

**The Republic of the Union of Myanmar**

**The Government of the Republic of the Union of Myanmar**

**New Plant Variety Protection Law**

**The - -, 1377 M.E.**

**( 20<sup>th</sup> , January , 2016 )**

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Plant Variety Protection Law (Draft)**

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(The Government of the Republic of the Union of Myanmar Law No. 1/2012 )

The Public of the Parliament of Myanmar enacts the following law:

**CHAPTER I**

**TITLE, ENFORCEMENT AND DEFINITIONS**

**Article 1**

- (1) This Law shall be called **New Plant Variety Protection Law**.
- (2) This Law shall come into force commencing from the day of completion of one years of its promulgation.

**Article 2**

The expressions contained in this Law shall have the meaning given hereunder:

- (a) **“Plant”** means any living organism in the plant kingdom but excludes any micro-organism;
- (b) **“variety”** means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged;
- (c) **“new plant variety”** means the variety which expresses at least one characteristic and feature from the existing variety, reveals uniformity in characters when it is cultivated and there is no change in characters through propagation;

- (d) **“breeder”**
- a. means the person who bred, or discovered and developed, a variety including new plant variety,
  - b. the person who is the employer of the aforementioned person under sub paragraph (3-a)
  - c. the successor in title of the (first or second) aforementioned person under sub paragraph (3-a) and (3-b), as the case may be;
- (e) **“right for the protected new plant variety”** means the protected right to new plant variety which produced by the breeder if it can be used for the procedure mentioned in this Law act twenty three according to the permission of that breeder.
- (f) **“breeder’s right”** means the right of the breeder provided for in this Law act twenty three ;
- (g) **“propagating materials”** mean the seeds (or) the whole plant (or) any parts of the whole plant that can be used to reproduce;
- (h) **“harvested material”** means any part of a plant with potential economic value or any product made directly therefrom in proper cases.
- (i) **“recognition certificate”** means the certificate issued under this Law recognizing to produce or to introduce new plant variety;
- (j) **“Ministry”** means the Ministry of Agriculture and Irrigation;
- (k) **“Central Committee”** means National New Plant Variety Protection Committee organized by Ministry according to the agreement of Union Cabinet.
- (l) **“Department” means** Department of Agriculture and Irrigation under Ministry of Agriculture and Irrigation.

## **CHAPTER II**

### **OBJECTIVES**

#### **Article 3**

The objectives of this Law are as follows:

- (a) to protect of the rights of breeders of new plant varieties
- (b) to develop the activities of plant breeding
- (c) to encourage investments in and development of the breeding of new plant varieties in both public and private sectors
- (d) to assist the agricultural sector development by producing and cultivation of the new improved varieties

## **CHAPTER III**

### **FORMATION OF THE NATIONAL PLANT VARIETY PROTECTION COMMITTEE**

#### **Article 4**

The Ministries, with the approval of the cabinet:  
shall form the National New Pant Variety Protection Committee comprising the Deputy Minister for the Ministry of Agriculture and Irrigation as chairman, the Director General of Department of Agricultural Research as secretary, representatives from the relevant Government departments and organizations, experts and other suitable persons as members.

#### **Article 5**

may determine and assign duties to the vice-chairman and joint secretary in forming the National Pant Variety Protection Committee under paragraph (1)

#### **Article 6**

may reorganize, from time to time, the National Pant Variety Protection Committee formed under paragraph (1)

## **CHAPTER IV**

### **FUNCTIONS AND DUTIES OF THE NATIONAL PLANT VARIETY PROTECTION COMMITTEE**

#### **Article 7**

National New Plant Variety Protection Committee:

- (a) adopting the plant breeding policy for the development of the agricultural sector by cultivating and producing and using new plant variety;
- (b) cooperating with the Government departments and organizations, international organizations, internal and external organizations and private sectors relating to develop plant breeding activities;
- (c) prescribing, for dispatching and receiving necessary plant materials of protected variety to enable to do research according to the bilateral agreement;
- (d) assigning Technical Plant Variety Protection Committee

#### **Article 8**

When plant breeder applies the breeder right for the new plant variety, National New Plant Variety Protection Committee must give the recognition certificate to protect it, if it is compliance with the requirements of new plant variety in this Law.

