

Draft

Law on the Plant Breeder's Right of the Kingdom of Cambodia

(Note: After combining PVP draft Law and Seed draft Law, now the final title of the law is on the discussion whether called **Law on Seed or Plant Breeder's Right and Seed or Protection of New Variety of Plant and Seed or other title may be fitted**)

CHAPTER 1 GENERAL PROVISION

Article 1 .-

This Law provides the management and inspection on breeding, release for use, production, registration, distribution, importation, exportation and protection of new variety of plant in the Kingdom of Cambodia.

Article 2 .-

This Law has an objective to secure the management, incentive and sustainable development of seed for benefits of society, economy and environment.

Article 3 .-

This Law is applied for any variety including existing variety and new variety of plant, except the provisions prescribed in other concerning laws.

Article 4 .-

The grant of the protection of new variety of plant shall be under the competent of the Ministry of Industry, Mines and Energy.

The management of all kinds of seed shall be under the competent in general of the Ministry of Agriculture, Forestry and Fishery.

Article 5 .-

The essential terminology used in this Law shall be prescribed in the Annex of this Law.

CHAPTER 2 NEW PLANTS VARIETIES PROTECTION

SECTION 1

Condition for Plants Breeder's Right Protection

Article 6 .-

New varieties of plants that shall received the right for the protection must be had criteria as following:

- new;
- distinct;
- uniform;
- stable.

Article 7 .-

A variety shall be considered new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:

- (a) in *the Kingdom of Cambodia* earlier than one year before the date on which protection is applied for under this *Law*; and
- (b) outside *the Kingdom of Cambodia*, earlier than six years in the case of trees or vines or earlier than four years in the case of other varieties, before the filing date.

Article 8.-

A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or where relevant, at the priority date.

Article 9 .-

A variety shall be considered to be uniform if, it is sufficiently uniform in its relevant characteristics, although, that variety had been produce through sexuality or un-sexuality?

Article 10 .-

A variety shall be considered to be stable if its relevant characteristics remain unchanged at all cycles of propagation and each such cycle.

SECTION 2

Scope and Duration of Plant Breeder's Right

Article 11.-

The physical person or entitle person who breded or discovered and develop new varieties of plant and has a purpose to protect intellectual property right for that new variety of plant shall file an application at the Ministry of Industry, Mines and Energy, in which the document shall be sent to the Ministry of Agriculture, Forestry and Fishery to conduct technical examination in according with the provisions of this Law.

Article 12.-

The Ministry of Industry, Mines and Energy whose institution is responsible for a register of new plant variety protection shall have duties as following:

- (a) grant of a breeder's right protection;
- (b) change the ownership of that right;
- (c) declaration of nullity or cancellation;
- (d) submission, registration, change or cancellation of the new variety denomination;
- (e) compulsory license; and
- (f) record license contract.

Article 13.-

An applicant for the protection of a breeder's right must:

- (a) have *Cambodian nationality* ; or
- (b) have foreign nationality but shall be resident in the Kingdom of Cambodia,
or
- (c) live in any State which, being a Contracting Party, of UOPV convention
- (d) live in any State which, being a Contracting Party, grants reciprocity of treatment to *the Kingdom of Cambodia*.

Article 14.-

The holder of the a breeder's right has the right to assign or otherwise transfer own breeder's right.

The assignment or transfer to physical person or entitle person shall be in writing and shall be signed by the concerned parties and shall be registered in the Ministry of Industry, Mines and Energy and shall be to inform Ministry of Agriculture, Forestry and Fisheries.

Article 15 .-

The use of the variety or the propagating material of a protected variety in the act of production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing and stocking shall be required the authorization of the right's holder.

The right's holder may make his authorization to use own variety subject to conditions and limitations.

The exploitation and use referred to in paragraph 1 of this Article in respect of harvested material, obtained through the unauthorized use of the propagating material of the protected variety shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material.

The new plant breeder right shall be extent to varieties:

- (i) which are essentially derived from the protected variety;
- (ii) which are not clearly distinguishable in accordance with the protected variety;
- (iii) whose production requires the repeated use of the protected variety.

