

Unofficial Translation

PLANT VARIETY PROTECTION ACT
B.E. 2542 (1999)¹

BHUMIBOL ADULYADEJ, REX;
Given on the 14th Day of November B.E. 2542;
Being the 54th Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have the law on plant varieties protection;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which section 29, in conjunction with section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Plant Variety Protection Act B.E. 2542 (1999)”.

Section 2². This Act shall come into force as from the day following the date of its publication in the Government Gazette.

¹ Translated by Ms. Vipatboon Klaosontorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

² Published in the Government Gazette, Vol. 116, Part 118a, Page 15, dated 25th November B.E. 2542.

Section 3. In this Act:

“Plant” means a living organism in the kingdom of plant and shall include mushroom and seaweed but exclude other micro-organism;

“plant variety” means a set of plant which contains the same or similar genetic or botanical characteristics with uniform, constant and different uniqueness from plants in other groups and shall include trees the propagation of which is conducive to the plant grouping of the aforesaid features;

“local domestic plant variety” means plant variety which exists in a particular locality within the Kingdom and has never been registered as a new plant variety and is registered as a local domestic plant variety under this Act;

“forest plant variety” means a plant variety which exists or used to exist in the natural habitat in the country and has not yet been cultivated widely;

“general domestic plant variety” means a plant variety which originates or exists in the country and has been used widely and shall include a plant variety which is not new, a local domestic plant variety or forest plant variety;

“genetic material” means a chemical substance which specifies the uniqueness of a living organism and is able to be used as a pattern of self model and transmits it to a succeeding generation;

“genetic modification” means a process using a genetic material which originates from a living organism, whether or not it is a natural genetic material, naturally modified genetic material or synthesized genetic material, to be included or permanently joined with the original genetic material of a plant resulting in a naturally unfound characteristic;

“genotype” means an overall genetic data defining the expression of characteristics of a living organism in conjunction with its environment;

“propagating material” means a plant or any part which enables to produce a new plant by an ordinary agricultural means;

“breeder” means a person who breeds or develops a variety and, as a consequence thereof, obtained a new plant variety;

“locality” means a group of people residing and inheriting and passing over culture continually together and registered under this Act;

“commission” means a plant variety protection commission;

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“a competent official” means a person appointed by the Minister for the execution of this Act;

“Director –General” means the Director-General of the Department of Agriculture;

“Minister” means the Minister having charge and control of the execution this Act;

Section 4. The Minister of Agriculture and Cooperatives shall have charge and control of the execution of this Act and shall have the power to appoint competent officials, issue Ministerial Regulations prescribing fees not exceeding the rate attached hereto and prescribing other activities and issue Notifications for the execution of this Act

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

Plant Variety Protection Commission

Section 5. There shall be a plant variety protection commission consisting of Permanent Secretary of the Ministry of Agriculture and Cooperatives as Chairman, Secretary-General of the Consumer Protection Board, Director-General of the Department of Internal Trade, Director-General of the Department of Intellectual Property, Director-General of the Department of Fisheries, Director-General of the Royal Forest Department, Director-General of the Department of Agriculture Extension, Director of the National Genetic Engineering and Biological Technology, Director of the Institute of Thai Traditional Medicine, Director of the Botanic Gardens Organisation, and twelve qualified members appointed by the Council of Ministers as members, provided that six must be appointed from farmers, one from academics in the field of plant variety breeding in educational institutions, one from academics in the field of natural resources conservation in educational institutions, two representatives from non-governmental organisations not seeking profit whose activities are related to agriculture and natural resource conservation, and two representatives from associations whose objects involve the breeding and propagation of plant varieties, as members and Director-General of the Department of Agriculture as member and secretary.

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Qualified members who are farmers must have experience in the conservation, development or exploitation of plant varieties and shall be selected from the nomination made by agricultural groups, clubs, associations, farmers' groups or agricultural co-operatives of all regions, and there shall be at least one member from each region.

Qualified members from non-governmental organisations not seeking profit and whose activities are related to agriculture and natural resource conservation under paragraph one shall be selected from the nomination made by such non-governmental organisations.

