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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-Fourth Extraordinary Session
Geneva, March 30, 2007

**EXAMINATION OF THE CONFORMITY OF THE PHILIPPINE PLANT VARIETY
PROTECTION ACT OF 2002 WITH THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated November 2, 2006, Mrs. Lealyn A. Ramos, former Acting Registrar, Plant Variety Protection Office, Department of Agriculture of the Government of the Philippines (hereinafter referred to as the "Philippines"), requested the examination of the "Philippine Plant Variety Protection Act of 2002" (hereinafter referred to as the "Law"), which was enacted on June 7, 2002, and became effective on July 19, 2002, for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter and the Law are reproduced in Annexes I and II of this document.
2. The Philippines did not sign the 1991 Act. In conformity with Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act, and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in the Philippines

3. In the Philippines, the protection of new plant varieties is governed by the Law and the implementing rules and regulations of the Law approved on February 20, 2003. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of 1991 Act: Definitions

4. Section 3 of the Law contains the definitions of relevant terms used in the Law. In particular, the definition of “variety” conforms with the definition of variety in Article 1(vi) of the 1991 Act. In addition, the definition of “breeder” conforms with the definition of breeder in Article 1(iv) of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

5. Section 2 of the Law provides that the State “shall protect and secure the exclusive rights of breeders with respect to their new plant variety [...]”. Subject to the deviations from the 1991 Act identified in this document, the Law complies with the basic obligation in Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

6. Article 3(2) of the 1991 Act requires that when the Philippines becomes bound by the 1991 Act of the UPOV Convention, it has to apply the Law to at least 15 genera and species and, by the expiration of a period of ten years from the date on which the Philippines becomes bound by the 1991 Act, to all genera and species. Section 3. i) of the Law provides that “‘Plant’ includes terrestrial and aquatic flora”.

7. At the time of depositing its instrument of accession to the 1991 Act, the Philippines is obliged to notify the genera and species to which the Philippines will apply the provisions of the 1991 Act (Articles 3(2) and 36(1)(ii) of the 1991 Act).

Article 4 of the 1991 Act: National Treatment

8. The second sentence of Section 23 of the Law, in conjunction with the definition of “foreign national” in Section 22 of the Law, contains provisions concerning national treatment in conformity with the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

9. Sections 4 to 8 of the Law contain the majority of the provisions concerning the conditions of protection in Articles 5 to 9 of the 1991 Act.

10. A drafting clarification is recommended under Section 5(b) of the Law by the deletion of “in which the application has been filed” in line with Article 6(1) of the 1991 Act. It

should be noted that the filing of applications in other territories does not affect the novelty condition in the Philippines. The grace periods contained in paragraphs (a) and (b) of Section 5 of the Law both relate to applications filed in the Philippines. What matters is the date of sale or disposal of to others for purposes of exploitation of the variety, in the Philippines (Section 5(a) of the Law) or in any other territory (Section 5(b) of the Law).

11. Paragraph 2 of Section 5 of the Law contains provisions concerning a transitional novelty regime for varieties of recent creation in line with Article 6(2) of the 1991 Act.

12. Section 6 of the Law contains the essential provisions concerning the condition of distinctness in line with Article 7 of the 1991 Act. Minor departures from the treaty language of Article 7 of the 1991 Act have been identified in the Law. Section 6 of the Law provides that “a variety shall be deemed distinct if it is clearly distinguishable from any *common known variety*”. Article 7 of the 1991 Act provides that “[t]he 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*” (emphasis added). In the second sentence of Section 6 of the Law, “*public knowledge*” should be understood as “*common knowledge*” (emphasis added).

13. Section 7 of the Law contains the provisions on the condition of uniformity in line with Article 8 of the 1991 Act.

14. Section 8 of the Law contains the provisions on the condition of stability in line with Article 9 of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

15. Sections 17 to 27, and 29 of the Law contain provisions on the filing of applications in line with Article 10 of the 1991 Act.

16. The first sentence of Section 27 of the Law provides that “[t]he applicant shall be required by the Board to furnish information regarding any application filed by him in other countries including all pertinent documents relating thereto. [...]”. The information required on previous applications should be understood to be provided for examination purposes.

Article 11 of the 1991 Act: Right of Priority

17. Section 21 of the Law contains provisions concerning the right of priority in conformity with Article 11(1) and (2) of the 1991 Act.

18. The second sentence of Section 27 of the Law deviates from the provisions of Article 11(3) of the 1991 Act. It is recommended to amend the second sentence of Article 27 of the Law as follows and to place the proposed text in Article 21 of the Law:

“[...]. If the applicant has successfully claimed priority according to this Act, he shall be given a period of two (2) years ~~from the priority date to comply with the requirements of this Section.~~ 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 Board, any necessary information, document or material required for examination purposes under Sections 27 and 28.”

Article 12 of the 1991 Act: Examination of the Application

19. Sections 27 and 28 of the Law contain provisions concerning the examination of the application in line with Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

20. Section 42 of the Law contains provisions on provisional protection that conform with Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder’s Right

21. Sections 36 to 41 of the Law contain the essential provisions on the scope of the breeder’s right in line with Article 14(1), (2) and (5) of the 1991 Act.

22. The Law does not contain the optional provision of Article 14(3) of the 1991 Act concerning “acts in respect of certain products”. In this regard, it should be noted that the definition of “Harvested material” under Section 3(f) of the Law is confusing. “Harvested material” is defined as “any part of a plant with potential economic value or any product made directly therefrom in proper cases”. In the first place, the notion of “potential economic value” is not relevant for the protection granted under the UPOV Convention and in the second place, reference to “any product made directly therefrom in proper cases” seems to indicate that the legislator intended to include in the scope of the breeder’s right the optional provision in relation to products made directly from harvested material. If that was the case, in order to provide for legal security on the scope of the breeder’s right, it is recommended to incorporate in the Law the optional provision under Article 14(3) of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder’s Right

23. Section 43 of the Law contains provisions concerning the exceptions to plant variety protection. In order to comply with Article 15(1)(i) of the 1991 Act, the following should be added under Section 43(a) of the Law: “Acts done privately and for non commercial purposes”.

