

## Protection of Plant Breeder's rights in Laos: What You Need To Know

*In Laos, farming (agriculture) is very important for both the people's way of life and the country's economy. Because of this, protecting the rights of people who create new types of plants (i.e., plant breeder's rights) is becoming a very important issue. The [Law on Intellectual Property \(Amended\) No. 38/NA](#), which came into force on June 8, 2018, marks a significant step forward in recognizing and safeguarding the intellectual efforts of those who bring new plant varieties to life. But what does this mean for the breeders, the agricultural sector, and the biodiversity of Laos? **KENFOX IP & Law Office** would like to provide below some key points concerning protection of Plant Breeder's rights in Laos.*

### 1. Overview of Plant Breeder's Rights in Cambodia

New plant protection is vital and necessary for Lao PDR. Plant variety protection is the protection of the rights and interests of breeder or the owner of the plant, especially, economic benefits.

The Law on Intellectual Property (Amended) No. 38/NA dated 15 November 2017 and entered into force on June 8, 2018, establishes intellectual property rights for new plant varieties in Lao PDR. The provision related to new plant varieties protection from Article 69 to Article 91.

### 2. Criteria for Protection

To be eligible for protection, a plant variety must be **new, distinct, uniform, stable** and **designated with a distinctive denomination** for registration.

- (i) **Novelty:** A variety is considered new for breeder's rights if, at the filing date, its propagating or harvested material hasn't been sold or disposed of by the breeder, with a time limit: **(i)** one year or less before the national application filing; or **(ii)** four years or less (six years for trees or vines) before the filing date in any other territory.
- (ii) **Distinctness:** A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application.
- (iii) **Uniformity:** A variety shall be deemed to be uniform if it is sufficiently uniform in its relevant characteristics.
- (iv) **Stability:** A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation.
- (v) **Denomination:** Applicant must provide a name for the variety in accordance with legal provisions. A proposed denomination must enable the variety to be identified. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. It must be different from every denomination which designates, in the territory of the Lao PDR or any foreign country, an existing variety of the same plant species or of a closely related species. The denomination may also be the subject of a trade name, trademark or other similar indication.

The denomination shall be registered at the same time as the breeder's right is granted in accordance with requirements set forth in the Regulations.

### 3. Authority for registration

The Department of Intellectual Property (DIP), under the Ministry of Science and Technology serves as the competent authority in Lao PDR for protection plant variety rights.

### 4. Eligible Applicants

Any individual, legal entity or organization eligible to submit an application is as follows:

- any breeder as defined above may file an application for breeder's rights;

- where two or more persons have jointly bred a new variety, such persons may jointly apply for plant breeder's rights. In the absence of any special declaration of the apportionment of ownership, they are presumed to be owners of equal part of the concerned variety;
- a foreign individual, legal entity or organization shall enjoy within the territory of the Lao PDR the same treatment as is accorded to Lao nationals, subject to the requirement that a party that does not have a residence or business premises shall appoint a representative with such premises in the Lao PDR.

## 5. Registration Process

Each application for registration of a new plant variety shall relate to a single plant variety and undergoes both the formality and substantive examination. The process of handling a new plant variety application in Laos comprises of the following main steps:

### ▪ Formality

The DIP will conduct a formality examination of each new plant variety application for compliance, correctness, and payment of fees; and then issuance of a filing number and date.

### ▪ Publication

Once the formality examination is completed, bibliography of the application for new plant variety registration will be published on the official gazette.

### ▪ Opposition period

A third party may object against such plant variety registration within ninety (90) days from the date of publication on the Official Gazette.

### ▪ Substantive examination

- (i) **Examination Criteria:** The application undergoes a substantive examination to ensure it complies with the conditions specified in Article 69 (Requirements for Registration of New Plant Varieties); Article 70 (Novelty), Article 71 (Distinctness), Article 72 (Uniformity) and Article 73 (Stability).
- (ii) **Cooperation and Testing:** During the examination, the Ministry of Science and Technology collaborates with relevant plant variety testing authorities. Tests, including plantation tests, are conducted. The applicant bears the costs associated with these tests or the consideration of test results.
- (iii) **Information and Material Requests:** The Ministry may request the breeder to provide necessary information, documents, or propagating materials, including all harvested materials.
- (iv) **International Applications:** If the application has been filed in another country or intergovernmental organization, the Ministry requests a copy of the application and an examination report certified by the plant variety protection authority of that jurisdiction.
- (v) **Updated description:** The breeder can update or correct the description before the certificate is issued, provided it is retroactively accurate and doesn't cause injustice to third parties.