The selection of qualified members shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 6. The Commission shall have the following powers and duties:

(1) to provide recommendations to the Council of Ministers in respect of the issuance of Ministerial Regulations and Notifications under this Act;

(2) to consider, rule on the appeal of the order of the Director-General under section 25 and section 26;

(3) to provide opinion or recommendations to the Council of Ministers on the execution of this Act;

(4) to prescribe rules on education, experimentation, research, and improve or develop plant variety from local domestic plant variety, general domestic plant variety and forest plant variety or any part of such mentioned plant variety;

(5) to prescribe rule on the management of the plant variety protection fund;

(6) to prescribe rules and measures in giving special remuneration to employees or officials who have bred new plant varieties for the agencies to which they are attached to;

(7) to determine an agency or institute to have powers and duties in the examination of ecological and environmental safety impacts;

(8) to perform other acts as prescribed by the laws to be duties of the Commission.

Section 7. A qualified member shall be in office for a term of two years.

A qualified member who vacates the office may be re-elected but shall not be in office for more than two consecutive terms.

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Section 8. In addition to vacating the office at the expiration of the term under section 7, a qualified member shall vacate the office upon:

- (1) death;
- (2) resignation;
- (3) becoming a bankrupt;
- (4) being an incompetent or a quasi-incompetent person;
- (5) having been imprisoned by a final judgment to a term of imprisonment, except for an offence committed through negligence or a petty offence.

In the case where a qualified member vacates the office prior to the expiration of the term, the Council of Ministers shall appoint a person selected under section 5 to replace such member except if that the term of office of that qualified member remains less than ninety days, there may not be a replacement and the person appointed shall be in office for the remaining term of office he or she replaces.

Section 9. At a meeting of the Commission, the presence of not less than one-half of the total number of members is required to constitute a quorum.

If the Chairperson is not present at the meeting or is unable to perform his or her duty, the members present shall elect one among themselves to preside over the meeting.

A decision of the meeting shall be by a majority of votes. Each member shall have one vote. In the case of an equality of votes, the presiding chairman shall have an additional vote as a casting vote.

In the case where a member is directly or indirectly interested in any particular matter, that member shall not attend the meeting.

Section 10. For the performance of duties under this Act, the Commission shall have powers to appoint a sub-committee for the execution as assigned by the Commission.

The sub-committee under paragraph one shall have powers and duties and assigned by the Commission.

The provision in section 9 shall apply to a meeting of the sub-committee *mutatis mutandis*.

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CHAPTER II Plant Variety

Section 11. The plant variety under this Act shall have the following characteristics:

(1) being of uniformity in the particular features of the variety in respect of shape and appearance or in respect of other qualifications resulting from the expression of the genotype specific to such plant variety;

(2) being stable in the particular features of the variety which are capable of expressing such particular features in every cycle of the production of the propagating material of such plant;

(3) having the particular features distinct from other varieties in respect of shape or appearance, or having any characteristic resulting from the expression of the genotype distinct from other plant.

The characteristics under (1) shall not be applied to a forest plant variety.

Chapter III New Plant Variety Protection

Section 12. A new plant variety applying to be registered under this Act shall meet the following criteria:

(1) being a variety whose seeds or propagating material has not been exploited, by sale, trade, or any other means, within or outside the Kingdom of Thailand by the breeder or by others with his or her consent for more than one year before the applying date for registration.

(2) being distinguished from other recognised plant varieties as of the applying date. The distinctions include those related to cultivation, consumption, pharmaceutical purposes, production or processing. The distinctions from the following varieties are also included:

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(a) plant varieties which have been registered, within or outside the Kingdom of Thailand, before the applying date;

(b) plant varieties which has been submitted for registration in the Kingdom of Thailand which are subsequently registered.

Section 13. A new plant variety which has direct or indirect severe environmental impacts on the environment, people's health or welfare is prohibited from being registered under this Act.

A new genetic modified plant variety can only be registered once an assessment of the impact it has on the environment, people's health and welfare has been made by the Department of Agriculture or other agency or institute assigned by the Committee under the regulations and methodology specified under Ministerial Regulation.