24. Section 43(b) of the Law complies with Article 15(1)(ii) of the 1991 Act.

25. Section 43(c) of the Law needs to be completed, as follows, in order to comply with the full scope of Article 15(1)(iii) of the 1991 Act. “acts done for the purpose of breeding other varieties and except when Sections 39 and 40 apply, acts referred to in Sections 36 to 38 in respect of such other varieties”.

26. Section 43(d) of the Law contains provisions which deviate from the exception under Article 15(2) of the 1991 Act. Section 43(d) of the Law is reproduced for ease of reference:

“The Certificate of Plant Variety Protection shall not extend to:

[...]

d) The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the condition under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sell of seeds among and between said small farmers: Provided, That the small farmers may exchange or sell seeds for reproduction and replanting in their own land.”

27. In relation to the first sentence of Section 43(d) of the Law, if “exchange, share or sell of their farm produce of a variety protected under this Act” is for the purpose of reproduction, those acts would constitute infringements to the breeder’s right contrary to Article 14(1) of the 1991 Act, independently of whether such a reproduction is undertaken under a commercial marketing agreement or outside such a commercial marketing agreement.

28. In relation to the third sentence in Section 43(d) of the Law, “exchange and sell of seeds among and between said small farmers” would constitute an infringement to the breeder’s right (Article 14(1) of the 1991 Act). The exception under Article 15(2) of the 1991 Act requires that such an exception be implemented “within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder [...] in relation to any variety in order to permit farmers to *use* for propagating purposes, *on their own holdings*, the product of the harvest which they have obtained by planting, *on their own holdings*, the protected variety [...]” (emphasis added). The exchange and sale of seeds among and between the said small farmers in their own land, as provided in the third sentence of Section 43(d) of the Law, go beyond the exception of Article 15(2) of 1991 Act and therefore would constitute an infringement to the breeder’s right (Article 14(1) of the 1991 Act).

29. In order to comply with Article 15(2) of the 1991 Act, it is recommended to amend Section 43(d) of the Law.

Article 16 of the 1991 Act: Exhaustion of the Breeder’s Right

30. Section 44 of the Law contains provisions concerning the exhaustion of the breeder’s right which conform with Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restriction on the Exercise of the Breeder’s Right

31. Sections 57 to 60 of the Law contain provisions concerning compulsory licences.

32. Reference in the introduction of Section 57 of the Law to the notion of public interest is in line with Article 17(1) of the 1991 Act.

33. Section 58(c) of the Law requires that the petitioner pays the holder “reasonable royalties” in line with Article 17(2) of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

34. Article 18 of the 1991 Act provides that:

“The breeder’s right shall be independent of any measure taken by a Contracting Party to regulate within its territory 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 Convention.”

35. Attention is drawn to Section 75 of the Law concerning “relations with other Laws”:

“Relation with Other Laws. – *The interpretation of the provisions of this Act shall not negate the effectivity and application of Republic Act No. 8371 otherwise known as the Indigenous People’s Rights Act, Republic Act No. 9147, otherwise known as The Wildlife Resources Conservation and protection Act, Presidential Decree No. 1151, otherwise known as the Philippine Environmental Policy and Executive Order No. 430 and Administrative Order No. 8, Series of 2002 of the Department of Agriculture of the rules and regulations for the importation and release to the environment of plant products derived from the use of biotechnology.*” (emphasis added)

36. In order to comply with Article 18 of the 1991 Act, the application of the laws, rules and regulations referred to in Section 75 of the Law should not affect the application of the provisions of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder’s Right

37. Section 33 of the Law contains provisions concerning the duration of the breeder’s right in line with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

38. Sections 9 to 16 of the Law contain the majority of the provisions concerning variety denominations of Article 20 of the 1991 Act.

39. Section 10 of the Law deviates from the provisions of Article 20(2) of the 1991 Act. A denomination already registered for a variety could be registered for another variety if the denomination is, as required by Article 20(2) of the 1991 Act, “not liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely-related species.”

40. The deviation from Article 20(2) of the 1991 Act in Section 10 of the Law, may lead to the unnecessary refusal of variety denominations submitted by breeders and create difficulties to comply with the obligation under Article 20(5) of the 1991 Act (Section 14 of the Law) that aims to register the same denomination in all members of the Union.

41. In order to comply with Article 20(2) of the 1991 Act, it is recommended to delete the second sentence of Section 9 and Section 12 of the Law and to amend Section 10 of the Law as follows:

~~“Section 10. Right of Priority Over Denomination. – The use of a denomination shall not be granted to a breeder registered if such denomination is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, 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, has already been registered to another breeder or is being used by a third party in relation to the sale or offering for sale of a particular variety prior to the filing date or priority date of an application for a Certificate of Plant variety protection. In case two (2) or more breeders/applicants apply for of conflicting proposed variety denominations, as provided in this Section, in the Philippines or in other members of UPOV, the one with an earlier publication date should be retained. the registration of the same denomination, the breeder/applicant who has the earliest filing date or priority date shall have the right to register the same to the exclusion of the other applicant/breeder (3).”~~

42. The recommended modification of the last sentence of Section 10 of the Law is based on the Explanatory Note 4 (c) of document UPOV/INF/12/1 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

43. The provisions of Article 20(4) of the 1991 Act concerning “Prior rights of third persons” are not included in the Law. Such an inclusion is required in order to comply with Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder’s Right

44. Section 61 of the Law contains the grounds for nullity of the breeder’s right.

45. Section 61(a) of the Law differs from the reasons of nullity under Article 21(1)(i) and (ii). Reference to “where the grant of the breeder’s right has been essentially based upon information and documents furnished by the breeder”, is relevant for the reason of nullity concerning the conditions of uniformity and stability. It is recommended to follow treaty language and to amend Section 61(a) in order to comply with the reasons of nullity under Article 21(1)(i) and (ii) of the 1991 Act.

46. Section 61 (b) of the Law contains the reason of nullity under Article 21(1)(iii) of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder’s Right

47. Sections 62 and 34 of the Law contains the reasons for cancellation of the breeder’s right of Article 22 of the 1991 Act.

