

[Working Translation provided with the letter dated September 28, 2019 from  
Mr. Naing Kyi Win, Director General of DAR, MOALI]

**The New Plant Variety Protection Law**

**( The Pyidaungsu Hluttaw Law No. 29, 2019)**

**The 11<sup>th</sup> Waning day of Tawtalin, 1381 M.E.**

**(24, September 2019)**

The Pyidaungsu Hluttaw hereby enacts this Law.

**CHAPTER ( I )**

**TITLE AND DEFINITION**

1. This Law shall be called the **New Plant Variety Protection Law**.
2. The following expressions contained in this Law shall have the meanings given hereunder:
  - (a) **“Plant”** means any plant in the plant kingdom, including micro-organisms;
  - (b) **“Plant Variety”** means a plant grouping within a single botanical taxon of the lowest known rank, which grouping complies with the following specific characters and features, irrespective of whether the conditions of the protection of new plant variety in accordance with this law are fully met, can be
    - (i) defined by the expression of the related characteristics resulting from a given genotype or combination of genotypes,
    - (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics and
    - (iii) considered as a unit with regard to its suitability for being propagated unchanged;
  - (c) **“New Plant Variety”** means a plant variety which expresses at least one clearly distinct character from the existing plant varieties, reveals uniformity in characters when it is cultivated and there is no change in characters through propagation; has been granted a plant breeder’s right, it must be new in accordance with Section 8 and must be denominated according to Sections 12 and 13 of this Law;

- (d) **“Plant Breeder”** means the person who bred or discovered and developed a new plant variety or a plant variety. In this definition, it also included the person who is the employer of the aforementioned person or who has commissioned the latter’s work, or the successor in title of the aforementioned persons, as the case may be;
- (e) **“Plant Breeder’s Right”** means a right to be authorized and enjoyed for a protected new plant variety by a plant breeder if the acts in Sections 23, 24, 25 and 26 of this Law are carried out by any other person;
- (f) **“Propagating material”** means the entire plants or parts of plants of plant variety used for propagation;
- (g) **“Harvested material”** means entire plants or parts of plants obtained through the use of propagating materials of plant variety;
- (h) **“Recognition Certificate”** means a certificate issued under this Law to a plant breeder for the protection of a new plant variety;
- (i) **“Ministry”** means the Ministry of Agriculture, Livestock and Irrigation of the Union Government;
- (j) **“Central Committee”** means the Central Committee for National New Plant Variety Protection formed under this Law;
- (k) **“Department”** means the Department of Agricultural Research, the Ministry of Agriculture, Livestock and Irrigation.

## **CHAPTER (II)**

### **OBJECTIVES**

- 3. The objectives of this Law are as follows:
  - (a) to protect the rights of plant breeders;
  - (b) to develop the plant breeding activity;
  - (c) to promote local and foreign investment in the plant breeding activity;
  - (d) to support the development of the national economy through the utilization for production of new plant varieties.

## **CHAPTER ( III )**

### **FORMATION OF THE CENTRAL COMMITTEE**

4. The Ministry:

- (a) shall, with the approval of the Union Government, form the Central Committee for National New Plant Variety Protection comprising the Deputy Minister for the Ministry as the Chairperson, the Director General of the Department as the Secretary, and other suitable persons, expert representatives from the relevant departments and organizations under the Ministries which are applicable to this Law as members.
- (b) may determine and assign duty to the Vice-Chairperson and Joint-Secretary, if necessary, in accordance with subsection (a).
- (c) may reform the Central Committee, in accordance with subsection (a), with the approval of the Union Government from time to time.

## **CHAPTER (IV)**

### **DUTIES AND POWERS OF THE CENTRAL COMMITTEE**

5. The Central Committee shall:

- (a) lay down policies with the approval of the Union Government to create an enabling environment to encourage plant breeding and to support plant breeders' rights for the development of the agricultural sector;
- (b) cooperate and coordinate with the relevant Government departments, international organizations, local and foreign organizations and private entrepreneurs to develop the plant breeding activities, research and technology activities.
- (c) organize the Technical Committee and sub-Committee for a New Plant Variety Testing and reform them from time to time, and assign the function and duty.

