PLANT VARIETY PROTECTION IN MALAYSIA - A BASIC INFORMATION GUIDE

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1. INTRODUCTION

Plant Variety Protection, also known as Plant Breeders’ Right, is a form of intellectual property right which grants breeders of new plant varieties exclusive rights to exploit their varieties, for a specific period of time.

1.1. NEW LEGISLATION

In Malaysia, the protection of new plant varieties is governed by the Protection of New Plant Varieties Act 2004 (PNPV) and the Protection of New Plant Varieties Regulations 2008 (PNPVR).

The PNPV officially came into force on 1 January 2007, but the system for plant variety registration was implemented only recently when the enabling PNPV Regulations were gazetted on 20 October 2008.

The PVPV and the PNPVR brings with it the implementation of a new plant variety protection system which provides for the protection of breeders’ rights for new plant varieties while recognising and protecting the contribution made by farmers, local communities and indigenous people towards the creation of the same.

The new plant variety protection system is also expected to encourage investment and enhance the development of new plant varieties in both public and private sectors, for the benefit of society as a whole.

1.2. PLANT VARIETY DEFINITION

What is a plant?

The term “plant” is defined by the PNPV Act as any living organism in the plant kingdom but excludes any micro-organisms.

What is a variety?

According to the Act, “variety” means a plant grouping within a single botanical taxonomy of the lowest known rank, which can be:

- defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes;
- distinguished from any other plant grouping by the expression of at least one of such characteristics; and
- considered as a unit with regard to its suitability for being propagated unchanged, and includes propagating material and harvested material of the plant variety.

Thus, any new plant variety which falls within the above definitions may be entitled to seek protection under the plant variety registration system provided that the other conditions stipulated in the legislation are also satisfied.
2. PLANT VARIETIES BOARD

The legislation governing plant variety protection in Malaysia falls under the purview of the Department of Agriculture of the Ministry of Agriculture and Agro-based Industries. As provided by the legislation, a Plant Varieties Board has been established for the administration and implementation of the plant variety registration system in Malaysia.

2.1. MEMBERS OF THE BOARD

The Plant Varieties Board is headed by the Director General of the Department of Agriculture. The other members of the Board, consisting of top/senior officials from the relevant government departments and institutions, are as follows:-

- the Director General of the Malaysian Agricultural Research and Development Institute (MARDI);
- the Director General of the Malaysian Rubber Board;
- the Director General of the Malaysian Palm Oil Board (MPOB);
- the Director General of the Malaysian Cocoa Board;
- the Director General of the Forest Research Institute of Malaysia (FRIM);
- the Director of Agriculture, Sabah;
- the Director of Agriculture, Sarawak; and
- a representative from each of the following ministries –
  - the Ministry of Agriculture and Agro-based Industry;
  - the Ministry of Plantation Industries and Commodities;
  - the Ministry of Domestic Trade and Consumer Affairs; and
  - the Ministry of Science, Technology and Innovation.

2.2. FUNCTIONS OF THE BOARD

The main functions of the Board are as follows:-

- to consider and approve or reject applications for registration of new plant varieties and grant of breeder’s rights;
- to set appropriate systems for the examination of new plant varieties;
- to appoint any person, government department or organization to be an examiner for conducting substantive examination of plant varieties;
- to set terms and conditions pertaining to the samples of registered plant varieties deposited at approved centres;
- to impose any terms and conditions for the research and experimental use or export of any registered plant variety developed from local genetic resources or by indigenous people;
- to keep and maintain a register of registered new plant varieties called the Register of New Plant Varieties; and
- to keep and maintain a record of other plant varieties which are not registered in the Register of New Plant Varieties; and
- to revoke, surrender, assign or transmit any breeder’s right granted by the Board.
3. CONDITIONS FOR REGISTRATION AS A NEW PLANT VARIETY AND GRANT OF BREEDER’S RIGHT

3.1. CATEGORIES FOR REGISTRATION OF NEW PLANT VARIETY AND GRANT OF BREEDER’S RIGHT

The PNPV provides for two categories of new plant varieties to be registered, one category is for newly developed varieties while the other is for varieties which are discovered, developed and propagated by farmers, local communities or indigenous people.

