

**EXTRACTS OF PLANT VARIETY PROTECTION LAWS:
AFRICAN MODEL LAW, THAILAND, INDIA &
MALAYSIA**

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**EXTRACTS OF AFRICAN MODEL LEGISLATION FOR THE PROTECTION
OF THE RIGHTS OF LOCAL COMMUNITIES, FARMERS AND BREEDERS,
AND FOR THE REGULATION OF ACCESS TO BIOLOGICAL RESOURCES**

24. Recognition of Farmers Rights

- 1) Farmers' Rights are recognized as stemming from the enormous contributions that local farming communities, especially their women members, of all regions of the world, particularly those in the centres of origin or diversity of crops and other agro-biodiversity, have made in the conservation, development and sustainable use of plant and animal genetic resources that constitute the basis of breeding for food and agriculture production; and
- 2) For farmers to continue making these achievements, therefore, Farmers' Rights have to be recognized and protected.

25. Application of the Law on Farmers' Varieties

- 1) Farmers' varieties and breeds are recognized and shall be protected under the rules of practice as found in, and recognized by, the customary practices and laws of the concerned local farming communities, whether such laws are written or not.
- 2) A variety with specific attributes identified by a community shall be granted intellectual protection through a variety certificate which does not have to meet the criteria of distinction, uniformity and stability. This variety certificate entitles the community to have the exclusive rights to multiply, cultivate, use or sell the variety, or to license its use without prejudice to the Farmers' Rights set out in this law.

26. Farmers' Rights

- 1) Farmers' Rights shall, with due regard for gender equity, include the right to:
 - a) the protection of their traditional knowledge relevant to plant and animal genetic resources;
 - b) obtain an equitable share of benefits arising from the use of plant and animal genetic resources;
 - c) participate in making decisions, including at the national level, on matters related to the conservation and sustainable use of plant and animal genetic resources;
 - d) save, use, exchange and sell farm-saved seed/propagating material of farmers' varieties;
 - e) use a new breeders' variety protected under this law to develop farmers' varieties, including material obtained from genebanks or plant genetic resource centres; and
 - f) collectively save, use, multiply and process farm-saved seed of protected varieties.
- 2) Notwithstanding sub-paragraphs c) and d), the farmer shall not sell farm-saved seed/propagating material of a breeders' protected variety in the seed industry on a commercial scale.

3) Breeders' Rights on a new variety shall be subject to restriction with the objective of protecting food security, health, biological diversity and any other requirements of the farming community for propagation material of a particular variety.

30. Rights of Plant Breeders

1) A Plant Breeders' Rights, in respect of a new variety, is:

a) the exclusive right to sell, including the right to license other persons to sell plants or propagating material of that variety;

b) the exclusive right to produce, including the right to license other persons to produce, propagating material of that variety for sale;

2) A Plant Breeders' Rights in respect of a plant variety is subject to the conditions provided in Part V, the Farmers' Rights Part of this Act.

31. Exemptions to the Rights of Breeders

1) Notwithstanding the existences of Plant Breeders' Rights in respect of a plant variety, any person or farmers' community may:

a) propagate, grow and use plants of that variety for purposes other than commerce;

b) sell plants or propagating material of that variety as food or for another use that does not involve the growing of the plants or the propagation of that variety;

c) sell within a farm or any other place at which plants of that variety are grown any plants or propagating material of that variety at that place.

d) use plants or propagating material of the variety as an initial source of variation for the purpose of developing another new plant variety except where the person makes repeated use of plants or propagating material of the first mentioned variety for the commercial production of another variety.

e) sprout the protected variety as food for home consumption or for the market.

f) use the protected variety in further breeding, research or teaching.

g) obtain, with the conditions of utilization, such a protected variety from genebanks or plant genetic resources centres.

2) Farmers will be free to save, exchange and use part of the seed from the first crop of plants which they have grown for sowing in their own farms to produce a second and subsequent crops subject to conditions specified in Part V, the Farmers' Rights Part of this Act.

