1.0. INTRODUCTION

1.1. Background

Plant Breeders' Rights or also known as Plant Variety Protection (PVP), is a form of Intellectual Property Rights (IPRs) which grant plant breeders an exclusive right to exploit their new varieties. The exclusive right will enable plant breeders to reap benefit from their effort, innovation and creativity towards the development of new plant varieties.

In Malaysia, Plant Variety Protection System is implemented under Protection of New Plant Varieties Malaysia Act 2004 (PNPV Act 2004). The Act is gazette on 1 July 2004 and came into operation since 20 October 2008.

1.2. Objective of PNPV Act 2004

- To provide for the protection of the rights of breeders of new plant varieties.
- To provide recognition and protection of contribution made by farmers, local communities and indigenous people towards the creation of new plant varieties.
- To encourage investment in and development of the breeding of new plant varieties in both public and private sectors.

1.3. Definition of Variety

"Variety" means a plant grouping within a single botanical taxonomy of the lowest known rank:

- Which can be defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes
- Which can be distinguished from any other plant grouping by the expression of at least one of such characteristics
- Which can be considered as a unit with regard to its suitability for being propagated unchanged

1.4. Plant Varieties Board

- Plant Varieties Board is an entity responsible in managing and setting PVP System under PNPV Act 2004.
- Secretariat to the board is Plant Variety Protection Registration Office, Crop Quality Control Division, Department of Agriculture Malaysia.
2.0. CONDITIONS FOR APPLICATION

2.1. Protected Genera and Species
Open to all kind of plants except for microorganism.

2.2. Prohibition of registration
The Board shall not approve the registration of a new plant variety and grant of a breeder’s right to any person in respect of any:

- Variety which may affect public order or morality.
- Variety where there is reasonable ground to believe that the cultivation, reproduction or any other use of that plant variety may produce a negative impact on the environment.

2.3. Qualified Applicant
Application can only be made by:-
- A breeder;
- The employer of the breeder;
- The successor in title of the breeder;
- A farmer or group of farmers, local community or indigenous people who have carried out the functions of a breeder;
- Any government or statutory body which has carried out the functions of a breeder.

Agent is needed by applicant as follows:

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>AGENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Applicant</td>
<td>a resident or who has a registered office in Malaysia</td>
</tr>
<tr>
<td>Group of farmers</td>
<td>a resident or who has a registered office in Malaysia</td>
</tr>
<tr>
<td>Local community or an indigenous people</td>
<td>authority representing local community or indigenous people.</td>
</tr>
</tbody>
</table>

2.4. Criteria of Application

<table>
<thead>
<tr>
<th>CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 14(1)</td>
</tr>
<tr>
<td>Denomination, New, Distinct, Uniform and Stable</td>
</tr>
<tr>
<td>Section 14(2)*</td>
</tr>
<tr>
<td>Denomination, New, Distinct, and Identifiable</td>
</tr>
</tbody>
</table>

*Only for variety which bred, or discovered and developed by traditional farmers, local community or indigenous people.
A. Denomination

Name or identification for a plant variety expressed in letter or a combination of letters and figures. Conditions for denomination:

- shall be the generic designation of the plant variety;
- must enable the plant variety to be identified;
- shall not exclusively consist of numerals; and
- shall be different from other plant variety denominations which identify an existing plant variety of the same plant species or a closely related species.

The denomination shall be used when the plant variety is offered for sale and if a trade mark, trade name or other similar indication is used together with the denomination, the denomination of that registered plant variety must remain easily recognizable.

Variety denomination must comply with section 9 of Administrative Guidelines on Application and Registration of New Varieties of Plants.

B. New

Plant variety is new if on the filing date, the propagating or harvested material of the plant variety has been sold or otherwise disposed of on a commercial basis by or with the consent of the breeder:

- within Malaysia: less than one (1) year
- in other countries
  - less than 6 years for trees and vines.
  - less than 4 years for other plants

Example:

<table>
<thead>
<tr>
<th>VARIETY</th>
<th>SITUATION</th>
<th>NEW STATUS</th>
</tr>
</thead>
</table>
| Variety A | Filing Date: 20 October 2009  
            Date of first sold (in Malaysia):  
            03 July 2008 | X           |
| Variety B | Filing Date: 20 October 2009  
            Date of first sold (in Malaysia):  
            31 October 2008 | ✓          |
C. Distinct

On the filing date of the application, variety is clearly distinguishable from any other plant variety, the existence of which is a matter of common knowledge.