Section 14. With the Committee's approval, the Minister has the authority to specify in the Government Gazette which new plant variety is to be under protection and which to be important to national security.

Section 15. An applicant for a new plant variety registration has to be a breeder and has one of the following characteristics:

(1) being of Thai nationality or being a juristic person with headquarter located in Thailand;

(2) being of the nationality of a country that allows a Thai national or juristic person with headquarter located in Thailand to apply for protection within that country;

(3) being of the nationality of a country which is a party to an international convention or agreement on plant variety protection to which Thailand is also a party;

(4) currently residing or having proper industrial or commercial enterprise in Thailand or in a country which is a party to an international convention or agreement on plant variety protection to which Thailand is also a party;

Section 16. The right to apply for plant variety protection for a new variety which is developed by an employee or a contractor under employment contract or a contract to develop a new plant variety shall belong to the employer or the proprietor as the case may

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be, unless stated otherwise in the contract. Moreover, to apply for plant variety protection registration, the employer or the proprietor needs to have one of the characteristics under (1), (2), (3) or (4) of section 15.

The right to apply for plant variety protection for a new variety which is developed by a government employee belongs to the government agency for which he or she works.

If the employer, proprietor, or government agency benefits from the development of a new plant variety, the employee, contractor, or government employee working for them shall receive special rewards on top of his or her usual wages or salaries as the case may be

The rewards under paragraph three shall be in accordance with the regulations and guidelines laid down by the Committee.

Section 17. If a new plant variety is modified or developed by several persons, the right to apply for registration jointly belongs to those persons.

If a certain breeder declines to jointly apply for registration, or cannot be contacted, or does not have a characteristic specified under section 15, the remaining breeders may jointly apply for new plant variety registration under their own names.

A joint breeder who does not take part in a joint application may request to be a joint applicant at any time before the certification of variety registration is issued. Once the request is received, a responsible official shall verify if the applicant is eligible for joint registration. The official shall set a schedule for verification and send a copy of the request to the applicant and the other joint applicants.

In the verification process under paragraph three, the responsible official shall call the applicant and the other joint applicants to testify, clarify, or submit supporting documents to support the application. Once verification is completed, the official shall submit a report to the Director-General. The Director-General will then inform the applicant and the joint applicants of his decision.

Section 18. In the case where a number of breeders have each developed or modified the same new plant variety without cooperation, the breeder who first applies for registration of the variety shall have the right of priority

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If applications for new plant variety registration are made on the same day, the applicants shall decide which applicant shall have the sole right to apply, or should the right jointly belong to the applicants. If a decision cannot be reached within the timeframe set by the Director-General, the matter shall be brought to the Court within ninety days after the timeframe ends. If the matter is not brought before the Court within the specified time, the application for new plant variety registration shall be deemed to be dismissed.

Section 19. The application for new plant variety registration shall be in accordance with the rules and conditions laid out in the Ministerial Regulation.

An application for registration shall contain the followings:

- (1) name of the new plant variety and the details of its prominent features;
- (2) name(s) of the breeder(s) who participate in modifying or developing the new variety;
- (3) details about the origin of the new variety or the genetic material used in modification or development, as well as the modifying methodology with sufficient and comprehensive details;
- (4) a declaration stating that the seeds or propagating material of the new plant variety applying for registration and the genetic material used in modifying or developing under (3) shall be submitted to the responsible official for verification within the specified timeframe;
- (5) an agreement to share the proceeds in case where local or forest plants varieties, or any part thereof, is used in a variety breeding for commercial ends.
- (6) other features as laid out in the Ministerial Regulation.

Section 20. In respect of a person who has applied for new plant variety registration outside Thailand, if an application is to be resubmitted in Thailand within one year from the day which application outside Thailand was submitted, the applicant may request that the first-time applying date outside Thailand to be used as the date which application for new plant variety registration is submitted within Thailand, provided that similar right is granted to Thai nationals in the countries the applicant first submitted his request and that the applicant is of the nationality of these countries.

