

Translation

PLANT VARIETIES PROTECTION ACT, B.E. 2542 (1999)*

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;

Whereas this Act contains certain provisions relating to the restriction of rights and liberties of the people, which section 29 in conjunction with section 48 and section 50 of the Constitution of the Kingdom of Thailand allow to be done 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 shall be called the “Plant Varieties Protection Act, B.E. 2542 (1999)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. In this Act,

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

“plant variety” means a plant grouping of similar or identical genetic and botanical characteristics, with particular features which are uniform, stable and distinct from other grouping in the same species of plant and shall include trees the propagation of which is conducive to the plant grouping of the aforesaid features;

* Tentative translation by Dr. Pinai Nanakorn, legal officer of the Foreign Law Division of the Office of the Council of State. The translation is prepared **in the translator’s own capacity on a gratuitous basis and as the translator’s favour to the Department of Agriculture and the Office of the National Plant Varieties Protection, Ministry of Agriculture and Co-operatives** for their presentation to UPOV. The translator, however, reserves full copyrights in this translation. The translator’s permission must strictly be obtained for use of this literary work for any purpose other than for official use by the aforesaid agencies.

* Published in Government Gazette, Vol. 116, Part 118a, dated 25 November 1999.

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

“wild plant variety” means a plant variety which currently exists or used to exist in the natural habitat and has not been commonly cultivated;

“general domestic plant variety” means a plant variety originating or existing in the country and commonly exploited and shall include a plant variety which is not a new plant variety, a local domestic plant variety or a wild plant variety;

“genetic material” means the chemical material defining particular features of a living organism and capable of being a pattern for self-model and of passing to its next generation.

“genetic modification” means a process for the permanent combination of a genetic material originating from a living organism, be it a natural, induced or synthesized genetic material, with the initial genetic material of a given plant, thereby resulting in a characteristic unfound in its natural setting;

“genotype” means the 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 thereof capable of producing a new plant by an ordinary agricultural means;

“breeder” means a person who has bred or developed a variety and, as a consequence thereof, obtained a new plant variety;

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

“Commission” means the “Plant Variety Protection Commission;

“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 of 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.

The Ministerial Regulations and Notifications shall come into force upon its 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 from representatives of non-governmental organisations not seeking profit whose activities are related to agriculture and natural resource conservation, and two from representatives of 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.

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 submit recommendations to the Minister on the issuance of Ministerial Regulations and Notifications under this Act,

(2) to consider and decide appeals against orders of the Director-General under section 25 and section 26;

(3) to give opinions or advice to the Minister with regard to the execution of this Act;

(4) to prescribe regulations with regard to the studies, experimentation, research, breeding or development of or into plant varieties from local domestic plant varieties, general domestic plant varieties and wild plant varieties or any part thereof;

(5) to prescribe regulations with regard to the management of the Plant Varieties Protection Fund;

(6) to lay down rules and procedure for giving special remuneration to State employees or officials who have bred new plant varieties for the agencies to which they are attached;

(7) to determine agencies or institutions to be authorised to examine and appraise biological and environmental safety impacts;

(8) to perform such other acts as prescribed by law to be under the responsibility of the Commission.

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

The outgoing qualified member may be re-appointed but may not serve for more than two consecutive terms.

Section 8. In addition to the vacation of office upon the expiration of the term under section 7, a qualified member vacates 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 the qualified member vacates office before the expiration of term, the Council of Minister shall appoint other person to fill the vacancy, but if less than ninety days remain in the term of office of the qualified member, such appointment may be omitted. The person who is appointed to fill the vacancy shall be in office for the remaining term of the person he 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 Chairman is not present at the meeting or is unable to perform the 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. In the performance of duties under this Act, the Commission has the power to appoint a sub-committee for performing such act as entrusted by the Commission.

A sub-committee under paragraph one shall have the same powers and duties as those of the Commission in respect of the matter entrusted.

Section 10 shall apply *mutatis mutandis* to a meeting of a sub-committee.