33. Restrictions to Plant Breeders' Rights

1) Where the Government considers it necessary, in the public interest, the Plant Breeders' Rights in respect of a new variety shall be subject to conditions restricting the realization of those rights. These restrictions may be imposed, inter alia:

- a) where problems with competitive practices of the Rights holder are identified;
 - b) where food security or nutritional or health needs are adversely affected;
 - c) where a high proportion of the plant variety offered for sale is being imported;
 - d) where the requirements of the farming community for propagating material of a particular variety are not met; and
 - e) where it is considered important to promote public interest for socio-economic reasons and for developing indigenous and other technologies;
- 2) Where restrictions are imposed on a Plant Breeders' Rights:
- a) the grantee shall be given a copy of the instrument setting out the conditions of the restriction;
 - b) a public notice shall be given;
 - c) the compensation to be awarded to the holder of the Rights shall be specified;
 - d) the Rights-holder may appeal against the compensation award.

In particular, and without prejudice to the generality of the foregoing provisions, the relevant Government authority shall have the right to convert the exclusive Plant Breeders' Rights granted under this Act to non-exclusive Plant Breeders' Rights (compulsory licence of right).

40. Plant Genetic Resources Centres

The Government shall declare or gazette specified plant genetic resources centre(s), as suitable centre(s) for storage and maintenance of germplasm material for the purpose of this Act.

42. Uniform Testing and Assessment Procedures

- 1) On the acceptance of an application, the National Competent Authority shall stipulate the quantity of seed/planting material that should be made available by the applicant for trials and testing.
- 2) The National Competent Authority shall arrange to get statistically valid trials conducted to evaluate the suitability of the variety for national release.
- 3) The assessment criteria shall include important economic, physiological, ecological and nutritive quality attributes.
- 4) The fees with respect to a Plant Breeders' Rights shall be fixed on the basis of the administrative and examination costs incurred.

43. Characteristics of Plant Varieties Originating from Outside the Country

For the purpose of this Act, where a plant variety in respect of which an application has been accepted has originated from outside the country, the variety shall not be taken to have a particular characteristic unless:

a) statistically valid, multi-locational, variety trials carried out in the country for at least three growing seasons have demonstrated that the variety has the specific characteristic as claimed by the applicant; or

b) an exceptional crises in food production so requires and the National Competent Authority is satisfied that:

i) statistically valid trials on the variety carried out outside the country have demonstrated that the variety has that specified characteristic; and

ii) the natural environment outside the country under which the statistically valid trials were carried is similar to the environment in the country.

47. Opposition to Grant of Plant Breeders' Rights

1) Where official gazettment of an application for a Plant Breeders' Rights in respect of a plant variety or of the variation of such a variety is given, any person who considers that:

a) commercial or public interests would be negatively affected by the grant of those rights to the applicant;

b) the application in relation to that variety does not fulfil the prescribed criteria for granting a Plant Breeders' Rights; may within 6 months after publication of the application, or any further time before the application is disposed of, lodge with the National Competent Authority a written objection to the granting of the Rights setting out the particulars of the objection.

2) Where an opposition to the grant of a Plant Breeders' Rights is lodged under paragraph 1), the National Competent Authority shall cause a copy of that opposition to be given to the applicant for that Plant Breeders' Rights.

3) Any person may inspect an application, or an opposition lodged, at any reasonable time and is entitled, upon payment of such fee as is prescribed, to be given a copy of the application or of the opposition.

