

Consejo

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EXAMEN DE LA CONFORMIDAD DEL PROYECTO DE ENMIENDA DE LA LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES DE 2004 [LEY 634] DE MALASIA CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV

Documento preparado por la Oficina de la Unión

Descargo de responsabilidad: el presente documento no constituye un documento de política u orientación de la UPOV

RESUMEN

1. El 23 de septiembre de 2025, Malasia presentó una petición al Consejo para examinar la conformidad del proyecto de enmienda de la Ley de Protección de las Obtenciones Vegetales de 2004 [Ley N.º 634] de Malasia (denominado, en adelante, el “proyecto de Ley”) con el Acta de 1991 del Convenio de la UPOV (denominado, en adelante, “Acta de 1991”). Este documento presenta un análisis de la Oficina de la Unión sobre el proyecto de Ley. El presente análisis incluye la opinión de la Oficina de la Unión de que el proyecto de Ley incorpora las disposiciones del Acta de 1991.
2. Se invita al Consejo a:
 - a) tomar nota del análisis expuesto en el presente documento;
 - b) tomar una decisión positiva respecto de la conformidad del proyecto de Ley con las disposiciones del Acta de 1991, de modo que, una vez que el proyecto de Ley haya sido aprobado sin modificación y la Ley haya entrado en vigor, Malasia podrá depositar su instrumento de adhesión al Acta de 1991; y
 - c) autorizar al secretario general a informar de esta decisión al Gobierno de Malasia.

ANTECEDENTES

3. El Artículo 34.3) del Acta de 1991 dispone que “[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión”.
4. Desde 2005, la Oficina de la Unión ha prestado asistencia al Gobierno de Malasia en la elaboración de legislación conforme al Acta de 1991.
5. El 8 de abril de 2005 (documento [C\(Extr.\)/22/3](#)) el Consejo examinó la conformidad de la Ley de Protección de las Obtenciones Vegetales de 2004 de Malasia (la Ley) con las disposiciones del Acta de 1991. El Consejo tomó nota de que la Ley aún exige algunas disposiciones y enmiendas adicionales, tal como se establece en el documento [C\(Extr.\)/22/2](#), para ajustarse plenamente al Acta de 1991; la Ley se someterá nuevamente al Comité Consultivo una vez que se hayan incorporado las disposiciones y enmiendas adicionales.
6. Entre 2011 y 2025, la Oficina de la Unión formuló comentarios sobre diferentes versiones del proyecto de Ley y participó en varias consultas de índole jurídica. En 2011, 2017, 2019, 2021 y 2022, los representantes de Malasia participaron en talleres sobre redacción de legislación conforme al Acta de 1991 del Convenio de la UPOV (talleres sobre legislación).

7. Mediante correo electrónico de fecha 23 de septiembre de 2025, dirigido al secretario general adjunto y al director de Asuntos Jurídicos de la UPOV, el Sr. Datuk Seri Isham bin Ishak, secretario general del Ministerio de Agricultura y Seguridad Alimentaria, solicitó que se examinara la conformidad del proyecto de Ley con el Acta de 1991. El mensaje de correo-e se reproduce en el Anexo I del presente documento. En el Anexo II se reproduce el proyecto de Ley en inglés.

FUNDAMENTO DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN MALASIA

8. En Malasia, la protección de las obtenciones vegetales de conformidad con el Acta de 1991 estará regida por el proyecto de Ley, una vez aprobado. A continuación se analiza el proyecto de Ley siguiendo el orden en que figuran las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

9. El Artículo 2 del proyecto de Ley contiene definiciones de “obtentor” y “variedad” que son conformes a las definiciones incluidas en el Artículo 1, puntos iv) y vi) del Acta de 1991, respectivamente.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

10. La Parte III y la Parte VIII del proyecto de Ley contienen disposiciones que son conformes a la obligación fundamental prevista en el Artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

11. El Artículo 2A. del Proyecto Ley dispone lo siguiente:

“2A. (1) La presente Ley se aplicará a todos los géneros y las especies, incluidos los hongos y las algas autótrofas.”

12. El Artículo 2A. del proyecto de Ley es conforme a la obligación prevista en el Artículo 3.2) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

13. El Artículo 13(3A) del proyecto de Ley contiene disposiciones sobre el trato nacional que son conformes a las disposiciones del Artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, la novedad, la distinción, la homogeneidad y la estabilidad

14. El Artículo 14 del proyecto de Ley contiene disposiciones sobre las condiciones de la protección que son conformes a las disposiciones de los Artículos 5 a 9 del Acta de 1991.

Artículo 10 del Acta de 1991: Presentación de solicitudes

15. Los Artículos 12, 13 y 17 del proyecto de Ley contienen disposiciones relativas a la presentación de solicitudes. Al parecer, el proyecto de Ley no contiene disposición alguna que sea incompatible con el Artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

16. El Artículo 18 del proyecto de Ley contiene disposiciones sobre el derecho de prioridad que son conformes a lo dispuesto en el Artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

17. Los Artículos 19, 20 y 21 del proyecto de Ley contienen disposiciones sobre el examen de la solicitud que son conformes a lo dispuesto en el Artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

18. El Artículo 26B. del proyecto de Ley contiene disposiciones sobre la protección provisional que corresponden a las disposiciones del Artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

19. El Artículo 30 del proyecto de Ley contiene disposiciones sobre el alcance del derecho de obtentor que son conformes a lo dispuesto en el Artículo 14 del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

20. El Artículo 31 (1) del proyecto de Ley contiene disposiciones relativas a las excepciones obligatorias al derecho de obtentor que son conformes a lo dispuesto en el Artículo 15.1) del Acta de 1991.

21. El Artículo 31 (1)(d) del proyecto de Ley contiene las siguientes disposiciones sobre la excepción facultativa prevista en el Artículo 15.2) del Acta de 1991:

“d) cualquier acto de reproducción o multiplicación realizado por agricultores, en relación con variedades, si utilizan con fines de reproducción o multiplicación en su propia explotación el producto de la cosecha que hayan obtenido mediante el cultivo, en su propia explotación, de la variedad protegida o de una variedad amparada por los apartados 30(3A)(a) o (b) de la presente Ley, siempre que dicho uso se realice dentro de límites razonables y sin perjuicio de la salvaguarda de los intereses legítimos del titular de los derechos, según dispone el Reglamento.”