48. The second part of Section 62 (b) of the Law provides that the breeder’s right shall be cancelled if “[t]he breeder [...] provides false information in his or her application;” This provision seems to introduce an additional reason for cancellation which is contrary to Article 22(2) of the 1991 Act, its deletion is recommended.

Article 30 of the 1991 Act: Implementation of the Convention

49. In relation to Article 30(1)(i) of the 1991 Act, Sections 47 to 56 of the Law contain provisions concerning the enforcement of plant breeder's rights. The last sentence of Section 47 of the Law provides that the holder "may also avail of all relief as are available in any proceeding involving infringements of other proprietary rights".

50. It is recommended to delete the word "sexually" from Section 47 (c) of the Law. Article 14(1)(a)(i) of the 1991 Act and Section 36(a) of the Law refer to the act of "production or reproduction" without differentiating between sexually or asexually production or reproduction of the variety.

51. It is recommended to clarify the provisions under Section 47(e) and (f) of the Law, which are reproduced here for ease of reference:

"e) Use seed which had been marked "unauthorized propagation prohibited" or "unauthorized seed multiplication prohibited" or progeny thereof to propagate the novel variety;"

f) Dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received;"

52. Section 47(e) of the Law might be deleted because even if there is not such a marking "unauthorized propagation prohibited", the act of using seed for propagating the variety would also constitute an infringement to the breeder's right. This infringement act is already covered by Section 47(c) of the Law, once the word "sexually" has been deleted from that Section.

53. The wording used under Section 47(f) of the Law to identify "what constitutes infringement" should not deviate from the scope of the breeder's right in relation to the acts that require the authorization of the breeder in Sections 36 to 41 of the Law (Article 14(1)(2) and (5) of the 1991 Act). Furthermore, attention is drawn to the words "without notice as to being a protected variety" in Section 47(f) of the Law. The absence of such a notice does not automatically imply that the breeder's right has not been infringed. Under Article 30(1)(iii) of the 1991 Act, members of the Union shall adopt measures to ensure that the public is informed of the applications for and grants of breeders' rights.

54. The first part of Section 47(h) of the Law is already covered by Section 47(a)(b) and by Section 47(c) of the Law, once the word "sexually" has been deleted from Section 47(c). Clarification is sought of what should be understood by "except in pursuance of a valid Philippine plant patent" at the end of Section 47(h) of the Law.

55. Reference to "conditioning for the purpose of propagation" is missing in Article 47 of the Law. Such an act undertaken without the authorization of the breeder would constitute an infringement to the breeder's right (Article 14(1)(a)(ii) of the 1991 Act and Article 36(b) of the Law).

56. In relation to Article 30(1)(ii) of the 1991 Act, Section 74(a) of the Law provides that the Register shall "issue the said certificates and sign them in the name of the Board". The Law complies with Article 30(1)(ii) of the 1991 Act.

57. Sections 30 and 32 of the Law provide for the publication of applications for and certificates of plant variety protection, respectively. Section 73 of the Law refers to the Plant Variety Gazette for all the publication requirements of the Law. As required by Article 30(1)(iii) of the 1991 Act, the Plant Variety Gazette should contain relevant information concerning applications for and grants of breeder's rights, and also proposed and approved variety denominations. Taking that into consideration, the Law complies with Article 30(1)(iii) of the 1991 Act.

Other comments

58. Section 71 of the Law establishes a "Gene Trust Fund" the purpose of which is not clearly established in the Law but seems to be related to conservation of genetic resources:

"Gene Trust Fund. – There shall be an independent and separate trust fund established under this Act, to be *administered by the Board*, for the benefit of bona fide organizations or institutions managing and operating an accredited gene bank. An amount to be determined by the Board but not to exceed twenty percent (20%) of the fees and charges, shall be used for the purposes of the gene trust fund. The trust fund may also accept donations from national and international institutions and other organizations and individuals interested in *strengthening genetic conservation*." (emphasis added)

59. Since measures concerning conservation of genetic resources pursue different objectives and require a different administrative structure than the legislation dealing with the grant of breeders' rights, it would be appropriate to include those measures in a different piece of legislation, although such legislation should be compatible and mutually supportive.

General Conclusion

60. In the opinion of the Office of the Union, the Law incorporates the majority of the provisions of the 1991 Act, but still needs some clarifications and amendments, as provided in this document, in order "to give effect" to the provisions of the 1991 Act, as required by its Article 30(2).

61. *The Council is invited to:*

(a) *take note of the information given in this document;*

(b) *advise the Government of the Philippines that the Law incorporates the majority of the provisions of the 1991 Act, but still needs some clarifications and amendments, as provided in this document, in order to conform with the 1991 Act; once the above clarifications and amendments are incorporated in the Law, the Government of the Philippines is invited to request the examination of the amended law as provided in Article 34(3) of the 1991 Act;*

(c) to request the Office of the Union to offer its assistance to the Government of the Philippines in drafting the necessary clarifications and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of the Philippines of that decision.

[Annexes follow]

ANNEX I



Republic of the Philippines
Department of Agriculture
PLANT VARIETY PROTECTION OFFICE

02 November 2006

DR. KAMIL IDRIS
Secretary-General
International Union for the Protection of New Varieties of Plants (UPOV)
34, chemin des Colombettes
CH-1211 Geneva 20

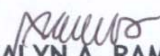
Dear Secretary-General Idris:

I have the pleasure to inform you that on 07 June 2002 the Senate and the House of Representatives in Congress passed into law Republic Act 9168, an Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and for other Purposes. This law is otherwise known as the Philippine Plant Variety Protection Act of 2002.

The Philippines intends to adhere to the International Convention for the Protection of New Varieties of Plants (UPOV Convention of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (UPOV Convention).

Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate if the Council of UPOV could examine the conformity of the Law of the Philippines with the provisions of the UPOV Convention.