3.2. ELIGIBILITY CRITERIA

To be eligible for registration as a new plant variety and granted a breeder’s right, a newly developed plant variety must satisfy the following four criteria:
- new;
- distinct;
- uniform; and
- stable.

However, for a plant variety which is bred, or discovered and developed by a farmer, local community or indigenous people, it is entitled for registration as a new plant variety and granted a breeder’s right if it fulfils the following three conditions:
- new;
- distinct; and
- identifiable.

New

A plant variety is considered new if it has not been commercially exploited prior to seeking protection. However, there are exemptions. If any commercialisation has taken place in Malaysia, the same must have occurred within one year before the filing date of the application for registration in Malaysia. For commercialisation outside of Malaysia, the grace period provided is four years but for trees and vines, the exemption is for six years.

Distinct

The condition of distinctness is fulfilled if a new variety is clearly distinguishable from any other existing variety which is publicly known.

Uniform

A plant variety is uniform if its characteristics are consistent from plant to plant within the variety.

Stable
For a plant variety to qualify as stable, the relevant characteristics of the plant variety must remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each particular cycle.

**Identifiable**

A plant variety is regarded as identifiable if it can be distinguished from any other plant grouping by the expression of one characteristic and that characteristic is identifiable within individual plants or within and across a group of plants; and such characteristics can be identified by any person skilled in the relevant art.

### 3.3. PROHIBITION OF REGISTRATION AND GRANT OF BREEDER’S RIGHT

Even if a new plant variety meets all the criteria for registration as mentioned above, there are still two exceptions which would disqualify a variety from being granted protection. The exceptions are as follows:-

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

### 3.4. DENOMINATION OF A NEW PLANT VARIETY

A new plant variety, in addition to satisfying the registration criteria as mentioned above, is also required to be given a suitable denomination. The denomination serves as the name or identification of a plant variety.

**Requirements for denomination**

The denomination given to a plant variety must fulfil the following requirements:-

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

Any denomination that does not satisfy the above requirements will be rejected by the Board.

**Prohibitions**

Also, the Board may not allow any denomination which –

- is contrary to public order or morality;
- is not suitable for the identification of the plant variety; or
- may cause confusion concerning the characteristics or the identity of the breeder of the plant variety.

Should a proposed denomination be rejected by the Board as being unacceptable, the applicant will be given an opportunity to propose another suitable denomination.

### 3.5. ELIGIBILITY OF APPLICANT
Who may apply?

The following persons are entitled to file an application for registration of a new plant variety and granted a breeder’s right:

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

Who is a breeder?

The Act defines “breeder” as a person who has bred or has discovered and developed any plant variety.

For the purpose of the plant variety protection system, the term “breeding” means carrying out activities conducive to the development of any plant variety while “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.

Who is a farmer?

According to the Act, “farmer” means any person who –

- cultivates crops by cultivating the land himself;
- cultivates crops by directly supervising the cultivation of the land through any other person; or
- 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.

Who is a local community?

For the purposes of plant variety protection, a “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.

Who are indigenous people?

“Indigenous people” means persons who fall within the definition of “aborigine” or “native” as defined in the Federal Constitution.

4. APPLICATION AND REGISTRATION PROCEDURE

4.1. APPLICATION FOR REGISTRATION
The protection for new plant varieties is conferred through the system of registration. Therefore, to obtain protection, a new plant variety must be registered with the Plant Varieties Board.

**Application Requirements and Procedure**

An application for registration of a new plant variety and grant of a breeder’s right must be made to the Board at the address below:-

Secretariat
Plant Varieties Board,
Crop Quality Control Division
Department of Agriculture
Level 7, Wisma Tani, Lot 4G2
No. 30, Persiaran Perdana, Presint 4
62624 Putrajaya

The application must contain the following:-

- Form PVBT 1 (for a newly developed plant variety) or PVBT 2 (for a variety which is bred, or discovered and developed by a farmer, local community or indigenous people) duly completed;
- Technical Questionnaire duly completed; and
- Payment of the prescribed filing fee (RM100).

All fees are payable to the Director General of the Department of Agriculture in the form of a postal order, money order or bank draft. Payment in cash is also accepted at the service counter of the Secretariat.