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

22. El Artículo 31 (2) del proyecto de Ley contiene disposiciones relativas al agotamiento del derecho de obtentor que se conforman a las disposiciones del Artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

23. Los Artículos 36, 37 y 38 del proyecto de Ley contienen disposiciones sobre licencias obligatorias que son conformes a lo dispuesto en el Artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

24. El Artículo 15A del proyecto de Ley contiene disposiciones sobre la reglamentación económica que son conformes a lo dispuesto en el Artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

25. El Artículo 32 del proyecto de Ley contiene disposiciones relativas a la duración del derecho de obtentor que son conformes a lo dispuesto en el Artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

26. Los Artículos 16, 16A, 16B y 16C del proyecto de Ley contienen disposiciones en materia de denominación de la variedad que son conformes a lo dispuesto en el Artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

27. El Artículo 39 del proyecto de Ley contiene disposiciones sobre la nulidad del derecho de obtentor que son conformes a lo dispuesto en el Artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

28. El Artículo 41 del proyecto de Ley contiene disposiciones sobre la caducidad del derecho de obtentor que son conformes a lo dispuesto en el Artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

29. En cuanto a la obligación de prever “los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (Artículo 30.1)i) del Acta de 1991), los artículos 47, 48 y 49 del proyecto de Ley contienen disposiciones sobre las medidas disponibles para defender los derechos de obtentor.

30. El Artículo 4 (c) del proyecto de Ley dispone que la administración encargada de la tarea de conceder derechos de obtentor es la Comisión de Obtenciones Vegetales, de conformidad con el requisito previsto en el Artículo 30.1)ii) del Acta de 1991.

31. Los Artículos 16(7) y 22 del proyecto de Ley se conforman a la obligación de publicar la información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según prevé en el Artículo 30.1)iii) del Acta de 1991.

Conclusión general

32. A juicio de la Oficina de la Unión, el proyecto de Ley incluye las disposiciones sustantivas del Acta de 1991. Por consiguiente, una vez que el proyecto de Ley haya sido aprobado sin modificación y la Ley haya entrado en vigor, Malasia estará en condiciones de “dar efecto” a lo dispuesto en el Acta de 1991, tal como prevé su Artículo 30.2).

33. *Se invita al Consejo a:*

a) tomar nota del análisis expuesto en el presente documento;

b) tomar una decisión positiva respecto de la conformidad del proyecto de Ley con las disposiciones del Acta de 1991, de modo que, una vez que el proyecto de Ley haya sido aprobado sin modificación y la Ley haya entrado en vigor, Malasia podrá depositar su instrumento de adhesión al Acta de 1991; y

c) autorizar al secretario general a informar de esta decisión al Gobierno de Malasia.

[Siguen los Anexos]

ANEXO I

De: DATUK SERI ISHAM BIN ISHAK (KPKM) <isham@kpkm.gov.my>

Fecha: Martes, 23 de septiembre de 2025 a las 14:46

A: HUERTA-CASADO Yolanda <yolanda.huerta@upov.int>; EKVAD Martin <martin.ekvad@upov.int>

Con copia a: NISHIMURA Yoshiro <yoshiro.nishimura@upov.int>; NOR SAM BINTI ALWI (DOA) <norsam@doa.gov.my>; PEGAWAI KHAS KSU <pkksu@kpkm.gov.my>

Asunto: Presentación del proyecto de enmienda de Malasia de su Ley de Protección de las Obtenciones Vegetales de 2004 [Ley N.º 634]

Estimados Sra. Huerta y Sr. Ekvad:

En nombre del **Gobierno de Malasia y del Ministerio de Agricultura y Seguridad Alimentaria**, tengo el honor de adjuntar a la presente el **proyecto de enmienda de la Ley de Protección de las Obtenciones Vegetales de 2004 [Ley N.º 634]** para su examen por el Consejo de la UPOV.

El texto se presenta de conformidad con los procedimientos previstos en el documento UPOV/INF/13/2, con el fin de que sea examinado en la próxima sesión del Consejo de la UPOV, el 22 de octubre de 2025.

Malasia valora muy positivamente el constructivo intercambio mantenido y la orientación que la Oficina de la UPOV ha brindado durante todo el proceso. Nos permitimos presentar el proyecto de Ley para que el Consejo lo examine y brinde asesoramiento al respecto, en el marco del actual compromiso de Malasia con el Acta de 1991 del Convenio de la UPOV, reconociendo plenamente que esta etapa constituye un paso esencial en el proceso de adhesión.

Rogamos tengan presente que, a la luz de las circunstancias actuales, en esta etapa el texto se transmite por correo electrónico; la documentación formal se enviará como corresponde por los canales establecidos, a mi regreso a Malasia.

Adjuntamos el documento que contiene el proyecto de Ley, que sometemos a la atención del Consejo. Malasia proporcionará sin demora las clarificaciones adicionales que sean necesarias.

Aprovecho la oportunidad para expresarles el testimonio de mi más alta consideración.

Atentos saludos,

DATUK SERI ISHAM ISHAK

secretario general

Ministerio de Agricultura y Seguridad Alimentaria
MALASIA



Peringatan

Pengguna Perkhidmatan MyGovUC adalah bertanggungjawab melindungi kerahsiaan data/maklumat Rahsia Rasmi Kerajaan. Adalah diingatkan agar pengguna sentiasa peka dengan SEMUA peraturan, arahan keselamatan dan pekeling semasa yang berkuatkuasa bagi semua pengendalian data/maklumat Rahsia Rasmi Kerajaan yang berkaitan.

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II
[in English only / en anglais seulement / nur auf Englisch / solamente en inglés]

LAWS OF MALAYSIA

Act 634

PROTECTION OF NEW PLANT VARIETIES ACT (REVISED)
20XX

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

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Protection of New Plant Varieties (Amendment) Act [20XX].

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

(2A) This Act shall be read together with any other written laws relating to plants, genetically modified plants and plant genetic resources, as well as sanitary and phytosanitary measures.