Sincerely yours,


LEALYN A. RAMOS
Acting Registrar



Enclosure: Copies Republic Act 7308 and its corresponding Implementing Rules and Regulations

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
METRO MANILA

Twelfth Congress

First Regular Session

Begun and held in Metro Manila on Monday, the twenty-third of July, two thousand one.

[REPUBLIC ACT NO. 9168]

**AN ACT TO PROVIDE PROTECTION TO NEW VARIETIES,
ESTABLISHING A NATIONAL PLANT VARIETY PROTECTION BOARD AND FOR
OTHER PURPOSES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

TITLE 1

PRELIMINARY TITLE

SECTION 1. Short Title. – This act shall be known and cited as the “Philippine Plant Variety Protection Act of 2002”.

SECTION 2. Statement of Policies. –

- a) the State recognizes that an effective intellectual property system in general and the development of new plant variety in particular is vital in attaining food security for the country. To this end, it shall protect and secure the exclusive rights of breeders with respect to their new plant variety particularly when beneficial to the people for such periods as provided for in this Act.
- b) The use of intellectual property bears a socioeconomic function. To this end, the State promote the diffusion of technology and information for the promotion of national development and progress for the common good.
- c) The State recognizes the indispensable role of the private sector, encourages the participation of private enterprises and provides incentives to needed investments in the development of new plant varieties.

- d) The State recognizes that science and technology are essential for national development and promotes the adaptation of technology and knowledge from all sources for the national benefit. The State also recognizes the need to protect and secure the exclusive rights of scientists and other gifted citizens to their intellectual property and creations.
- e) The State, while recognizing intellectual property rights in the field of agriculture, does so in a manner supportive of and not inconsistent with its obligations to maintain a healthful ecology in accord with the rhythm and harmony of nature.

TITLE II

DEFINITION

SECTION 3. Definition. –

- a) “Applicant” means the breeder who applies for the grant of a Certificate of Plant variety Protection.
- b) “Board” means the National Plant Variety Protection created by this Act. It shall also refer to the National Seed Industry Council during the transition period from the effectivity of this Act up to the time the said Board has been organized and operating.
- c) “Breeder” means:
 - 1. The person who bred, or discovered and developed a new plant variety; or
 - 2. The person who is the employer of the aforementioned person or who has commissioned the work; or
 - 3. The successors-in-interest of the foregoing persons as the case may be; or
 - 4. The holder of the Certificate of Plant Variety Protection.
- d) “Certificate of Plant Variety Protection” means the document issued by the Board pursuant to this Act for the protection of a new plant variety.
- e) “Commission” means the engage the services of a person to develop new plant varieties in exchange for monetary or any material consideration.
- f) “Harvested material” means any part of a plant with potential economic value or any product made directly therefrom in proper cases.
- g) “Holder” means a person who has been granted a Certificate of Plant Variety Protection or his successors-in-interest.
- h) “Person” includes natural persons and juridical persons.
- i) “Plant” includes terrestrial and aquatic flora.
- j) “Plant Variety Protection (PVO)” means the rights of breeders over their new plant variety as defined in this Act.
- k) “Propagating material” means any part of the plant that can be used to reproduce the protected variety.
- l) “Regulations” means the rules and regulations promulgated by the Board for the purpose of implementing the provisions of this Act.
- m) “Variety” means a plant grouping within a single botanical taxon of the lowest known rank, that without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant groupings by the expression of at least one (1) characteristic, and considered as a unit with regard to the suitability for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture plantlets, and other forms.

TITLE III

CONDITIONS FOR THE GRANT OF THE PLANT VARIETY PROTECTION

SECTION 4. The Certificate of Plant Variety Protection shall be granted for varieties that are:

- a) New;
- b) Distinct;
- c) Uniform; and
- d) Stable.

SECTION 5. Newness. – A variety shall be deemed new if the propagating or harvested material of the variety has not been sold, offered for sale or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety;

- a) In the Philippines for more than one (1) year before the date of filing of an application for Plant Variety Protection; or
- b) In other countries or territories in which the application has been filed, for more than four (4) years or, in the case of vines or trees, more than six (6) years before the date of filing of an application for Plant variety Protection.

However, the requirement of novelty provided for this Act shall not apply to varieties sold, offered for sale or disposed of to others for a period of five (5) years before the approval of this Act; Provided, That application for PVP shall be filed within one (1) year from the approval of this Act.

SECTION 6. Distinctness. – A variety shall be deemed distinct if it is clearly distinguishable from any commonly known variety. The filing of an application for the granting of a plant variety protection or for the entering of a new variety in an official register of variety in the Philippines or in any country, shall render the said variety a matter of public knowledge from the date of the said application. Provided, That the application leads to the granting of Certificate of Plant Variety Protection or the entering of the said other variety in the official register of variety as the case may be.

SECTION 7. Uniformity. – The variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficient uniform in its relevant characteristics.

SECTION 8. Stability. – The variety shall be deemed 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.

TITLE IV

VARIETY DENOMINATION

SECTION 9. Variety Denomination. – The variety shall be designated by a denomination which shall be its generic description. In particular, it must be different from any denomination that designates an existing variety of the same plant species or closely related species.

SECTION 10. Right of Priority Over Denomination. – The use of a denomination shall not be granted to a breeder if such denomination has already been registered to another breeder or is being used by a third party in relation to the sale or offering for sale of a particular variety prior to

the filing date or priority date of an application for a Certificate of Plant variety protection. In case two (2) or more breeders/applicants apply for the registration of the same denomination, the breeder/applicant who has the earliest filing date or priority date shall have the right to register the same to the exclusion of the other applicant/breeder (3).

SECTION 11. Figures as Denomination. – The denomination must enable the variety to be identified. It may not consist solely of figures except when it is an established practice for designating such a variety.

SECTION 12. Misleading Denomination. – No denomination shall be accepted if it is liable to mislead or to cause confusion concerning the characteristic value or identity of the variety or identity of the breeder.

SECTION 13. Refusal of Denomination. – If the denomination does not satisfy these requirements, its registration shall be refused and the breeder shall be required to propose another denomination within a prescribed period. The denomination shall be registered together with the grant of the breeder's right.

