned the registration right;
- The trademark failed to satisfy the registration conditions; and
- The amendment or supplementation to the trademark application expands the scope of the subject matter already disclosed or makes the nature of the subject matter changed.

The statute of limitations for exercising the right to request invalidation of a trademark registration certificate is five (5) years from the granting date (or from the effective date in Vietnam of the International Trademark Registration under the Madrid Agreement and Protocol).

Geographical Indications

Definition and registrable conditions

A geographical indication is a sign used to identify a geographical origin of goods from a specific region, locality, territory or country. Homonymous geographical indications are defined as geographical indications that have the same pronunciation or spelling. For a geographical indication to be granted registration in Vietnam, it must satisfy the following registrable conditions and not fall into the scope of subject matter excluded from the registration as a geographical indication:

- (i) The goods bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication, provided that geographical areas bearing geographical indications must have their boundaries accurately determined by words and by maps; and
- (ii) The goods bearing the geographical indication has a reputation, quality or characteristics essentially attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication, wherein, geographical conditions relevant to a geographical indication means natural and human factors decisive to reputation, quality and characteristics of goods bearing such geographical indication. Natural factors shall include climatic, hydrological, geological, topographical and ecological factors and other natural conditions, and human factors shall include skills and expertise of producers, and traditional production processes of localities.

Homonymous geographical indications satisfying the above-mentioned conditions shall be granted registration, provided that the actual use of such geographical indications (i) does not cause misleading to consumers as to the geographical origins of goods bearing the geographical indications; and (ii) shall ensure the principle of fair treatment among manufacturers of goods bearing such geographical indications.

The reputation of goods bearing a geographical indication shall be determined based on consumers' trust in such products, to the extent that they are widely recognized and chosen by consumers.

The quality and characteristics of goods bearing a geographical indication shall be determined by one or more qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical means or by experts with appropriate testing methods.

Subject matters excluded from protection as geographical indications

- (i) Names or indications which have become generic names of goods as already aware of by relevant consumers in Vietnam;
- (ii) Geographical indications of foreign countries where they are not, or no longer, protected or used;

- (iii) Geographical indications identical with or similar to a registered trademark or applied trademark with the earlier filing date or priority date, where the use of such geographical indication in practice is likely to cause confusion as to the origin of goods; and
- (iv) Geographical indications which mislead consumers as to the true geographical origin of goods bearing such geographical indications.

Geographical indication application

- (i) Filing requirements, not exhaustive

For any geographical indication application filed through a Vietnamese licensed IP Agent, a POA duly executed by the applicant is required. A copy of the executed POA is acceptable at the time of filing, and the original should be followed within one (1) month from the filing date.

One of the other documents required for geographical indication application is a description of peculiar characteristics and quality, or reputation of the product bearing geographical indication and particular elements of natural conditions decisive to the characteristics and quality, or reputation of the goods (the “**description of particular characteristics**”). The description of particular characteristics shall comprise the following contents:

- Description of the relevant product including raw materials, and physical, chemical, microbiological and perceptible properties of the goods;
- Method of identification of the geographical area bearing the geographical indication;
- Evidence proving that the goods originates from such geographical area;
- Description of local and stable methods of production and processing;
- Information on relationship between the peculiar characteristics and quality, or reputation of the goods and the geographical conditions; and
- Information on the mechanism of self-control of the peculiar characteristics or quality of the goods.

A map of the geographical area bearing the geographical indication is also required for a geographical indication application. For the case of a foreign geographical indication, documents evidencing that the geographical indication is under protection in the country of origin must be submitted. For the homonymous geographical indications, document explaining the use conditions and representations thereof for ensuring the distinctiveness of such homonymous geographical indications is also required.

- (ii) Examination time schedule

- Formality examination: one (1) month from the filing date. Official action: Decision on Formality Acceptance (for properly filed application) or Notification of Provisional Refusal (for improperly filed application, and time limit for remedying shortcomings is two (2) months from the issuance date of the Notification of Provisional Refusal, extendable for an additional period of two (2) months);

- Publication on the National IP Gazette for properly filed application: within two months from the issuance of the Decision on Formality Acceptance;
- Substantive examination: six (6) months from the publication date. Official action: Notification of Grant of Certificate (for geographical indication complying with the registration conditions) or Notification of Provisional Refusal (for geographical indication not complying with the registration conditions; the time limit for responding to the Notification of Provisional Refusal is three (3) months from the issuance date thereof, extendable for an additional period of three (3) months); and
- Grant of Certificate: about two (2) months from the issuance date of the Notification of Grant of Certificate, subject to the payment of granting fee.

(iii) Opposition proceedings

The time limit for submission of an opposition against the grant of Certificate of geographical indication is three (3) months as from the publication date of the geographical indication application on the National IP Gazette. Any opposition must be made in writing and be accompanied by documents or must quote the source of information for supporting the opposition, and the opposer must pay prescribed fees or charges.

Granted geographical indication registration

(i) Protection term

A certificate of geographical indication registration shall have indefinite validity from the granting date.

(ii) Cases of termination of validity of geographical indication registration

- The owner declares relinquishment of the geographical indication rights;
- The owner of geographical indication rights no longer exists and does not have a lawful heir;
- The geographical conditions decisive to reputation, quality or special characteristics of goods bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of goods; and
- The geographical indication of a foreign country is no longer protected in the home country.