Interpretation

2. In this Act, unless the context otherwise requires —

"propagating material" means any material or plant, or any part of the plant, used for multiplication or reproduction;

"breed" means to carry out activities conducive to the development of any plant variety;

"prescribed" means prescribed by regulations made under this Act;

"breeder's right" means the right given on the registration of a new plant variety under this Act;

"Ministry" means the Ministry for the time being responsible for agriculture;

"Fund" means the Plant Varieties Fund established under section 10;

"Board" means the Plant Varieties Board established under section 3;

"compulsory licence" means the authorization by the Board under section 36 to perform in Malaysia any act referred to in subsection 30(1) without the consent or agreement of the holder;

"local community" means a group of individuals who have settled together and continuously inherit production processes and culture or a group of individuals settled together in a village or area and under an eco-cultural system;

"discover and develop" means activities which lead to the desired phenotypic expression and affect the crop genotype and which may or may not entail deliberate or artificial creation of genetic variability;

"Minister" means the Minister charged with the responsibility for plant varieties;

"denomination" means the name or identification for a plant variety expressed in letters or a combination of letters and figures written in any language;

"person" includes a body of persons, corporate or unincorporate;

"authorized officer" means an officer authorized under subsection 53(1);

"breeder" means —

- (a) any person who bred, or discovered and developed a plant variety, or
- (b) any person who is the employer of the aforementioned person or who has commissioned the latter's work, or
- (c) the successor in title to the person in paragraph (a) or (b) as the case may be

"holder" means the holder of a breeder's right;

"licensee" means any person, agency or company to whom a compulsory license is granted by the Board under section 36;

"Examiner" means any person, government department or organization appointed by the Board for the purpose of conducting a substantive examination under section 21;

"farmer" means any person who—

- (a) cultivates crops by cultivating the land himself;
- (b) cultivates crops by directly supervising the cultivation of land through any other person; or
- (c) conserves and preserves, severally or jointly, with any person any traditional variety of crops or adds value to the traditional variety through the selection and identification of their useful properties;

"Contracting Party" - means member of the International Union for the Protection of New Varieties of Plants (UPOV);

"indigenous people" means persons who fall within the definition of the "aborigine" or "native" as defined respectively in Clause (2) of Article 160 and Clause (6) of Article 161A of the Federal Constitution;

"samples" include seeds and any other propagating material which are capable of regeneration;

"variety" means a plant grouping within a single botanical taxonomy of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's rights are fully met, can be—

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

"new plant variety" means a plant variety that is described in paragraph 14 (3) (a);

"registered plant variety" means a plant variety which has been registered as a new plant variety and for which a breeder's right has been granted under this Act;

"legal personal representative", in relation to a deceased person, means a person to whom probate of the will of the deceased person or letters of administration of the estate of the deceased person have been granted whether in Malaysia or outside Malaysia.

Genera and Species to be protected

2A. (1) This Act shall apply to all plant genera and species, including mushrooms and autotrophic algae.

PART II

PLANT VARIETIES BOARD

Establishment of the Board

3. A board by the name of "Plant Varieties Board" is established.

Functions and powers of the Board

4. (1) The functions of the Board shall be—

- (a) to perform the duties and functions and exercise the powers as may be provided for in this Act;
- (b) to set appropriate systems for the examination of new plant varieties;
- (c) to consider and approve or reject applications for registration of new plant varieties and grant of breeder's rights;
- (d) to impose fees or administrative charges to be paid under this Act;
- (g) to keep and maintain a record of other plant varieties which are not registered in the Register of New Plant Varieties;
- (h) to administer and control the Plant Varieties Fund;
- (i) to appoint any person, government department or organization to be an Examiner for the purposes of conducting a substantive examination under section 21;
- (j) to process cancellation, surrender, assign or transmit any breeder's right granted under this Act;
- (k) to advise the Minister on all matters pertaining to this Act; and
- (l) to do such other things as it considers fit to enable it to perform its functions effectively or that are incidental to the performance of its functions.

(2) The Board shall have all such powers as may be necessary for or in connection with the performance of its functions under subsection (1) or which are reasonably incidental to such performance.

Membership of the Board

5. (1) The Board shall consist of the following members:

- (a) the Director General of the Department of Agriculture, Peninsular Malaysia who shall be the

Chairman;

- (b) the Director General of the Malaysian Agricultural Research and Development Institute;
- (c) the Director General of the Malaysian Rubber Board;
- (d) the Director General of the Malaysian Palm Oil Board;
- (e) the Director-General of the Malaysian Cocoa Board;
- (f) the Director-General of the Forest Research Institute of Malaysia;
- (g) the Director of Agriculture, Sabah;
- (h) the Director of Agriculture, Sarawak;
- (i) a representative from the Ministry of Agriculture and Food Security;
- (j) a representative from the Ministry of Plantation Industries and Commodities;
- (k) a representative from the Ministry of Domestic Trade and Consumer Affairs; and
- (l) a representative from the Ministry of Science, Technology and Innovations.
- (m) a representative from the Ministry of Home Affairs;
- (n) a representative from the Ministry of Health; and
- (o) a representative from the Ministry of Natural Resources and Environmental Sustainability.

(2) The Minister shall appoint a senior officer of the Department of Agriculture, Peninsular Malaysia, to be the Secretary to the Board.

Alternate member

6. (1) The Minister may appoint a person to be an alternate member in respect of each person who is a member of the Board under paragraphs 5(1)(a) to (h) to attend meetings of the Board in place of the member when that member is for any reason unable to attend.

(2) When attending meetings of the Board in place of a member, an alternate member shall for all purposes be deemed to be a member of the Board.

Meetings of the Board

7. (1) The Chairman shall preside over every meeting of the Board.

(2) Notwithstanding subsection (1), if for any reason the Chairman is unable to attend a meeting of the Board, the members present shall elect from among themselves a member to preside over the meeting, and the member elected shall exercise the powers of the Chairman for the duration of that meeting and shall be deemed to be the Chairman for the purposes of that meeting.

(3) The quorum of the Board shall be six.

(4) If on any question to be determined by the Board there is an equality of votes, the Chairman shall

have the casting vote.

- (5) The Board shall meet at such place and time as may be determined by the Chairman.

Board may invite others to meetings

8. The Board may invite any other person to attend any meeting of the Board for the purpose of advising the Board on any matter under discussion, but that person shall have no right to vote at the meeting.

Provision of facilities by Ministry

9. The Ministry shall provide the Board with the staff, funds and other facilities as are necessary to enable it to carry out its functions.

Plant Varieties Fund

10. (1) A fund to be known as the "Plant Varieties Fund" which shall be administered and controlled by the Board is established.

(2) The Fund shall consist of—

- (a) such sums as may be provided from time to time by the Government or any State Government for the purposes of this Act; and
- (b) moneys, fees and other charges received by the Board under this Act.