CHAPTER II

Plant Varieties

Section 11. A plant variety under this Act shall be of the following descriptions:

(1) being of uniformity in the particular features of the variety in respect of shape and appearance or in respect of other characteristics 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 description of a plant variety under (1) shall not apply to a wild plant variety.

CHAPTER III

Protection of New Plant Varieties

Section 12. A plant variety capable of registration as a new plant variety under this Act shall be of the following descriptions:

(1) being a plant variety the propagating material of which has not been exploited, whether by means of sale or distribution in any manner whatsoever, in or outside the Kingdom by the breeder or with the breeder's consent for more than one year prior to the date of filing the application;

(2) being distinct from other plant varieties existing on the date of filing the application, provided that such distinctness is related to the feature beneficial to the cultivation, consumption, pharmacy, production or transformation, including the distinctness from the following plant varieties:

(a) plant varieties already registered and protected, whether in or outside the Kingdom, prior to the date of filing the application;

(b) plant varieties in respect of which application for registration has been made in the Kingdom and which will subsequently have been registered.

Section 13. No registration under this Act shall be made of a new plant variety having a severely adverse impact, directly or indirectly, on environment, health or public welfare.

A new plant variety derived from genetic modification may be registered as a new plant variety only upon a successful result of a safety appraisal with regard to environment, health or public welfare conducted by the Department of Agriculture or other agency or institution designated by the Commission, in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 14. The Minister, with the approval of the Commission, may by publication in the Government Gazette designate any particular type of plant as a new plant to which protection is to be afforded and any particular type of plant as being important to national security.

Section 15. An applicant for registration of a new plant variety shall be a breeder with the following qualifications:

(1) being of Thai nationality or being a juristic person having a head office in Thailand;

(2) being of the nationality of a country allowing Thai nationals or juristic persons having head offices in Thailand to apply for protection in that country;

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

(4) having a domicile or carrying out real and effective industry or business in Thailand or in a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

Section 16. The right to apply for protection of a new plant variety the breeding of which was made by an employee or a contractor hired to work under a contract of employment or a contract of hire for the purpose of breeding a new plant variety shall vest in the employer or the hirer, as the case

may be, unless otherwise provided in the contract. In this connection, in registering the new plant variety, the employer or the hirer must also possess the qualifications under (1), (2), (3) or (4) of section 15.

The right to apply for protection of a plant variety the breeding of which was made by a State official in the performance of official duties shall vest in the agency to which that official is attached.

If the employer, the hirer or the agency to which the State official is attached receives benefit from the breeding of the new plant variety, that employee, contractor or State official shall be rewarded special remuneration in addition to his normal wages or salaries, as the case may be.

The entitlement to the special remuneration under paragraph three shall be in accordance with the rules and procedure prescribed by the Commission.

Section 17. If several persons have jointly bred or developed a new plant variety, these persons shall have the right to apply for registration thereof jointly.

In the case where any joint breeder refuses to make a joint application for registration or cannot be contacted or does not meet the qualifications set forth in section 15, other joint breeder(s) may apply for registration of that new plant variety jointly bred in his or their own names.

The joint breeder who fails to join the application for registration may, at any time before the issuance of a certificate of registration of the new plant variety, submit an application for joining the former application. Upon receipt of the latter application, the competent official shall conduct an inquiry as to the applicant's eligibility therefor. For this purpose, the competent official shall notify the date of inquiry, and furnish a copy of the application to the applicants and the joining applicant.

In conducting the examination under paragraph three, the competent official may summon the applicants and the joining applicant to give statements or explanations or furnish documents or evidence for the purpose of consideration. The competent official shall, upon completion of the examination, submit his opinion to the Director-General. When the Director-General has made a decision, it shall be notified to the applicants and the joining applicant.

Section 18. In the case where several breeders have individually bred or developed a new and identical plant variety without having done so jointly, the person who first files an application for the protection of the new plant variety shall have the right of priority.