Example: Distinctness on color

![Variety A](image1) ![Variety of Common Knowledge](image2) ![Variety of Common Knowledge](image3)

D. Uniform

Uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Example:

![Plant 1](image4) ![Plant 2](image5) ![Plant 3](image6) ![Plant 4](image7)
E. Stable

Stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each particular cycle.

Example:

F. Identifiable

Plant variety is identifiable if:-

- It can be distinguished from any other plant grouping by the expression of one characteristic and that characteristic is identifiable within individual plants or within and across a group of plants.
- Such characteristics can be identified by any *person skilled in the relevant art.

*Refers to Examiners appointed by Plant Varieties Board.
3.0. PROCEDURE OF APPLICATION AND EXAMINATION FOR REGISTRATION OF NEW PLANT VARIETY AND GRANT OF BREEDER’S RIGHT

3.1. Application Flow Chart

Diagram 3.1: Procedure from application to registration of new plant variety and grant of breeder’s right
(A) APPLICATION

All application for registration of new plant variety and grant of breeder’s right shall disclose the following documents:

- Form PVBT 1 OR Form PVBT 2 (for application under section 14(2) only)
- Technical Questionnaire enclose with pictures
- Copy of Letter of Appointment of Agent (if necessary)
- Copy of Import Permit and Phytosanitary Certificate (if necessary)
- Supporting documents from competent authority (Ministry of Natural Resources and Environment) for genetically modified variety
- Filing fee

One set of application form is required for each variety. The application form enclosed with required documents should be sent to Plant Varieties Board at:

Plant Variety Protection Registration Office (PVPRO)
Crop Quality Control Division
Department of Agriculture Malaysia
Wisma Tani, Level 7, No. 30,
Persiaran Perdana, Presint 4,
62624 Putrajaya

(B) FILING DATE

The filing date shall be the date of receipt of the application by the Board on condition that the application has complied with the requirements:

a. Completed form
b. Submission of related documents
c. Payment of filing fee

(C) PRELIMINARY EXAMINATION

At this stage, the examination is made on:

- Effect of variety on public order or morality
- Negative impact on environment
- Appropriateness of Denomination
- Novelty

If the result of the examination finds that the requirements have been complied with, a notification will be sent to applicant.
(D) SUBSTANTIVE EXAMINATION

A request for substantive examination shall be made within 30 days upon receipt of notification. Request for substantive examination shall be accompanied by:

- Completed PVBT 3 form
- Fee for request of substantive examination
- Planting materials for the purpose of examination (if required by Secretariat)

Examination will be made on:

- Novelty
- Distinctness
- Uniformity
- Stability
- Identifiable

3 methods of substantive examination are as follow:

- Document examination
- On-site inspection
- Growing test

Determination of method of substantive examination is made based on type of application, genera and species and other factors.

Substantive examination will be conducted by examiners appointed by the Board and report of the examination will be brought to the Board for evaluation.

(E) EVALUATION BY BOARD

If the Board is satisfied that the application has complied with the requirements of this Act, the Board shall cause the application to be published in the Gazette.

(F) FIRST GAZETTE

Application published for the first time in the Government Gazette is open for opposition within three (3) months from the date of publication.
Opposition can be made on any of the following grounds:

- the person opposing the application is entitled to the breeder's right as against the applicant
- the application does not comply with the requirements of the Act
- the application is contrary to public order or morality
- the application may produce a negative impact on the environment

**Opposition Process**

- The opponent shall give notice of opposition to the PVPRO, as secretariat to the board using form PVBT4.
- The secretariat will then inform the applicant and request the applicant to give a reply to the secretariat and the opponent.
- The applicant shall give the reply within 30 days using form PVBT 5. If the applicant fails to reply within the specified period, the secretariat may extend the period for another 14 days. The application for the registration of the new plant variety and grant of a breeder’s right shall be deemed to have abandoned if the applicant fails to reply within the additional period.
- Where the applicant submits a reply, the secretariat shall give notice to the applicant and the opponent to provide documentary evidence in support of their claims using form PVBT 6 within 30 days upon receipt of notice.
- If the opponent fails to provide documentary evidence within the said period, his opposition will be treated as abandoned. But if the applicant fails to provide documentary evidence, his application for the registration of the new plant variety and grant of breeder’s right will be treated as abandoned.
- Where the applicant and the opponent submit a reply, the secretariat shall examine the documentary evidence and shall refer the matter to the board to decide whether to approve or reject the application for the registration of the new plant variety and grant of breeder’s right.
- The applicant and the opponent will be informed of the Board decision within 2 months after making a decision.