Expenditure to be charged on the Fund

11. The Fund shall be expended for the purpose of paying any expenditure incurred by the Board for carrying into effect the provisions of this Act.

PART III

PROCEDURE AND CONDITIONS FOR APPLICATION OF REGISTRATION OF NEW PLANT VARIETY AND GRANT OF BREEDER'S RIGHT

Application for registration of new plant variety and grant of breeder's right

12. (1) An application for the registration of a new plant variety and a grant of a breeder's right shall be made to the Board in the prescribed manner and shall—

- (a) specify the name, address, nationality and other particulars of the applicant;
- (b) provide information required for the examination of the conditions of protection established in section 14;
- (c) be supported by documents and information relating to the characteristics of the plant variety which distinguish the plant variety from other plant varieties;
- (d) specify a plant variety denomination in accordance with section 16;

(2) An application under subsection (1) shall be accompanied by the prescribed filing fee.

Persons who may apply for registration of new plant variety and grant of breeder's right

13. (1) An application for the registration of a new plant variety and grant of a breeder's right under section 12 shall only be made by-

- (a) a breeder;
- (b) the employer of the breeder;
- (c) the successor in title of the breeder;
- (d) a farmer or group of farmers, local community or indigenous people who have carried out the functions of a breeder;
- (e) any government or statutory body which has carried out the functions of a breeder.

(2) If the applicant's ordinary residence or principal place of business is outside Malaysia or if the applicant is a group of farmers, the applicant shall appoint an agent who is a resident or who has a registered office in Malaysia upon whom notice or process relating to the application for registration and grant of a breeder's right and other matters relating to such registration or breeder's right may be served, and if the applicant fails to appoint such an agent, the Board may refuse to proceed with the application until the agent has been appointed.

(3) If the applicant is a local community or an indigenous people, the authority representing the local community or indigenous people shall be the agent for such applicant and notice or process relating to the application and other matters relating to the registration of a new plant variety or breeder's right may be served on it.

(3A) Without prejudice to the rights specified in this Act, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party, enjoy within the territory of Malaysia the same as is accorded by this Act to the nationals of Malaysia, provided that the said nationals, natural persons or legal entities of a Contracting Party comply with the conditions and formalities imposed on the nationals of Malaysia.

Conditions for registration of new plant variety and grant of breeder's right

14. (1) The Protection of a new plant variety shall be granted where the variety is—

- (a) new;
- (b) distinct;
- (c) uniform; and
- (d) stable.

(2) Granting protection to a new plant variety shall not be subjected to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of section 16 the applicant complies with the formalities provided for in this Act and he has paid the required fees.

(3) For the purposes of subsection (1) —

- (a) a variety is new if on the date of filing of the application for protection of the new plant variety, the 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 the purpose of exploitation of the variety —
 - (i) earlier than one year before the date of filing of the application, in Malaysia; and

(ii) outside Malaysia—

(A) earlier than six years before that date in respect of trees or vines; and

(B) earlier than four years before that date for other plants.

(b) a variety is distinct if, on the filing date of the application, it is clearly distinguishable from any other variety, the existence of which is a matter of common knowledge. In particular, the granting of a breeder's rights or 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;

(c) a variety is 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; and.

(d) a variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each particular cycle.

(4) The Board shall publish the withdrawal and rejection of any application for protection of a new plant variety and grant of breeder's rights in a prescribed manner.

15. [Section 15 deleted]

Restrictions on the Exercise of the Breeder's Right

15A. (1) The exercise of a breeder's right granted under this Act shall comply with all applicable written laws in particular those relating to:

(a) the control of substances;

(b) biosafety and the release of genetically modified organism; or

(c) access to biological resources and benefit sharing.

(2) The protection granted under this Act shall not in itself constitute an authorization for commercial exploitation of the variety, for which the requirements of the corresponding legislation shall be satisfied.

(3) The exercise of breeder's right may be restricted, where appropriate, in order protect public order or morality, human, animal or plant life or health or to avoid serious harm to the environment.

Denomination of a new plant variety

16. (1) A plant variety in respect of which an application for protection of a new plant variety and grant of breeder's rights is made shall have a denomination which will be its generic designation and, subject to subsections (2) and (3), the denomination shall be approved by the Board and registered at the time the plant variety is granted protection and grant of breeder's rights is made.

(2) The Board shall consider for approval and registration of a proposed denomination for a new plant variety if it complies with the following conditions –

(a) it must enable the plant variety to be identified

(b) it does not consist solely of figures, except where this is an established practice for designating plant varieties; and

- (c) the denomination 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.

(3) The Board shall not approve or register a denomination for the new plant variety which —

- (a) does not satisfy the requirement of subsection (2);
- (b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;
- (c) is contrary to any written law or public order, or is likely to be offensive to the public; and
- (d) 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 to a person who, in accordance with the provisions of subsection 16A(1), is obliged to use it, the Board shall require the breeder to submit another denomination for the variety.

(4) Where a denomination for a plant variety has previously been submitted in any Contracting party for the purpose of protecting a new plant variety, the denomination submitted for the purpose of an application in Malaysia in respect of that plant variety must be the same as the denomination submitted in that Contracting party.

(5) The Board shall approve the denomination submitted under subsection (4) upon the grant of breeder's rights, unless the Board considers the denomination to be unsuitable for use within Malaysia.

(6) Where the Board refuses to approve a denomination under subsections (2), (3) or (5), the Board shall require, and the applicant shall propose, another denomination within sixty (60) days from the date of notification, failing which the application shall be deemed to have been abandoned upon the expiration of that period.

(7) The Board shall publish proposed and approved denominations of new varieties in a prescribed manner.

(8) The Board ensures that the authorities of the Contracting party are informed of matters concerning 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 Board.

Use of denomination

16A. (1) Any person who offers for sale or markets propagating material of a variety protected in Malaysia shall use the registered denomination for that protected variety even after the term of the grant of the Breeder's Rights has expired, except where, in accordance with the provisions of subsection 16(3)(d), prior rights prevent such use.

(2) A person shall not offer for sale or market propagating material of some other plant variety of the same plant species or of a closely related species using the registered denomination of a protected variety.

Use of denomination in association with trademark and trade name or other similar indication

16B. A person who sells or markets material of a protected variety may, for that purpose, associate a trademark, trade name or other similar indication with the registered denomination of that protected variety. If such an association is indicated, the denomination must nevertheless be easily recognizable.