Article 16.-

The new plant breeder's right shall not extend to:

- (1) acts done for experimental purposes;
- (2) acts done privately and for non – commercial purposes;
- (3) acts done for the purpose of breeding other new varieties, and, except where the paragraph 4 of Article 15 of this Law.

The Ministry of Industry mines and Energy cooperate with Ministry of agriculture Forestry and Fisheries may, within reasonable limits and subject to safeguarding the legitimate interests of the breeder, may set out Regulations restricting the owner of the protected breeder's right in relation to any variety in order to permit farmers to make personal use of the product of the harvest of the protected variety for propagating purposes.

Article 17.-

The new plant breeder's right is exhausted in respected of any material of the protected variety, or of a variety covered by the paragraph 4 of Article 15 of this Law, which has been sold or otherwise marketed by the breeder or with his consent in Kingdom of Cambodia. This above right will not be exhausted in case of variety or any material derived from the said material had been involved further propagation of the variety in question or

involved an 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, except where the exported material is for final consumption purposes.

Article 18.-

The holder of a breeder's right shall, throughout the period for which the right is exercisable, be under an obligation to make available, at the request of the competent agency, reasonable samples of the protected variety capable of producing plants which correspond to the characteristics defined for the variety in the application requesting the right.

The holder of a breeder's right shall be under obligation to make available information, facilities for the inspection by competent authorities.

Article 19.-

The validity of the breeder's right shall be in period of 20 years, except the special species such as trees and vines which shall not be exceeded 25 years, after the grant of the breeder's right.

SECTION 3 Termination, Nullity and Cancellation

Article 20.-

The breeder's right shall be terminated prior the term expires when the holder of that right renounces it by written declaration addressed to the Registrar.

The date of termination shall be that specified in the declaration or, if none is specified, the date on which the declaration is received by the Registrar.

Article 21.-

The Registrar shall declare a breeder's right granted null and void as following :

- (1) that the conditions laid down in *Article 7* or *Article 8* of this Law were not complied with at the time of the grant of the breeder's right;
- (2) 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 *Article 9* or *Article 10* of this Law were not complied with at the time of the grant of the breeder's right.

- (3) that the breeder's right has been granted to a person who is not entitled to it.

Article 22.-

The Registrar shall cancel the breeder's right granted by him where is as following

1- the conditions laid down in *Article 9* or *Article 10* of this Law are no longer fulfilled,

2- the breeder does not fulfill the requirement of the Registrar by:

(a) not providing with the information, documents or material deemed necessary for verifying the maintenance of the variety;

(b) failing to pay such fees as may be payable to keep his right in force; or

(c) not proposing, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

SECTION 4

Applications and Right of Priority

Article 23.-

An applicant for the protection of a new variety of plant shall file an application with the Registrar in the prescribed form.

Applicant shall specify, on the date and at the place determined by the Registrar, submit for the purpose of the examination any necessary information, document or material.

The Registrar shall accord, as the filing date of the application after the payment of the prescribed fee.

The application ,document or material shall be prescribed in the joint Prakas (Regulation) of the Ministry of Industry mines and Energy and Ministry of Agriculture, Forestry and Fisheries

Article 24.-

The applicant may avail himself of the priority of an earlier application (hereinafter referred to as the "right of priority") that has been duly filed for the same variety with any Countries of a Contracting Party.

Where the application filed with the Registrar is preceded by several such applications, priority may be based only on the earliest application.

The applicant expressly claimed the right of priority in the application filed with the Registrar and may only be claimed within a period of twelve (12) months from the date of filing of the earliest application.

Article 25.-

In order to avail himself of the right of priority, the applicant shall submit to the Registrar within three(3) months of filing the application in *Kingdom of Cambodia*, a copy of the documents that constitute the earlier application, certified to be a true copy by the Authority with which that application was filed.

The Registrar may give an appropriate time to submit the information, document or material as requested.

If the Registrar finds that the condition did not comply with, the paragraph 1 of this Article shall be dealt with as if no priority has been claimed.