6. When a plant breeder applies for a breeder's right of a new plant variety protection, the Central Committee shall issue a recognition certificate in accordance with the evaluation on recommendations of the Technical Committee for a New Plant Variety Testing whether the applied variety complies with the conditions of protection or not.

## CHAPTER (V)

### STIPULATIONS TO RECOGNIZE AS A NEW PLANT VARIETY

7. An applied variety in order to grant plant breeder's right for new plant variety protection shall comply with the following conditions:

- (a) novelty
- (b) distinctness
- (c) uniformity
- (d) stability and
- (e) the variety is designated by a denomination in accordance with the provisions of Section 12 and Section 13.

8. The applied variety shall be deemed to be as a new plant variety,

- (a) if at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of commercial exploitation of the variety earlier than one year within Myanmar before the date of filing the application, in other foreign countries earlier than four years or earlier than six years in case of trees and vines before the said date;
- (b) if propagating or harvested materials of the applied variety, which it was not possible to apply in the past, such varieties may be deemed to be new even if the sale for the purposes of commercial exploitation of propagating or harvested materials of such variety took place in Myanmar within four years before the filing date or, in the case of trees or of vines, within six years before the said date;
- (c) the provision under subsection (b) of this Section, shall apply to the applications for a breeder's right filed within one year only after the enactment of this Law.

9. The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

10. The variety shall be deemed to be 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.

11. The variety shall be deemed to be 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 such cycle.

12. (a) A new plant variety shall be named :

(i) The variety shall be designated by a denomination which will be is generic designation.

(ii) It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. It must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(iii) It may not consist solely of figures except where there is usually established practice for designating varieties.

(iv) Subject to subsection (vi), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(v) A variety must be submitted to all members of UPOV under the same denomination.

(vi) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden for a person who, in accordance with the provision of Section 13 subsection (a-iii), is obliged to use it, the Central Committee shall require the breeder to submit another denomination for the variety.

(b) When a protected variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

13. (a) In relation to denominations the following applies:
- (i) Where a denomination of a new plant variety is rejected by the Central Committee in accordance with the provisions in Section 12 subsection (a), the applicant may furnish a new denomination within the prescribed period.
  - (ii) The denomination shall be registered by the Central Committee at the same time as the breeder's right is granted.
  - (iii) Any person who offers for sale or markets propagating material of a variety protected within Myanmar is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of Section 12, subsection (a-vi), prior rights prevent such use.
- (b) The Central Committee ensures that the authorities of the members of UPOV are informed of matters concerning the variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Central Committee.

## **CHAPTER (VI)**

### **APPLICATION OF THE RIGHT OF A NEW PLANT VARIETY PROTECTION**

14. The following persons can apply for the grant of the breeder's right:
- (a) any national
  - (b) any foreigner and their organizations, including natural persons and legal entities, who have their permanent residence in Myanmar, and
  - (c) any national from, as well as natural person or legal entity resident in, foreign countries and intergovernmental organizations, which have entered with Myanmar into agreements on new plant variety protection.
15. The persons under the subsection (b) and (c) of Section 14, shall enjoy the same treatment concerning plant breeders' rights as the nationals if they comply with existing Law, by-laws, rules and regulations and disciplines.
16. The plant breeder can apply for a plant breeder's right for all plant genera and species in accordance with this Law.

17. An applicant for the breeder's right of a new plant variety shall apply to the Central Committee in accordance with the provisions in the rules and the filing date of the application for a breeder's right shall be the date of the receipt of the application duly filed as prescribed by this Law.

18. (a) Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Sections 8 to 12. In the course of the examination, the Central Committee may assign the duty to the Technical Committee for a New Plant Variety Testing comprising the experts from the relevant Government departments with the approval of the Ministry or; an independent institute, or relevant experts;

(b) According to subsection (a), the Technical Committee for a New Plant Variety Testing, or independent institute, or relevant experts; may take into account the results of the growing tests or other necessary testing or other trials which have already been carried out or checking the test trial documents.