Invalidation of registration of denomination

16C. (1) An application by any person for a declaration of invalidity of a registered denomination may be made to the Court on the grounds that it is registered in breach of subsection 16(3).

(2) The Board shall require the rights holder to submit another suitable denomination for registration within sixty (60) days from the date of notification where the registration of a denomination has been declared invalid by the Court under subsection (1).

Filing date

17. (1) The filing date of an application for the registration of a new plant variety and grant of a breeder's right shall be the date of receipt of the application by the Board on condition that the application has complied with the requirements of section 12.

(2) Subject to subsection (1), where two or more applications for the registration of a new plant variety and grant of a breeder's right are received by the Board in respect of the same plant variety, priority shall be given to the application that is accorded an earlier filing date by the Board.

Right of priority

18. (1) Any breeder who has duly filed an application for the protection of a variety in a Contracting Party, for the purpose of filing an application for protection of a new plant variety for the same variety with the Board, enjoy a right of priority for a period of twelve (12) months. This period shall be computed from the date of filing of the first application, and not from the dates of any subsequent filing. The day of filing shall not be included in the latter period.

(2) In order to benefit from the right of priority, the breeder shall, in the application filed with the Board, claim the priority of the first application. The Board shall require the breeder to furnish, within a period of not less than three (3) months from the filing date of the application, a copy of the 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.

(3) The breeder shall be allowed 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 Board any necessary information, document or material required for the purpose of the examination under section 19, 20 and 21 of the Act.

(4) Events occurring within the period provided for in subsection (1), 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 rights.

Preliminary examination

19. (1) Where an application for the registration of a new plant variety and grant of a breeder's right has a filing date and the application is not withdrawn, the Board shall examine the application and determine whether it complies with the requirements of section 16.

(2) If the Board, as a result of the examination under subsection (1), finds that the requirements of section 16 are not complied with, the Board shall give an opportunity to the applicant to make any observation on such finding and to amend the application within the specified period so as to comply with those requirements, and if the applicant fails to do so, the Board may refuse the application.

(3) If the Board, as a result of the examination under subsection (1), finds that the requirements of section 16 have been complied with, the Board shall notify the applicant in writing as soon as practicable.

Request for substantive examination

20. (1) If an application for the registration of a new plant variety and grant of a breeder's right has been examined under section 19 and the applicant has been notified under subsection 19(3), the applicant shall file within the specified period a request for a substantive examination of the application.

(2) A request for a substantive examination under subsection (1)—

- (a) shall be made in the prescribed form;
- (b) shall be accompanied with the prescribed fee; and
- (c) if requested by the Board, shall provide the specified quantities of propagating material required for the purposes of the substantive examination.

Substantive examination

21. (1) Where a request for substantive examination has been made under section 20, the Board shall refer the application to an Examiner who—

- (a) shall determine whether the application complies with the requirements of section 14; and
- (b) shall report his determination to the Board.

(2) If the Examiner reports in accordance with subsection (1) that the requirements of section 14 are not complied with, the Board shall give the applicant an opportunity to make observations on the report and to amend the application so as to comply with the requirement within the specified period.

(3) If the applicant fails to satisfy the Board within the specified period that the requirements of section 14 are complied or to amend the application so as to comply with the requirements, the Board shall reject the application for the registration of a plant variety and grant of a breeder's right.

(4) If the Examiner reports in accordance with subsection (1) that the application as originally filed or as amended complies with the requirements of section 14, the Examiner shall inform the Board in writing of the findings of his examination.

Application for registration of new plant variety and grant of breeder's right to be published

22. If the Board is satisfied that an application for the registration of a new plant variety and grant of a breeder's right has complied with the requirements of this Act, the Board shall cause the application to be published.

Opposition to application for registration of a new plant variety and grant of breeder's right

23. (1) Any interested person may, within three months from the date of publication of an application for the registration of a new plant variety and grant of a breeder's right, give notice to the Board and the applicant of his intention to oppose the application on any or any combination of the following grounds:

- (a) that the person opposing the application is entitled to the breeder's right as against the applicant; and
- (b) that the application for the registration of the new plant variety and grant of a breeder's right does not comply with the requirements of this Act;

(2) The notice shall be in writing in the manner to be specified by the Board in writing and shall include a statement of the grounds of opposition.

Reply by applicant

24. (1) The applicant shall within thirty days after the receipt of the notice of opposition send a reply to the

Board and the opponent, in the manner to be specified by the Board in writing, stating the grounds for his application for registration and grant of a breeder's right.

(2) If the applicant fails to reply to the opposition within the period specified in subsection (1) or, if the period has been extended by the Board, within the additional period, the applicant shall be deemed to have abandoned his application for the registration of the new plant variety and grant of a breeder's right.

Filing of documentary evidence in support

25. (1) Where the applicant submits a reply under subsection 24(1), the opponent and the applicant shall file documentary evidence in support of the opposition or the application for the registration of the new plant variety and grant of a breeder's right, as the case may be, with the Board.

(2) Any documentary evidence to be filed by the opponent or the applicant under subsection (1) shall be filed within the time and in the manner to be specified by the Board in writing.

(3) Where the applicant files the documentary evidence in support of his application, the opponent may be given an opportunity, within the time to be specified by the Board in writing, to submit to the Board and applicant evidence in reply to be adduced in the manner to be specified by the Board in writing.

(4) After considering the documentary evidence filed by the opponent and applicant, and after giving both parties an opportunity to make submissions, the Board shall decide whether—

(a) to reject the application for the registration of the new plant variety and grant of breeder's right;
or

(b) to approve the application.

(5) The Board shall, within two months after making a decision under subsection (4), give its grounds of decision in writing.

Failure to file documentary evidence

26. (1) If the applicant fails to file the documentary evidence as required under subsection 25(1), the Board may treat the application for the registration of the new plant variety and grant of a breeder's right as abandoned.

(2) Where the opponent fails to file the documentary evidence as required under subsection 25(1), the Board may treat the opposition as abandoned and shall approve the application for the registration of the new plant variety and grant of a breeder's right.

Withdrawal or abandonment of application

26A.(1) Any application may be withdrawn by the applicant at any time before the granting of breeder's rights is made in respect of it.

(2) Where any information, document or material required to be given to the Board under the provisions of this Act is not supplied within the period stated in the written notice issued by the Board, the application concerned shall be deemed to have been abandoned upon the expiration of that period.

(3) The applicant shall not be entitled to a refund of any fee paid prior to withdrawal or abandonment of the application.