The following information and documents must be submitted to the Board along with the application:-

- the name, address, nationality and other particulars of the applicant;
- the method by which the plant variety is developed;
- documents and information relating to the characteristics of the plant variety which distinguish the plant variety from other plant varieties;
- proposal of a plant variety denomination;
- information relating to the source of the genetic material or the immediate parental lines of the plant variety;
- the prior written consent of the authority representing the local community or the indigenous people in cases where the plant variety is developed from traditional varieties;
- documents relating to the compliance of any law regulating access to genetic or biological resources; and
- documents relating to the compliance of any law regulating activities involving genetically modified organisms in cases where the development of the plant variety involves genetic modification.

**Appointment of an Agent**

A local applicant may file an application directly with the Plant Varieties Board.

However, in the case of an applicant whose ordinary residence or principal place of business is outside Malaysia, an agent who is a resident or has a registered office in Malaysia needs to be appointed to represent him.
For applications by a local community or an indigenous people as the applicant, the authority representing them is required to act as the agent.

The Act does not impose any other conditions on the qualification of an agent.

Forms and Fees

A list of the forms and fees payable is provided in Appendix 1. All forms are downloadable from the website of the Department of Agriculture, www.pvpbkkt.doa.gov.my.

4.2. STAGES OF REGISTRATION PROCEDURE

Generally, an application for registration of a new plant variety and grant of a breeder’s right goes through the following stages as indicated in the flowchart below:-

Filing of Application

On receiving the application and the prescribed payment of the official filing fees, the application is checked to see whether the same is complete, in other words, if all the required information and documents have been submitted. If so, the application is assigned a filing date and an application number.

Preliminary Examination

The application is then subjected to a preliminary or non-technical examination, whereby it is examined to determine whether the variety is novel and also if it falls under the prohibited area. At this stage, it is also ascertained if the denomination proposed by the applicant meets the stipulated requirements. Should there be any non-compliance, a written notification is issued and the applicant is invited to rectify the same, within thirty (30) days.

On the other hand, if all the requirements have been met, or the non-compliances have been addressed, the applicant is notified in writing and invited to submit the request for substantive examination.

Request for Substantive Examination

The request for substantive examination must be made on Form PVBT 3 together with the prescribed fee in accordance with the method of substantive examination as determined by the Board, within thirty (30) days from the date of notification.

The different methods of substantive examination are as follows:-
- Document examination;
- On-site inspection;
- Growing test; and
- Subsequent growing test (if necessary).
Substantive Examination

The application then proceeds to the substantive examination, which is also known as the technical examination. At this juncture, the application is examined to ascertain compliance with the registration criteria of distinctness, uniformity and stability (DUS). These criteria, often grouped and examined together, are referred to as the “DUS Test”.

If any non-compliance is found, the applicant is given an opportunity to put the application in order within a time frame of thirty (30) days.

Publication

If the application is found to be in compliance with the requirements (or where non-compliances have been successfully addressed) the application is published in the Government Gazette and a three-month period is given for any party to file an opposition against the application.

Opposition

Any interested person may oppose the application on any of the following grounds:-

- the person opposing the application is entitled to the breeder’s right as opposed to the applicant;
- the application for the registration of the new plant variety and grant of a breeder’s right does not comply with the requirements of the PNPV;
- the application for the registration of the new plant variety and grant of a breeder’s right is contrary to public order or morality; or
- the application for the registration of the new plant variety and grant of a breeder’s right may produce a negative impact on the environment.

A notice in writing of the opponent's intention to oppose the application, including a statement of the grounds of opposition, must be submitted to the Board and the applicant on Form PBVT 4.

Within thirty (30) days of receiving the notice of opposition, the applicant must reply in writing to the Board and the opponent on Form PVBT 5, stating the grounds for his application. If the applicant fails to do so within the given time frame, the Board may grant an extension of time of fourteen (14) days. Failure to file a response within the given time frame or the extended period will result in the application being deemed as abandoned.

Where the applicant submits a reply to the notice of opposition, the Board will request both the opponent and applicant to submit documentary evidence in support of their cases. The same must be submitted to the Board within thirty (30) days of the Board’s request together with Form PVBT 6.

After receiving the documentary evidence filed by both the opponent and the applicant, the Board will take the same into consideration and give both parties an opportunity to make submissions. The Board will then make a decision whether to reject or approve the application and notify the parties its grounds of decision in writing.
However, if the applicant fails to submit any documentary evidence to the Board within the prescribed period, the application will be treated as abandoned. On the other hand, should the opponent fail to comply with the Board’s request, the opposition will be regarded as abandoned, and the application will be approved.

