



Salil Siriwat
Patent Agent
salil.s@tilleke.com

Draft Bill Provides Updates to Protection of New Plant Varieties in Thailand

The Department of Agriculture, Ministry of Agriculture, recently proposed a Draft Bill on the Plant Variety Protection (No. 2) (Draft PVP Bill) and released it for public hearing. The Draft PVP Bill aims to amend the Plant Variety Protection Act B.E. 2542 (1999) (PVP Act) so that Thai law is in compliance with the International Convention for the Protection of New Varieties of Plants, which came into force on March 19, 1991 (UPOV 1991). The current PVP Act was drafted based on UPOV 1978.

The major amendments to the Draft PVP Bill can be summarized as follows:

Introduction of the “Essentially Derived Varieties” (EDV) Concept

The EDV concept was proposed to prevent the exploitation of protected varieties by engineering minor alterations of a protected initial plant variety, such as by using biotechnology and genetic engineering methods. Under this concept, cultivators of an EDV are unable to exploit their altered variety without permission from the rights holder of the initial variety. According to the Draft PVP Bill, to receive protection the EDV must share the genotype of the initial variety and must not be significantly different from that variety in its essential characteristics.

Introduction of “Harvested Materials” to New Plant Variety Rights

The current PVP Act gives a new plant variety owner the right to “propagating materials.” To comply with UPOV 1991, the Draft PVP Bill will also confer an owner with rights to the “harvested materials” of the new plant variety, including rights to the products created from the “harvested materials” of the new plant variety.

Limitations of Plant Breeders’ Rights

The current PVP Act allows farmers to save seeds in an amount of up to three times the amount originally received. However, in the Draft PVP Bill, the owner of the new plant variety will have the right to save the seeds of the new plant variety for propagation, improvements to propagation, sale, offering for sale, and exportation and importation. The new plant variety owner’s rights will not include any acts conducted on the new plant variety that: (1) are not intended for propagating the plant variety; (2) are not intended for commercialization; or (3) are intended for research and development in plant breeding. Also exempted is where cultivation or propagation of a new plant variety is done by the farmer on his/her own land, or as allowed by the Minis-

try of Agriculture, with authorization by the Plant Variety Protection Commission.

Revision of Grace Period for “Novelty” of New Plant Varieties

The current PVP Act allows for a grace period of one year for propagating materials that will be sold or distributed within or outside of Thailand. To comply with UPOV 1991, the Draft PVP Bill amends the relevant provision to include a grace period for propagating material or harvested material that will be sold or distributed in any way within or outside of Thailand under the control of the plant breeder or another party designated by the plant breeder. For general plants, the grace period is one year if sold or distributed within Thailand and four years if sold or distributed outside Thailand. For trees or vines, the grace period is extended to six years.

Updates to the Protection Period for New Plant Varieties

The current PVP Act provides the following protection periods for new plant varieties: 12 years for fruit-bearing plants that bear fruit within two years from germination; 17 years for fruit-bearing plants that bear fruit beyond two years from germination; and 27 years for trees that are used for timber or trees that bear fruit. To comply with UPOV 1991, the protection period under the Draft PVP Bill has been amended to extend protection of plants bearing fruit to be longer than set out in the current PVP Act. Counting from the issuance date of an owner’s plant variety certificate, general plants will have 20 years of protection, and trees and vines will have 25 years of protection.

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The Draft PVP Bill has already undergone a public hearing, but remains surrounded by controversy as there are complaints that it still lacks clarity on some points, with several exceptions in the bill granting the Ministry of Agriculture and the Plant Variety Protection Commission ultimate discretion in a number of matters. Most opposition to the Draft PVP Bill is focused on the introduction of “harvested materials,” as new plant variety rights will be extended to include fruits, crops, and other food products, which in turn may affect food sustainability.

It seems likely that the Draft PVP Bill will need further revision and broader consensus, including review by the Thai Farmers Association, before the new law can be approved and implemented. It is anticipated that a revised Draft Bill will be completed and circulated for another hearing by the end of 2018. 🍌