(4) The Board shall publish any withdrawal or abandonment of applications for Breeder's Rights in the prescribed manner.

Provisional Protection

26B. (1) Provisional protection is provided to safeguard the interests of the breeder during the period between the publication of the application for protection of new plant variety and the granting of those rights.

(2) The rights holder shall be entitled to equitable remuneration from any person who, during the period provided in subsection (1), has carried out acts which, once the rights are granted, require the breeder's authorization under section 30.

(3) For the purpose of the subsection 26B(2), the rights holder may seek redress in the Court after the granting of the rights

27. [Section 27 deleted]

Registration of new plant variety and grant of breeder's right

28. (1) If the Board is satisfied that the applicant has complied with requirements of section 12, section 13 and section 20 the Board shall register the protection of new plant variety and grant breeder's rights to the applicant and shall—

(a) issue a certificate of registration of the new plant variety and grant of a breeder's right to the applicant in the prescribed form;

(b) record the denomination of the new plant variety and the registration of the new plant variety and grant of a breeder's right in the Register of New Plant Varieties; and

(c) publish a reference to the registration of the new plant variety and grant of a breeder's right.

(2) The contents of the certificate of a breeder's right shall be *prima facie* evidence of the facts stated therein and the duration of the protection granted.

(2A) Upon the grant of the breeder's right, the rights' holder shall pay a prescribed annual fee, to keep the breeder's rights in force subject to subsection 41 (c).

Register

29. (1) The Board shall keep and maintain a register called the Register of New Plant Varieties.

(2) The Register shall be kept in such form and shall contain such particulars as may be specified by the Board.

(3) The Register shall be available to the public for inspection subject to such conditions as the Board deems fit.

(4) A copy or extract of any entry in the Register duly certified by the Secretary to the Board shall be given to any person requiring the copy or extract upon payment of the prescribed fee.

PART IV

RIGHTS, LIMITATIONS AND DUTIES OF A HOLDER

Scope of breeder's right

30. (1) Subject to Section 31 the following acts in respect of the propagating material of the protected variety shall require the authorization of the rights holder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing;
- (g) stocking the material for the purposes mentioned in paragraphs (a) to (f).

(2) The rights holder may make his authorization subject to conditions and limitations.

(3) Subject to section 31 the breeder's rights shall also extend to the acts referred to in paragraphs (1) (a) to (g) in respect of harvested material including entire plants and parts of plant obtained through unauthorized use of the propagating material of the protected variety, unless the rights holder had reasonable opportunity to exercise his rights in relation to the said propagating material.

(3A) The provision of subsections 30(1) (2) and (3) shall also extend 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 distinguishable in accordance with paragraph 14(3)(b) from the protected variety;
- (c) varieties whose production requires the repeated use of the protected variety.

(3B) For the purposes of paragraph 30(3A)(a), a variety shall be deemed to be essentially derived from another protected initial variety when—

- (a) it is predominantly derived from the protected initial variety or from a variety that itself is predominantly derived from the protected initial variety, while retaining the expression of the essential characteristics that result from the genotype or a combination of genotypes of the protected initial variety;
- (b) it is clearly distinguishable from the protected initial variety; and
- (c) except for the differences which result from the act of derivation, it conforms to the protected initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected initial variety.

(3C) Essentially derived varieties may be obtained by for example but not limited to the selection of a natural or induced mutant, or of a soma-clonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Limitations of breeder's right

31. (1) The breeder's right shall not extend to—

- (a) any act done privately on a non-commercial basis;
- (b) any act done for an experimental purpose;
- (c) any act done for the purpose of breeding other varieties and except where the provisions of subsections 30(3A) to (3C) apply, acts referred to in subsections 30(1) to (3) in respect of such other varieties;

- (d) any act of propagation by farmers, in relation to varieties, if they 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 or a variety covered by paragraphs 30(3A)(a) or (b) of this Act, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the rights holder as prescribed in the Regulation.

(2) The breeder's right granted under section 30 shall not apply to any material of the registered plant variety or of a variety covered by the provisions of Section 30(3A) or any material derived from the said material, which has been sold or otherwise marketed within Malaysia by the breeder or by any other person with his consent, unless such material is used for purposes involving—

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

(2A) For the purposes of subsection (2), "material" in relation to a variety means any one of the following:

- (a) propagating material of any kind.
- (b) harvested material, including entire plants and parts of plants, and
- (c) any product made directly from the harvested material.

Duration of breeder's right

32. (1) The duration of protection for a plant variety shall be twenty (20) years, and in the case of trees and vines shall be twenty-five (25) years, and shall commence from the date of granting of a breeder's rights.

(2) The Board shall publish expiration of breeder's rights in a prescribed manner.

33. [Section 33 deleted].

34. [Section 34 deleted]

Duties of a holder

35. (1) The holder shall throughout the duration of the breeder's right—

- (c) provide the Board with facilities and information regarding the registered plant variety, without any charge, whenever requested by the Board.

(2) For the purposes of paragraph 35(1), "facilities" includes the facilities for carrying out an inspection.

PART V

COMPULSORY LICENCE

Compulsory license

36. (1) Only on grounds of public interest, the Board may grant a compulsory license to any person, agency or company to undertake any of the acts mentioned in subsection 30(1) with regard to any material of the protected variety, without authorization from the rights holder, notwithstanding that the rights holder may

have granted his authorization to any other person.

(2) For the purposes of this part, public interest includes food security, natural disaster, health security, pest and disease outbreak.

(3) Before granting a compulsory license, the Board shall give the rights holder a notice in writing of its intention to do so and giving him the right to make representations within a specified period.

(4) The Board shall, upon considering the representations of the rights holder, or if no representation is received within the specified period, make a decision in respect of its intention and shall inform the rights holder of its decision within a reasonable period of time.

(5) Where the Board grants a compulsory license under subsection (1), the Board shall determine an equitable remuneration to be paid by the compulsory licensee to the rights holder.

(6) Board shall publish compulsory licensing of breeder's rights in a prescribed manner.

Scope and conditions of compulsory license

37. Upon the granting of a compulsory license to any person, agency or company, the Board shall determine—

(a) the scope of the compulsory license and the right to carry out any of the acts referred to in section 30 except that such right shall not extend to the act of importation;

(b) the duration of the compulsory license; and

(c) the terms and conditions of the compulsory license.