Approval by Plant Varieties Board

If there is no opposition or the decision by the Board, in the case of an opposition, is favourable to the applicant, the application is approved. On the other hand, if the decision by the Board favours the opponent, the application will be rejected.

Deposit of Samples

On approval of the application, the applicant is required to deposit samples of the seed or any other propagating material of the plant variety at a centre approved by the Board.

Registration

Once the depository requirement is fulfilled, the application is registered and the applicant awarded a certificate of registration of a new plant variety and grant of a breeder’s right. The registration and denomination of the new plant variety is recorded in the Register of New Plant Varieties. A publication in the Government Gazette to notify the public of the registration also takes place.
5. RIGHTS, LIMITATIONS AND DUTIES OF A HOLDER

5.1. SCOPE OF BREEDER’S RIGHT

Upon registration, a holder of a breeder’s right has the right to carry out the following acts on a commercial basis:

• producing or reproducing;
• conditioning for the purpose of propagation;
• offering for sale;
• marketing inclusive of selling;
• exporting;

Application accorded Filing Date

Preliminary Examination (non-technical)

Request for Substantive Examination

Substantive Examination (technical)

Publication

Approval by Plant Varieties Board

Deposit of Samples

Registration
• importing; and
• stocking of the material for the purposes mentioned above.

5.2. LIMITATION OF BREEDER’S RIGHT

There are, however, limitations to the breeder’s rights granted under the Act. The rights granted do not extend to the following acts:-

• non-commercial basis;
• experimental purposes;
• for the purpose of breeding other plant varieties;
• propagation by small farmers (using the harvested material) and planting on their own holdings;
• exchange of reasonable amounts of propagating materials among small farmers; and
• sale of farm-saved seeds in situations where non-usage of seeds is due to natural disasters or factors beyond the control of the farmer, in which case the amount sold is not more than the amount required in his own holding.

For the purpose of new plant variety protection, small farmer means a farmer whose farming operations do not exceed the size of a holding of 0.2 hectares or less.

5.3. DURATION OF BREEDER’S RIGHT

Once registered, the duration of protection for a registered plant variety which is new, distinct, uniform and stable is twenty (20) years from the filing date of the application for registration, whereas for a registered plant variety that is new, distinct and identifiable, the term of protection is fifteen (15) years.

As for trees and vines, the duration of protection is twenty five (25) years from the filing date of the application for registration.

The registrations must be renewed on a yearly basis for the same to remain in force even though there is no renewal fee payable. Failure to renew will render the registration as lapsed.

5.4. EXTENSION OF DURATION OF BREEDER’S RIGHT

The duration of protection may be extended by the Board beyond the given period provided that the Board is satisfied that such extension is desirable on the ground of national needs and interests. If such an extension of the duration of protection is desired, an application in writing must be made to the Board by the holder of the rights before the expiry of the duration.

5.5. AVAILABILITY OF PROPAGATING MATERIAL

There is a requirement for the holder of the breeder’s right to ensure that the propagating material of the plant variety is available in reasonable quantities within three (3) years from the date of filing of the application for registration of the new plant variety and grant of a breeder’s right and at such reasonable price as may be determined by the Board.

5.6. DUTIES OF A HOLDER
Throughout the duration of the breeder’s right, the holder is also required to do the following:

- maintain at its expense samples which have been deposited at a centre approved by the Board;
- furnish the Board with the propagating material of the registered plant variety which is capable of reproduction whenever requested by the Board;
- provide the Board with facilities (including those for carrying out an inspection) and information regarding the registered plant variety, without any charge, whenever requested by the Board.

6. COMPULSORY LICENCE

6.1. WHAT IS COMPULSORY LICENCE AND WHY IS IT GRANTED?

Meaning of compulsory licence

A compulsory licence is basically an authorization given by the Board to any person or entity to exploit the rights of the holder of the breeder’s right without the consent or agreement of the holder.

Why is compulsory licence granted?

The Board may grant a compulsory licence, if, after three (3) years from the grant of a breeder’s right, the Board finds that:

- the propagating materials (which is of reasonable quality) of the registered variety is not available in reasonable quantities or at reasonable prices and the needs of farming community for the propagating material of the registered plant variety have not been met; or
- an excessive proportion of the registered plant variety offered for sale is being imported.