### ▪ Issuance of Certificate

After examination, if the application for new plant variety registration satisfied all requirements as stipulated in this law, the DIP shall register and issue a certificate for new plant variety registration for the applicant, record the registration and publish result of such new plant variety registration on the official gazette.

## 6. Priority Claims

An application may claim a priority date based on a foreign application filed in countries which are treaty partners with Laos for a period of twelve (12) months from the date of filing the first application.

## 7. Provisional Protection

During the period between the publication date and the grant date of that application, the holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the said time limit, has carried out acts which, once the right is granted, require the breeder's authorization as provided under the law.

## 8. Duration of Protection

- 25 years from the date of grant of the breeder's right for trees and vines.
- 20 years from the date of grant of the breeder's right for other varieties of plants.

## 9. Maintenance and Fees

In order to maintain the term of protection, the new plant variety owner must pay an annual fee as prescribed.

## 10. Rights and Obligations of the Owner

**10.1. Rights [Article 82]:** The rights of the new plant variety owner include:

- (1) To prevent individuals, legal entities or organizations from: [1.1] production, reproduction or additional production; [1.2] conditioning for the purpose of propagation; [1.3] offering for sale; [1.4] selling or distribution; [1.5] import; [1.6] export; [1.7] stocking for any of the purposes mentioned in the aforesaid items [1.1] to [1.6].
- (2) To make his authorization subject to conditions and limitations.
- (3) To protect their rights under the law and regulations against infringements by others such as to institute court action, [and] rights to compensation from damages caused by others.

The acts referred to in items [1.1] to [1.7] above 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. The provisions shall likewise apply in respect of products made directly from harvested material of the protected variety.

The provisions of paragraphs (i) and (ii) above shall also apply in relation to the varieties as follows:

[1]. Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

[2]. Varieties which are not clearly distinguishable in accordance with Article 71 (Novelty) of Lao IP Law from the protected variety;

[3]. Varieties whose production requires the repeated use of the protected variety. The plant variety owner is entitled a plant variety right obtained from substantial genotype of original plant variety such as selection of a plant variety in nature, mutation of a plant variety, somaclonal variant, selection of different type of variety for propagating purpose with the original variety, genetic engineering of plant.

No individual, legal entity or organization other than the plant variety owner shall undertake any of the acts described in paragraphs 1 through 4 of this Article in the Lao PDR without authorization by the plant variety owner, and except as otherwise provided in this law

- (4) **Provisional Protection:** during the time between the publication of an application for the grant of a breeder's right and the actual granting of that right, the holder of the breeder's right has the right to receive fair compensation from any individual or entity that, during that interim period, engages in activities that would later require the breeder's authorization according to the regulations outlined in Article 82 of Lao IP Law. In essence, it ensures that those who use the protected plant variety before the breeder's right is officially granted must provide compensation to the breeder once the right is awarded.

**10.2. Obligation:** The owner of the new plant variety has obligation as follows:

- (i) Ensure the protection and management of their rights by monitoring and inspecting the use of the industrial property, as outlined in this law.
- (ii) Promote and encourage the societal use of their industrial property for mutual benefit.
- (iii) Report any violations of their industrial property to the relevant state organizations.
- (iv) Fulfill financial obligations to the state in accordance with laws and regulations resulting from the exploitation, leasing, transfer, or inheritance of the industrial property, or from other benefits.
- (v) Coordinate efforts to remedy violations of their industrial property.

## 11. Exceptions to the Breeder's Right

The exceptions to the breeder's right are as follows:

- Acts done privately and for non-commercial purposes;
- Acts done for experimental purposes;
- Acts done for the purpose of breeding other varieties.

## 12. Nullity of the Breeder's Right

A breeder's right granted by the Lao PDR shall be nullified in following cases:

- the conditions of Novelty or Distinctness as laid down by the Law are not complied with at the time of the grant of the breeder's right;
- the submitted information and document are inconsistent with the reality of the breeder to the DIP when considering the registration.
- 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.

## 13. Cancellation of the Breeder's Right

A breeder's right granted by the Lao PDR may be canceled in following cases:

- the conditions of the application's Uniformity or Stability as stipulated under the Law are no longer fulfilled;
- after being requested for cancellation and within a prescribed period, the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- the breeder fails to pay maintenance fees to keep his right in force;
- the breeder does not propose another suitable denomination, where the denomination of the variety is cancelled after the grant of the right.

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