#### **Article 9**

National New Plant Variety Protection Committee can give the determination to permit any offence prosecuted under this Law according to the finding of Technical Plant Variety Protection Committee.

## **CHAPTER V**

### **THE CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT**

#### **Article 10**

At the time of application of new plant variety to get the grant of the breeder's right by the plant breeder-

- (a) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, has not been sold or otherwise disposed of to others, by or with the consent

of the breeder, for purposes of exploitation of the variety in the territory of the Republic of the Union of Myanmar earlier than one year before the date of filing of the application and in a territory other than that of the Republic of the Union of Myanmar earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(b) The propagating of harvested materials and products of that variety has not been sold or otherwise disposed of to.

### **Article 11**

The variety shall be deemed to be distinct if it is clearly distinguished from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeders' right or to the entering of the said other variety in the official register of varieties, as the case may be.

### **Article 12**

The variety shall be deemed to be 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.

### **Article 13**

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

### **Article 14**

The breeder's right shall be granted where the proposed variety for granting of breeder's right is completed with the conditions of denomination compliance with the requirements of the rules and regulation of this Law.

## **APPLICATION OF THE RIGHT FOR NEW PLANT VARIETY**

### **Article 15**

A person who can apply to grant the right for new plant variety :

- (a) Any breeder of National,
- (b) Any breeder of foreigners who are the permanent residence in the area of The Republic of the Union of Myanmar and their organizations, and
- (c) Any individuals and organization of new plant breeding from foreign countries, which are both, enter into an agreement on plant variety protection system.

### **Article 16**

The applicant shall apply their new plant variety to get the breeder's right if it cannot affect the natural environment and biodiversity.

### **Article 17**

The applicant shall apply to the National Plant Variety Protection Committee in accordance with the stipulation of rules and regulations of this Law for the granting of new plant variety protection

### **Article 18**

The Central Committee assigns to for grow out testing of the new plant variety.

### **Article 19**

The technical committee tests the candidate variety in accordance with this Law articles' from 10 to 14 and reports this results to central committee.

### **Article 20**

The applicant may request and shall have for the priority right in case according to the enacting of rule and regulation of this Law, a subsequent application form was applied for the variety registration to the National New Plant Variety Protection Committee after the first application form of the same variety has been submitted in a country which and the Republic of the Union of Myanmar both enter into an agreement on plant variety protection.

### **Article 21**

The National New Plant Variety Protection Committee can permission and cancellation the recognizing certificate for provisional protection of new pant variety under the following conditions:

- (a) After publication of his application, the applicant for variety protection shall have an exclusive right to commercially and industrially exploit the variety claimed in the variety protection application.
- (b) After the publication of the application, where the application falls under any of the following items, the right under paragraph (1) shall be deemed never to have arisen:
  - (i) where an application has been abandoned, invalidated or withdrawn; and
  - (ii) where the examiner's decision that the application is to be rejected has become final and conclusive

#### **Article 22**

Where a person having the right under paragraph (a) has exercised the right and the application falls under either of the items (i) or (ii) of paragraph (b), such person shall be liable to indemnify any damage caused to another party by exercising that right.

## **CHAPTER VII**

### **THE CONDITIONS OF THE BREEDER'S RIGHT AND THE PROTECTION OF THE RIGHT**

#### **Article 23**

Subject to Articles 28 and 29, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (a) production or reproduction (multiplication)
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,
- (d) selling or other marketing,
- (e) exporting,
- (f) importing,
- (h) stocking for any of the purposes mentioned in (i) to (vi), above.

#### **Article 24**

The plant breeder can permit the article 23 to a person according to the coordinating with the central committee.