(iii) Cases of being entirely or partly invalidated of a geographical indication registration

- The applicant has neither had nor been assigned the registration right;
- The geographical indication failed to satisfy the registration conditions; and
- The amendment or supplementation to the geographical indication application expands the scope of the subject matter already disclosed or makes the nature of the subject matter changed.

The statute of limitations for exercising the right to request invalidation of a geographical indication registration certificate shall be the whole protection term of the geographical indication registration.

Layout Designs

Definition and registrable conditions

A semiconductor integrated circuit is defined as a product in its intermediate or final form in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous with IC, chip and micro-electronic circuit.

Layout-design of semiconductor integrated circuit (layout-design) is defined as a spatial disposition of circuit elements and their interconnection in a semiconductor integrated circuit.

For a layout design to be granted registration in Vietnam, it must satisfy the registrable conditions comprising originality and commercial novelty, and not fall into the scope of subject matter excluded from the registration as layout design. The registrable conditions of a layout design are specified as follows:

- (i) Originality: a layout design shall be considered as original if it is resulted from its author's own creative effort; and not to be widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation. In addition, a layout design that is a combination of common general elements and interconnections shall be considered as original if such a combination as a whole is original.
- (ii) Commercial novelty: a layout design shall be deemed to be commercially novel if it has not yet been commercially exploited anywhere in the world prior to the filing date of the application for registration. A layout design shall not be deemed to have lost its commercial novelty if the application for registration of the layout design is filed within two years from the date it was commercially exploited for the first time anywhere in the world by the person who has the right to register it as defined in Articles 86 and 86(a) of the IP Law or by his or her licensee, wherein, commercial exploitation of a layout design as stipulated in Article 71.2 of the IP Law means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of such layout design, or of a commodity containing such semiconductor integrated circuit.

Subject matters ineligible for protection as layout designs

- (i) Principles, processes, systems and methods operated by semiconductor integrated circuits; and
- (ii) Information or software contained in semiconductor integrated circuits.

Layout design application

- (i) Filing requirements, not exhaustive

For any layout design application filed through a Vietnamese licensed IP Agent, a POA duly executed by the applicant is required. A copy of the executed POA is acceptable at the time of filing, and the original should follow within one (1) month from the filing date.

Documents, samples, and information provided to identify a layout design filed for registration in a layout design application shall include:

- Photographs/drawings of the layout design;
- Information on the functions and structure of semi-conducting closed circuits produced under the layout design; and
- Samples of semi-conducting closed circuits produced under the layout design, if such layout design has been commercially exploited.

(ii) Examination time schedule

- Formality examination: one (1) month from the filing date. Official action: Decision on granting of Certificate subject to the payment of granting fee (for properly filled application) or Notification on Refusal (for improperly filed application);
- Publication of the basic information of the application and Certificate under the manner of submitting the search request to the IP Vietnam: within two (2) months from the issuance of the Decision on granting of Certificate; and
- The reproduction of a registered layout design is not permitted for the search requester, and access to confidential information in an application shall only be permitted to competent authorities and parties involved in the process of carrying out procedures for invalidating protection titles or the process of dealing with infringement of rights.

(iii) Provisional rights for layout design

Provisional rights are available to applicants of layout design applications. Accordingly, the applicant of a layout design which has been commercially exploited by the applicant or under his/her authorization may notify in writing any other person (user) who is using the same layout design for commercial purposes, specifying the registration right for such layout design, so that the user may consider either terminating or continuing such use. Where the user continues using such layout design, then as soon as a registration is granted to the applicant, the user may be requested to pay compensation to the layout design rights owner, corresponding to the price for licensing of layout design rights, the scope and duration of user's use of the registered layout design.

Granted layout design registration

(i) Protection Term

A layout design registration shall have validity from the granting date and expire at the earliest date among the following:

- The end of ten (10) years as from the filing date;

- The end of ten (10) years as from the date the layout-designs were first commercially exploited anywhere in the world by the person having the right to registration or his or her licensee; and
 - The end of fifteen (15) years as from the date of creation of the layout design.
- (ii) Case of termination of validity of layout design of semiconductor integrated circuit registration
- The owner declares relinquishment of the rights to layout design of semiconductor integrated circuit; and
 - The owner of rights to layout design of semiconductor integrated circuit no longer exists and does not have a lawful heir.
- (iii) Cases of being invalidated of layout design of semiconductor integrated circuit registration
- The applicant has neither had nor been assigned the registration right;
 - The layout design of semiconductor integrated circuit failed to satisfy the prescribed protection conditions; and
 - The amendment or supplementation to the layout design application expands the scope of the subject matter already disclosed or makes the nature of the subject matter changed.

The statute of limitations for exercising the right to request invalidation of a layout design of semiconductor integrated circuit registration certificate shall be the whole protection term.

Trade Secrets

Definition and ground for the establishment of rights

Trade secret means information obtained from financial or intellectual investment activities that has not yet been disclosed and can be used in business. IPRs for a trade secret shall be established based on lawful acquisition of the secret and maintaining its confidentiality.

Protection conditions

A trade secret shall be eligible for protection when it satisfies the following conditions:

- (i) It is neither common knowledge nor easily obtainable;
- (ii) When used in business activities, the trade secret will create for its holder advantages over those who do not hold or use it; and
- (iii) The owner of the trade secret maintains its secrecy by necessary means so that the secret will not be disclosed nor be easily accessible.

