

DECEMBER 2008 / JANUARY 2009 Thailand: Plant variety law fails foreign applicants

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Under the Plant Varieties Protection Act, the right holder of a new plant variety has the sole rights to produce, sell or distribute, import, export, or possess for the aforementioned purposes. In this context, the eligibility and practicality for a foreign applicant who wishes to seek protection for its creation under the Act is a key issue.

One of the criteria for eligibility as an applicant is that they must be carrying out real and effective industry or business in Thailand or in a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

At present, Thailand is not a party to any such international conventions or agreements. Further, the Plant Variety Protection Office, Department of Agriculture, has established that a foreign legal person wishing to enjoy eligibility as an applicant under this condition must be one and the same legal person (with an identical name) as in its home country. This is problematic because most legal persons formed in Thailand are incorporated with a name that differs from the registration in the home country. Since such an entity cannot be regarded as one and the same legal person, this type of applicant would be deemed ineligible.

Plant varieties eligible for protection must possess novelty, stability, uniformity, and distinctiveness. However, not all plant varieties that meet the requirements will be eligible for protection under the Act. Not only must they meet the requirements, but they must also be listed by the Department as protectable plant varieties. To date, only 47 plant varieties are included on the list, with more to be added at the discretion of the Department.

Further, some of the plants on the list such as rice, rubber, and citrus are classified as restricted plants, the importation or exportation of which is restricted under the Plant Quarantine Act, except for the purposes of research and development. Bringing in the seeds or propagating materials for a growth test for the registration of a new plant variety under the Act is not regarded as for research and development purposes. Although case-by-case permission is possible, obtaining the permit will be a burden for the applicant.

Several aspects of the Act pose difficulties and impracticalities for foreign applicants. Since the Act is still in its early stage, we can only hope that changes and amendments to the Act will be introduced to provide equal access to all applicants as intended.



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