The responsible official may ask the applicant under paragraph one to provide a copy of the application for new plant variety registration he submitted outside Thailand with a

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Thai translation, or other evidence within the specified timeframe which shall not be less than ninety days.

Section 21. In processing of an application for new plant variety registration, the responsible official shall verify if:

- (1) the application meets the requirements in section 19;
- (2) the plant variety in question qualifies as a plant variety per section 11 and as a new variety per section 12, does not fall under registration prohibition per section 13 paragraph one, and pass evaluation per section 13 paragraph two.

Any expenses incurred during evaluation shall be repaid in full by the applicant for new plant variety registration within sixty days from the day he or she is informed by the responsible official. If the expenses are not paid within the timeframe, the application is considered discarded.

Section 22. Once the responsible official has completed evaluation per section 21, the official shall report to the Director-General.

When the Director-General has considered the official's report per paragraph one and deems that the new plant variety application is complete per section 19, the Director-General shall have the application publicised within thirty days of receiving the report. The applicant shall reimburse the publication expenses in full per the regulations and guidelines laid out in the Ministerial Regulation.

Section 23. Any person with a view that he or she has a preferential claim to the new plant variety registration right or that the application for registration is not conform with section 12, section 13, section 15, section 16 or section 20, the person may file an objection to the responsible official within ninety days from the publication date per section 22.

Upon receiving an objection filed per paragraph one, the responsible official shall send a copy of the objection to the applicant for new plant variety registration. The applicant shall file a counter-objection within ninety days from the day he or she receives a copy of the objection. If no counter-objection is filed by the applicant within the specified timeframe, the application is deemed discarded.

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The objection and counter-objection shall be presented with supporting evidence.

Section 24. In considering the objection and counter-objection, relevant parties may produce additional witness and evidence or statements per the regulation laid out by the Director-General.

The Director-General shall arrive at a decision regarding the objection and counter-objection per paragraph one within sixty days as from the day he or she receives the he objection or counter-objection.

Section 25. In the case where the Director-General decides that the person who files objection has a preferential right to the original applicant, the Director-General shall revoke the registration. The applicant has the right to appeal against the Director-General's decision to the Committee within ninety days from the day he or she is notified of the Director-General's decision.

In the case where the applicant fails to appeal against the Director-General's decision or an appeal is made but the Committee affirms the Director-General's decision, if the person who files the objection applies for new plant variety registration within one hundred and eighty days from the day he or she receives the Director-General's or the Committee's decision, as the case may be, the application for new plant variety registration of the person shall be the same day which the original application was made. The publication of the original application shall also be considered the publication of the person who files the objection.

Section 26. In the case where the Director-General decides that the person who files the objection has no right in the new plant variety, the objection is discarded.

The person who files the objection has the right to appeal to the Committee within ninety days from the day he or she is notified of the Director-General's decision.

The Committee shall finish considering the appeal within ninety days from the day it receives the appeal.

Section 27. Once the Committee has reached a decision per section 25 or section 26, if the applicant or the person who files the objection disagrees with the

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Committee's decision, he or she has the right to bring the matter to Court within sixty days from the day he or she is notified of the Committee's decision. If no matter is brought before Court within the specified timeframe, the Committee's decision is deemed final.

In the case where the Court gives a final decision or to give the person who files the objection the right in the new plant variety, section 25 paragraph two shall apply *mutatis mutandis*.

Section 28. If it is the case that the application for new plant variety registration does not conform with section 12, section 13, section 15, section 16, section 19 or section 20, the Director-General shall order the application to be discarded and the responsible official shall inform the applicant, as well as the person who files the objection per section 23.

If the application for new plant variety registration is revoked after the publication under section 22 is made, such publication shall be revoked and section 22 shall apply *mutatis mutandis*.

Section 29. Once the Director-General has finished considering the report of the responsible official and the registration process and finds no objection to the new plant variety registration, the Director-General shall authorize the registration.

The applicant shall pay the fee for issuing a certificate of new plant variety registration within sixty days from the date he or she is notified. If the applicant fails to pay the fee within that time, the application shall be deemed discarded.