SECTION 14. Denomination Used in an Application Previously Filed Abroad. – An application filed in this country, the subject matter of which is the same as that of an application previously filed abroad, shall use the same denomination as the latter. However, if such denomination does not conform to the provisions of this Title, the applicant/breeder shall be required to submit a new denomination.

SECTION 15. Obligation to Use Denomination. – Any person, who offers for sale or markets in the Philippines, Propagating material of a variety protected, shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right therefore except when the rule of prior rights apply.

SECTION 16. Use of Marks. – When a protected variety is offered for sale or marketed, it may be associated with a trademark, trade name or other similar indication with a registered denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

TITLE V

APPLICATIONS TO A PLANT VARIETY PROTECTION

SECTION 17. Entitlement. – Any breeder, with respect to the variety developed, may apply for a plant variety protection and obtain a Certificate of Plant variety Protection upon compliance with the requirements of this Act.

SECTION 18. Co-ownership of the Right. – If two (2) or more persons contribute to the development of a new plant variety, all of them shall be named in the Certificate of Plant Variety Protection and shall be entitled to such rights as agreed upon in writing or in the absence thereof, the rights in proportion to their contribution in the development of plant variety.

SECTION 19. Employee-Employer Relationship. – In case an employee develops a plant variety in the course of his employment as a result of the performance of his regular duty, the plant variety protection shall belong to the employer, unless there is a written stipulation to the contrary.

SECTION 20. First to File Rule. – If two (2) or more persons develop a new plant variety separately and independently of each other, the Certificate of Plant Variety Protection shall belong to the person who files the application first. In case two (2) or more persons file an application for the same plant variety, the right shall be granted to the person who has the earliest filing date or priority date.

SECTION 21. Priority Date. – Any application for a Certificate of Plant Variety Protection previously filed by a breeder in another country, which by treaty, convention or law affords similar privileges to Filipino citizens, shall be considered as filed locally as of the date of filing of the foreign application: Provided, That:

- a) The local application expressly claims priority;
- b) It is filed within twelve (12) months from the filing date of the earliest foreign application; and
- c) The application submits, within six (6) months from the filing of the local application, authenticated copies of documents which constitute the foreign application, samples or other evidence showing that the variety which is being applied for protection is the same variety which has been applied for protection in a foreign country.

SECTION 22. Foreign Nationals. – For purposes of this Act, a person shall be considered a national of a foreign country if he is a citizen of such country according to its laws, a natural person residing therein, or is a legal entity whose office is registered in such foreign country.

SECTION 23. National Treatment. – Any application filed locally for a Certificate of Plant variety Protection previously granted to a breeder in another country, which by treaty, convention or law affords similar privileges to Filipino citizens, shall be issued a Certificate of Plant Variety Protection upon payment of dues and compliance to all the provisions of this Act. This Act shall also apply to the nationals of foreign countries that are members of intergovernmental organizations or party to any multilateral agreement or convention concerning the granting of intellectual property protection of plant varieties.

TITLE VI

EXAMINATION OF THE APPLICATION AND ISSUANCE OF PVP CERTIFICATE

SECTION 24. Contents of the Application. – An application for a Certificate of Plant Variety Protection shall be filed in the manner and on the conditions prescribed in the regulations, and shall include:

- a) Name of the applicant/breeder;
- b) Address of the applicant/breeder in the Philippines;
- c) Name of resident agent and address in the Philippines;
- d) The description of the variety and particulars of the variety bred, including particulars of its characteristics;
- e) The variety denomination;
- f) Samples of propagating materials, which are the subject of the application; and
- g) Any other particular required by the regulations.

SECTION 25. Right of the Applicant to File the Application. – If the applicant is not the actual breeder, he shall indicate in his application the basis for his right to file the application.

SECTION 26. Contents of the Description and Order of Presentation. – The Board shall issue rules and regulations stipulating the contents of the description and the order of presentation.

SECTION 27. Other Information Required. – The applicant shall be required by the Board to furnish information regarding any application filed by him in other countries including all pertinent documents relating thereto. If the applicant has successfully claimed priority according to this Act, he shall be given a period of two (2) years from the priority date to comply with the requirements of this Section.

SECTION 28. Manner of Conducting Tests. – The Board may carry out the necessary tests, cause the conduct of tests, or consider the results of other tests or trials that have already been done. For this purpose, the Board shall require the applicant to furnish all the necessary information, documents or materials within a period of time prescribed in the regulations.

SECTION 29. Filing Date. – For purposes of according a filing date, the Board shall consider, as a minimum requirement, all of the above enumerated items in Section 24 hereof.

SECTION 30. Publication of the Application. – After the Board has accorded a filing date, the application shall be published within sixty (60) days at the expense of the applicant in the Plant variety Gazette hereunder described in Section 72.

Prior to such publication, the application and all related documents shall not be made available to the public without the written consent of the applicant.

After the publication of the application, any person may inspect the application documents in a manner to be prescribed by the Board.

SECTION 31. Opposition to the Grant of Plant Variety Protection. – Any person who believes that the applicant is not entitled to the grant of the Certificate of Plant Variety Protection may file an opposition thereto within the period prescribed by the Board from the date of its publication and before the issuance of the Certificate of Plant variety Protection.

Opposition to the application may be made on the following grounds:

- a) that the person opposing the application is entitled to the breeder's right as against the applicant;
- b) that the variety is not registrable under this Act.

If the opposition is based on the conditions of Plant Variety Protection, such opposition shall be considered together with the examination of the application.

SECTION 32. Issuance of the Certificate. – When the Board has tested and examined the variety, and/or considered the supporting materials and literature pertinent thereto, it shall issue a Certificate of Plant variety Protection. A notice of such issuance shall be published in the manner to be prescribed in the regulations at the expense of the holder.

SECTION 33. Term of Protection. – For trees and vines, the period of protection shall be twenty-five (25) years from the date of the grant of the Certificate of Plant variety Protection and twenty (20) years from the said date for all other types of plants, unless declared void ab initio or cancelled otherwise, as provided under Section 61 and 62, respectively of this Act.