If the applications for registration of the new plant variety under paragraph one are filed on the same day, the applicants shall agree as to whether the rights thereto shall vest solely in one applicant or in several applicants jointly. If such an agreement cannot be reached within the time specified by the Director-General, the parties shall bring an action to the Court

within ninety days as from the date of the expiration of the time specified by the Director-General. If no such action is brought to the Court within such time, those persons shall be deemed to have abandoned the applications for registration of the new plant variety.

Section 19. The application for registration of a new plant variety shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

An application shall have the following particulars:

(1) the name of the new plant variety and particulars of essential features of the new plant variety;

(2) the name of the breeder participating in the breeding or developing the new plant variety;

(3) details showing the origin of the new plant variety or the genetic material used in the breeding of the variety or in the development of the new plant variety, including its breeding process, provided that details enabling clear comprehension of such process shall also be included;

(4) a statement that the propagating material of the new plant variety in respect of which the application for registration has been filed and the genetic material used in the breeding or in the development of the new plant variety under (3) will be furnished to the competent official for the purpose of examination thereof within the time specified by the competent official;

(5) an profit-sharing agreement in the case where a general domestic plant variety or a wild plant variety or any part thereof has been used in the breeding of the variety for a commercial purpose.

(6) other items of particulars as prescribed in the Ministerial Regulation.

Section 20. The person who has filed an application for registration of a new plant variety outside the Kingdom may, if an application is filed for registration of that new plant variety in the Kingdom within one year as from the date of the first filing of the application outside the Kingdom, make a request for having the date of first filing of the application for registration of the new plant variety outside the Kingdom specified as the date of filing of the application for registration of the new plant variety in the Kingdom, provided that the country in which the first filing of the application has been made grants the similar right to Thai nationals and the applicant is of the nationality of such country.

The competent official may order the applicant under paragraph one to furnish a copy of the application for registration of the new plant variety filed in the foreign country together with its translation into Thai or other evidence within the time prescribed which shall not be less than ninety days.

Section 21. In considering an application for registration of a new plant variety, the competent official shall examine the following:

(1) examination of the compliance of the application with section 19;

(2) examination as to the plant variety's conformity with the description set out in section 11, its being of the descriptions specified in section 12, its freedom from prohibitions under section 13 paragraph one and its having the successful result of the appraisal under section 13 paragraph two.

Provided that this shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

If there incurs any cost in the examination of that plant variety, the applicant for registration shall pay the actual cost to the competent official within sixty days as from the date of the receipt of the notification thereof by the competent official. In the case where the applicant fails to make payment within the specified time, the applicant shall be deemed to have abandoned the application.

Section 22. When the competent official has made an examination under section 21, the competent official shall prepare and submit an examination report to the Director-General.

When the Director-General has considered the examination report of the competent official under paragraph one and is of the opinion that the application for registration of the new plant variety is in compliance with section 19, the Director-General shall, within thirty days as from the date of the receipt of the report, make an order for the publication of such application at the actual expense of the applicant in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 23. Any person who considers that he has a better right than the applicant for registration of a new plant variety or that the application for registration of a new plant variety is not in compliance with section 12, section 13, section 15, section 16 or section 20 may submit an objection to the competent official within ninety days as from the date of the publication under section 22.

Upon receipt of the objection under paragraph one, the competent official shall furnish a copy thereof to the applicant. The applicant shall submit a counter-objection within ninety days as from the date of the receipt of the copy. If the applicant fails to submit the counter-objection within such period of time, the application for registration of the new plant variety shall be deemed as having been abandoned.

The objection and counter-objection shall be accompanied by supporting documents.

Section 24. For the purpose of the consideration of the objection and counter-objection, the person addressing the objection and the person addressing the counter-objection may give additional evidence or statements, in accordance with the Regulation prescribed by the Director-General.

The Director-General shall have a decision on the objection and counter-objection under paragraph one within sixty days as from the date of the receipt thereof from the competent official.