However, before granting a compulsory licence, the holder of a breeder’s right is given a notice in writing of the Board’s intention and giving him the right to make representations. The representation by the holder must be made within thirty (30) days from the date the notification.

A decision will be made by the Board after consideration of the representation made by the holder and the holder will be notified of said decision.

How is compulsory licence granted?

If a decision to grant a compulsory licence is made, an advertisement is put up in the major local newspaper inviting local interested parties to become a licensee. The interested party must make an application to the Board on Form PVBT 10.

6.2. SCOPE AND CONDITIONS OF COMPULSORY LICENCE

In granting a compulsory licence, the following conditions are determined by the Board:

- the scope of the compulsory licence and the right to carry out any of the acts that are considered exclusive rights of the holder with an exception to the act of importation;
- the duration of the compulsory licence; and
6.3. TERMINATION OF COMPULSORY LICENCE

If the Board finds that a licensee has breached any of the terms and conditions of the compulsory licence, the same may be terminated or revoked.

Before terminating a compulsory licence, the licensee is given notice in writing requiring it to show cause as to why the licence should not be terminated, within 14 days from the date of receipt of the notice.

After consideration of any representation made by the licensee, a decision is made by the Board whether to terminate the licence or take no further action on the matter. The licensee is notified in writing of the decision of the Board.

7. INFRINGEMENT

7.1. WHAT IS AN INFRINGEMENT?

An infringement of a breeder’s right occurs when a person other than the holder of the breeder’s right carries out any exclusive rights of the holder without the consent or authorisation of the holder.

7.2. CIVIL ACTION FOR INFRINGEMENT

The holder of the breeder’s right has the right to initiate Court proceedings against any person who has infringed or is infringing his rights. The proceedings however must be initiated within five years from the date of infringement.

7.3. REMEDIES FOR INFRINGEMENT

If the holder of the breeder’s right proves that an infringement has been committed or is being committed, the Court will award damages and grant an injunction to prevent further infringement, and award any other legal remedy as deemed appropriate.

8. INVALIDATION, REVOCATION, SURRENDER AND ASSIGNMENT OR TRANSMISSION

8.1. INVALIDATION OF BREEDER’S RIGHT

Grounds for invalidation

Any interested person may initiate Court proceedings against the holder to invalidate the registration of a new plant variety and grant of a breeder’s right on the following grounds:-

- the holder has furnished to the Board false or misleading information or statement in respect of the application for registration of the new plant variety and grant of a breeder’s right;
- the holder has not complied with the requirements of the PNPV Act; or
- the breeder’s right does not belong to the person to whom the breeder’s right was granted.
Effect of Invalidation

If the grounds for the invalidation are proven, the Court will decide to invalidate a breeder’s right. Once the decision of the Court becomes final, the Registrar of the Court will notify the Board and the Board will record the invalidation on the certificate of registration and in the Register of New Plant Varieties. The fact of the invalidation will also be published in the Government Gazette.

Any invalidated certificate of registration and grant of breeder’s right will be regarded as null and void from the date of the grant of the breeder’s right.

8.2. REVOCATION OF BREEDER’S RIGHT

Grounds for revocation

A breeder’s right granted to a holder may be revoked in any of the following circumstances:

- the holder fails to provide the Board, within the specified period, with the information, facilities or propagating materials deemed necessary by the Board for the maintenance of the samples deposited at a centre approved by the Board when requested by the Board;
- the holder fails to pay any fees payable to the Board to keep its breeder’s right in force;
- the registered plant variety fails to demonstrate continuously the conditions for which the registration was made and breeder’s right was granted;
- the holder contravenes any of the terms and conditions imposed on it as a holder; or
- the holder uses or causes to be used any sample of a registered plant variety deposited at a centre approved by the Board without the prior written permission of the Board.

Revocation Procedure

However, before revoking a breeder’s rights, the holder is given a notice in writing requiring it to show cause as to why its rights should not be revoked. The show cause representation by the holder must be made within 14 days from the date the written notice is served on the holder.

A decision will be made by the Board after considering the representation made by the holder and the holder will be notified of said decision via a written notice.