Once the payment per paragraph two is made by the applicant, the responsible official shall register and issue a certificate of new plant variety registration for the applicant within seven days from the day of receiving the fee.

A certificate of a new plant variety registration shall be in accordance with the Ministerial Regulation.

Section 30. The Director-General shall publish new plant variety registered under this Act in the Government Gazette.

Section 31. The certificate of a new plant variety registration shall be valid for

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(1) twelve years for plant variety which bears fruits after being cultivated for less than two years

(2) seventeen years for plant variety which bears fruits after being cultivated for over two years

(3) twenty seven years for plant variety which its parts can be used after being cultivated for over two years

The validity of the certificate of new plant variety registration under paragraph one shall begin on the date of being issued.

Section 32. The right holder of a new plant variety is the person to whom certificate of a new plant variety registration is issued.

The right holder of the new plant variety may authorise any person to exercise his or her rights or transfer the rights to other persons.

In the case where the right is held jointly by several persons, right transfer or authorisation for other persons to exercise the right can only be made with the consent of every right holder.

The right transfer or authorisation for other persons to exercise the right per paragraph two shall be made in writing and registered with the responsible official per the regulations, procedure and conditions laid out in the Ministerial Regulation.

Section 33. The right holder of a new plant variety has the sole right to produce, sell or trade in any manner, import into and export out of the Kingdom, or be in possession of its seeds and propagating material for such purposes.

Provisions under paragraph one does not applied in the following cases:

(1) actions related to a protected new plant variety with no intention of using as propagating material;

(2) study, investigation, experiment, or research related to a protected new plant variety to modify or develop plant variety;

(3) actions related to a protected new plant variety undertaken in good faith;

(4) cultivation or propagation of a protected new plant variety by farmers with propagating material made by themselves. In the case where the Minister, with the Committee's approval, declares that new plant variety to be promoted in development,

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farmers may cultivate or propagate the variety not greater than three times the quantity they received;

(5) actions related to a protected new plant variety without commercial purposes;

(6) the sale or trade by any means, import into, export out of the Kingdom, or having in possession for the aforementioned purpose with the seeds and propagating material sold by the right holder or with his or her consent.

Section 34. In a sale or trade of the seeds and propagating material of a new plant variety, the right holder is required to display a symbol on the seeds and propagating material of the new plant variety, its container or package.

The symbol under paragraph one shall conform with the Director-General's requirement.

Section 35. The registration of the right transfer in a new plant variety in the form of inheritance shall conform with the regulations and guideline laid out in the Ministerial Regulation.

Section 36. if it is deemed necessary to prevent disease and promote health, to keep public well-being, to preserve and protect the environment and bio-diversity, or to serve other public interests, the Minister, with Committee's approval, has the authority to prohibit the production, sale, or trade by any means, import into or export out of the Kingdom of new plant varieties for a specified period of time.

In the interest of the national security, food security, monopoly prevention or other public interests, the Minister, with the approval of the Committee, has the power to give permission to the public to act under section 33 paragraph one, given that appropriate compensation is made to the right holder of a new plant variety. Such permission need to specify the period allowed and the rate of compensation.

After having taken actions per paragraph two but still unable to effectively prevent or relieve the situation per paragraph two, the Minister, with Committee's approval, may order the certificate of registration of that new plant variety to be revoked.

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Section 37. After a three-year period from registration date of the of a new plant variety, other persons may request to exercise the rights under section 33 paragraph one with the Director-General if, at the time of making a request, there is no seeds and propagating material for sale, or not in adequate quantity to meet the public need within the Kingdom, or inappropriately priced, unless the right holder can prove that such situation is beyond his or her control, or that the variant is used to produce hybrid seeds, which are produced in adequate quantity to meet the public need within the Kingdom, or appropriately priced.

The Director-General, with the approval of the Committee, has the power to grant the exercise of rights under section 33 paragraph one, given that the person requesting the right has provided appropriate compensation to the right holder.

The application to exercise rights in the new plant variety, compensation determination and the allowed period shall conform with the regulations, guideline and conditions laid out in the Ministerial Regulation.