Section 25. In the case where the Director-General gives a decision that the person addressing the objection has the better right than the applicant for registration of the new plant variety, the Director-General shall give an order rejecting the application for registration thereof. The applicant shall have the right to appeal to the Commission against the order of the Director-General within ninety days as from the date of the receipt of the notification of the Director-General's order.

In the case where the applicant fails to appeal against the order of the Director-General or has made an appeal but the Commission makes a decision affirming the decision of the Director-General, if the person addressing the objection files an application for registration of the new plant variety within one hundred and eighty days as from the date of the receipt of the notification of the Director's order or the Commission's decision, as the case may be, it shall be deemed that the person addressing the objection files the application for registration on the day the initial applicant has filed the application and it shall also be deemed that the publication of the application for registration of the new plant variety filed by the initial applicant is the publication of the application filed by the person addressing the objection.

Section 26. In the case where the Director-General gives a decision that the person addressing the objection has no right in the new plant variety in question, the Director-General shall reject such objection.

The person addressing the objection shall have the right to appeal to the Commission against the order of the Director-General within ninety days as from the date of the receipt of the notification of the Director-General's order.

The Commission shall have a decision on the appeal within ninety days as from the date of the receipt thereof.

Section 27. When the Commission has made a decision under section 25 or section 26, the applicant for registration of the new plant variety or the person addressing an objection thereto, as the case may be, shall, if dissatisfied with the decision of the Commission, have the right to bring an action before the Court within sixty days as from the date of the receipt of the notification of the decision. If no such action is brought within such period of time, the decision of the Commission shall be deemed final.

In the case where the Court gives a final order or judgment that the person addressing the objection duly has the right in the new plant variety, section 25 paragraph two shall apply *mutatis mutandis*.

Section 28. If it appears that the application for registration of the new plant variety is not in compliance with section 12, section 13, section 15,

section 16, section 19 or section 20, the Director-General shall give an order rejecting the application and the competent official shall notify the order to the applicant and to the person addressing the objection in the case where such objection has been made under section 23.

If the rejection of the application for registration of the new plant variety occurs after the publication under section 22, the rejection order shall be published and section 22 shall apply *mutatis mutandis*.

Section 29. When the Director-General has thoroughly considered the examination report of the competent official and the registration process and finds no hindrance to the registration of the new plant variety, the Director-General shall give an order for the registration thereof.

The applicant shall pay the fee for the issuance of a certificate of registration of the new plant variety within sixty days as from the date of the receipt of the notification thereof. If the applicant fails to pay the fee within the specified time, it shall be deemed that the application is abandoned.

Upon payment by the applicant of the fee under paragraph two, the competent official shall effect the registration of the new plant variety and issue a certificate of registration thereof to the applicant within seven days as from the date of the receipt of the fee. If the applicant fails to make payment of the fee within the time specified, the application shall be deemed to have been abandoned.

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

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

Section 31. The certificate of registration of a new plant variety shall be valid for the following terms:

(1) in respect of the plant which is capable of giving such fruits as expected of the specific features of the variety after the cultivation of its propagating material within the period of not over two years: twelve years;

(2) in respect of the plant which is capable of giving such fruits as expected of the specific features of the variety after the cultivation of its propagating material within the period of over two years: seventeen years;

(3) in respect of the plant which is of tree-based utilisation and capable of giving fruits in accordance with the specific features of the variety after the cultivation of its propagating material within the period of over two years: twenty seven years.

The term of the certificate of registration of the new plant variety under paragraph one shall commence as from the date of its issuance.

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

The right holder of the new plant variety may authorise any person to use his rights in his new plant variety or may assign such rights to other persons.

In the case where several persons are joint-right holders, the assignment of rights or the authorisation of the use of rights may be made only with the consent of all right holders.