Subject matters ineligible for protection as trade secret

- (i) Personal identification secrets;

- (ii) State management secrets;
- (iii) National defence and security secrets; and
- (iv) Other confidential information unrelated to business.

Tradenames

Definition and ground for establishment of rights

Tradenname means the designation of an organization or individual used in business activities in order to distinguish the business entity bearing such tradenname from other business entities in the same business sector and area, wherein business area means the geographical area in which a business entity has its partners, customers, or reputation. IPRs for a tradenname shall be established based on its lawful use.

Protection conditions

A tradenname shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business sector and locality. A tradenname shall be deemed to be distinctive when it satisfies the following conditions:

- (i) It consists of a proper name, except where the proper name was widely known by use;
- (ii) It is not identical with or confusingly similar to a tradenname which was used earlier by another person in the same business sector and locality; and
- (iii) It is not identical with or confusingly similar to another person's mark or a geographical indication which was protected before the date of use of such tradenname.

Subject matters ineligible for protection as tradenames

Names of State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations and other entities not involved in business activities shall not be protected as tradenames.

Copyright and Related Rights

Copyright

- (i) Authors and copyright owners

Copyright protection in Vietnam shall be given to author(s) (and legal owner(s) in cases where such author(s) and owner(s) are not the same) of a copyrighted work. An author is identified as the person directly creating the whole or part of a work eligible for copyright protection and as the person who has created derivative works from other's works (with prescribed conditions).

The legal owner of a copyrighted work may be one of the following:

- The author (or co-authors) who created the work for himself/herself (themselves)

by using his/her own resources. A person who provides supports, suggestions or materials to the creator in his/her creating a work is not considered as the author (or co-author) of such work;

- Person who assigns the task of creation to the author, or has creation contract with the author in respect of work having the nature of work-made for hire, if not otherwise agreed by parties;
- Person being the heir of the copyright owner;
- The assignee of copyrights over the works; or
- The State, in certain cases as prescribed in Article 42 of the IP Law.

The author and copyright owner of copyrighted works comprise: Vietnamese organizations and individuals; foreign organizations and individuals whose works were first published in Vietnam and not yet published in any other country, or whose works were published in Vietnam within thirty (30) days from the date of the first publication in another country; and foreign organizations and individuals whose works have been protected in Vietnam in accordance with the Berne Convention to which Vietnam is a member.

(ii) Copyrighted works

Copyright protection is given to literary, artistic or scientific works which fall within any of the following categories: (i) literary and scientific works, textbooks, teaching materials, and other works expressed in written letters or other characters; (ii) lectures, addresses, and other speeches; (iii) press works; (iv) musical works; (v) dramatic works; (vi) cinematographic works and works created by similar methods; (vii) fine artworks and applied artworks; (viii) photographic works; (ix) architectural works; (x) sketches, plans, maps, and drawings relevant to topography or scientific works; (xi) folklore and folk art works; (xii) computer programs and data collections; and (xiii) derivative works.

(iii) Works eligible for copyright protection

To be eligible for copyright protection, a work must be original, i.e. created personally by authors through their intellectual labour and without copying the work of others, wherein derivative work shall only be protected if such protection is not prejudicial to the copyright in the work used to create such derivative works. Copyright for a work shall arise at the moment a work is created and fixed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered.

(iv) Works ineligible for copyright protection

- News of the day, as mere items of information;
- Legislations, administrative and other judicial documents, and official translations thereof; and
- Processes, systems, method of operation, concepts, principles and data.

(v) Content of copyrights

Moral rights to a copyrighted work shall comprise the following rights: to give title to the work; to attach real name(s) or pseudonym(s) of author(s) to the work; to have real names or pseudonyms of author(s) acknowledged when the work is published or used; to publish the work or to authorize other persons to publish such work; and to protect the integrity of the work; and to forbid other persons to modify, edit or distort the work in whatever form, causing harm to the honour and reputation of the author. The moral rights to a copyrighted work belonging to its author(s), except for the case of “work-made for hire”, where the right to publish the work or to authorize other persons to publish such work belongs to the copyright owner if not otherwise is agreed by parties. The author’s moral rights for a work shall not be assigned or licensed, except for the rights to publish the work, and the right to give title to the work can be licensed to the person who is the transferee of the economic rights for the work.

Economic rights to a copyrighted work shall comprise the following rights: to make derivative works; to display directly or indirectly the works to the public through sound and visual recordings or any technical means from a place that members of the public can access, but they cannot freely choose the time and parts of the works; to reproduce directly or indirectly all or part of their works by any means or forms (with certain exceptions as provided in Article 20.3(a) of the IP Law); to distribute or import for distribution to the public through sale or other forms of ownership transfer with respect to the original works or copies thereof in tangible form (with certain exceptions as provided in Article 20.3(b) of the IP Law); to broadcast, communicate to the public of the works, by wireless or landline means, electronic information network or any other technical means, including the making available to the public of the works in such a way that members of the public can access from a place and at a time individually chosen by them; and to lease the original or copies of cinematographic works and computer programs, unless computer program is not the main object of the lease.

The economic rights to a copyrighted work belonging to the copyright owner. In addition, as mentioned above, in case of “work-made for hire”, the copyright owner shall also have the right to publish the work if not otherwise agreed by parties.