If a breeder’s right is revoked, the holder is directed to return the certificate of registration of the new plant variety and grant of a breeder’s right to the Board. The Board also has the power to authorise any person to undertake the production of the plant variety for reasons of public interest.

The invalidation is recorded on the certificate of registration and in the Register of New Plant Varieties. The fact of the revocation is also published in the Government Gazette.

8.3. SURRENDER OF BREEDER’S RIGHT
A holder may surrender its breeder’s right by a written request to the Board together with the certificate of registration of the new plant variety and grant of a breeder’s right. The surrender takes effect on the date the Board receives the certificate of registration and the written request.

The Board however has the right to impose any terms and conditions as it deems fit in respect of the surrender.

The surrender is recorded in the Register of New Plant Varieties and also published in the Government Gazette.

8.4. ASSIGNMENT OR TRANSMISSION OF BREEDER’S RIGHT

Entitlement to assignment or transmission

A breeder’s right or an application for the registration of a new plant variety and grant of a breeder’s right may be assigned or transmitted with the approval of the Board to –

- the legal personal representative of the holder or the applicant for such assignment or transmission; or
- any person entitled by operation of law to such assignment or transmission.

For the purpose of the plant variety protection system, “assignment” means sale. It is basically an outright transfer of ownership of a breeder’s right or an application for the registration of a new plant variety and grant of a breeder’s right to another person or entity for a sum of consideration. An assignment must be in writing and signed by or on behalf of the contracting parties.

“Transmission” generally refers to the transfer of a breeder’s right or an application for the registration of a new plant variety and grant of a breeder’s right to an heir or successor.

Application for assignment or transmission

The application for the assignment or transmission must be made to the Board on Form PVBT 11 together with the prescribed fee (RM100). The original or certified true copy of the deed of assignment signed by the parties concerned or any other documents evidencing the change of ownership must also be submitted together with the application.

The Board may approve the assignment or transmission, as the case may be, if –

- the assignment or transmission is in writing and signed by or on behalf of the contracting parties; or
- the holder or the applicant for the registration of a new plant variety and grant of a breeder’s right dies or becomes incapacitated.

Before granting its approval, the Board will publish in the Government Gazette the details of the application and also provide a reasonable period of time for any objection to the application for the assignment or transmission to be raised.

On approval, the assignment or transmission of a breeder’s right is recorded in the Register of New Plant Varieties. The fact of the assignment or transmission is also published in the Government Gazette.
9. OFFENCES

9.1. ACTS DEEMED AS AN OFFENCE

The following acts are deemed to be an offence and on conviction, the offender is liable to a fine or imprisonment:-

- furnishing to the Board any false or misleading particular, information or statement with regard to an application for the registration of a new plant variety and grant of a breeder’s right; and
- contravening any of the terms and conditions imposed on him as a holder or a licensee, or using without prior written permission of the Board any sample of a registered plant variety deposited at an approved depository centre.

9.2. PENALTY

On conviction for providing false or misleading information, the offender is liable to a fine not exceeding twenty thousand ringgit (RM20,000) or imprisonment for a term not exceeding two (2) years or to both.

For the other offences stated above, the penalty is a fine not exceeding five thousand ringgit (RM5,000) or imprisonment for a term not exceeding six (6) months or both.

10. MISCELLANEOUS

10.1. TERRITORIAL RIGHTS

Plant variety protection is territorial in nature. This means that a plant variety registered in Malaysia is protected only in Malaysia. The protection accorded in Malaysia does not extend to other countries.

10.2. PLANT VARIETY PROTECTION OUTSIDE MALAYSIA

To obtain new plant variety protection in other countries, applications in the countries where protection is desired need to be made.