The assignment of rights or the authorisation of the use of rights under paragraph two shall be made in writing and registered with the competent official in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

Section 33. The right holder of a new plant variety has the exclusive right to produce, sell or distribute in any manner, import, export or possess for the purpose of any of the said acts the propagating material of the new plant variety.

The provisions of paragraph one shall not apply to the following circumstances:

(1) the act relating to a protected new plant variety without an intention to use it as propagating material;

(2) the education, study, experiment or research relating to a protected new plant variety for the purpose of breeding or developing plant varieties;

(3) the act relating to a protected new plant variety committed in good faith;

(4) the cultivation or propagation by a farmer of a protected new plant variety from the propagating material made by himself, provided that in the case where the Minister, with the approval of the Commission, publishes that new plant variety as promoted plant variety, its cultivation or propagation by a farmer may be made in the quantity not exceeding three times the quantity obtained;

(5) the act relating to a protected new plant variety for non-commercial purpose;

(6) the sale or distribution by any means, importation or exportation of, or having in possession for the purpose of any of the aforesaid activities, the propagating material of the protected new plant variety which has been distributed by the right holder or with the right holder's consent.

Section 34. In a sale or distribution of the propagating material of a new plant variety, the right holder of the new plant variety shall display a mark on the propagating material of the new plant variety, its container or package.

The mark under paragraph one shall be in accordance with the form prescribed by the Director-General.

Section 35. The registration of the transfer of the rights in a new plant variety by way of inheritance shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 36. When necessity arises for the prevention of diseases, the promotion of health, the maintenance of public welfare, the preservation and conservation of environment and biological diversity or for other public interest, the Minister, with the approval of the Commission, has the power to issue a Notification prohibiting the production, sale, distribution in any manner, importation or exportation of new plant varieties for the period of time specified in the Notification.

For the purposes of the national security, the maintenance of nutritious stability, the prevention of monopoly or for the purpose of other public interests, the Minister, with the approval of the Commission, has the power to issue a Notification authorising general members of the public to do the acts specified in section 33 paragraph one, provided that appropriate remuneration shall be paid to the right holder of a new plant variety. Such Notification shall also specify therein the term of the authorisation and the rates of remuneration.

If, after action has been taken under paragraph two, it appears that the circumstance under paragraph two cannot be effectively prevented or alleviated, the Minister, with the approval of the Commission, may revoke the certificate of registration of that new plant variety.

Section 37. Upon the expiration of three years as from the date of the registration of a new plant variety, other persons may file an application with the Director-General for authorisation of the use of the rights under section 33 paragraph one if it appears at the time of such application that there has been no sale of the propagating material of that new plant variety or the sale thereof has been made in the quantity insufficient for the need of the people within the Kingdom or at exorbitant prices unless the right holder can prove that the lack of sale or the sale in the quantity insufficient for the need of the people within the Kingdom or at exorbitant prices is caused by the circumstance beyond his control or that the new plant variety is a derivative intended to be utilised for the sole production of hybrid seeds provided that the hybrid seeds have been produced in such quantity sufficient to the need of the people within the Kingdom and sold at the prices which are not exorbitant.

The Director-General, with the approval of the Commission, has the power to authorise the use of the rights under section 33 paragraph one upon payment by the applicant of reasonable remuneration to the right holder of the new plant variety.

The application for the authorisation of the use of rights in the new plant variety and the determination of remuneration therefor shall be in accordance

with the rules, procedure and conditions prescribed in the Ministerial Regulation.

Section 38. The Director-General, with the approval of the Commission, has the power to revoke a certificate of registration of a new plant variety in the following circumstances:

(1) such plant variety is not in conformity with the descriptions set forth in section 11 and section 12;

(2) the certificate of registration of the new plant variety has been issued inconsistently with section 13, section 15, section 16, section 17, section 19 and section 20;

(3) the particulars stated in the application for registration submitted to the competent official under section 19 are false.

In the case where there exist the circumstance under (1), (2) or (3), any person may invoke it or bring an action to the Court for an order revoking the certificate of registration of the new plant variety.