Termination of compulsory license

38. (1) The Board shall have the power to terminate or revoke any compulsory license granted under section 36 if the Board is satisfied that the licensee has breached any of the terms and conditions of the compulsory license.

(2) Before terminating a compulsory license, the Board shall give the licensee a notice in writing requiring him to show cause within fourteen days from the date of receipt of the notice as to why the license should not be terminated.

(3) After the expiry of the period of fourteen days and after considering any representations made by the licensee, the Board shall decide whether to terminate the license or to take no further action.

(4) The Board shall give the licensee a written notice of its decision under subsection (3) as soon as practicable.

PART VI

NULLITY, CANCELLATION, SURRENDER AND ASSIGNMENT OR TRANSMISSION

Nullity of a Breeder's Right

39. (1) An application for a declaration of nullity of any grant of rights may be made by any person—

(a) to the Board, on any grounds referred to in paragraphs 39(2)(a) and (b); or

(b) to the Court, on the grounds referred to in paragraph 39(2)(c).

(2) The breeder's rights shall be declared null and void when it is established that —

- (a) the conditions laid down in paragraphs 14(3)(a) or (b) were not complied with at the time of the grant of the breeder's rights;
- (b) 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 paragraphs 14(3)(c) or (d) were not complied with at the time of the grant of the breeder's rights; or
- (c) the breeder's rights have been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(3) Where the grant of rights is nullified, pursuant to subsection 39(2), by the Board or the Court, the Board shall publish the nullity of the breeder's rights in a prescribed manner.

(4) Subject to paragraph 39(2)(c), if the Court ruled the grant of rights has been wrongly made, and should be transferred to the person who is entitled to it, the Court shall instruct the Board to invalidate the grant of rights, and the person entitled may apply to the Board for the implementation of the transfer of rights as prescribed in the Regulations.

(5) Notwithstanding the application made by any person under subsection 39(1), the Board shall nullify any grants of rights if satisfied that any of the condition under paragraph 39(2) (a) or (b) is proven.

(6) No breeder's right shall be declared null and void for reasons other than those referred to in subsection 39(2).

40. [Section 40 deleted]

Cancellation of a Breeder's Right

41. (1) The breeder's rights shall be cancelled if it is established that:

- (a) The conditions laid down in paragraphs 14(3) (c) or (d) are no longer fulfilled;
- (b) If, after being requested to do so and within a prescribed period, the rights holder does not provide the Board with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (c) The rights holder fails to pay such fees as may be prescribed payable under subsection 28(2A) to keep his rights in force; or
- (d) The rights holder does not submit, where the denomination of the variety is cancelled after the grant of the rights, another suitable denomination.

(2) Before canceling a breeder's rights, the Board shall give the rights holder a notice in writing requiring the rights holder to show cause within thirty days.

(3) After the expiry of the period of thirty days (30) the Board shall make a decision upon considering any representations made by the rights holder.

(4) The Board shall give the rights holder a written notice of its decision under subsection(3)

(5) The cancellation of a breeder's rights shall take effect—

- (a) if there is no appeal against the cancellation, on the expiration of thirty (30) days from the date on which the notice of cancellation is served on the rights holder; or
- (b) if there is an appeal against such cancellation under section 41, upon the decision of such appeal.

(6) The Board shall record the cancellation in the Register of Protected Plant Varieties and publish such

cancellation in a prescribed manner.

(7) No breeder's rights shall be declared cancelled for reasons other than those referred to in subsection 41(1).

Surrender of breeder's right

42. (1) A holder may surrender his breeder's right by submitting a written request to the Board together with the certificate of registration of the new plant variety and grant of a breeder's right.

(2) The surrender shall take effect on the date the Board receives the certificate of registration and grant of a breeder's right pursuant to the written request under subsection (1).

(3) The Board may impose any terms and conditions as it deems fit in respect of the surrender.

(4) The Board shall record the surrender in the Register of New Plant Varieties and publish the fact of such surrender.

Assignment or transmission of breeder's right

43. (1) A breeder's right or an application for the registration of a plant variety and grant of a breeder's right may be assigned or transmitted with the approval of the Board to —

(a) the legal personal representative of the holder or the applicant for such registration and grant; or

(b) any person entitled by operation of law to such assignment or transmission.

(2) The application for the assignment or transmission of a breeder's right shall be—

(a) made in the manner to be specified by the Board in writing; and

(b) accompanied with the prescribed fee.

(3) The Board may approve the assignment or transmission of the breeder's right if—

(a) it is in writing signed by or on behalf of the assignor; or

(b) the holder or the applicant for the registration of a new plant variety and grant of a breeder's right dies or becomes incapacitated.

(4) Before granting its approval for the assignment or transmission of a breeder's right, the Board shall publish the details of the application and provide a reasonable period of time for any objection to the application for the assignment or transmission

(5) The assignment or transmission of a breeder's rights shall be recorded in the Register of New Plant Varieties and the fact of such assignment or transmission shall be published.

PART VII

APPEALS

Appeals

44. Any person who is aggrieved by the decision of the Board with regard to —

- (a) the rejection of an application for the registration of a new plant variety and grant of a breeder's right;
- (b) the grant of a compulsory licence under subsection 36(1);
- (c) the determination of the equitable remuneration to be paid by the compulsory licensee to the rights holder under subsection 36(5);
- (d) the termination of a compulsory licence under section 38;
- (e) the revocation of a breeder's right;
- (f) the terms and conditions in respect of the surrender of a breeder's right; or
- (g) the assignment or transmission of a breeder's right,

may, within thirty days after being informed in writing of the decision of the Board appeal in writing against such decision to the Minister.

Appeal Board

45. (1) Upon receipt of an appeal under section 44, the Minister shall refer the matter to an Appeal Board.

(2) The Appeal Board shall consist of the following members:

- (a) the Secretary-General of the Ministry of Agriculture and Agro-based Industry, who shall be the Chairman;
- (b) the Secretary-General of the Ministry of Science, Technology and Innovations;
- (c) the Secretary-General of the Ministry of Plantation Industries and Commodities;
- (d) the Permanent Secretary of the Ministry of Agriculture and Food Industry of Sarawak; and
- (e) the Permanent Secretary of the Ministry of Agriculture, Sabah.

(3) At the meetings of the Appeal Board, three members shall constitute a quorum.

