

## SEPTEMBER 2009 Vietnam: Plant variety protection clarified

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Vietnam's regulations on the protection of plant varieties as stipulated in the current Law on Intellectual Property are fundamentally in compliance with the International Convention for the Protection of New Varieties of Plants, to which Vietnam is a party. However, the IP Law has some unclear issues regarding plant variety protection.

Therefore, on June 19 2009, the National Assembly of Vietnam adopted several amendments to the IP Law, which will enter into effect on January 1 2010. The amendments regarding plant variety protection clarify a number of issues. Importantly, the amendments have expanded the parties that are eligible to file for protection in Vietnam by adding foreign organisations and individuals having permanent residence or offices or having establishments producing or trading in plant varieties in countries that are signatories to agreements on plant variety protection for which Vietnam is also a member.

The New Plant Variety Protection Office of Vietnam is the authority that will receive applications for plant variety protection. In Vietnam, a first-to-file rule applies, but if several applications for the same plant variety are filed on the same day, the first-to-breed rule shall apply. In order to be eligible for protection in Vietnam, a plant variety must be on the list of protectable species issued from time to time by the relevant Vietnamese authority. At present, the list includes over 50 species.

The term of protection for plant varieties is 25 years from the granting date for trees and vines, and 20 years for other varieties. An application for a plant variety protection will undergo examination as to form and thereafter, examination as to substance which involves an examination of novelty, appropriate variety denomination, and the result of a distinctness, uniformity and stability (DUS) test.

A DUS test for plant variety protection in Vietnam must be conducted by a competent state or private testing centre or by a competent individual as designated by the Ministry of Agriculture and Rural Development of Vietnam. Vietnam's regulations stipulate that prior DUS test results from other jurisdictions can be used and in such circumstances, the applicant must bear responsibility for the authenticity and accuracy of such results. However, in practice, acceptance of the prior test results is at the discretion of the relevant authorities on a case-by-case basis, depending on the particular type of plant variety and the country of origin of the DUS test results. In practice, DUS test results originating from countries that have signed bilateral agreements in this field with Vietnam tend to be accepted. As a result, the duration of the examination period may vary from species to species and may depend on the country where the DUS test was administered. It is hoped that Vietnam will soon issue clearer guidelines on the acceptance of prior DUS test results to clarify this issue.



*Vu Thi Kim Dung and Nguyen  
Duy Dzung*

**Tilleke & Gibbins Consultants Limited**

HAREC Building, 4th Floor

4A Lang Ha Street

Ba Dinh District

Hanoi, Vietnam

Tel: +84 4 3772 6688

Fax: +84 4 3772 5568

[thuylien.v@tillekeandgibbins.com](mailto:thuylien.v@tillekeandgibbins.com)

[www.tillekeandgibbins.com](http://www.tillekeandgibbins.com)