

# Protection of New Plant Varieties in Malaysia

By

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## Introduction

Breeding of new varieties of plants in Malaysia is mainly carried out by government research agencies and research institutions. There are very few local private companies that venture into plant breeding which requires a substantial investment in terms of skill, labour, material resources and financing. In addition it may take many years of research and development before a new variety can be released for commercial planting. A new variety, once released, may in many cases be readily reproduced by others, thereby depriving the breeder the opportunity to profit adequately from his investment of time, labour and money.

To encourage investment in the breeding of new plant varieties in both public and private sectors, the Malaysian Government gazetted the Protection of New Plant Varieties (PNPV) Act on 1 July 2004 which came into operation on 1 July 2007. Malaysia is also a member of World Trade Organization (WTO) and a signatory to the Trade Related aspects of Intellectual Property rights (TRIPs) Agreement which, under Article 27.3(b), stipulates that member countries shall provide for the protection of plant varieties either by a patent or by an effective *sui generis* system or by any combination thereof.

Plant Breeders' Rights (PBR), also called Plant Variety Protection (PVP), is a form of Intellectual Property Rights (IPRs). It is an exclusive right granted to breeders of new varieties to exploit their varieties and has features that are in common with patents for industrial inventions. Both forms of protection grant their holders a form of exclusive right to pursue innovative activity. PVP is an independent *sui generis* form of protection tailored for the purpose of protection of new plant varieties.

## Importance of Plant Variety Protection

The other objectives of the PNPV Act are to provide for protection of the rights of breeders of new plant varieties and also to provide recognition and protection of contribution made by farmers, local communities and indigenous people towards the creation of new plant varieties. With the PVP legislation, growers are in a better position to have access to new and improved varieties for commercial growing. Temperate flower growers in Malaysia, for example, were facing problem in getting new varieties from Netherlands and other countries which bred these varieties. With the implementation of the PNPV Act, plant breeders in other countries can apply for protection of their varieties in Malaysia.

## **The Protection of New Plant Varieties (PNPV) Act 2004**

The PNPV Act is a pan-Malaysian by nature, which is applicable to all plants but excludes microorganisms. Protection of a new variety is granted via a registration process based on validation of plant characteristics that distinguishes it from other varieties. The responsibility in implementing the PNPV Act 2004 has been entrusted to the federal Department of Agriculture in Putrajaya. Under this Act, the scope of a breeder's right extends to acts carried out on a commercial basis including producing or reproducing, conditioning for the purpose of propagation, offering for sale, marketing, exporting, importing and stocking the material for the earlier activities. Hence, unauthorized conduct of such acts will constitute an infringement under the PNPV law.

There are limitations to plant breeder's right under this Act. These include any acts done privately on a non-commercial basis or for an experimental purpose or any act done for the purpose of breeding other plant varieties, propagation by small farmers using harvested material of the registered plant variety planted on their own holding, exchange of reasonable amount of propagating materials among small farmers and the sale of farm-saved seeds in situations where non-usage is beyond the control of the farmer.

### **Who may apply for PVP?**

The person who may apply for registration of new plant variety for breeder's right are: (a) a breeder, (b) the employer of the breeder, (c) the successor in the title of the breeder, (d) a farmer or group of farmers, local community or indigenous people who have carried out the functions of a breeder and (e) any government or statutory body which has carried out the functions of a breeder. However, if the applicant's ordinary residence or principal place of business is outside Malaysia or if the applicant is a group of farmers, the applicant should appoint an agent who is a resident or who has a registered office in Malaysia. Besides that, if the applicant is a local community or an indigenous people, the authority representing the local community or indigenous people shall be the agent.

### **Conditions for Registration**

The PNPV Act provides for **two (2)** categories of new plant varieties to be registered: (a) for newly developed varieties under **Section 14 (1)**, and (b) for varieties which are discovered, developed and propagated by farmers, local communities or indigenous people under **Section 14 (2)**. The application for registration of a new plant variety and grant of a breeder's right must be filed with the Plant Varieties Board. The application is to include the following information and documents:

- Form PVBT 1 (for a newly developed plant variety) or PVBT 2 (for a variety which is bred, or discovered and developed by a farmer, local community or indigenous people).
- A Technical Questionnaire.

- Method by which the plant variety is developed. This includes Information relating to source of the genetic material or the immediate parental lines of the newly developed variety.
- Documents and information relating to the characteristics of the plant variety which distinguish the plant variety from the others.
- Proposal of plant variety denomination, i.e. name of the new variety.

