

# **ADMINISTRATIVE GUIDELINES ON APPLICATION AND REGISTRATION OF NEW VARIETIES OF PLANTS 2008**

## **1.0 INTRODUCTION**

The legal framework for protection of new varieties of plants are provided for in the Protection of New Plant Varieties Act 2004 (hereto referred to as “Act”) and the Protection of New Plant Varieties Regulations 2008 (hereto referred to as “Regulations”). To further enhance these provisions, a well-defined set of administrative guidelines is needed to standardize the procedures related to the application and registration of new varieties of plants. For a better understanding of the plant variety protection system in Malaysia, interested parties are advised to read the Act, the Regulations and the Administrative Guidelines simultaneously.

## **2.0 DATE OF ENFORCEMENT OF THE ACT**

- 2.1 The date of entry into force of the Act is 1 January 2007.
- 2.2 The date of entry into force of the Protection of New Plant Varieties Regulations 2008 is 20 October 2008.

## **3.0 CLARIFICATION**

- 3.1 “Vine” refers to climbing or trailing plants which are woody in nature.
- 3.2 “Tree” refers to woody plants which are perennial in nature.
- 3.3 “Farmer” refers to local farmer in the territory of Malaysia.
- 3.4 “Trademark” refers to protected trademark administered by Intellectual Property Corporation of Malaysia.
- 3.5 “PVPRO” refers to Plant Variety Protection Registration Office which is the office of the Secretary of the Plant Variety Board.
- 3.6 “Person skilled in the relevant art” refers to crop examiner appointed by the Board to conduct technical examinations in the characterization & identification of new plant varieties.
- 3.7 In any dispute arise between Malay and English texts, the Malay text will be accepted.

#### 4.0 PLANT GENERA AND SPECIES FOR PROTECTION

##### 4.1 The plant genera and species prioritized for protection:

Plant Category	Common Name	Local Name	Botanical Name
Ornamentals	Chrysanthemum	Kekwa, Mums, Pom-poms	<i>Chrysanthemum spp.</i>
	Orchid	Orkid	<i>Dendrobium spp.</i> <i>Vanda spp.</i> <i>Aranda spp.</i> <i>Mokara spp.</i>
	Lily	Lili, Oriental Lily	<i>Lilium spp.</i>
	Anthurium	Flamingo Lily, Tailflower, Oilcloth flower	<i>Anthurium spp.</i>
	Gerbera	African Daisy	<i>Gerbera spp.</i>
Fruits	Papaya	Betik	<i>Carica papaya</i>
	Guava	Jambu Batu	<i>Psidium guajava</i>
	Mango	Mangga	<i>Mangifera indica</i>
	Pineapple	Nanas	<i>Ananas comosus</i>
Industrial Crops	Oil Palm	Kelapa sawit	<i>Elaeis guineensis</i>
	Cocoa	Koko	<i>Theobroma cacao</i>
	Pepper	Lada hitam	<i>Piper nigrum</i>
	Rubber	Getah	<i>Hevea brasiliensis</i>
Cereal crop	Paddy	Padi	<i>Oryza sativa</i>
Forest Plantation Crops	Acacia	Akasia	<i>Acacia mangium</i> <i>Acacia hybrid</i> ( <i>A. mangium</i> x <i>A. auriculiformis</i> )
	Teak	Jati	<i>Tectona grandis</i>
	Khaya (African Mahogany)	Khaya	<i>Khaya ivorensis</i> <i>Khaya senegalensis</i>
	Batai	Batai	<i>Paraserianthes falcataria</i>
	Binuang	Binuang	<i>Octomeles sumatrana</i>
	Kelempayan	Kelempayan/Laran	<i>Neolamarckia cadamba</i>

- 4.2 The processing of application for plant varieties other than the priority list above is subjected to availability of technical expertise and technical data. The PVPRO may require a longer period of time to process such application.

## **5.0 FORMS**

- 5.1 The various types of forms to be used are as stated in First Schedule of the Regulations.

- 5.2 The forms are provided free upon request. They are obtainable from:

Plant Variety Protection Registration Office  
Crop Quality Control Division  
Department of Agriculture Malaysia  
Wisma Tani  
Level 7, No. 30, Persiaran Perdana  
Presint 4, 62624 Putrajaya

- 5.3 The forms can also be downloaded at <<http://pvpbkkt.doa.gov.my>>.

## **6.0 PAYMENT OF FEES**

- 6.1 The various types of fees are as stated in Second Schedule of the Regulations. Payment must be made either in the form of cash, postal order, money order or bank draft.
- 6.2 Postal order, money order or bank draft shall be made payable to the **Director General, Department of Agriculture, Malaysia**.
- 6.3 An official receipt will be issued when the application has fulfilled the requirements of paragraph 7.5. Fees collected by the Office shall be credited as government revenue and accounting procedures to comply with Chapter B of Treasury Instruction, (Bab B, Arahan Perbendaharaan).