(c) The Technical Committee shall send the results of the test report to the Central Committee and send a copy of the report to the plant breeder.

19. The Central Committee may ask to the breeder to furnish all the necessary information, documents or material for the purpose of examination as specified in the rules, by-laws of the Ministry.

20. An applicant for a breeder's right of a new plant variety:

(a) shall enjoy the right of priority for a period of twelve months from the day after the date of filing of the first application if he/she applies a subsequent application for the same new plant variety after applying the right of protection in a foreign country or intergovernmental organization which has entered with Myanmar into agreements on plant variety protection.

(b) shall submit, within a period of three months from the filing date of the application, a copy of documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(c) shall allow a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Central Committee, any necessary information, documents or materials required for the purpose of the examination.

21. Events occurring within the priority period provided for in Section 20, subsection (a), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.
- 22.(a) During the period between the publication of the application by Central Committee and the grant of that right the breeder shall enjoy provisional protection to safeguard the interests of the breeder.
- (b) The applicant is considered to be the holder of a breeder's right in relation to any person who, during the provisional period has carried out acts which, once the right is granted, require the breeder's authorization as provided in Sections 23, 24, 25 and 26. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.

## **CHAPTER (VII)**

### **PLANT BREEDER'S RIGHT**

23. (a) Subject to the provisions of Sections 27 and 28, the following acts in respect of the propagating material of the protected variety shall not be done by any other person without out the authorization of the breeder:
- (i). production or reproduction;
  - (ii) conditioning for the purpose of propagation;
  - (iii) offering for sale;
  - (iv) selling or other marketing;
  - (v) exporting;
  - (vi) importing;
  - (vii) stocking for any of the purposes mentioned in (i) to (vi), above;
- (b) The breeder may make his authorization under subsection (a) to others subject to agreement between them.

24. Subject to the provisions of Sections 27 and 28, the acts referred to in Section 23 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

25. Subject to provisions of Sections 27 and 28, the acts referred to in Section 23 in respect of products made directly from harvested material of the protected variety falling within the provisions of Section 24 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

26. The provisions in Sections 23, 24, and 25 shall also apply in relation to the following varieties.

- (a) Varieties, which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, which may be obtained by the selection of a natural or induced mutants, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformed by genetic engineering. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when
  - (i) it is predominantly derived from another variety (“initial variety”) or from the variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
  - (ii) it is clearly distinguishable from the initial variety and
  - (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (b) varieties which are not clearly distinguishable in accordance with Section 9 from the protected variety;
- (c) varieties whose production requires the repeated use of the protected variety

27. (a) The breeder's right shall not extend to the following:
- (i) acts done privately and for non-commercial purposes;
  - (ii) acts done for experimental purposes and
  - (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Section 26 apply, acts referred to in Sections 23, 24 and 25 in respect of such other varieties.
- (b) Farmers shall not be considered that they infringe the breeder's right, if they use for propagating purposes, on their own holdings, only for their home consumption, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Section 26 (a) or (b) of this Law.
- (c) Varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under subsection (b) of this Section.
28. (a) The breeder's right shall not extend to acts concerning any materials of the protected variety, or of a variety covered by the provisions of Section 26 which has been sold or otherwise marketed by the breeder or with his consent in the territory of Myanmar or any material derived from the said material, unless such acts
- (i) involve further propagation of the variety,
  - (ii) involve an export of material of the variety, which enables the propagation of the variety, into a foreign country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (b) For the purposes of subsection (a), "material" means, in relation to a variety,
- (i) propagating materials,
  - (ii) harvested materials and
  - (iii) any product made directly from the harvested material.
29. Any person-
- (a) shall not carry out the acts provided for in Sections 23, 24, 25 and 26 without the authorization of the plant breeder to a protected new plant variety.
  - (b) shall not restrict for reasons other than public interest except where expressly provided in this Law, the free exercise of a breeder's right.