*Documentary evidence is the supporting documents to support

**Diagram 3.2: Opposition procedure**

(G) **DEPOSIT OF SAMPLE**

“Samples” include seeds and any other propagating material which are capable of regeneration.

**Diagram 3.3: Procedure for Deposit of Samples**
The applicant shall deposit the samples at a centre approved by the Board within 3 month upon notification.

The quantity of the samples to be deposited by the applicant is as follows:
- Seeds - 1000 seeds or 10 grams, whichever is suitable; or
- Other propagating material – 10 plants

The Board may approve deposit of samples at a breeder’s site subjected to the following consideration:
- The maintenance of security is of major concern to the breeder
- The location of the breeder’s site shall be within the territory of Malaysia.
- The samples shall be properly maintained and be made accessible to the Plant Variety Protection Registration Office officials for inspection at all times.

Deposit of samples is exempted for foreign bred temperate varieties which are not suitable to be cultivated in Malaysia. The decision of exemption shall be the prerogative of the Board.

(H) REGISTRATION AND SECOND GAZETTE

Diagram 3.4: Activities of registration of new plant varieties and grant of breeder’s right.
(I) RENEWAL OF RIGHTS

It is obligatory for the rights holder to renew his plant breeder’s right every year upon notification by the PVPRO. Renewal of right is free of charge. Failure by the rights holder to do so may cause revocation of his plant breeder’s right.

3.2. Form and Fee

<table>
<thead>
<tr>
<th>NO.</th>
<th>MATTERS</th>
<th>FORM</th>
<th>FEE (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Filing (per application)</td>
<td>PVBT 1 or</td>
<td>100.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PVBT 2</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Request for substantive examination</td>
<td>PVBT 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. Documentation examination</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. On-site inspection</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Growing test</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>d. Subsequent growing test (if necessary)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Opposition</td>
<td>PVBT 4</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Reply by applicant</td>
<td>PVBT 5</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Filing of documentary evidence in support</td>
<td>PVBT 6</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Certificate of registration of new plant variety and grant of breeder’s right (application under section 14(1) Act)</td>
<td>PVBT 7</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Certificate of registration of new plant variety and grant of breeder’s right (application under section 14(2) Act)</td>
<td>PVBT 8</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Request for certified copies or extracts of Register of New Plant Varieties</td>
<td>PVBT 9</td>
<td>10.00</td>
</tr>
<tr>
<td>9.</td>
<td>Application for compulsory licence</td>
<td>PVBT 10</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Application for assignment or transmission of breeder’s right</td>
<td>PVBT 11</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Table 3.1: List of forms and fees for application for registration of new plant variety and grant of breeder’s right
The forms are obtainable from Plant Variety Protection Registration Office (PVPRO) or downloaded from [http://pvpbkkt.doa.gov.my](http://pvpbkkt.doa.gov.my).

Payment must be made in the form of cash, postal order, money order or bank draft only and be made payable to the **Director General, Department of Agriculture, Malaysia**.

## 4.0. REGISTRATION OF NEW PLANT VARIETY AND GRANT OF BREEDER’S RIGHT

### 4.1. Duration of Breeder’s Right

The breeder’s right to a registered plant variety shall take effect from the filing date of an application and protected for a period of:

<table>
<thead>
<tr>
<th>Type of application</th>
<th>Duration of Breeder’s right</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under Section 14 (1)</td>
<td>20 years</td>
</tr>
<tr>
<td></td>
<td>25 years (trees and vines/perennial plant)</td>
</tr>
<tr>
<td>Under Section 14 (2)</td>
<td>15 years</td>
</tr>
<tr>
<td></td>
<td>25 years (trees and vines/perennial plant)</td>
</tr>
</tbody>
</table>

### 4.2. Scope of Breeder’s Right

Holder of a breeder's right shall have the right to carry out all or any of the following acts on a commercial basis:

- Producing or reproducing
- Conditioning for the purpose of propagation
- Offering of sales
- Marketing, inclusive of selling
- Exporting and importing
- Stocking the material for the purposes mentioned above

The breeder’s right shall also extend to:

- Any propagating material of the registered plant variety, harvested material of the registered plant variety and the entire or any part of plant variety where the propagating material of the plant variety is obtained through unauthorized means from the registered plant variety;
• Plant varieties which are essentially derived from the registered plant variety.
• Plant varieties which are not clearly distinguishable from the registered plant variety.
• Plant varieties which require the repeated use of the registered plant variety in its production.