## **7.0 FILING OF APPLICATION**

- 7.1 One set of application form is required for one variety application.
- 7.2 Applicants are required to disclose their names, addresses and the genera of their applied varieties at the time of request of application forms. An appropriate Technical Questionnaire (specific to the genus or species of the applied variety concerned) will be attached together with the application form.
- 7.3 Where an appropriate Technical Questionnaire is not available, the applicant is required to provide a full botanical description of his variety using General Technical Questionnaire.

- 7.4 Applicants are required to submit their applications (application form, Technical Questionnaire of applied variety and the filing fee) to the Secretary of the Plant Variety Board (address as shown in paragraph 5.2).
- 7.5 The date of filing of application is subject to compliance of the following:
- (a) Section 12 of the Act;
  - (b) Disclosure of all relevant information; and
  - (c) Submission of the correct amount of filing fee.
- 7.6 An official receipt will be issued upon compliance to paragraph 7.5. The date of the receipt shall be deemed as the date of filing of application and the applicant to be notified in writing.

## **8.0 NOVELTY**

- 8.1 The establishment of novelty is based on:
- (a) Information supplied by the applicant;
  - (b) Literature search for example: journals, research publications, breeder catalogues, crop magazines, annual reports etc.;
  - (c) Verification with UPOV Plant Variety Database (UPOV-ROM);
  - (d) Verification with East Asian PVP Secretariat and ASEAN PVP Authorities;
  - (e) Verification with crop experts, breeders, universities, agencies, professional organizations etc.
- 8.2 Applicants are required to declare truthfully the novelty status of their applied varieties. Failure to do so may not only lead to cancellation of their breeder rights, but also constitute as an offence under section 50 of the Act.
- 8.3 The exceptions to the condition of novelty are as follows:
- (a) For the conduct of trials or experiments;
  - (b) For the purpose of multiplication but still under the control of the breeder;
  - (c) Under legal or administrative obligation to transfer planting material of the applied variety to a gene bank for the purpose of biological conservation;
  - (d) Transfer of rights to other parties prior to application for plant variety protection;
  - (e) In the case where the by-product or surplus product of the applied variety which was produced during trial or multiplication, was sold or disposed of to others, with or without the consent of the breeder.

## **9.0 DENOMINATION**

9.1 Examination on denomination will be carried out at two different stages, i.e.

- (a) At the time of filing of application to ensure that the provisions of section 16(1) and (2) of the Act are complied with; and
- (b) Before publication of registration of applied variety in the gazette to ensure that the denomination does not cause confusion in relation to its characteristics.

9.2 Section 16(5) of the Act allows the denomination variety to be used together with a trademark, in which the breeder has a right. In cases where the denomination bears the same name as the trademark, the denomination shall be refused unless the breeder chose to renounce the trademark prior to the submission of a proposed denomination.

9.3 In pursuance to section 16(2) of the Act, a variety denomination may be rejected based on the following grounds:

- (a) Difference of at least one letter that provides for a clear visual or phonetic difference, for example: Bough and Bow might cause confusion (in phonetic terms);
- (b) A variety denomination should not be used more than once in the same group (within a genus or species);
- (c) If it contravenes the prior rights of third persons;
- (d) The denomination should not consist of or contain, comparative or superlative designations such as Best, Superior, Sweet etc..
- (e) The denomination conveys the impression that the variety has particular characteristics which, in actual fact, it does not have, for example: dwarf for a plant variety of normal height.
- (f) The denomination creates the impression that only the variety possesses certain specific characteristics, whereas in fact other varieties of the same genus or species in question may also have the same characteristics, for example: Sweet for a fruit variety.
- (g) The re-use of denomination is discouraged as it may cause confusion, unless in some limited cases where a variety was never commercialized or commercialized for a limited period; and the denomination in use was not well known.

- (h) The variety denomination should not mislead or cause confusion concerning the identity of the breeder, for example: MR code for rice varieties produced by MARDI and the use of MR code by other breeders are not allowed.
- (i) The denomination shall be in the form of Roman letters and/or numerals. Mixtures with other character sets such as Indian, Chinese or Arabic are prohibited.

9.4 Due diligence check on the suitability of denomination with the following:

- (a) UPOV Plant Variety Database (UPOV-ROM);
- (b) East Asian PVP Secretariat / ASEAN Plant Variety Protection Authorities;
- (c) Research Institutions, Universities, Agencies, Professional Associations, Breeders and Crop Experts.