SECTION 7
Variety Denomination and Use

Article 26.-

The applicant for a breeder's right shall propose a variety denomination in accordance with this Section.

A variety denomination shall be deemed as inappropriate as following case:

- (a) does not enable the variety to be identified;
- (b) consists solely of figures except where this is an established practice for designating varieties;
- (c) is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder;
- (d) is identical to a variety denomination which in *Kingdom of Cambodia* or in another Contracting Party designates an existing variety of the same plant species or of a closely related species;
- (e) is the same as a variety denomination which received the right of protection.

Only the variety denomination which has been proposed or registered in that other Contracting Party may be proposed and registered and the Registrar shall not register any other designation as a denomination for the variety unless the Registrar considers the denomination unsuitable within its territory.

Article 27.-

Any person who markets the protected material of a variety protected in Kingdom of Cambodia shall, even after the expiration of the protection, use the registered variety denomination only in so far as prior rights do not prevent such use.

When a protected variety is marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination.

Article 28.-

The Registrar shall cancel any registered variety denomination if the denomination should not have been registered. In this case, the holder of a breeder's right shall propose new denomination acceptable for registration.

Article 29.-

Any person who willfully markets material of a variety protected in Kingdom of Cambodia without using the registered variety denomination shall be prohibited.

Any person who willfully use of the registered variety denomination of a variety protected in Kingdom of Cambodia for another variety of the same plant species shall be prohibited.

**SECTION 6
EXAMINATION OF THE APPLICATION AND PUBLICATION**

Article 30.-

The Registrar shall examine the variety to determine whether it fulfills the requirements of novelty, distinctness, uniformity and stability, and where those requirements are not fulfilled, the Registrar shall reject the application.

For the purposes of determination of the distinctness, uniformity or stability of the variety, the Registrar shall forward the application to the Ministry of Agriculture, Forestry and Fishery for conducting technical examination.

Where the examination shows the positive result and that the proposed denomination of the variety can be registered, the Registrar shall grant a breeder's right and publish that decision in a gazette.

Where the examination shows that the proposed denomination of the variety cannot be registered, the Registrar shall request the applicant to submit another denomination within a period determined by Prakas of the Ministry of Industry, Mines and Energy.

When a certificate indicated a breeder's right is granted, the holder of the right shall be

entitled to equitable compensation for acts specified in paragraph 1 of Article 15 of this Law done during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

Article 31.-

Registration Department of new variety of plant shall be publication necessary information relevant to the new plant breeder's right in the official gazette which will be prescribed in the Prakas of the Ministry of Industry, Mines and Energy.

**SECTION 7
Opposition and Appeals**

Article 32.-

The opposition procedure should be available to any interested persons for protection of new plant variety to register within three (3) months after examination result shall be publication on official bulletin .

Article 33.-

Any person aggrieved by a decision of the Registrar under this Law may appeal against that decision to the Ministry of Industry, Mines and Energy.

**CHAPTER 8
LICENSES AND COMPULSORY LICENSES**

Article 34.-

The applicant for or the holder of a breeder's right may grant, to other physical person or entitle person, an exclusive or a non-exclusive license relating to all or any of the rights provided for under this Law.

Article 35.-

Physical person or entitle person may apply to the Minister of Ministry of Industry Mines and Energy through Minister of Ministry of Agriculture, Forestry and Fisheries for the grant of a compulsory license in respect of any breeder's right on the ground that it is necessary to safeguard the public interest in *Kingdom of Cambodia*. Person to whom a license is granted under this Article shall pay the holder of the breeder's right an equitable remuneration.

**SECTION 9
Regulation and Payment of Fee**

Article 36.-

The provisions for implementation of Chapter 2 of this Laws shall be prescribed in the Prakas of the Ministry of Industry Mines and Energy and Ministry of Agriculture, Forestry and Fisheries.

Article 37.-

Physical person or entitle person who files the application for a breeder's right shall pay an administrative fees for registration and annual fees for mentaining validity of the protection of breeder's right at Ministry of Industry, Mines and Energy.