Section 38. The Director-General, with Committee's approval, has the authority to revoke a certificate of a new plant variety registration if:

- (1) plant variety does not conform with section 11 and section 12;
- (2) certificate of new plant variety registration issued does not conform with section 13, section 15, section 16, section 17, section 19 and section 20;
- (3) details in in the application for registration submitted to the responsible official under section 19 are false.

In the case of (1), (2) or (3), any person may bring the matter to Court to request for an order to revoke the certificate of registration of the new plant variety.

Section 39. The right holder of a new plant variety is required to pay an annual fee per the rate and means laid out in the Ministerial Regulation. The fee is to be paid within ninety days from the date of receiving of the certificate of registration of the new plant variety and for every subsequent year.

Section 40. The right holder of a new plant variety fails to pay the annual fee under section 39, he or she shall pay an additional fee of thirty percent of the unpaid annual fee.

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If the right holder of a new plant variety fails to pay the annual fee and the additional fee within ninety days from the due date for the annual fee payment under section 39, the Director-General, with Committee's approval, shall have the authority to revoke the certificate of registration.

Section 41. An application for new plant variety registration, an objection to the registration, a certificate of a new plant variety registration, an application for registration to exercise rights under a certificate, an application for registration of the rights transfer under a certificate, a substitute-certificate of a new plant variety registration are to pay fees as laid out in the Ministerial Regulations.

Section 42. In the case where a certificate of a new plant variety registration is damaged or lost, the right holder shall apply for a substitute-certificate per the regulations and guideline laid out in the Ministerial Regulation.

Chapter IV

Local Domestic Plant Variety Protection

Section 43. A plant variety which may apply for registration as a local domestic plant variety under this Act must be:

- (1) a plant variety which only exists in a local area within the Kingdom;
- (2) a plant variety which has not been registered as a new plant variety

Section 44. A juristic person who resides locally and inherits a body of culture together, and takes part in preserving or developing a plant variety which meets the requirement under section 43 may register as a community under this Act by having a representative submits an application in writing to the *Changwat* Governor.

The application shall at least consist of the following:

- (1) plant variety jointly preserved or developed and the method of its preservation or development;

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- (2) names of community members;
- (3) landscape with a rough map showing the community and neighbouring areas.

The application and its consideration shall conform with the regulations and guideline laid out in the Ministerial Regulation

Section 45. a plant variety which only exists in a local area and has been preserved or developed solely by local community, that community has the right to request local administrative organisation to apply for registration of the local domestic plant variety on behalf of the community.

Upon receiving the request from the community per paragraph one, the local administrative organisation shall apply for registration of the local domestic plant variety with the Committee from the day all necessary documents and information are submitted.

In the case where the community per paragraph one is organised as a farmer group or a co-operative under co-operative law, such farmer group or co-operative has the right to apply for registration of the local domestic plant variety on behalf of the community.

Section 46. The application for registration, its consideration, the issue of a certificate of a local domestic plant variety registration shall conform with the regulations and guideline laid out in the Ministerial Regulation.

Section 47. Once registration for the protection of a local domestic plant variety of a community is made, that community has the sole right to modify, study, investigate, experiment, research, produce, sell, export out of the Kingdom or trade by any means the seeds and the propagating material of the local domestic plant variety. The local administrative organization, farmer group, or co-operative that receives the certificate of registration of the local domestic plant variety is the right holder on behalf of the community.

Provisions under paragraph one does not applied in the following cases:

- (1) actions related to a protected local domestic plant variety with no intention of using as propagating material;
- (2) actions related to a protected local domestic plant variety undertaken in good faith;

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(3) cultivation or propagation of a protected local domestic plant variety by farmers with propagating material made by themselves. In the case where the Minister, with the Committee's approval, declares that local domestic plant variety to be promoted in development, farmers may cultivate or propagate the variety not greater than three times the quantity they received;

(4) actions related to a protected local domestic plant variety without commercial purposes;

Section 48. Any person who collects, acquires or gathers a local domestic plant variety or any of its part for variety development, study, experiment or research for commercial ends shall make a proceeds-sharing agreement from the local domestic plant variety.