(vi) Term of copyright protection

Moral rights, except for the rights to publish works, are protected for an indefinite term, while economic rights and the publication rights for motion pictures, photography, applied art works and anonymous works are protected for seventy-five (75) years from the first publication, or for hundred (100) years as from the date of its formulation of the motion pictures, photography, applied art works, which have not yet been published within twenty-five (25) years as from the date of its formation, or for the entire life of the author plus fifty (50) years after the author’s death for other works.

(vii) Fair use of copyrighted work

Parties may use a published copyright work for non-commercial purposes without the permission of the copyright owner and without paying royalties, provided that the author’s

name and origin of the work must be quoted, and such use shall not be in conflict with the normal exploitation of the work and does not unreasonably harm to the legitimate rights and interest of the work's owner and author. In connection with this fair use, "non-commercial purposes" are specified as follows:

- Making one copy for purpose of scientific research, or personal study (except for the case of copying by public copying devices);
- Reasonably copying a part of work using copying devices for scientific research, or personal study;
- Reasonably using the work for illustration in lectures, publications, performances, sound recording, visual recording, or broadcast programs for teaching purposes, provided that relevant technical measures shall be taken in case of making works available on an internal computer network;
- Using work in public activities of State bodies;
- Reasonably reciting the work without misrepresenting the authors' views for the commentary, introduction, or illustration purposes; for writing articles, using in periodicals, broadcasting programs, or documentaries;
- Using work in library activities for non-commercial purposes in prescribed conditions;
- Performing a dramatic, music, dance work or other artwork in mass culture, communication or mobilization activities for non-commercial purposes;
- Photographing or televising an art, architecture, photograph work, or applied artwork displayed at a public place in order to present images of such work for non-commercial purposes;
- Importation of copies of others' works for personal use and non-commercial purposes;
- Copying by republishing in newspapers, periodicals, broadcasting or other forms of communication to the public of lectures, speeches and other speeches presented to the public to the extent appropriate for current news purposes, except where the author claims to hold copyright;
- Photographing, audio-visual recording or broadcasting of events for the purpose of reporting current news, including using works heard or seen in such events; and
- Using work by disabled people in prescribed cases as provided in Article 25(a) of the IP Law.

However, the exception of making a copy of copyrighted work as above-mentioned shall not apply to architecture works, fine art works, computer programs; and the above-mentioned uses do not include the making of anthologies and anthology of works.

- (viii) Use of published work without obtaining consent from the copyright owner, but users must pay royalties and quote the author's name, and origin of work

A broadcasting organization which uses published works, works permitted by the copyright owners to be fixed on phonograms and video recordings for commercial purposes to make broadcasts, regardless of whether they are funded or not by sponsorship, advertisement or charges in whatever form shall not be required to seek

permission but must pay royalties to the copyright owner as agreed by parties or in accordance with regulations of the Government, for the time of use of such published works or in accordance with regulations of the Government for seeking a decision on royalties payable to the copyright owner in respect of this use of published works if no agreement is reached by the parties. It is important to note that the uses as mentioned above do not apply to cinematographic works, and shall not be in conflict with the normal utilization of these works nor unreasonably prejudice to the legitimate interests of the authors or copyright owners.

(ix) Copyright registration

Under the IP Law of Vietnam, copyright registration is voluntary. However, copyrighted works should be registered because copyright registration will help the copyright owner to enforce more conveniently his or her rights in relation to their creation. In particular, in case of a dispute or an infringement, the fact of registration gives the copyright owner *prima facie* evidence of his or her rights in his or her work (the certificate of copyright registration and/or registration information published at <http://www.cov.gov.vn/tra-cuu-nien-giam>). This *prima facie* evidence fulfills a requirement for the competent authority to handle the case, and rather than the registered copyright owner having to prove their ownership rights in the work, the burden of proof will be shifted to the alleged infringer to demonstrate their rights in the copyrighted work. In addition, copyright registration information and the certificate of copyright may be used for commercial purposes, such as advertising. These benefits are such that it is in the interest of a creator to copyright their work, not only to protect themselves and their financial and emotional investment in their creation, but to assist them in exploiting their creation financially.

The application for registration of copyright will be made to the COV, and in practice, it may take several weeks from the filing date to the grant of copyright registration certificate in a copyrighted work.

Related rights

(i) Persons eligible for protection of related rights

- Performers who perform literary and artistic works;
- Owners of performances, phonograms, video recordings, and broadcasting as specified in Article 44 of the IP Law;
- Phonograms and video recording producers who initially create fixed forms of the sounds and images of performances or other sounds and images; and
- Broadcasting organizations that initiate and carry out the broadcasting.

(ii) Subject matters eligible for protection of related rights

The following performances, phonograms and video recordings, broadcasts, and encrypted program-carrying satellite signals shall be the subject of protection of related rights in Vietnam, provided that such related rights protection shall not prejudice the relevant copyright:

- Performances by Vietnamese citizens in Vietnam or any foreign country; performances performed by foreigners in Vietnam; performances fixed on recordings of eligible recording producers; performances not yet fixed on recordings, but already broadcast by eligible broadcasting organizations;
- Phonograms and video recordings made by Vietnamese producers; and
- Broadcasts and encrypted program-carrying satellite signals produced by Vietnamese broadcasting organizations.

In addition, the protection of related rights in Vietnam is provided for performances, phonograms of foreign producers, and broadcasts and encrypted program-carrying satellite signals of foreign broadcasting organizations under certain conditions in accordance with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Phonograms Convention), and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention), of which Vietnam is a member.