**EXTRACTS FROM THAILAND PLANT VARIETIES PROTECTION ACT 2542
(1999)**

Definitions

“plant variety” means a plant grouping of similar or identical genetic and botanical characteristics, with particular features which are uniform, stable and distinct from other grouping in the same species of plant and shall include trees the propagation of which is conducive to the plant grouping of the aforesaid features;

“local domestic plant variety” means a plant variety which exists only in a particular locality within the Kingdom and has never been registered as a new plant variety and which is registered as a local domestic plant variety under this Act;

“wild plant variety” means a plant variety which currently exists or used to exist in the natural habitat and has not been commonly cultivated;

“general domestic plant variety” means a plant variety originating or existing in the country and commonly exploited and shall include a plant variety which is not a new plant variety, a local domestic plant variety or a wild plant variety;

**Chapter II
Plant Varieties**

11. A plant variety under this Act shall be of the following descriptions:

- (1)** being of uniformity in the particular features of the variety in respect of shape and appearance or in respect of other characteristics resulting from the expression of the genotype specific to such plant variety;
- (2)** being stable in the particular features of the variety which are capable of expressing such particular features in every cycle of the production of the propagating material of such plant;
- (3)** having the particular features distinct from other varieties in respect of shape or appearance, or having any characteristic resulting from the expression of the genotype distinct from other plant.

The description of a plant variety under (1) shall not apply to a wild plant variety.

**Chapter III
Protection of New Plant Varieties**

12. A plant variety capable of registration as a new plant variety under this Act shall be of the following descriptions:

- (1)** being a plant variety the propagating material of which has not been exploited, whether by means of sale or distribution in any manner whatsoever, in or outside the Kingdom by the breeder or with the breeder’s consent for more than one year prior to the date of filing the application;
- (2)** being distinct from other plant varieties existing on the date of filing the application,

provided that such distinctness is related to the feature beneficial to the cultivation, consumption, pharmacy, production or transformation, including the distinctness from the following plant varieties:

(a) plant varieties already registered and protected, whether in or outside the Kingdom, prior to the date of filing the application;

(b) plant varieties in respect of which application for registration has been made in the Kingdom and which will subsequently have been registered.

13. No registration under this Act shall be made of a new plant variety having a severely adverse impact, directly or indirectly, on environment, health or public welfare.

A new plant variety derived from genetic modification may be registered as a new plant variety only upon a successful result of a safety appraisal with regard to environment, health or public welfare conducted by the Department of Agriculture or other agency or institution designated by the Commission, in accordance with the rules and procedure prescribed in the Ministerial Regulation.

14. The Minister, with the approval of the Commission, may by publication in the Government Gazette designate any particular type of plant as a new plant to which protection is to be afforded and any particular type of plant as being important to national security.

19. The application for registration of a new plant variety shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

An application shall have the following particulars:

(1) the name of the new plant variety and particulars of essential features of the new plant variety;

(2) the name of the breeder participating in the breeding or developing the new plant variety;

(3) details showing the origin of the new plant variety or the genetic material used in the breeding of the variety or in the development of the new plant variety, including its breeding process, provided that details enabling clear comprehension of such process shall also be included;

(4) a statement that the propagating material of the new plant variety in respect of which the application for registration has been filed and the genetic material used in the breeding or in the development of the new plant variety under (3) will be furnished to the competent official for the purpose of examination thereof within the time specified by the competent official;

(5) a profit-sharing agreement in the case where a general domestic plant variety or a wild plant variety or any part thereof has been used in the breeding of the variety for a commercial purpose.

(6) other items of particulars as prescribed in the Ministerial Regulation

33. The right holder of a new plant variety has the exclusive right to produce, sell or distribute in any manner, import, export or possess for the purpose of any of the said acts the propagating material of the new plant variety.

The provisions of paragraph one shall not apply to the following circumstances:

- (1) the act relating to a protected new plant variety without an intention to use it as propagating material;
- (2) the education, study, experiment or research relating to a protected new plant variety for the purpose of breeding or developing plant varieties;
- (3) the act relating to a protected new plant variety committed in good faith;
- (4) the cultivation or propagation by a farmer of a protected new plant variety from the propagating material made by himself, provided that in the case where the Minister, with the approval of the Commission, publishes that new plant variety as promoted plant variety, its cultivation or propagation by a farmer may be made in the quantity not exceeding three times the quantity obtained;
- (5) the act relating to a protected new plant variety for non-commercial purpose;
- (6) the sale or distribution by any means, importation or exportation of, or having in possession for the purpose of any of the aforesaid activities, the propagating material of the protected new plant variety which has been distributed by the right holder or with the right holder's consent.