In permitting any person to take action per paragraph one and in drawing up a proceeds-sharing agreement, the local administrative organisation, farmer group or co-operative which receives the certificate of registration of the local domestic plant variety shall undertake transaction on behalf of the community, with prior approval from the Committee.

Section 49. Out of the proceeds from permitting other persons to exercise the right over the local domestic plant variety, twenty percent shall be given to persons who preserve or develop the variety, sixty percent to community as joint income, and twenty percent to local administrative organisation, farmer group or co-operative for making transaction.

The proceeds-sharing among the persons who preserve or develop the plant variety shall be in accordance with the regulations prescribed by the Committee.

In the case of any dispute regarding the sharing of proceeds under paragraph one, the Committee shall have the final say.

Section 50. The provisions in section 31 shall apply *mutatis mutandis* to the validity of a certificate of a local domestic plant variety registration.

The validity of the certificate of a local domestic plant variety registration per paragraph one may be extended for ten years each time if the Director-General finds that such plant variety still meets the requirement under section 43 and the community still meets the requirement under section 44 and section 45.

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The extension of the validity of protection and its approval shall be in accordance with the rules and measures prescribed by the Ministerial Regulation.

Section 51. Section 36 and section 37 shall apply *mutatis mutandis* to a local domestic plant variety.

Chapter V

General Domestic Plant Variety and Forest Plant Variety Protection

Section 52. Any person who collects, acquires or gathers common domestic plant varieties, forest plant varieties or any of its part for variety development, study, experiment or research for commercial ends require permission from a responsible official and shall make a proceeds-sharing agreement, where part of the proceeds is given to the Plant Variety Protection Fund per the regulations, guideline, and conditions laid out in the Ministerial Regulation.

The proceeds-sharing agreement shall at least have the following:

- (1) objective of plant variety collection and gathering;
- (2) required amount or quantity of plant variety samples;
- (3) obligations of the authorised person;
- (4) determination of intellectual property rights in the outcome of the modification, study, experiment, or research of the plant variety under agreement;
- (5) specifying the amount, percentage, and period of time for proceeds-sharing under the agreement regarding the products derived from the plant variety;
- (6) length of the agreement;
- (7) revocation of the agreement;
- (8) dispute settlement procedure;
- (9) other items as laid out in the Ministerial Regulation.

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Section 53. Any persons who study, experiment or research on a common domestic plant variety or a forest plant variety or any of their part with no commercial ends shall follow the regulations laid out by the Committee.

Chapter VI Plant Variety Protection Fund

Section 54. A fund called the “Plant Varieties Protection Fund” shall be established under the Ministry of Agriculture and Co-operatives to be a source of funds to support and assist enterprises related to preservation, research, and development of plant variety. The Fund shall consist of the following assets:

- (1) income from proceeds-sharing agreements under section 52;
- (2) cash or property generated from plant variety registration;
- (3) government subsidies;
- (4) donated cash or property;
- (5) interests or other benefits generated by the Fund.

Cash or other property under paragraph one shall be directed to the Fund without becoming State revenue.

Section 55. The Fund shall be spent on the following:

- (1) to support and subsidize any community activities related to preservation, research and development of plant varieties;
- (2) source of fund for local administrative organisations to subsidise communities in preservation, research and development of plant varieties;
- (3) to manage expenses of the Fund.

The Fund management and expenses control shall conform with the regulations laid out by the Committee, with Ministry of Finance’s approval.

Section 56. A Fund Committee shall be established, with Permanent Secretary of the Ministry of Agriculture and Co-operatives as Chair, and up to seven other persons to be

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appointed as member by the Committee. The Director-General of the Department of Agriculture shall serve as a committee member and its secretary.

Section 57. The Fund Committee shall have the following powers and duties:

(1) to propose directions, criteria, conditions and priorities for using the Fund per the objects laid out in section 55 to the Committee;

(2) to set up regulations related to criteria and allocation process for grant or subsidy request made to the Fund;

(3) to allocate funds per the objects laid out in section 55 subject to directions, criteria, conditions and priorities laid out by the Committee.