Section 39. The right holder of a new plant variety shall pay an annual fee at the rate and in accordance with the procedure prescribed in the Ministerial Regulation and shall make such payment within ninety days as from the date of the receipt of the certificate of registration of the new plant variety and within such period of every successive year.

Section 40. The right holder of a new plant variety shall, in the event of his failure to make payment of the annual fee under section 39, be liable to an additional fee in the amount equivalent to thirty percent of the annual fee in arrears.

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

Section 41. An application for registration of a new plant variety, an objection to the registration of a new plant variety, a certificate of registration of a new plant variety, an application for registration of the licensing of rights under a certificate of registration of a new plant variety, an application for registration of the assignment of rights under a certificate of registration of a new plant variety, a substitute-certificate of registration of a new plant variety shall be subject to such fees as prescribed in the Ministerial Regulations.

Section 42. In the case where a certificate of registration of a new plant variety is lost or substantially damaged, the right holder of the new plant variety may apply for a substitute-certificate in accordance with the rules and procedure prescribed in the Ministerial Regulation.

CHAPTER IV

Protection of Local Domestic Plant Varieties

Section 43. A plant variety capable of registration as a local domestic plant variety under this Act shall be of the following descriptions:

(1) being a plant variety existing only in a particular locality within the Kingdom;

(2) being a plant variety not registered as a new plant variety.

Section 44. A *sui juris* person, residing and commonly inheriting and passing over culture continually, who takes part in the conservation or development of the plant variety which is of the descriptions specified in section 43 may register as a community under this Act. For this purpose, there shall be appointed a representative who shall submit an application in writing to the *Changwad* Governor of the locality.

The application shall at least contain the following particulars:

(1) the plant variety jointly conserved or developed and the method of its conservation or development;

(2) the names of members of the community;

(3) the landscape together with a concise map showing the boundary of the community and adjacent areas.

The submission of the application and the consideration and approval thereof shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 45. When a plant variety only exists in any particular locality and has been conserved or developed exclusively by a particular community, that community shall have the right to submit, to the local government organisation in whose jurisdiction such community falls, a request for initiating an application for registration of the local domestic plant variety in the name of such community.

Upon receipt of the request from the community under paragraph one, the local government organisation shall proceed to apply to the Commission for registration of the local domestic plant variety as from the day documents and information necessary for the registration have duly been obtained.

In the case where the community under paragraph one is formed as a farmers' group or co-operative under the law on co-operatives, such farmers' group or co-operative shall have the right to apply for registration of the local domestic plant variety on behalf of the community.

Section 46. The application for registration, the consideration of the application and the issuance of a certificate of registration of a local domestic

plant variety shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 47. When registration has been made for the protection of a local domestic plant variety of any locality, that locality shall have the exclusive right to develop, study, conduct an experiment or research in, produce, sell, export or distribute by any means the propagating material thereof. For this purpose, the local government organisation, farmers' group or co-operative to which the certificate of registration of the local domestic plant variety has been granted shall be the right holder of such plant variety in the name of the said locality.

The provisions of paragraph one shall not apply to the following circumstances:

(1) the act relating to a protected local domestic plant variety without an intention to use it as propagating material;

(2) the act relating to a protected local domestic plant variety committed in good faith;

(3) the cultivation or propagation by a farmer of a protected local domestic plant variety from the propagating material made by himself, provided that in the case where the Minister, with the approval of the Commission, publishes that local domestic plant variety as promoted plant variety, its cultivation or propagation by a farmer may be made in the quantity not exceeding three times the quantity obtained;

(4) the act relating to a protected local domestic plant variety for non-commercial purpose.

Section 48. A person who collects, procures or gathers a local domestic plant variety or any part thereof for the purposes of variety development, education, experiment or research for commercial interest shall make a profit-sharing agreement in relation to the profits derived from the use of such local domestic plant variety.