Physical person or entitle person who files a request for conduct a technical examination shall pay technical service fees at Ministry of Agriculture, Forestry and Fishery.

Fees for administrative for registration, fees for annual maintaining validity of the protection of the breeder's right and fees for technical service mentioned in paragraph 1 and paragraph 2 of this Article, shall be prescribed in the Prakas of Ministry of Economy and Finance, Ministry of Industry, Mines and Energy and Ministry of Agriculture, Forestry and Fishery.

SECTION 10

Agent

Article 38.-

The breeder may file application by himself or agent for filing application on behalf of him.

In case of the permanence residence or principal place of business of the applicant is outside of the Kingdom of Cambodia, the applicant shall be represented by agent residing and or practicing in the Kingdom of Cambodia.

The represented agent shall have an appropriate qualification and fulfill the requirements prescribed in the inter-Ministerial Prakas of Ministry of Industry, Mines and Energy and Ministry of Agriculture, Forestry and Fishery.

CHAPTER 3

SEED MANAGEMNET

(Note: related to seed management)

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SECTION 2

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(Note: related to seed management)

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SECTION 2
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CHAPTER 5
NATIONAL FUND FOR SEED DEVELOPMENT

(Note: related to seed management)

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CHAPTER 6 **SEED INSPECTION**

(Note: related to seed management)

Article 66.-
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CHAPTER 7 **SETTLEMENT PROCEDURE FOR INFRINGEMENT OF SEED** **AND OFFENCES**

(Note: related to seed management)

SECTION 1 **Settlement Procedure for Infringement**

Article 71.-
Article 72.-
Article 73.-
Article 74.-
Article 75.-
Article 76.-
Article 77.-

SECTION 2 **Offences**

Article 78.-

The holder of the breeder's right may make application to the competent court for compensation as following procedure:

- 1- request for temporary suspend and or civil action in order to prohibit the committed acts or committing acts of infringement of the breeder's right;
- 2- Fines, confiscate or destroy the seed produced by the acts of infringement of the breeder's right; and compensation of injury as in currency and as non-currency that the breeder's right had lost.

Article 79.-

Whoever makes a false statement in any document filed for the protection of breeder's right, shall be guilty of an offence punishable by a transitional fine from one million (1,000,000) Riels to five million (5,000,000) Riels. The maximum penalty for committing a repeated offence, shall be doubled in accordance with the first transitional fine. In case of committing a repeated offence, shall be forwarded document to the competent Court.

Article 80.-

Any person who performs an act which constitutes as following infringement, shall be guilty of an offence punishable by imprisonment from one (1) month to one (1) year and by a fine from one million (1,000,000) Riels to five million (5,000,000) Riels or by punishment any of both offences and shall confiscate the authorization letter, certificate certifies the quality of seed, destroy the evidence materials or seizure of which is deemed as State asset :

- 1-knowingly committed the infringement acts of the breeder's right as provided in Article 15 of the Law,
- 2-import an evil seed caused a danger, to the Kingdom of Cambodia,
- 3-export seed by committing infringement of the Government prohibition, when it was needed as necessary by the Kingdom of Cambodia,
- 4-committe an act of counterfeit a quality of seed.

Any person who repeated offence prescribed in the paragraph 1 of this Article, the penalty shall be doubled including imprisonment and fine , which are not considering yet to the others heavy criminal offences and the addition of the responsibility of the civil

procedure, in case of cause serious prejudice to the public health or the environment of agronomy.

Article 81.-

Competent official prescribed in Article 67 and Article 69 of this Law who associated or committed offence to this Law, shall be punished in accordance with the administrative punishment or in accordance with criminal punishment, pursuant to the criminal code.

CHAPTER 8 TRANSITIONAL PROVISION

Article 82.-

Seed has been obtained the certificate certifies the quality and letter of an authorization for exploitation of seed under other provisions, shall make regularization under this Law in the period not exceeded of six (6) months from the date of coming to the effect of this Law.

CHAPTER 9
FINAL PROVISION

Article 83.-

Any provisions that contradict to this Law shall be considered as null and void.

Article 84.-

This Law is declared as

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