(iii) Contents of related rights, and protection term

For performances, the performer shall have moral rights for their performances comprising rights to have their names acknowledged upon performance or when distributing recordings or broadcasting their performances; and rights to protect the integrity of their performance imagery, and prevent others from modifying, editing or distorting the work in any way prejudicial to their honor and reputation. Investors for performances, who may also be the performers, shall have economic rights for such performances comprising: rights to fix the live performances in recordings; rights to directly or indirectly reproduce the whole or a part of the performances already fixed in recordings; rights to broadcast or communicate to the public in other ways unfixed performances so that they may be accessed by the public, except where such performance is intended to be broadcast; and rights to distribute, import for distribution to the public an original performance and copies thereof in the form of sale, ownership assignment of the original or copies of the works under tangible forms; right to rent originals or copies of the performance recordings, even after such recordings have been distributed by or under the consent of the performer; and right to broadcast or communicate to the public the fixation of the performance.

The related rights for a performance shall last fifty (50) years as from the year following the year in which the performance is turned into a fixed form.

For phonograms and video recordings, the following rights will belong to the producers: to directly or indirectly reproduce the whole or a part of their phonograms and video recordings by any means or forms; and distribute or import for distribution to the public their original phonograms and video recordings and copies thereof under tangible form in the form of sale, or other forms of ownership assignment; conduct the commercial rental of their original phonograms and video recordings and copies thereof to the public, even

after distribution by producers or with the producers' permission; and broadcast and communicate their original phonograms and video recordings and copies thereof to the public, including the making available to the public of the works in such a way that members of the public can access from a place and at a time individually chosen by them.

The related rights of producers for a phonogram/video recording shall be protected for fifty (50) years as from the year following the year in which the phonogram/video recording is published, or, for unpublished phonogram/recording, fifty (50) years as from the year following the year in which the phonogram/recording is turned into a fixed form.

For broadcast programs, the following rights will belong to the broadcasting organizations: to broadcast or re-broadcast their broadcasting programs; directly or indirectly reproduce the whole or a part of their fixed broadcasts by any means or forms; turn their broadcasts into a fixed form; distribute or import for distribution to the public through sale or other forms of ownership assignment of their fixed broadcasts in tangible form.

The related rights of broadcasting organizations for a broadcast program shall be protected for fifty (50) years as from the year following the year in which a broadcast program is made.

It is worth noting that the owner of related rights with respect to the performance, phonogram and video recording, and broadcast program may not prevent other persons from: (i) the reproduction of work to exercise other rights under the IP Law; (ii) the temporary reproduction according to a technological process, during the operation of devices for transmission in a network between third parties through intermediaries or legitimate use of their fixed performance on works, which have no independent economic purpose and the copies are automatically deleted and cannot be restored; and (iii) the subsequent distribution, importation for distribution of the original and copies of the works as specified in Articles 29.5, 30.3 and 31.3 of the IP Law.

(iv) Fair uses of related rights

Parties may conduct the following use of protected related rights subjects for non-commercial purposes without the permission of the related rights owner and without paying royalties, provided such use must neither contradict the normal use of performances, phonograms and video recordings or broadcasts; nor cause any unreasonable damage to the legitimate interests of performers, producers of phonograms and video recordings, or broadcasting organizations; and quote the information about such performances, phonograms, and video recordings, broadcasting organizations:

- Directly recording a part of a performance for purpose of reporting current events, or for non-commercial teaching purposes;
- Making one copy or supporting disability to make one copy a part of performances, phonograms, video recordings, and broadcasts for scientific research or non-commercial teaching purposes;

- Making copy reasonably a part of performances, phonograms, video recordings, and broadcasts for personal teaching without commercial purposes, except for the cases where the performances, phonograms, or video recordings have been published for teaching purposes;
 - Taking appropriate quotes from a protected subject in order to report current events; and
 - Making temporary copies of protected subjects in order for a broadcasting organization to carry out the broadcasting when the broadcasting right has been granted.
- (v) Cases of use of related rights use of published work without obtaining consent from the copyright owner, but with payment of royalties and quote the information about such performances, phonograms, and video recordings, broadcasting organizations

Organizations and individuals that use phonograms or video recordings already published for commercial purposes to make their broadcasts, regardless of whether they are funded or not by sponsorship, advertisement or charges in any form, are not required to obtain permission but have to pay royalties to performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use. Such royalties or payment methods may be as agreed by the parties; or if no agreements are reached by the parties, the regulation of Government shall prevail. These uses must neither contradict the normal utilization of performances, phonograms, video recordings or broadcasts, nor cause unreasonable damage to legitimate interests of performers, producers of phonograms and video recordings, and broadcasting organizations.

- (vi) Related rights registration

Similar to copyright registration, the related rights registration is voluntary. The application for registration of related rights will also be made to the COV, and information on related rights registration is also published at <http://www.cov.gov.vn/tra-cuu-nien-giam>.

Plant Variety Protection

Definition and registration conditions

Plant variety means a plant community within a single botanical taxonomy of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant community by the expression of at least one inheritable phenotype.

The subject matter of IPRs to plant varieties shall comprise propagating materials and harvested materials reproductive materials, wherein the propagating material is defined as a plant or a part thereof capable of growing into a new plant for use in reproduction or cultivation; and the harvested material is defined as a plant or a part thereof obtained from the cultivation of a reproductive material.