36. When necessity arises for the prevention of diseases, the promotion of health, the maintenance of public welfare, the preservation and conservation of environment and biological diversity or for other public interest, the Minister, with the approval of the Commission, has the power to issue a Notification prohibiting the production, sale, distribution in any manner, importation or exportation of new plant varieties for the period of time specified in the Notification.

For the purposes of the national security, the maintenance of nutritious stability, the prevention of monopoly or for the purpose of other public interests, the Minister, with the approval of the Commission, has the power to issue a Notification authorising general members of the public to do the acts specified in Section 33 paragraph one, provided that appropriate remuneration shall be paid to the right holder of a new plant variety. Such Notification shall also specify therein the term of the authorisation and the rates of remuneration.

If, after action has been taken under paragraph two, it appears that the circumstance under paragraph two cannot be effectively prevented or alleviated, the Minister, with the approval of the Commission, may revoke the certificate of registration of that new plant variety.

37. Upon the expiration of three years as from the date of the registration of a new plant variety, other persons may file an application with the Director-General for authorisation of the use of the rights under Section 33 paragraph one if it appears at the time of such application that there has been no sale of the propagating material of that new plant variety or the sale thereof has been

made in the quantity insufficient for the need of the people within the Kingdom or at exorbitant prices unless the right holder can prove that the lack of sale or the sale in the quantity insufficient for the need of the people within the Kingdom or at exorbitant prices is caused by the circumstance beyond his control or that the new plant variety is a derivative intended to be utilised for the sole production of hybrid seeds provided that the hybrid seeds have been produced in such quantity sufficient to the need of the people within the Kingdom and sold at the prices which are not exorbitant.

The Director-General, with the approval of the Commission, has the power to authorise the use of the rights under Section 33 paragraph one upon payment by the applicant of reasonable remuneration to the right holder of the new plant variety.

The application for the authorisation of the use of rights in the new plant variety and the determination of remuneration therefor shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

Chapter IV Protection of Local Domestic Plant Varieties

43. A plant variety capable of registration as a local domestic plant variety under this Act shall be of the following descriptions:

- (1) being a plant variety existing only in a particular locality within the Kingdom;
- (2) being a plant variety not registered as a new plant variety.

44. A *sui juris* person, residing and commonly inheriting and passing over culture continually, who takes part in the conservation or development of the plant variety which is of the descriptions specified in Section 43 may register as a community under this Act. For this purpose, there shall be appointed a representative who shall submit an application in writing to the *Changwad* Governor of the locality.

The application shall at least contain the following particulars:

- (1) the plant variety jointly conserved or developed and the method of its conservation or development;
- (2) the names of members of the community;
- (3) the landscape together with a concise map showing the boundary of the community and adjacent areas.

The submission of the application and the consideration and approval thereof shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

45. When a plant variety only exists in any particular locality and has been conserved or developed exclusively by a particular community, that community shall have the right to submit, to the local government organisation in whose jurisdiction such community falls, a request for initiating an application for registration of the local domestic plant variety in the name of such community.

Upon receipt of the request from the community under paragraph one, the local government organisation shall proceed to apply to the Commission for registration of the local domestic plant variety as from the day documents and information necessary for the registration have duly been obtained.

In the case where the community under paragraph one is formed as a farmers' group or co-operative under the law on co-operatives, such farmers' group or co-operative shall have the right to apply for registration of the local domestic plant variety on behalf of the community.

46. The application for registration, the consideration of the application and the issuance of a certificate of registration of a local domestic plant variety shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

47. When registration has been made for the protection of a local domestic plant variety of any locality, that locality shall have the exclusive right to develop, study, conduct an experiment or research in, produce, sell, export or distribute by any means the propagating material thereof. For this purpose, the local government organisation, farmers' group or co-operative to which the certificate of registration of the local domestic plant variety has been granted shall be the right holder of such plant variety in the name of the said locality.