(4) to process requests for support and assistance per section 55;

(5) to perform any duties assigned by the Committee

Section 58. Provisions in section 7 and section 8 shall apply to the term of office and its vacation of the Fund Committee member *mutatis mutandis*.

The provisions in section 9 shall apply to Fund Committee meeting *mutatis mutandis*.

Section 59. Plant Variety Protection Fund shall allocate the money received from the utilization of common domestic plant varieties per the proceeds-sharing agreement under section 52 to local administrative organization where the plant varieties locate per the regulations, guideline, and rate laid out in the Ministerial Regulation.

Section 60. Within one hundred and twenty days from the end of calendar year, the Fund Committee shall submit a balance-sheet and income statement for the past year year to the Office of the Auditor-General for auditing and subsequently report to the Committee.

The Committee shall submit the balance-sheet and income statement to the Minister, and the Minister shall present them to the Council of Ministers for its information and publish them in the Government Gazette.

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Chapter VII

Rights Protection for Plant Variety Right Holders

Section 61. In the case where the right of the right holder of a new plant variety or the right holder of a local domestic plant variety under section 33 or section 47 is violated, the Court has the power to order the violator to compensate the right holder in the amount which the Court deems appropriate to the nature of the damage, as well as loss of interests and the costs necessary for enforcing the rights of the right holder.

Section 62. Plant varieties or objects in possession of the persons who violate the right of the right holder of a new plant variety or a local domestic plant variety under section 33 or section 47 shall be confiscated by court order.

All confiscated objects per court order shall belong in the State, and the Department of Agriculture shall proceed in manners which conform with regulations laid out by the Director-General, with the Committee's approval.

Chapter VIII

Penalties

Section 63. Any official responsible for registration of new plant varieties for protection who, unlawfully or without right holder's consent, reveal information related to plant variety modification under section 19 (3), use, allow other persons to use, or give to other persons the seeds and propagating material or genetic material given to him or her per the application under section 19 (4) shall be liable to imprisonment for a term of not exceeding two years, or a fine not exceeding four hundred thousand baht, or to both.

Section 64. Any person who undertakes any action under section 33 or section 47 without consent from the right holder of the plant variety shall be liable to imprisonment

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for a term of not exceeding two years or a fine not exceeding four hundred thousand baht or both.

Section 65. Any right holder of a new plant variety who fails to follow the requirement of section 34 shall be liable to imprisonment for a term of not exceeding one month or a fine of not exceeding twenty thousand Baht or both.

Section 66. Any person who fails to follow the requirement of section 48 or section 52 shall be liable to imprisonment for a term of not exceeding two years or a fine of not exceeding four hundred thousand baht or both.

Section 67. Any person who forges or copies a symbol or undertakes any action to mislead other persons that a plant variety is a protected variety under this Act shall be liable to imprisonment for six months to five years and a fine of twenty thousand to two hundred thousand baht.

Section 68. Any person who applies for registration of new plant variety or local domestic plant variety with false information to the responsible official in order to obtain a certificate of registration for new plant variety or local domestic plant variety shall be liable to imprisonment for not exceeding two years or a fine of not exceeding four hundred thousand baht or both.

Section 69. In the case where the offender who is punishable under this Act is a juristic person, the representatives of that juristic person shall be liable to the penalty specified by law for such offence unless it can be proven that the juristic person's action is undertaken without their knowledge or consent.

Countersigned by:

Chuan Leekpai

Prime Minister

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Rates of Fees

1. Application for new plant variety registration	1,000 Baht
2. Objection to an application for new plant variety registration	1,000 Baht
3. Certificate of a new plant variety registration	1,000 Baht
4. Annual fee for the protection of a new plant variety	1,000 Baht per year
5. Registration of authorisation to exercise rights under a certificate of registration of a new plant variety	500 Baht
6. Registration of the rights transfer under a Certificate of a new plant variety registration	500 Baht
7. Substitute Certificate of a new plant variety registration	500 Baht

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