“Plant varieties which essentially derived from the registered plant variety” referred to plant which are:

• Predominantly derived from the initial plant variety, or from a plant variety that is itself predominantly derived from the initial plant variety, while retaining the expression of the essential characteristics that results from the genotype or combination of genotypes of the initial plant variety;
• Clearly distinguishable from the initial plant variety; and
• Except for the differences which results from the act of derivation, conforms to the initial plant variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial plant variety.

4.3. Limitation of Breeder’s Right

The breeder’s right shall not extend to:

• Any act done privately on a non-commercial basis
• Any act done for experimental purpose
• Any act done for the purpose of breeding other plant varieties (except where such other plant varieties have been essentially derived from the registered plant variety
• Activities done by “small farmers” as follow:
  o propagation using the harvested material of the registered plant variety planted by their own holdings
  o exchange of reasonable amounts of propagating materials.
  o sale of farm-saved seeds in situation where a small farmer cannot make use of the farm-saved on his own holding due to natural disaster or emergency or any other factor beyond the control of the small farmer (the amount sold is not more than what is required in his own holding).

“Small farmer” - farmer with the size of land of holding for farming operations not exceeding 0.2 hectare.
The breeder’s right shall not apply to any material of the registered plant variety or any material derived from that material which has been sold within Malaysia on a commercial basis by the breeder or by any other person with his consent, unless such material is used for purposes involving:

- The further propagation of the registered plant variety; or
- The export of the material to a country which does not protect varieties of the plant genus or species to which the variety belongs.
- The exported material is not for final consumption.

4.4. Invalidation of Breeder’ Right

The breeder’s right could be invalidated if:

- The holder has furnished false or misleading information or statement in respect of the application for registration of new plant variety and grant of a breeder’s right
- The holder has not complied with the requirement of this Act.
- The breeder’s right does not belong to the person to whom the breeder’s right was granted (except if the breeder’s right has been assigned to whom the breeder’s right belongs)

The invalidation is effective from the date of the grant of the breeder’s right.

4.5. Revocation of Breeder’s Right

The Board may revoke a breeder’s right granted to a holder if:

- The holder fails to provide information, facilities or propagating materials deemed necessary by the Board within the specified period.
- The holder fails to pay fees imposed on him.
- The registered plant variety fails to demonstrate continuously the conditions for which the registration was made and breeder’s right was granted.
- The holder contravenes any of the terms and conditions imposed on him as a holder.
- The holder uses or causes to be used any sample of a registered plant variety deposited at a center without the prior written permission of the Board.

4.6. Assignment or Transmission of Breeder’s Right
A breeder’s right or an application for the registration of a plant variety and grant of a breeder’s right may be assigned or transmitted with the approval of the Board to:

- The legal personal representative of the holder or the applicant for such registration and grant.
- Any person entitled by operation of law to such assignment or transmission.

5.0. OFFENCE AND PENALTY

<table>
<thead>
<tr>
<th>NO.</th>
<th>OFFENCES</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Furnishing any false or misleading particular, information or statement in respect of an application.</td>
<td>Fine not more than RM20,000 or imprison not more than two (2) years or both.</td>
</tr>
<tr>
<td>2.</td>
<td>Offence with respect to contravention of terms and conditions and use of samples deposited at any centre without permission of the Board.</td>
<td>Fine not more than RM5,000 or imprison not more than six (6) months or both.</td>
</tr>
</tbody>
</table>

Table 5.1: List of offences and penalties for registration of new plant varieties and grant of breeder’s right

6.0. INFRINGEMENT

Infringement are committed if a third party perform activities granted to the rights holder of the registered plant varieties without prior authorization from the rights holder.

The rights holder shall have the right to institute court proceedings against any person who has infringed or is infringing his rights.