SECTION 34. Annual Fees. – To maintain the validity of the Certificate of Plant Variety Protection, the holder shall pay an annual fee to be prescribed by the Board. Annual fees shall

be paid starting from the fourth anniversary of the issuance of the certificate and every year thereafter within the first three (3) months of said years. The holder has the option to pay in advance this annual fee for a maximum of twenty (20) years.

The Certificate of Plant Variety Protection shall expire and cease to have force and effect upon the holder's failure to pay the annual fees within the prescribed period. A notice of such cancellation shall be published in the Plant Variety Gazette one (1) year after the term of protection has expired. Before such publication, any holder who fails to pay the annual fees may request for a reinstatement of his certificate. Provided, That he settles his unpaid accounts including surcharges to be determined by the Board.

SECTION 35. Notice of Rejection. – Whenever an application is rejected, the Board shall immediately inform the applicant on the grounds therefore, and when applicable, identify and provide the documents used as the basis for rejection.

- a) Reconsideration – Within two (2) months from the receipt of the rejection notice, the applicant may amend his application or traverse the finding of the Board. The Board, in turn, may reverse its initial finding or issue a final rejection within the same period.
- b) Appeal from the Notice of Rejection – The decision of the Board is final except for anomalous circumstances involving the Board in which case the applicant may appeal it to the proper court.

TITLE VII

RIGHTS OF HOLDERS

SECTION 36. Rights of Holders of Plant Variety Protection. – In respect of the propagating materials, holders of a Certificate of Plant Variety Protection shall have the right to authorized any of the following acts:

- a) Production or reproduction;
- b) Conditioning for the purpose of propagation;
- c) Offering for sale;
- d) Selling or other marketing;
- e) Exporting;
- f) Importing;
- g) Stocking for any purpose mentioned above.

SECTION 37. The holder may make his authorization subject to conditions and limitations.

SECTION 38. Acts in Respect of Harvested Materials. – Except for Section 43 and 44 of this Title, the rights in the two (2) preceding sections shall also extend to the harvested materials which may be the entire plant or its other parts, if the production thereof resulted directly from the unauthorized use of the plant's propagating materials that are covered by this Act, unless the holder has had the reasonable opportunity to exercise his right in relation to the said propagating materials.

SECTION 39. Coverage of Protection. – The rights of holder under Section 36 and 38 of this Act shall also apply in relation to:

- a) Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b) Varieties which are not clearly distinct from the protected variety; and

- c) Varieties whose production requires the repeated use of the protected variety.

SECTION 40. Essentially Derived Varieties. – For the purpose of paragraph 39(a), a variety shall be deemed to be essentially derived from the initial variety when:

- a) It is predominantly derived from the initial variety, or from a 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;
- b) It is clearly distinguished from the initial variety; and
- c) 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.

SECTION 41. Manner of Developing Essentially Derived Varieties. – It shall also be understood that essentially derived varieties may be obtained through processes which may include, but not limited to, the selection of a natural or induced mutant, or of a somoclonal variant, the selection of a variant individual from plants of initial variety, backcrossing or transformation by genetic engineering. Genetic engineering shall be understood as the introduction of genes by laboratory techniques.

SECTION 42. Provisional Protection. – An application for a Certificate of Plant Variety Protection shall be entitled to equitable remuneration from any person who, during the period between the publication of the application for the certificate and the grant of the certificate, has carried out acts which, once the certificate is granted, require the holder's authorization as conferred in this Act: Provided, That the applicant shall initiate the legal action against the alleged infringer within two (2) years from the date of the granting of his Certificate of Plant Variety Protection.

SECTION 43. Exceptions to Plant Variety Protection. – The Certificate of Plant Variety Protection shall not extend to:

- a) Acts done for noncommercial purposes;
- b) Acts done for experimental purposes;
- c) Acts done for the purpose of breeding other varieties, except when Section 39 and 40 apply; and
- d) The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. The Board shall determine the condition under which this exception shall apply, taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sell of seeds among and between said small farmers: Provided, That the small farmers may exchange or sell seeds for reproduction and replanting in their own land.

SECTION 44. Exhaustion of Plant Variety Protection. – The Certificate of Plant Variety Protection shall not extend to acts concerning any material of the protected variety, or a variety covered by the provisions of Section 39 and 40 hereof, which has been sold or otherwise marketed by the breeder or with his consent in the Philippines, or any material derived from the said material, unless it:

- a) Involves further propagation of the variety in question; or
- b) Involves the export of the variety, which enables the propagation of the variety, into a country that does not protect the variety of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

SECTION 45. Right of Attribution. – No Certificate of Plant variety Protection shall be issued without naming the breeder(s) unless this right is protested in writing within one (1) year.

SECTION 46. Succession Transmission. – The Certificate of Plant Variety Protection shall be considered as a property right and the transmission thereof shall be governed by the law on Property.

TITLE VIII

INFRINGEMENT

SECTION 47. What Constitutes Infringement. – Except as otherwise provided in this Act, any person who without being entitled to do so, performs the following acts:

- a) Sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;
- b) Import the novel variety into, or export it from, the Philippines; or
- c) Sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or
- d) Use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or
- e) Use seed which had been marked “unauthorized propagation prohibited” or “unauthorized seed multiplication prohibited” or progeny thereof to propagate the novel variety; or
- f) Dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or
- g) Fails to use a variety denomination the use of which is obligatory under Section 15; or
- h) Perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid Philippine plant patent; or
- i) Instigate or actively induce performance of any foregoing acts,

May be sued by the holder, who may also avail of all relief as are available in any proceeding involving infringements of other proprietary rights.

SECTION 48. Where to Commence Action. – Any holder may petition the proper regional trial court for infringement of his plant variety protection as defined in this Act.

SECTION 49. Presumption of Validity. – Certificates of Plant Variety Protection shall be presumed valid and the burden of proof of their invalidity shall rest on the party assailing them.

SECTION 50. Defenses Against Infringement Charges. – The following shall be valid defenses against infringement charges:

- a) Non-infringement;
- b) The plant variety does not possess at the time of its application criterion of novelty or distinctness;
- c) The alleged infringement was performed under a right adverse to it, prior to the notice of infringement; and/or
- d) Other defenses that are made available under this Act.