The provisions of paragraph one shall not apply to the following circumstances:

- (1)** the act relating to a protected local domestic plant variety without an intention to use it as propagating material;
- (2)** the act relating to a protected local domestic plant variety committed in good faith;
- (3)** the cultivation or propagation by a farmer of a protected local domestic plant variety from the propagating material made by himself, provided that in the case where the Minister, with the approval of the Commission, publishes that local domestic plant variety as promoted plant variety, its cultivation or propagation by a farmer may be made in the quantity not exceeding three times the quantity obtained;
- (4)** the act relating to a protected local domestic plant variety for non-commercial purpose.

48. A person who collects, procures or gathers a local domestic plant variety or any part thereof for the purposes of variety development, education, experiment or research for commercial interest shall make a profit-sharing agreement in relation to the profits derived from the use of such local domestic plant variety.

In authorising any person to carry out the act under paragraph one and in making the profit-sharing agreement, the local government organisation, farmers' group or co-operative to which the certificate of registration of the local domestic plant variety is granted shall make the agreement in the name of the community, provided that approval of the Commission shall first be obtained.

49. Twenty percent of the profits derived from authorising another person to use the rights in the local domestic plant variety shall be allocated to the persons who conserve or develop the plant variety, and sixty percent thereof to the community as its common revenue and twenty percent thereof to the local government organisation, the farmer's group or the co-operative that makes the agreement.

The profit-sharing among the persons who conserve or develop the plant variety shall be in accordance with the regulations prescribed by the Commission.

In the case of any dispute in connection with the allocation of profits under paragraph one, it shall be decided by the Commission.

50. Section 31 shall apply *mutatis mutandis* to the term for which a certificate of registration of a local domestic plant variety is granted.

The term of the certificate of registration of a local domestic plant variety under paragraph one may be extended for each term of ten years if the Director-General considers that such plant variety is still of the descriptions specified in Section 43 and such community is still of the description specified in Section 44 and Section 45.

The application for extension of the term of protection and the permission thereof shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

51. Section 36 and Section 37 shall apply *mutatis mutandis* to a local domestic plant variety.

Chapter V Protection of General Domestic Plant Varieties and Wild Plant Varieties

52. A person who collects, procures or gathers general domestic plant varieties, wild plant varieties or any part of such plant varieties for the purposes of variety development, education, experiment or research for commercial interest shall obtain permission from the competent official and make a profit-sharing agreement under which the income accruing therefrom shall be remitted to the Plant Varieties Protection Fund in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

The profit-sharing agreement shall at least have the following particulars:

- (1) the purposes of the collection and gathering of the plant variety;
- (2) the amount or quantity of samples of the intended plant variety;
- (3) the obligations of the person to whom permission is granted;
- (4) the stipulation as to intellectual property rights in the products which result from the development, study, experiment or research of or into the plant variety and which are derived from the use of the plant variety under the agreement;
- (5) the stipulation as to the amount or rate of, or the term for, the profit-sharing under the profit-sharing agreement in respect of products derived from the use of the plant variety thereunder;
- (6) the term of the agreement;
- (7) the revocation of the agreement;

- (8) the stipulation as to the dispute settlement procedure;
- (9) other items of particulars as prescribed in the Ministerial Regulation.

53. A person who conducts a study, an experiment or research of or into a general domestic plant variety or a wild plant variety or any part thereof for a non-commercial purpose shall comply with the Regulation prescribed by the Commission.

Chapter VI

Plant Varieties Protection Fund

54. There shall be established in the Ministry of Agriculture and Co-operatives a fund call the “Plant Varieties Protection Fund” to expended for the purposes of assisting and subsidising activities related to the plant varieties conservation, research and development, consisting of the following property:

- (1) income accruing from profit-sharing agreements under Section 52;
- (2) money or property received from the registration of plant varieties;
- (3) subsidies from the Government;
- (4) donated money or property;
- (5) fruits or other benefits accruing from the Fund.