Plant varieties eligible for protection are plant varieties which are selected and bred or discovered and developed; and have novelty, distinctiveness, uniformity, stability and are designated by proper denominations, wherein:

- (i) a plant variety shall be deemed new if reproductive materials or harvested materials of such variety have not yet been sold or otherwise distributed for the purpose of exploitation in the territory of Vietnam by the registration right holder defined in Article 164 of the IP Law or his or her licensee one year before the filing date of the application for registration, or for exploitation outside the territory of Vietnam six (6) years before the filing date of the application for registration for woody plant varieties or vines, or four (4) years for other plant varieties;
- (ii) a plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety which has been popularly known at the time of filing the application or on the priority date;
- (iii) a plant variety shall be deemed uniform if, subject to variation which may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics;
- (iv) a plant variety shall be deemed stable if its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle; and
- (v) a denomination for a plant variety shall be considered improper in the following cases: consisting of numerals only, unless such numerals are relevant to characteristics or the breeding of such varieties or including species name of such plant variety; violating social ethics; likely misleading as to features, characteristics, value of such varieties; likely misleading as to identifications of the breeders; being identical or confusingly similar to marks, tradenames or geographical indications already protected before the publication date of the plant variety application; and causing effects to prior rights of other organizations or individuals.

Plant variety application

- (i) Filing requirements, not exhaustive

The documents required for a plant variety application comprise: the declaration of distinctness, uniformity and stability testing techniques (DUS testing) according to the templates stipulated for each kind of plant, and pictures of the variety that demonstrates its three distinct characteristics.

For claiming priority under the International Convention for the Protection of New Varieties of Plants, subsequent application for registration of plant variety in Vietnam shall be filed within the time limit of twelve (12) months as from the date of filing application for registration of the same plant variety in other member countries. A certified copy of the priority document is required for the purpose of enjoying this priority.

- (ii) Examination time schedule

- Formality examination: fifteen (15) days from the filing date. Official action:

Decision on Formality Acceptance, and requesting the registrant to supply samples of the plant variety to the testing institution for performance of technical tests within thirty (30) days before the first growing season from the date of such Decision is issued, unless the plant variety is tested by the applicant as specified in Article 178.2 of the IP Law (for properly filed application) or Notification on Provisional Refusal (for improperly filed application; time limit for remedying shortcomings is thirty (30) days from the issuance date of the Notification on Provisional Refusal, extendable for an additional period of thirty (30) days);

- Publication on the Specialized Magazine for opposition: within ninety (90) days from the issuance of the Decision on Formality Acceptance;
- Substantive examination, comprising examination as to the novelty and proper denomination of the plant variety, and as to the results of technical tests of the plant variety: ninety (90) days as from the receiving date of the results of technical tests; and
- Grant of certificate of plant variety registration: about two (2) months, subject to the payment of granting fee.

(iii) First-to-file principle

Where there are multiple parties who independently file applications for the same plant variety, a plant variety registration shall only be granted to the party with the earliest valid application. In addition, where there are applications filed by different applicants for registration of the same plant variety, satisfying all the conditions for the grant of a plant variety registration and having the same priority or filing date, the registration may only be granted for the object of a single application under the agreement of all applicants. Without such an agreement, the PVPO shall consider granting a plant variety registration certificate to the party deemed to be the first breeder who selected and bred or discovered and developed such variety.

(iv) Opposition Proceedings

At any time during the period from the publication of the plant variety application on the Specialized Magazine until prior to the date of issuance of a decision on grant of a plant variety registration, any third party shall have the right to file an opposition with the PVPO, opposing either the grant or refusal to grant a plant variety registration. Any opposition must be made in writing and be accompanied by documents or must quote the source of information for supporting the opposition.

Granted plant variety registration

(i) Term of protection

The duration of protection of a new plant variety is twenty-five (25) years for woody plant varieties and vines, twenty (20) years for any other new plant varieties, subject to payment of annuities.

(ii) Obligation to use of denomination of registered plant variety

Organizations and individuals who offer for sale or bring onto the market reproductive materials of plant varieties must use the denominations of such plant varieties as registered even after the expiration of the protection terms. In addition, where denominations of plant varieties are combined with marks, tradenames or indications similar to denominations of plant varieties already registered for the offer for sale or brought onto the market, such denominations must still be distinguishable.

(iii) Cases of suspension and restoration of validity of plant variety registration

- The protected plant variety no longer satisfies the conditions of uniformity and stability as at the time of grant of the certificate. In this case, any third party may request the PVPO to suspend the plant variety registration. However, the validity of the plant variety registration shall be restored after its holder successfully proves that the plant variety has satisfied the conditions of uniformity and stability and the PVPO has certified such satisfaction;
- The protection certificate holder fails to pay the annuities;
- The protection certificate holder fails to supply necessary documents and reproductive materials for maintaining and preserving the plant variety according to regulations; and
- The protection certificate holder fails to change the denomination of the plant variety at the request of the State administrative body for rights to plant varieties.

(iv) Cancellation of the effectiveness of plant variety registration

- The applicant has neither had nor been assigned the registration right;
- The protected plant variety failed to satisfy the conditions of novelty or distinctness at the time of grant of the plant variety registration certificate; and
- The plant variety failed to satisfy the conditions of uniformity or stability where the plant variety registration was granted on the basis of results of technical tests conducted by the registrant.

The statute of limitations for exercising the right to request invalidation of a plant variety registration shall be the whole protection term.