SECTION 51. Notice. – No damages shall be awarded unless there is actual or constructive notice made upon the alleged infringer.

SECTION 52. Damages. – The court may award actual, moral, exemplary damages and attorney's fees according to a proven amount including a reasonable royalty for the use of the protected variety.

SECTION 53. Injunction. – The court may also enjoin the infringer(s) from further performing any act of infringement on the rights of the holder(s) as defined in this Act.

SECTION 54. Court to Order Confiscating of Infringing Materials. – Upon petition by the complainant, the court may order the confiscation of infringing materials, and:

- a) Cause their distribution to charitable organization;
- b) Cause the sale and provide the proceeds thereof to research organizations; or
- c) Cause the return to the petitioner for further scientific use.

SECTION 55. Prescription. – No recovery of damages for any infringement case shall prosper when the cause of action has reached more than six (6) years from the time the alleged infringement case was committed.

SECTION 56. Criminal penalty. – Any person who violates any of the rights of the holder provided for in this Act may also suffer the penalty of imprisonment of not less than three (3) years but not more than six (6) years and/or a fine of up to three (3) times the profit derived by virtue of the infringement but in no case should be less than One Hundred Thousand pesos (P100,000.00).

TITLE IX

COMPULSORY LICENSE

SECTION 57. Grounds for the Grant of Compulsory Licensing. – Any interested person may file a petition for compulsory license with the Board at any time after two (2) years from the grant of the Certificate of Plant variety protection under this Act when it is for the public interest to grant such compulsory license, and:

- b) The reasonable requirements of the public for any part of the variety are not met; or
- c) There is an overseas market for the sale of any part of the variety and the same are not met by the holder; or
- d) The plant variety developed relates to or required in the production of medicine and/or any food preparation.

SECTION 58. Scope of Compulsory License. – The Board, upon petition by any interested party and upon proof of any of the foregoing grounds, may issue a decision;

- a) Allowing the petitioner to produce in commercial quantity and distribute the variety protected or any part thereof; or
- b) Requiring the holder to ensure the availability of the propagating materials of the variety protected; or
- c) Requiring the petitioner to pay the holder with license fees in the form of reasonable royalties; and
- d) Other such additional remedies as the Board may determine to be consistent with appropriate circumstances.

SECTION 59. Duration of the License. – A compulsory license shall be effective until the ground(s) for its issuance has been terminated as determined by the Board motu proprio or upon petition by party or parties and solution by the Board.

SECTION 60. Procedure for Grant. – The Board shall provide in the rules and regulations the manner and procedure for granting compulsory licenses.

TITLE X

CANCELLATION AND NULLITY OF PLANT VARIETY PROTECTION

SECTION 61. Grounds for Nullity. – The Certificate of Plant variety protection be declared void ab initio on any of the following grounds:

- a) The grant of the Certificate of Plant variety Protection was essentially based upon information and documents furnished by the applicant, wherein the conditions of distinctness, uniformity, stability, and newness were not complied with at the time of the grant of the certificate; or
- b) The Certificate of Plant Variety Protection was granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

The effect of the declaration of nullity is that as if the Certificate of Plant Variety Protection was not issued.

SECTION 62. Grounds for Cancellation. – The Plant Variety Protection shall be cancelled on any of the following grounds:

- a) The breeder does not provide the required information, documents, or materials necessary for verifying the maintenance of the variety; or
- b) The breeder fails to pay the required fees to keep his or her rights in force or provides false information in his or her application; or
- c) The breeder does not propose, within the time/period provided under the regulations. Another suitable denomination if the denomination of the variety is cancelled after the grant of the Certificate of Plant Variety Protection; or
- d) The conditions of uniformity and stability could not be maintained although these were present at the time of the issuance of the Certificate of Plant Variety Protection; or
- e) The breeder entitled to the Certificate of Plant Variety Protection or the holder has relinquished his/her rights through a declaration in a public instrument filed with the registrar.

SECTION 63. Venue. – Any petition to cancel a Certificate of Plant variety protection shall originally be under the jurisdiction of the Board. Decisions of the Board may be appealable with the Court of Appeals within fifteen (15) days from the date of notice of the Board's final decision.

SECTION 64. Prescription. – The right to cancel a Certificate of Plant variety Protection shall be instituted at any time within the term of protection of such right.

SECTION 65. Publication. – A notice of the filing of a petition to cancel a Certificate of Plant variety Protection and the final order/decision on the same shall be published in the Plant variety Gazette at the expense of the petitioner.

TITLE XI

INSTITUTION

SECTION 66. National Plant Variety Protection Board. – There is hereby created a National Plant Variety Protection Board which shall be composed of the following or their duly designated representatives:

- a) The Secretary of the Department of Agriculture, as chairman;
- b) The Secretary of the Department of Science and Technology, as co-chairman;
- c) The Director-General of the Intellectual Property Office, as vice chairman;
- d) The Director of the Bureau of Plant Industry;
- e) The Director of the Institute of Plant Breeding of the University of the Philippines Los Baños;
- f) The President of the Philippine Seed Industry Association;
- g) A representative from a federation of small farmers' organizations to be nominated by the Secretary of Agriculture;
- h) A representative from the scientific community to be nominated by the National Academy of Science and Technology; and
- i) The Registrar (ex officio).

The members of the Board or their representatives must be Filipino citizens, have good moral character and should not have been convicted of a crime involving moral turpitude.

The Board shall perform the following functions:

- a) Promulgate policy guidelines for the effective implementation of the provisions of this Act;
- b) Have original and exclusive appellate jurisdiction over all acts of the Registrar;
- c) Have original jurisdiction over petitions for compulsory licensing, nullity and cancellation of the Certificates of Plant Variety Protection;
- d) Institutionalize database of existing plant varieties, collected from foreign and local databases, within one (1) year from the effectivity of this Act;
- e) Call on resource persons to provide inputs that will be relevant in the performance of the tasks of the Board;
- f) Organize the Registrar as it sees fit;
- g) Approve capital expenditure and contracts of experts; and
- h) Perform all other functions as may be required in the implementation of this Act.