Money or other property under paragraph one shall be remitted to the Fund without having to remit the same as State revenue.

55. The money in the Fund shall be expended for the following activities:

- (1) assisting and subsidising any activities of communities in connection with the conservation, research and development of plant varieties;
- (2) serving as expenses of local government organisations for the purposes of their subsidising the conservation, research and development of plant varieties of communities;
- (3) serving as expenses in the management of the Fund.

The management of the Fund and the control of the expenses therefrom shall be in accordance with the Regulation prescribed by the Commission with the approval of the Ministry of Finance.

59. The money forming the Plant Varieties Protection Fund and accruing from the exploitation of general domestic plant varieties under profit-sharing agreements under Section 52 shall be allocated to the local government organisation which is the source of the exploitation of such general domestic plant varieties, in accordance with the rules, procedure and rate prescribed in the Ministerial Regulation.

**EXTRACTS FROM INDIAN PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS ACT, 2001**

Definitions

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

.....

- (j) “extant variety” means a variety available in India which is—
- (i) notified under section 5 of the Seeds Act, 1966; or
 - (ii) farmers’ variety; or
 - (iii) a variety about which there is common knowledge; or
 - (iv) any other variety which is in public domain;
- (k) “farmer” means any person who—
- (i) cultivates crops by cultivating the land himself; or
 - (ii) cultivates crops by directly supervising the cultivation of land through any other person; or
 - (iii) conserves and preserves, severally or jointly, with any other person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties;
- (l) “farmers’ variety” means a variety which—
- (i) has been traditionally cultivated and evolved by the farmers in their fields; or
 - (ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge.

General functions of Authority

8. (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for -

- (a) the registration of extant varieties subject to such terms and conditions and in the manner as may be prescribed;
- (b) developing characterization and documentation of varieties registered under this Act;
- (c) documentation, indexing and cataloguing of farmers’ varieties;
- (d) compulsory cataloguing facilities for all varieties of plants;
- (e) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

(f) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication;

(g) ensuring the maintenance of the Register.

Application for Registration

14. Any person specified in section 16 may make an application to the Registrar for registration of any variety—

(a) of such genera and species as specified under sub-section (2) of section 29; or

(b) which is an extant variety; or

(c) which is a farmers' variety.

15. (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

(2) Notwithstanding anything contained in sub-section (1), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

(3).....

Persons who May Make Application

16.—(1) An application for registration under section 14 shall be made by—

(a) any person claiming to be the breeder of the variety; or

(b) any successor of the breeder of the variety; or

(c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or

(d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or

(e) any person authorized in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or

(f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Form of Application

18.—(1) Every application for registration under section 14 shall—

- (a) be with respect to a variety;
- (b) state the denomination assigned to such variety by the applicant;
- (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- (d) be in such form as may be specified by regulations;
- (e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;
- (f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;
- (g) be accompanied by such fees as may be prescribed;
- (h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and
- (i) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (b) to (i) shall apply in respect of the application and the application shall be in such form as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

19. (1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seeds of such variety along with parental material conform to the standards as may be specified by regulations.

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(2) The applicant shall deposit such fees as may be prescribed for conducting tests referred too in sub-section (1).

(3) the tests referred to in sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

Advertisement of Application

21.—(1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.

(3) Opposition to the registration under sub-section (2) may be made on any of the following grounds, namely:—

- (a) that the person opposing the application is entitled to the breeder's right as against the applicant; or
- (b) that the variety is not registrable under this Act; or
- (c) that the grant of certificate of registration may not be in public interest; or
- (d) that the variety may have adverse effect on the environment.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

Registration of Essentially Derived Variety

23.—(1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word “variety”, the words “essentially derived variety” have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.

(2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.

(3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(6) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety: Provided that the authorisation by the breeder of the initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.

(7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word “variety”, the words “essentially derived variety” have been substituted therein.