The condition for registration of new plant varieties and the granting of breeder's right is that the plant variety is **new, distinct, uniform and stable**. Notwithstanding, where a plant variety is bred, or discovered and developed by farmers, local community or indigenous people, the plant may be registered as a new plant variety and granted a breeder's right if the plant variety is **new, distinct and identifiable**.

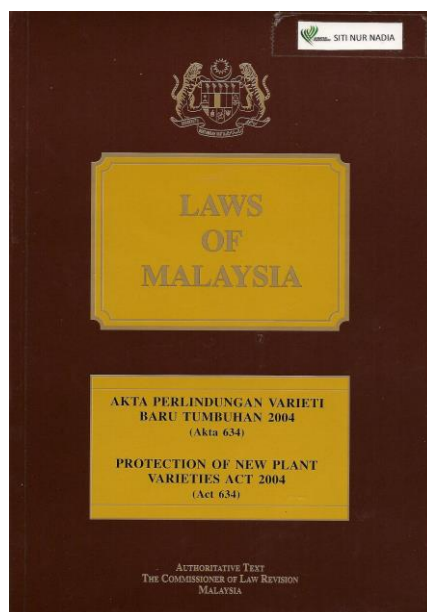
The plant variety is new if, on the filing date of application for registration and grant of a breeder's right, the propagating or harvested material has not been sold or otherwise disposed off on a commercial basis by or with the consent of the breeder earlier than one year within Malaysia, and in other countries, earlier than six years in respect of trees and vines and earlier than four years in respect of other plant varieties. The flowchart for registration and grant of PBR is as shown in Figure 1.

### **Duration of Breeder's Right**

On approval of the application, the applicant is required to deposit samples of the seed or any other propagating material of the plant variety at a centre approved by the Board. Term of protection is 20 years from the filing date of the application for a plant variety that is new, distinct, uniform and stable, and 15 years for a variety that is new, distinct and identifiable. For trees and vines, the term of protection is 25 years from the filing date of the application, subject to certain provisions of the Act and/or Regulations and the discretion of the Board.

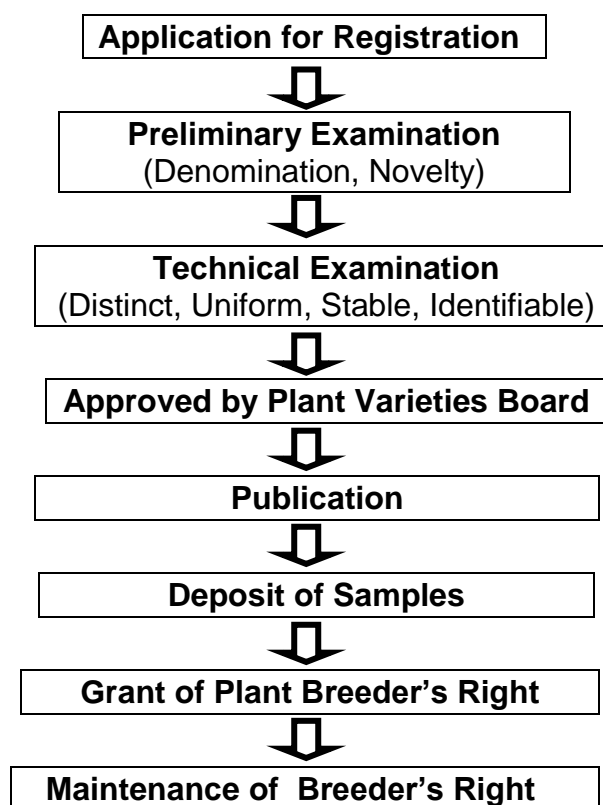
### **Current Status of Plant Varieties being Protected under the PNPV Act**

So far, a total of 154 applications for new plant varieties had been submitted to the Plant Varieties Board since the implementation of the Act on 20 October 2008. These comprise 84 local applications while the rest are from international companies. Foreign applications are for chrysanthemum (from the Netherlands and Japan), pineapple (from USA) and kiwi fruit (from New Zealand). Applications that have been granted PBR are three chrysanthemum varieties, a papaya variety called 'Frangi', two dendrobium orchid varieties and 19 Acacia hybrids. These varieties have been published in the official gazette of the Malaysian Attorney-General's Chamber on 5th April 2012 according to the PVP website (<http://pvpbkkt.doa.my>).



*Cover of the Protection of New Plant Varieties Act 2004  
(Courtesy of Ms Soo F.L., DOA Putrajaya)*

**Figure 1: Flow Chart for Registration and Grant of Plant Breeder's Right**



**Source:**

*Protection of New Plant Varieties Act 2004, Act 634*

*Website:* <http://pvpbkkt.doa.my>