SECTION 67. Rule and Regulations. – For the purpose of the preceding section, the Board with representatives from the Senate and House Committees on Agriculture, shall within six (6) months from the effectivity of this Act, prescribe rules and regulations necessary for the implementation of its functions, or reorganize and create units therefore under its control and supervision.

SECTION 68. Fees. – The Board shall prescribe a schedule of fees to be charged against any applicant/breeder in the course of the application for a Certificate of Plant Variety Protection or in the maintenance therefore.

SECTION 69. Coordination and Cooperation with Other Institutions. – For the purpose of verifying certain facts such as but not limited to the requirements of stability, distinctness and uniformity, the Board may enter into agreements with other governmental or non-governmental institutions both domestic and foreign under a set of conditions germane to its functions.

Further, the board shall also designate appropriate state colleges and universities, bona fide research institutions, or appropriate non-governmental research centers as testing centers for the distinctness, uniformity and stability of varieties.

SECTION 70. The PVP Fund. – There is hereby created a PVP Fund, hereinafter referred to as the fund, to be administered by the Board. All fees, fines and charges collected by the Board under this Act, shall be deposited in the fund. The Board is hereby authorized to use and disburse the fund without need of approval by any government agency, and subject only to existing accounting and auditing rules and regulations for purposes of defraying the cost of operations in the delivery of its services to the public.

SECTION 71. Gene Trust Fund. – There shall be an independent and separate trust fund established under this Act, to be administered by the Board, for the benefit of bona fide organizations or institutions managing and operating an accredited gene bank. An amount to be determined by the Board but not to exceed twenty percent (20%) of the fees and charges, shall be used for the purposes of the gene trust fund. The trust fund may also accept donations from national and international institutions and other organizations and individuals interested in strengthening genetic conservation.

SECTION 72. Farming Communities and Bona Fide Farmers' Organizations. – Farming communities and bona fide farmers' organizations are encouraged to build an inventory of locally-bred varieties as an option to protect these resources from misappropriation and unfair monopolization.

SECTION 73. Publication. – The Board shall maintain its own publication which shall be known as the Plant variety gazette for all the publication requirements of this Act and for other purposes which the Board may require. Copies shall be distributed to all concerned especially to the Members of the Senate and House Committees on Agriculture: Provided: That the Board shall distribute for free, and in the major dialect understood by the locality, copies of the Plant Variety Gazette to small farmer groups and indigenous communities.

SECTION 74. The Registrar. – There is hereby established a National Plant Variety Protection Registrar and an Associate Registrar under the control and supervision of the Board. The Registrar and the Associate Registrar shall be appointed by the President of the Philippines upon the recommendation of the Board and shall have a term of six (6) years. However, the Registrar who shall be first appointed shall serve for a term of seven (7) years.

The Registrar shall be a citizen of the Philippines with good moral character, proven track record in the field of plant science, and/or extensive executive experience and capability.

Functions of the Registrar. The Registrar shall have the following functions:

- a) Has original and exclusive jurisdiction to receive, process, examine all applications for Certificates of Plant variety Protection in accordance with this Act, and in meritorious cases, issue the said certificates and sign them in the name of the Board;
- b) Issue and maintain a systematic record of all Certificates of Plant Variety Protection and transactions related thereto;
- c) Implement the rules and regulations issued by the Board;
- d) Institutionalize, maintain and continuously update a database of existing plant varieties collected from foreign and local databases;
- e) Maintain a library of scientific and other works and periodicals, both foreign and local, to aid his examiners in the discharge of their duties;
- f) Maintain samples of the propagating materials of the protected variety; and
- g) Perform such other functions as may be prescribed by the Board.

TITLE XIII

MISCELLANEOUS AND FINAL PROVISIONS

SECTION 75. Relation with Other Laws. – The interpretation of the provisions of this Act shall not negate the effectivity and application of Republic Act No. 8371 otherwise known as the Indigenous People’s Rights Act, Republic Act No. 9147, otherwise known as The Wildlife Resources Conservation and protection Act, Presidential Decree No. 1151, otherwise known as the Philippine Environmental Policy and Executive Order No. 430 and Administrative Order No. 8, Series of 2002 of the Department of Agriculture of the rules and regulations for the importation and release to the environment of plant products derived from the use of biotechnology.

SECTION 76. Transitory Provisions. – The National Seed Industry Council, which was created by Republic Act No. 7308 or the National Seed Development Act, shall perform the functions of the Board until the latter has been fully organized, but not later than three (3) years from the effectivity of this Act. Within the same period, the Director of the Bureau of Plant Industry shall be the Acting Registrar and the Assistant Director of the same Bureau shall act as the Associate Registrar.

SECTION 77. Appropriations. – The Secretary of the Department of Agriculture shall immediately include in its program and issue such rules and regulations to implement the provisions of this Act, the funding of which shall be included in the annual General Appropriations Act.

SECTION 78. Separability Clause. – If, for any reason, any provision of this Act is declared invalid or unconstitutional, the other parts not affected thereby shall continue to be in full force and effect.

SECTION 79. Repealing Clause. – All laws, decrees, executive orders, and rules and regulations, or parts thereof that are inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

SECTION 80. Effectivity. – This Act shall take effect thirty (30) days after its complete publication in a newspaper of general circulation.

Approved,

ORIGINAL SIGNED

JOSE DE VENECIA
Speaker of the House of Representatives

ORIGINAL SIGNED

FRANKLIN M. DRILON
President of the Senate

This Act, which is a consolidation of Senate Bill No. 1865 and House Bill No. 4518, was finally passed by the Senate and the House of Representatives on May 30, 2002 and May 29, 2002, respectively.

ORIGINAL SIGNED

ROBERTO P. NAZARENO
Secretary General

ORIGINAL SIGNED

OSCAR G. YABES
Secretary of the Senate

Approved: June 07, 2002

ORIGINAL SIGNED

GLORIA MACAPAGAL-ARROYO
President of the Philippines

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