In authorising any person to carry out the act under paragraph one and in making the profit-sharing agreement, the local government organisation, farmers' group or co-operative to which the certificate of registration of the local domestic plant variety is granted shall make the agreement in the name of the community, provided that approval of the Commission shall first be obtained.

Section 49. Twenty percent of the profits derived from authorising another person to use the rights in the local domestic plant variety shall be allocated to the persons who conserve or develop the plant variety, and sixty percent thereof to the community as its common revenue and twenty percent thereof to the local government organisation, the farmer's group or the co-operative that makes the agreement.

The profit-sharing among the persons who conserve or develop the plant variety shall be in accordance with the regulations prescribed by the Commission.

In the case of any dispute in connection with the allocation of profits under paragraph one, it shall be decided by the Commission.

Section 50. Section 31 shall apply *mutatis mutandis* to the term for which a certificate of registration of a local domestic plant variety is granted.

The term of the certificate of registration of a local domestic plant variety under paragraph one may be extended for each term of ten years if the Director-General considers that such plant variety is still of the descriptions specified in section 43 and such community is still of the description specified in section 44 and section 45.

The application for extension of the term of protection and the permission thereof shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

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

CHAPTER V

Protection of General Domestic Plant Varieties and Wild Plant Varieties

Section 52. A person who collects, procures or gathers general domestic plant varieties, wild plant varieties or any part of such plant varieties for the purposes of variety development, education, experiment or research for commercial interest shall obtain permission from the competent official and make a profit-sharing agreement under which the income accruing therefrom shall be remitted to the Plant Varieties Protection Fund in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

The profit-sharing agreement shall at least have the following particulars:

- (1) the purposes of the collection and gathering of the plant variety;
- (2) the amount or quantity of samples of the intended plant variety;
- (3) the obligations of the person to whom permission is granted;
- (4) the stipulation as to intellectual property rights in the products which result from the development, study, experiment or research of or into the plant variety and which are derived from the use of the plant variety under the agreement;
- (5) the stipulation as to the amount or rate of, or the term for, the profit-sharing under the profit-sharing agreement in respect of products derived from the use of the plant variety thereunder;

- (6) the term of the agreement;
- (7) the revocation of the agreement;
- (8) the stipulation as to the dispute settlement procedure;
- (9) other items of particulars as prescribed in the Ministerial Regulation.

Section 53. A person who conducts a study, an experiment or research of or into a general domestic plant variety or a wild plant variety or any part thereof for a non-commercial purpose shall comply with the Regulation prescribed by the Commission.

CHAPTER VI

Plant Varieties Protection Fund

Section 54. There shall be established in the Ministry of Agriculture and Co-operatives a fund call the “Plant Varieties Protection Fund” to expended for the purposes of assisting and subsidising activities related to the plant varieties conservation, research and development, consisting of the following property:

- (1) income accruing from profit-sharing agreements under section 52;
- (2) money or property received from the registration of plant varieties;
- (3) subsidies from the Government;
- (4) donated money or property;
- (5) fruits or other benefits accruing from the Fund.

Money or other property under paragraph one shall be remitted to the Fund without having to remit the same as State revenue.

Section 55. The money in the Fund shall be expended for the following activities:

- (1) assisting and subsidising any activities of communities in connection with the conservation, research and development of plant varieties;
- (2) serving as expenses of local government organisations for the purposes of their subsidising the conservation, research and development of plant varieties of communities;
- (3) serving as expenses in the management of the Fund.

The management of the Fund and the control of the expenses therefrom shall be in accordance with the Regulation prescribed by the Commission with the approval of the Ministry of Finance.

Section 56. There shall be a Fund Committee consisting of Permanent Secretary of the Ministry of Agriculture and Co-operatives as the Chairman and not less than seven other members appointed by the Commission and the

Director-General of the Department of Agriculture shall be the secretary and a member.