(8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

Issue of Certificate of Registration

24. (6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed,—

- (i) in the case of trees and vines, eighteen years from the date of registration of the variety;
- (ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966; and
- (iii) in other cases, fifteen years from the date of registration of the variety.

Determination of Benefit Sharing by Authority

26.—(1) On receipt of copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fees, as may be prescribed:

Provided that such claim shall only be submitted by any—

- (i) person or group of persons, if such person or every person constituting such group is a citizen of India; or
- (ii) firm or governmental or non-governmental organisation, if such firm or organisation is formed or established in India.

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claim to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

- (a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;
- (b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (a) of sub-section (1) of section 45 in the National Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

Breeder to Deposit Seeds or Propagating Material

27.—(1) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that regulation.

(2) The seeds or propagating material or parental line seeds to be deposited under sub-section (1) shall be deposited to the National Gene Bank specified by the Authority.

Registration to confer right

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety :

Provided that in the case of an extant variety, unless a breeder or his successor established his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seed Act, 1966, the State Government, shall be deemed to be the owner of such right.

(2) A breeder may authorize any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified by regulations.

(3) Every authorization under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fees to the Registrar to register his title and the Registrar shall, on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the Register :

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute so referred to has been determined by the Authority.

(5).....

Exclusion of Certain Varieties

29.—(1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties under this Act.

(3) Notwithstanding anything contained in sub-section (2) and sub-sections (1) and (2) of section 15, no variety of any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act.

Explanation.—For the purposes of this sub-section, the expression “any technology” includes genetic use restriction technology and terminator technology.

(4) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (2) except in the public interest.

(5) Any variety belonging to the genera or species excluded under sub-section (4) shall not be eligible for any protection under this Act.

Researcher's Rights

30. Nothing contained in this Act shall prevent—

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; or

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Revocation of Protection on Certain Grounds

34. Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:—

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

(d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier

denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder;

(f) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;

(g) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(h) that the grant of the certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

Farmers' Rights

39.—(1) Notwithstanding anything contained in this Act,—

i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(ii) the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18;

(iii) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act:

Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Explanation.—For the purposes of clause (iv), “branded seed” means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to

provide such performance under such given conditions, the farmer or the group of farmers or the organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.

Certain Information to be Given in Application for Registration

40.—(1) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

(2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

Rights of Communities

41.—(1) Any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government, by the Authority, in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons or such governmental or non-governmental organisation in such manner as it deems fit, and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such inquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (1), as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation granted under sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

Protection of Innocent Infringement

42. Notwithstanding anything contained in this Act,—

(i) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

(ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

Authorisation of Farmers' Variety

43. Notwithstanding anything contained in sub-section (6) of section 23 and section 28, where an essentially derived variety is derived from a farmers' variety, the authorization under sub-section (2) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Exemption from Fees

44. A farmer or group of farmers or village community shall not be liable to pay any fees in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act or the rules made thereunder.

Explanation.—For the purposes of this section, “fees in any proceeding” includes any fees payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or the rules made thereunder.

Gene Fund

45.—(1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act, or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 35;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;

(d) the contribution from any national and international organisation and other sources.

(2) The Gene Fund shall, in the prescribed manner, be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 41;

- (c) the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;
- (d) the expenditure of the schemes relating to benefit sharing framed under section 46.

Power of Authority to Make Order for Compulsory Licence in Certain Circumstances

47.—(1) At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

(2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(3) The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (4) of section 28 on payment of such fees by the applicant as is referred to in that sub-section.

When Requirement of Public Deemed to Have not been Satisfied

48. In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 47, the Authority shall take into account—

- (i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety, price of the seed of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and
- (ii) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

**EXTRACTS FROM THE MALAYSIAN PROTECTION OF NEW PLANT
VARIETIES 2004, ACT 634**

Interpretation

Section 2

....