11. APPENDIX

11.1. Appendix I – Schedule of Forms and Fees

11.2. Appendix II – Contact Details of Authorities
### APPENDIX 1

#### SCHEDULE OF FORMS AND FEES

<table>
<thead>
<tr>
<th>No.</th>
<th>Matters</th>
<th>Fee (RM)</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Filing (per application)</td>
<td>100.00</td>
<td>PVBT 1,</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>PVBT 2</td>
</tr>
<tr>
<td>2.</td>
<td>Request for substantive examination:</td>
<td></td>
<td>PVBT 3</td>
</tr>
<tr>
<td></td>
<td>(a) Document examination</td>
<td>500.00</td>
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<tr>
<td></td>
<td>(b) On-site inspection</td>
<td>1,500.00</td>
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<tr>
<td></td>
<td>(c) Growing test</td>
<td>2,500.00</td>
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</tr>
<tr>
<td></td>
<td>(d) Subsequent growing test (if necessary)</td>
<td>1,000.00</td>
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<td>3.</td>
<td>Opposition to registration of new plant variety and grant of breeder's right</td>
<td>-</td>
<td>PVBT 4</td>
</tr>
<tr>
<td>4.</td>
<td>Reply by applicant</td>
<td>-</td>
<td>PVBT 5</td>
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<tr>
<td>5.</td>
<td>Filing of documentary evidence in support</td>
<td>-</td>
<td>PVBT 6</td>
</tr>
<tr>
<td>6.</td>
<td>Certificate of registration of new plant variety and grant of breeder's right</td>
<td>-</td>
<td>PVBT 7</td>
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<td>7.</td>
<td>Certificate of registration of new plant variety and grant of breeder's right (Discovered and developed by a farmer, local community or indigenous people)</td>
<td>-</td>
<td>PVBT 8</td>
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<tr>
<td>8.</td>
<td>Request for certified copies or extracts of Register of New Plant Varieties</td>
<td>10.00</td>
<td>PVBT 9</td>
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<tr>
<td>9.</td>
<td>Application of compulsory licence</td>
<td>-</td>
<td>PVBT 10</td>
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<tr>
<td>10.</td>
<td>Application for assignment or transmission of breeder's right</td>
<td>100.00</td>
<td>PVBT 11</td>
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**Note:** Payment of fees may be made in the form of a postal order, money order or bank draft payable to the Director General of the Department of Agriculture. Cash payment is also accepted at the service counter of the Secretariat.
APPENDIX II

CONTACT DETAILS OF AUTHORITIES

For any enquiries relating to matters concerning Plant Variety Protection of Malaysia, the following personnel can be contacted:

<table>
<thead>
<tr>
<th>NO.</th>
<th>CONTACT DETAILS</th>
<th>NO.</th>
<th>CONTACT DETAILS</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Director</td>
<td>2.</td>
<td>Mr. Kadir bin Zainal</td>
</tr>
<tr>
<td></td>
<td>Crop Quality Control Division</td>
<td></td>
<td>Deputy Director</td>
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<tr>
<td></td>
<td>Department of Agriculture</td>
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<td>Plant Variety Protection Registration Section</td>
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<td>Crop Quality Control Division</td>
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<td></td>
<td>Malaysia</td>
<td></td>
<td>Department of Agriculture</td>
</tr>
<tr>
<td></td>
<td>Tel: +60388703448</td>
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<td>Ministry of Agriculture and Agro-based Industries</td>
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<tr>
<td></td>
<td>email: <a href="mailto:norma@doa.gov.my">norma@doa.gov.my</a></td>
<td></td>
<td>Malaysia</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. Esa bin Sulaiman</td>
<td>4.</td>
<td>Mr. Azizi bin Hashim</td>
</tr>
<tr>
<td></td>
<td>Principal Assistant Director</td>
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<td>Assistant Director</td>
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<tr>
<td></td>
<td>email: <a href="mailto:esasulaiman@doa.gov.my">esasulaiman@doa.gov.my</a></td>
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<tr>
<td></td>
<td>Assistant Director</td>
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<td></td>
<td>email: <a href="mailto:sudarti@doa.gov.my">sudarti@doa.gov.my</a></td>
<td></td>
<td>email: <a href="mailto:lian@doa.gov.my">lian@doa.gov.my</a></td>
</tr>
</tbody>
</table>
CONTACT

For further information or clarification, please contact:

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Facilitation, Client Support Services Division
Malaysian Biotechnology Corporation Sdn Bhd
Level 23 Menara Atlan
161 Jalan Ampang
50450 Kuala Lumpur

T: 03 2116 5588
F: 03 2116 5528
E: info@biotechcorp.com.my
REFERENCE

The author acknowledges reference to the following sources in the preparation of this booklet.

- Protection of New Plant Varieties Act 2004
- Protection of New Plant Varieties Regulations 2008
- Resources made available by the Department of Agriculture of the Ministry of Agriculture and Agro-based Industries
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