Anti-unfair competition

Unfair competition acts related to industrial property, which are strictly prohibited, as defined under the IP Law include the acts of:

- Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services;
- Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;
- Using marks protected in a country which is a contracting party to a treaty of which Vietnam is a member and under which representatives or agents of owners of such

- marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified; and
- Possessing, using domain names identical with, or confusingly similar to, protected tradenames or marks of others, or geographical indications without having the right to use, for bad intention, or for the purpose of taking advantage of the reputation of the corresponding trademarks, trade names or geographical indications for illegal profits.

Commercial indications referred to above mean signs and information serving as guidelines to trading of goods or services including marks, tradenames, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods. Acts of using commercial indications include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; and selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.

Apart from the IP Law, the Law on Competition of Vietnam also introduces unfair competitive acts which are strictly prohibited, including trade secret infringement in the following forms: (i) Assessing and acquiring trade secrets by going against security measures of the owner of such trade secrets; and (ii) Disclosing or using trade secrets without consent of the owner.



Industrial Property Rights Assignment and License

Restrictions to Industrial Property Rights assignment and license

Restrictions to Industrial Property Rights assignment

- Author(s) of copyrighted works shall not be permitted to assign the moral rights, except for the rights to publish such works;
- The assignment of rights to geographical indications is not permitted;
- The assignment of rights to tradenames must be accompanied with the assignment of the entire business establishment and business activities under such tradenames;
- The assignment of the rights to marks must not cause confusion as to properties or origins of goods or services bearing such marks;
- The assignees of rights to marks must satisfy conditions for persons having the right to register such marks; and
- The rights to plant varieties that are selected and bred or discovered and developed plant varieties from the results of scientific and technological tasks funded by the State may be assigned to organizations established under Vietnamese law, individuals being Vietnamese citizens and permanently residing in Vietnam. Organizations and individuals that receive the assignment of ownership must perform the respective obligations of the presiding organizations in accordance with the IP Law.

Restrictions to Industrial Property Rights licenses

- Author(s) of copyrighted works shall not be permitted to license the moral rights as specified in Articles 19.2 and 19.4 of the IP Law;
- Performers shall not be permitted to license moral rights as specified in Article 29.2 of the IP Law;
- Rights to geographical indications or tradenames shall not be licensed;
- Rights to collective marks must not be licensed to organizations or individuals other than members of the owners of such collective marks; and
- Licensees shall not be permitted to sub-license the licensed Industrial Property Rights to other persons unless having consent from the master licensor.

Obligations of the trademark licensee and patent licensee

- Trademark licensees shall be obliged to indicate on goods and goods packages that such goods have been manufactured under a trademark license; and
- Patent licensees under exclusive license agreements shall be obliged to use patented inventions to satisfy the requirements of national defence and security, disease prevention, and treatment and nutrition of the people or to meet other urgent social needs as provided for the patent owners.

Industrial Property Rights assignment and license agreements

Both Industrial Property Rights assignment agreements and Industrial Property Rights license, licensing agreements must be in writing, and shall contain material provisions, such as the identity of the parties, ground of assignment/ licensing; scope of license; price of assignment/ license; obligations of parties; etc.

It is important to note that license/licensing agreements for industrial property rights shall not have any provisions which unreasonably restrict the right of the licensee, and in particular the following provisions which do not derive from the rights of the licensor, and therefore shall be automatically invalid:

- Prohibiting the licensee from improving the industrial property object other than marks; compelling the licensee to transfer free of charge to the licensor improvements of the industrial property object made by the licensee or the right to register industrial property rights, or industrial property rights for such improvements;
- Directly or indirectly restricting the licensee from exporting goods produced or services provided under the license/licensing agreements for industrial property rights to the territories where the licensor neither holds the respective industrial property rights nor has the exclusive right to import such goods;
- Compelling the licensee to buy all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the licensor not for the purpose of ensuring the quality of goods produced or services provided by the licensee; and
- Prohibiting the licensee from complaining about or initiating lawsuits with regard to the validity of the industrial property rights or the licensor's right to license.

Registration requirement for Industrial Property Rights assignment and license agreements

Registration of industrial property rights assignment agreements with the administration authorities is required for the assignment of registered industrial property rights.

For industrial property rights license, licensing agreements, except for trademark licensing agreements, an industrial property rights agreement is effective as against a third (3rd) party upon registration with the administration authorities. Validity of an industrial property rights licensing agreement will cease upon the termination of the respective licensor's industrial property rights.



IPRs Enforcement



The legal framework for IPRs enforcement in Vietnam includes the IP Law, the Civil Code and the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code, the Customs Law, the Law on Handling Administrative Violations, and the guiding regulations of those laws. Accordingly, IPRs infringements can be handled under administrative, civil and criminal remedies.

Administrative procedure

Handling of IPRs infringements under administrative procedures occurs upon a written request by the IPRs holder, or at a decision of a competent authority upon their own detection of infringement. Any request for handling IPRs infringements must be accompanied by evidence of the legitimate rights of the IPRs holder, and for identifying the infringer and alleged infringement. In practice, such evidence can be evaluated by a licensed assessment organization of which the expert's opinion may be referred to by the competent authority during their verification of the infringement in question.