“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;

“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;

“small farmer” means a farmer whose farming operations do not exceed the size of holding as prescribed by the Minister;

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) specify the method by which the plant variety is developed;
- (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;
- (e) contain information relating to the source of the genetic material or the immediate parental lines of the plant variety;
- (f) be accompanied with 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;
- (g) be supported by documents relating to the compliance of any law regulating access to genetic or biological resources; and

(h) be supported by 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.

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

Conditions for Registration of New Plant Variety and Grant of Breeder's Right

14.—(1) Subject to sections 15 and 16, a plant variety shall be registered as a new plant variety and granted a breeder's right if the plant variety is new, distinct, uniform and stable.

(2) Notwithstanding subsection (1), where a plant variety is bred, or discovered and developed by a farmer, local community or indigenous people, the plant variety may be registered as a new plant variety and granted a breeder's right if the plant variety is new, distinct and identifiable.

(3) For the purposes of subsections (1) and (2)—

(a) a plant variety is new if on the filing date of the application for registration and grant of a breeder's right, the propagating or harvested material of the plant variety has not been sold or otherwise disposed of on a commercial basis by or with the consent of the breeder—

(i) within Malaysia, earlier than one year before the filing date of the application for registration of a new plant variety and grant of a breeder's right; and

(ii) in other countries—

(A) earlier than six years before the filing date of the application for registration of a new plant variety and grant of a breeder's right in respect of trees and vines; and

(B) earlier than four years before the filing date of the application for registration of a new plant variety and grant of a breeder's right in respect of other plant varieties;

(b) a plant variety is distinct if on the filing date of the application for registration of a new plant variety and grant of a breeder's right it is clearly distinguishable from any other plant variety, the existence of which is a matter of common knowledge;

(c) a plant 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;

(d) a plant 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;

(e) a plant variety is identifiable if—

(i) 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

(ii) such characteristics can be identified by any person skilled in the relevant art.

Prohibition of Registration and Grant of Breeder's Right

15. The Board shall not approve the registration of a new plant variety and grant of a breeder's right to any person in respect of any plant variety—

(a) which may affect public order or morality; or

(b) where 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.

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;

(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;

(c) that the application for the registration of the new plant variety and grant of a breeder's right is contrary to public order or morality;

(d) that 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.

(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.

Deposit of Samples

27. If an application for the registration of the new plant variety and grant of a breeder's right has been approved by the Board and the applicant has been notified in writing, the applicant shall, within the time specified by the Board, deposit samples of the seed or any other propagating material of the plant variety in the quantity to be specified by the Board at a centre approved by the Board.

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 plant varieties and any act referred to in paragraphs 30(1)(a) to (g) in respect of such other plant varieties, except where such other plant varieties have been essentially derived from the registered plant variety;

(d) any act of propagation by small farmers using the harvested material of the registered plant variety planted, on their own holdings;

(e) any exchange of reasonable amounts of propagating materials among small farmers;
and

(f) the sale of farm-saved seeds in situations where a small farmer cannot make use of the farm-saved seeds on his own holding due to natural disaster or emergency or any other factor beyond the control of the small farmer, if the amount sold is not more than what is required in his own holding.

Availability of Propagating Material

34. The holder shall ensure that the propagating material, which is of reasonable quality, of the registered plant variety is available in reasonable quantities within three years from the date of 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.

Compulsory Licence

36.—(1) If at any time after the expiration of three years from the grant of a breeder's right the Board is satisfied that—

(a) any of the requirements of section 34 is not complied with and the needs of the farming community for the propagating material of the registered plant variety have not been met; or

(b) an excessive proportion of the registered plant variety offered for sale is being imported,

the Board may grant a compulsory licence to any person, agency or company to undertake any of the acts mentioned in subsection 30(1) with regards to any material of the registered plant variety, whether with or without the authorization of the holder, notwithstanding that the holder may have granted his authorization to any other person.

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

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

(4) Where the Board grants a compulsory licence under subsection (1), the Board shall determine a reasonable sum to be paid by the licensee to the holder as royalty.