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

(1) to propose to the Commission directions, rules, conditions for as well as priorities of the disposition of the money in the Fund within the objects specified in section 55;

(2) to prescribe regulations in connection with rules and procedure for the allocation of, and the request for, grants or subsidies from the Fund;

(3) to consider and allocate the money in the Fund as expenses within the objects specified in section 55, in accordance with the directions, rules, conditions and priorities determined by the Commission;

(4) to consider and approve the request for the promotion and assistance under section 55;

(5) to perform any other activities as entrusted by the Commission.

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

Section 9 shall apply to a meeting of the Fund Committee *mutatis mutandis*.

Section 59. The money forming the Plant Varieties Protection Fund and accruing from the exploitation of general domestic plant varieties under profit-sharing agreements under section 52 shall be allocated to the local government organisation which is the source of the exploitation of such general domestic plant varieties, in accordance with the rules, procedure and rate prescribed in the Ministerial Regulation.

Section 60. Within one hundred and twenty days as from the end of a calendar year, the Fund Committee shall present a balance-sheet and the statements showing the revenues and expenses in the Fund during the previous year to the Office of the Auditor-General for its inspection and audit and shall then present them to the Commission.

The Commission shall submit such balance-sheet and statements of revenues and expenses to the Minister and the Minister shall submit them to the Council of Ministers for information and publish them in the Government Gazette.

CHAPTER VII

Protection of Rights of Right Holders of Plant Varieties

Section 61. In the case where there is an infringement of 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, as the case may be, the Court has the power to order the person committing the infringement to pay the right holder such amount of compensation as the Court deems appropriate, having regard to the gravity of the damage and loss of benefits, as well as the costs necessary for the enforcement of rights of the right holder.

Section 62. All plant varieties or articles in possession of the person committing the act infringing 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, as the case may be, shall be confiscated.

All articles confiscated by the Court shall vest in the State and shall be proceeded with by the Department of Agriculture in accordance with the regulations prescribed by the Director-General with the approval of the Commission.

CHAPTER VIII

Penalties

Section 63. Any competent official, having the responsibility in connection with registration of new plant varieties for protection thereof, unlawfully or without consent of the applicant for registration, uses or allows other persons to use or gives to other persons the propagating material of the new plant variety or the genetic material which has been presented to him as in the statement under section 19 (4) shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

Section 64. Any person who commits any act under section 33 or section 47 without authorisation from the right holder of the plant variety shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

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

Section 66. Any person who fails to comply with section 48 or section 52 shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

Section 67. Any person who forges or imitates a mark or does any act for the purpose of misleading other persons that a given plant variety is the protected plant variety under this Act shall be liable for imprisonment for a term of six months to five years and to a fine of twenty thousand to two hundred thousand Baht.

Section 68. Any person who, in applying for registration of a new plant variety or local domestic plant variety, gives false statements to the competent official with a view to obtaining a certificate of registration of the new plant variety or a certificate of registration of the local domestic plant variety, as the case may be, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding four hundred thousand Baht or to both.

Section 69. In the case where the person who commits an offence punishable under this Act is a juristic person, the persons representing that juristic person shall also be liable to the penalty imposed by the law for such offence unless it is proved that the act of such juristic person has been committed without their knowledge or consent.

Countersigned by:

Chuan Leekpai
Prime Minister

Rates of Fees

1. An Application for Registration of a New Plant Variety 1,000 Baht each
2. An Application for an Objection to an Application for
Registration of a New Plant Variety 1,000 Baht each
3. A Certificate of Registration of a New Plant Variety 1,000 Baht each
4. Annual Fee for the Protection of a New Plant Variety 1,000 Baht per year.
5. An Application for Registration of Authorisation
of the Use of Rights under a Certificate of Registration
of a New Plant Variety 500 Baht each
6. An Application for Registration of the Assignment
of Rights under a Certificate of Registration of a New
Plant Variety 500 Baht each
7. Substitute Certificate of Registration of a New Plant
Variety 500 Baht each

Certified correct translation

Dr. Ackaratorn Chularat
(Secretary-General of the Council of State)