30. When any such restriction, in accordance with Section 29(b), has the effect of the Central Committee, authorizing a party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

31. The breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.

32. The protection period of a plant breeder's right is 25 years for trees and vines and 20 years for other new plant varieties commencing from the date of the grant of the breeder's right.

## **CHAPTER (VIII)**

### **NULLITY AND CANCELLATION OF A PLANT BREEDER'S RIGHT**

33. A plant breeder's right shall be declared null and void when it is established

- (a) that the conditions laid down in Sections 8 or 9 were not complied with at the time of granting the breeder's right of a new plant variety;
- (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections 10 or 11 were not complied with at the time of granting the breeder's right of a new plant variety;
- (c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

34. A plant breeder's right shall not be declared null and void for other reasons than those referred to in Section 33.

35. The Central Committee shall cancel the breeder's right for the following reasons:

- (a) if it is established that the conditions laid down in Sections 10 or 11 are no longer fulfilled.
- (b) if, after being requested to do so and within the prescribed period, the breeder does not provide the Central Committee with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (c) if, after being requested to do so and within the prescribed period, the breeder fails to pay such fees as may be payable to maintain his right in force;

- (d) if, after being requested to do so and within the prescribed period, the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

36. A plant breeder's right shall not be cancelled for other reasons than those referred to in Section 35.

## **CHAPTER (IX)**

### **APPEALS**

- 37. (a) A person dissatisfied with evaluation report passed by the Technical Committee for a New Plant Variety Testing under this Law may file an appeal to the Central Committee in accordance with the stipulations within 60 days.
- (b) The Central Committee may approve, cancel or amend the evaluation report passed by the Technical Committee for a New Plant Variety Testing relating to the appeal under subsection (a). The decision of Central Committee is final.
- (c) A person dissatisfied with an order of decision passed by the Central Committee may file an appeal to the court in accordance with the stipulations within 90 days from the date of the receipt of such order of decision.

## **CHAPTER (X)**

### **OFFENCES AND PENALTIES**

38. Whoever violates any provision in Sections 23, 24, 25 and 26 without authorization of the plant breeder to a new plant variety shall, on conviction, be punished with imprisonment for a term of a minimum of six months to a maximum of three years or with a fine from a minimum of one million kyats to a maximum of five million kyats or with both.

## **CHAPTER (XI)**

### **MISCELLANEOUS**

39. Applicants shall comply with the requirements specified in this Law and pay the designated fees; a plant breeder's right shall not be restricted by any other conditions.

40. The Central Committee shall announce to the public concerning applications for and grants of breeders' rights and proposed and approved denominations through the regular publication of information.

41. Supervision over the implementation of this Law and its rules shall be performed by the Central Committee based on the findings of the Technical Committee.

42. (a) The holder of a breeder's right may request to the Central Committee to take the following actions with regard to a person who infringes his/her breeder's right

(i) to discontinue or refrain from such infringement or preserve evidence,

(ii) to destruct the propagating material, the harvested material or the processed products which are components of the breeder's right of infringement.

(b) The Central Committee may apply the provisions of intellectual property rights Laws in connection with plant breeders' rights.

43. The members of the Central Committee and of the Technical Committee for a Plant Variety Testing who are not government employees are entitled to enjoy emolument determined by the Ministry.

44. The Central Committee shall, with the approval of the Ministry, determine the fees to be paid by the applicant to get the right of protection to a new plant variety.

45. The applicant, to get the right of protection to a new plant variety, shall pay the prescribed fees concerning the filing and examination of applications to the Central Committee.

46. In implementing the provisions of this Law:

(a) the Ministry may issue by-laws, regulations and rules with approval of the Union Government,

(b) the Ministry and the Central Committee may issue notifications, orders, directives and procedures.

47. The Plant Variety Protection Law, which enacted at (2016 year by The Pyidaungsu Hluttaw Law No. 15), shall be declared void by this Law.

I hereby sign under the Constitution of the Republic of the Union of Myanmar.

Sd/ Win Myint

President

The Republic of the Union of Myanmar