#### **Article 25**

Subject to Articles 28 and 29, the acts referred to in items (a) to (h) of article 23 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

### **Article 26**

Subject to Articles 28 and 29, the acts referred to in items (a) to (h) of article 23 in respect of products made directly from harvested material of the protected variety through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

### **Article 27**

The provisions of articles 23, 25, 26 shall also apply in relation to the following

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (b) varieties which are not clearly distinguishable in accordance with Article 8 from the protected variety and
- (c) varieties whose production requires the repeated use of the protected variety.

### **Article 28**

The breeder's right shall not extend in the following conditions :

- (a) acts done privately and for non-commercial purposes,
- (b) acts done for experimental purposes and
- (c) exchange of the seeds between farmers with the amount not exceed to rules and regulations
- (d) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 18 (4) apply, acts referred to in Article 18 (1) to (3) in respect of such other varieties.

### **Article 29**

The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 23 , which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Republic of the Union of Myanmar, or any material derived from the said material, unless such acts

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

### **Article 29**

Except where expressly provided in article 28 and 29 of this Law, the free exercise of a breeder's right shall not be restricted for reasons other than of public interest.

### **Article 31**

The breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.

### **Article 32**

Any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material is independent of the breeder's right. In any case, such measures shall not affect the application of the provisions of this Law.

### **Article 33**

The breeder's right shall be granted for a period of 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

## **CHAPTER VIII**

### **NULLITY AND CANCELATION OF THE BREEDER'S RIGHT**

#### **Article 34**

The breeder's right shall be declared null and void when it is established as in following conditions:

- (a) that the conditions laid down in Articles 10 and 11 were not complied with at the time of the grant of the breeder's right,
- (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 12 and 13 were not complied with at the time of the grant of the breeder's right, or
- (c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

#### **Article 35**

No breeder's right shall be declared null and void for reasons other than those referred to in Article 34.

#### **Article 36**

If the following conditions are occurred, the Breeder's Right may be cancelled.

- (a) The breeder's right may be cancelled if it is established that the conditions laid down in Articles 12 and 13 are no longer fulfilled.
- (b) Furthermore, the breeder's right may be cancelled if, after being requested to do so and within the prescribed period. The breeder does not provide the National Plant

Variety Protection Committee with the information, documents or material deemed necessary for verifying the maintenance of the variety.

(c) The breeder fails to pay such fees as may be payable to keep his right in force.

#### **Article 37**

No breeder's right shall be cancelled for reasons other than those referred to in Article 36

### **CHAPTER IX**

#### **OFFENCES AND PENALTIES**

#### **Article 38**

(1) Whoever violates any prohibition contained in Article 23 shall, on conviction, be punished with imprisonment for a term not exceeding six months to three years or with fine not exceeding one hundred thousand kyats to fifty hundred thousand kyats, or with both. In addition, the exhibits involved in the offence shall also be confiscated.

### **CHAPTER X**

#### **MISCELLANEOUS**

#### **Article 39**

The punished under this Law shall be obtained after the central committee's permission

#### **Article 40**

If an exhibit involved in any offence prosecuted under this Law is not easily produceable before the Court, such exhibit need not be produced before the Court. However, a report or other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court may dispose of the same in accordance with law.

#### **Article 41**

The members of the National Plant Variety Protection Committee and the Technical Plant Variety Protection Committee who are not Government employees are entitled to obtain remuneration determined by the Ministry.

#### **Article 42**

The applicant shall give the Schedule of necessary fees for testing to get the protection of the new plant variety.

**Article 43**

The central committee provides the necessary fee to pay by the plant breeder according to the agreement of the Ministry.

**Article 44**

In implementing the provisions of this Law:

- (a) the Ministry may make rules with the approval of the government and may issue procedures, notifications, orders and directives as may be necessary.
- (b) the National Plant Variety Protection Committee and the Technical Plant Variety Protection Committee may issue notifications, orders and directives as may be necessary.

Sd/Thein Sein

President

The Republic of the Union of Myanmar