## **10.0 DISTINCT, UNIFORM AND STABLE (DUS)**

10.1 The protocol of examination of Distinctness and Uniformity is based on the following UPOV documents:

- (a) TGP/9/1 : Examining Distinctness; and
- (b) TGP/10/1 : Examining Uniformity

10.2 The DUS examination can be conducted by any of these methods:

- (a) Growing Test;
- (b) On-Site Inspection; and
- (c) Document Examination.

10.3 Growing Test

10.3.1 Growing tests are conducted in DUS Test Station or in other appropriate sites which have the necessary expertise for the crop in question, but under the supervision of the Crop Examiner; and in accordance to the National Test Guidelines.

10.3.2 The Crop Examiner prepares the final DUS test report; and submits it to the PVPRO.

10.4 On-Site Inspection

10.4.1 On-site inspection is carried out in applicant/breeder premises.

10.4.2 It is imperative for the applicant to fulfill all the requirement and conditions as set out in the test plan.

10.4.3 The Crop Examiner visits the applicant/breeder site to verify the conformity of the test design with the instructions given; and to collect data for DUS test report.

10.4.4 The Crop Examiner prepares the final DUS test report; and submits them to the PVPRO.

## 10.5 Document Examination

10.5.1 The document examination may be applied in cases where an applied variety has been tested by:

- (i) a competent local public research institute for more than one year and the document to be based on National Test Guidelines; or
- (ii) a reputable Plant Variety Protection Authority approved by the Board.

10.5.2 The PVPRO/Crop Examiner can request for additional data if necessary and may base his decision exclusively on the technical data provided by the public research institute and the Plant Variety Protection Authority.

10.5.3 The Crop Examiner prepares the final DUS test report; and submits them to the PVPRO.

## 10.6 Molecular Data Back-Up

10.6.1 Applicants are encouraged to provide molecular data (DNA Fingerprint) of his protected variety along with the protocols and primers used to the PVPRO. This information is required to safeguard the interest of rights holder in cases related to infringement by third party.

10.6.2 All cost relating to the above shall be borne by the rights holder.

## 10.7 DUS Test Report

DUS Test Report is an exclusive right of PVPRO. The usage of information in DUS Test Report shall have the PVPRO consent.

## **11.0 DISTINCT AND IDENTIFIABLE (DI)**

- 11.1 The DI examination can be conducted either by Growing Test or On-Site Inspection.
- 11.2 The requirements for conduct of growing test and on-site inspection are similar to paragraph 10.3 and 10.4.
- 11.3 Application for registration should have a minimum of five (5) plants and all these plants must possess the same characteristics.
- 11.4 The Crop Examiner shall conduct a technical examination for two growing cycles (annual) or two fruiting seasons (perennial);

## **12.0 DEPOSIT OF SAMPLES**

- 12.1 Deposit of samples is a prerequisite to grant of breeder rights. The successful applicant is required to deposit his variety at a centre (or repository) approved by the Plant Variety Board.
- 12.2 Under normal circumstances, samples of varieties (approved by the Plant Variety Board) will be deposited at government-owned repositories, unless specifically requested by the breeder concerned.
- 12.3 Deposit of samples at a breeder's site is allowed subjected to the following considerations:
  - (a) The maintenance of security is of major concern to the breeder, mainly due to:
    - (i) the protected varieties are of high market value, for example: pollens of tissue culture of oil palm clones;
    - (ii) the reproduction of protected varieties can be easily abused (by third parties);
    - (iii) the protected varieties are used for production of special planting materials, for example: inbred lines for production of hybrids and special parental lines.
  - (b) the location of the breeder's site shall be within the territory of Malaysia;



- (c) the samples shall be properly maintained and be made accessible to the Plant Variety Protection officials for inspection at all times.

12.4 Deposit of samples is exempted for foreign bred temperate varieties which are not suitable to be cultivated in Malaysia. The decision of exemption shall be the prerogative of the Board.

12.5 Importation of any planting material must comply with the Malaysian Plant Quarantine Regulations 1981.

### **13.0 REGISTRATION OF NEW PLANT VARIETY AND GRANT OF BREEDER'S RIGHT**

#### **13.1 Annual renewal**

The certificate of registration is subjected to renewal every year. It is obligatory for the rights holder to renew his plant breeder's right upon notification by the PVPRO. Failure by the rights holder to do so, may be deemed as an infringement under section 35(1)(c) of the Act.

13.2 A request to replace a damaged or lost certificate can be made to PVPRO. However, only certified copy of certificate will be given.

### **14.0 MISCELLANEOUS**

#### **14.1 Holding of small farmers.**

The land holding of a small farmer shall not exceed a total of 0.2 hectare; either in single or multiple lots.