(4) If for any reason the Chairman is unable to attend the meeting of the Appeal Board, the members present shall elect from among themselves a member to preside over the meeting and the member elected shall exercise the powers of the Chairman for the duration of that meeting and shall be deemed to be the Chairman for the purposes of that meeting.

(5) The Appeal Board may regulate its own procedure at the hearing of any such appeal and shall not be bound by any law or rule of practice relating to the admissibility of evidence.

(6) The Appeal Board shall consider the appeal and make recommendations to the Minister.

Decision of the Minister

46. The decision of the Minister shall be final and the person making the appeal shall be informed in writing of the decision.

PART VIII

INFRINGEMENT

Acts deemed to be infringement

47. Subject to the provisions of this Act, an infringement of a breeder's right shall consist of the performance of any of the acts referred to in section 30 in Malaysia by a person other than the holder without the authorization of the holder in relation to the registered plant variety for which a breeder's right has been granted to the holder.

Infringement proceedings

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

(2) The holder shall have the same right against any person who has performed acts which make it likely that an infringement will occur, which in this Part is referred to as an "imminent infringement".

(3) The proceedings in subsections (1) and (2) may not be instituted after five years from the date the act of infringement is discovered or could have been reasonably discovered by the holder.

Injunction and award of damages

49. (1) If the holder proves that an infringement has been committed or is being committed, the court may award damages and may grant an injunction to prevent further infringement and award any other legal remedy.

(2) If the holder proves that an imminent infringement has occurred, the court may grant an injunction to prevent the infringement and award any other legal remedy.

PART IX

OFFENCES

Offence with respect to furnishing any false or misleading particular, etc.

50. Any person who furnishes or causes to be furnished to the Board any false or misleading particular, information or statement in respect of an application for the registration of a new plant variety and grant of a breeder's right commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Offence with respect to contravention of terms and conditions and use of samples without permission

51. Any person who contravenes any of the terms and conditions imposed on him as a holder or as a compulsory licensee commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six (6) months or to both.

Offence by body corporate

52. Where a body corporate commits an offence under this Act or any regulations made under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other

similar officer of such body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in its management—

- (a) may be charged and tried jointly in the same proceedings with the body corporate; and
- (b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he took all reasonable precautions and had exercised all due diligence to prevent the commission of the offence.

PART X

ENFORCEMENT

Authorization of officers

53. (1) The Minister may authorize in writing any officer in the Ministry to exercise the powers under this Part.

(2) An officer authorized under subsection (1) shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Power of enforcement

54. (1) Any authorized officer or a police officer not below the rank of Inspector may exercise all the powers of enforcement under this Act.

(2) Every authorized officer or police officer, when acting against any person under this Act, shall declare his office and shall on demand produce to the person against whom he is acting such authority card as the Minister may direct to be carried by such authorized officer or as the Inspector General of Police may direct to be carried by such police officer.

Power of investigation

55. An authorized officer shall have all the powers necessary to carry out an inspection and to investigate the commission of any offence under this Act.

Additional powers

56. Any authorized officer or police officer not below the rank of Inspector may, for the purpose of enforcing this Act, do all or any of the following:

- (a) enter, inspect and examine with or without notice any premises or farm at any reasonable hour in relation to any offence reasonably suspected to have been committed under this Act;
- (b) require the production of any record, book, accounts, computerized data or documents kept by the holder and inspect, examine and copy any of them;
- (c) require the production of any identification document from any person in relation to any case or offence under this Act;

- (d) make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

PART XI

MISCELLANEOUS

Institution of prosecution

57. No prosecution for or in relation to any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Jurisdiction to try offences

58. Notwithstanding any written law to the contrary, a Court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to impose the full punishment for any such offence.

Protection of officers

59. No action shall be brought, instituted or maintained in any court against—

- (a) any member of the Appeal Board;
- (b) any member of the Board;
- (c) any authorized officer; and
- (d) any Examiner,

for any act or omission done in good faith in the performance of their functions and the exercise of their powers under this Act.

Regulations

60. (1) The Minister may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made —

- (a) to regulate the procedure for an application for the registration of a new plant variety and grant of a breeder's right and the determination of questions in connection with such application, registration and grant, and in connection with the extension of the duration of such registration and grant, and the revocation, surrender, assignment or transmission of a breeder's right;
- (b) prescribing the fees and charges payable under this Act and the manner for collecting and dealing with such fees and charges;
- (c) prescribing forms, books, registers, documents and other matters to be used under this Act and the information to be furnished for any of the purposes of this Act;
- (d) to prescribe conditions for the implementation of paragraph 31(1)(d);
- (da) to prescribe conditions for the implementation of subsection 32(2); and
- (e) providing generally for any other matter for the proper and effective implementation of this Act.

Transitional Provisions

60A.(1) The amendments to the principal Act shall not affect any application for registration of a new plant variety and granting of a plant breeder's right or for the renewal of the registration of a new plant variety and granting of a plant breeder's right or the registration of a new plant variety and granting of a plant breeder's right, as the case may be, made under the principal Act before the appointed date and the relevant provisions of the principal Act, shall apply to the application or registration or renewal, as the case may be, as if the provisions had not been amended by this Act.

(2) Notwithstanding subsection 54(1)-

- (a) any rights granted under the principal Act will automatically be subsumed under this Act;
- (b) any pending application at the time of commencement of this Act for grant of rights made under the principal Act, shall be deemed to be an application under this Act, and shall be dealt with accordingly;
- (c) The Register of Protected Plant Varieties under the principal Act shall be kept and maintained under this Act; and
- (d) any samples deposited under the principal Act will be disposed of in a prescribed manner.

(3) The period of protection of the new plant variety under the principal Act will remain the same as when the rights were granted.

(4) Nothing in the principal Act or this Act shall affect any person's ability to be prosecuted or punished for offences or breaches committed before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(5) Any right, privilege, obligation, appeals to the Plant Varieties Board and Appeal Board or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation appeals to the Plant Varieties Board and Appeal Board or liability shall not be affected by this Act and shall continue to remain in force as if this Act has not been enacted.

(6) Any person appointed under the principal Act and holding office at the commencement of this Act, shall remain in office as if he had been appointed under this Act.

(7) Any act made, executed, issued or passed under the principal Act and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, issued or passed under this Act.

(8) All proceedings, judicial or otherwise under the principal Act, commenced before and pending immediately before the commencement of this Act shall be deemed to have commenced and may be continued under this Act.

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Ende der Anlage II und des Dokuments /
Fin del Anexo II y del documento]