Administrative sanctions applied to an IPRs infringer comprise main sanctions, additional sanctions. Main sanctions include, inter alia, a warning or fines with the maximum level of VND250 million imposed on individual infringers or VND500 million imposed on corporate infringers for infringement upon industrial property rights and copyright and related rights; fines with the maximum of VND50 million imposed on individual infringers and VND100 million imposed on corporate infringers for infringement upon rights to plant varieties. Additional sanctions include confiscation of trademark or geographical indication counterfeit goods, raw materials, materials and means used mainly for the production or trading of trademark or geographical indication counterfeit goods; and suspension for a definite time of business activities of the infringers.

In addition to the administrative sanctions prescribed by regulations on the handling of administrative violations, an IPRs infringer might be subject to the remedial measures of forcible distribution or use for non-commercial purposes of counterfeit goods as well as raw materials, materials, and means used mainly for the production or trading thereof, provided that the distribution or use does not affect the exploitation of IPRs holders and meets other conditions as specified by the Government.

Authorities handling IPRs infringements comprise Specialized Inspectorates, Market Surveillance Agencies, Customs Offices, Specialized Police Officers, and Provincial People's Committees. In practice, most IPRs infringements are handled by the Market Surveillance Agencies and Specialized Inspectorates.

Civil procedure

IPRs infringements under civil procedure are handled upon petitions to the jurisdictional court by IPRs holders. Civil remedies include compulsory termination of the infringement, compensation for damages, compulsory destruction of infringing goods, raw materials and materials, and facilities used principally for the production or trade of infringing goods, or distribution or use of the same for non-commercial purposes, and public apology and rectification.

The principle of compensation for actual material damages and spiritual injury is applied in calculating damages. Compensation for actual material damage may be determined on the following bases, and also include reasonable costs for legal services:

- (i) The total material damage including profits gained by the infringer as a result of infringement if reduced profits of the IPRs holder have not yet been included;
- (ii) The value of the licensing of the industrial property objects with the presumption that the infringer has been granted the license to use that industrial property objects to the extent equivalent to the act of infringement;
- (iii) Material damages valued by other legitimate measures submitted by the IPR holder; and
- (iv) Statutory damages where it is impossible to determine the compensation in accordance with items (i), (ii) and (iii). In this case, compensation shall be fixed by the court depending on the loss level but not exceeding VND500 million.

Compensation for spiritual injury ranges from VND5 million to VND50 million, depending on the seriousness of the spiritual injury.

At the request of the IPRs holder, the court may apply prescribed injunctive relief including injunctions on seizure, attachment, sealing, prohibition from ownership transfer. The IPRs holder must deposit with the value equivalent to twenty percent (20%) of the value of the suspected infringing goods, if possible, of evaluation, or at least VND20 million as a guarantee.

The People's Court at the district level or, for cases relating to commercial purposes or foreign elements, at the provincial level handles civil lawsuits (the first instance) for IPRs infringement.

Criminal procedure

Both corporations and individuals may be subject to criminal liability if they commit one of the following acts without consent from the IPRs holder on a commercial scale, earn prescribed illegal profits, cause loss at prescribed amounts or if the infringing goods are valued at VND100 million or more:

- (i) intentionally making copies of works, phonograms, video recordings;
- (ii) intentionally distributing copies of works, phonograms, video recordings to the public; and
- (iii) intentionally infringing protected trademark rights or geographical indication rights, of which the infringing goods are counterfeits.

Penalties for individual offenders range from a fine with the maximum level of VND1 billion or three (3)-year imprisonment with an additional fine of up to VND200 million or prohibition from holding certain positions or doing certain works for up to five (5) years. Corporate violators may be fined at a maximum level of VND3 billion additional to suspension of associated business activities for two (2) years or a fine up to VND 300 million or be banned from operating in certain sectors or raising capital for up to three (3) years (if the main sanction is not a fine) in respect of acts listed in (i) and (ii) above, or up to VND5 billion and VND500 million respectively for acts listed in (iii) above, or be banned from operating in certain sectors or raising capital for up to three (3) years.

The People's Court at the district level or, for cases relating to foreign elements or complex cases, at the provincial level handles criminal cases of IPRs infringement.

Border Control Measures of IP-related imports and exports

Border control measures are performed at the IPRs holder's request and for the purpose of detection and collection of evidence of infringement. Subject to the IPRs holder's request, searching and monitoring may be applied for two (2) years, extendable for a period of two (2) years but not exceeding the valid duration of the IPRs.

Suspension of customs procedures for suspected goods may be taken according to the following cases:

Upon notification of the Customs Office, the IPRs holder may submit a request for suspension of customs clearance procedures for suspected goods for the time period of ten (10) working days, extendable for a maximum of ten (10) working days, provided the IPRs holder makes a guarantee, which may be a deposit with the value equivalent to twenty percent (20%) of the value of the suspected goods (at least VND20 million) or a bank guarantee. Upon expiration of the time limit for suspension of customs clearance, if the applicant fails to initiate civil proceedings and no decision is made under administrative procedures by the relevant customs office, the suspected goods will be released and the IPRs holder must compensate for damages caused to the owner of the suspected goods as well as pay related expenses such as fees for storage and preservation of goods.

In case of suspicion that the exports or imports are intellectual property counterfeit goods during the process of customs inspection, supervision and control, the Customs Office may carry out the suspension of customs clearance procedures and must immediately notify the IPRs holder, if possible, and the importer or exporter of such suspension. Within ten (10) working days from the date of notification, if the IPRs holder fails to initiate civil proceedings and no decision is made under administrative procedures by the relevant Customs Office, the Customs Office shall carry on the customs procedures for the consignment.

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