

# Thailand's sui generis system of plant variety protection



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# Contents

- Backgrounds of IP Law in Thailand
- Implementation of TRIPS Article 27.3(b)
- Thailand's sui generis PVP law
- Significant Features and Current Problems

**PART I:**  
**BACKGROUND OF IP LAW IN THAILAND**

# Intellectual Property Regimes

Domestic IP Legislations in Thailand	Remarks
Patent Act B.E. 2522 (AD1979)	Prior to TRIPS
Trademarks Act B.E. 2534 (AD1991)	
Copyright Act B.E. 2537 (AD1994)	
Layout Design of Integrated Circuits Act B.E. 2543	TRIPS Obligations
<b><i>Plant Variety Protection Act B.E. 2542 (AD1999)</i></b>	
Layout-design of ICT Act B.E. 2545 (2002)	
Geographical Indications Act B.E. 2546 (AD2003)	

# Intellectual Property Regimes

Domestic IP Legislations in Thailand	Government Authorities
Patent Act B.E. 2522 (AD1979)	Ministry of Commerce
Trademarks Act B.E. 2534 (AD1991)	Ministry of Commerce
Copyright Act B.E. 2537 (AD1994)	Ministry of Commerce
Layout Design of Integrated Circuits Act B.E. 2543	Ministry of Commerce
<b><i>Plant Variety Protection Act B.E. 2542 (AD1999)</i></b>	<b><i>Ministry of Agriculture</i></b>
Layout-design of ICT Act B.E. 2545 (2002)	Ministry of Commerce
Geographical Indications Act B.E. 2546 (AD2003)	Ministry of Commerce

**IP REGIME IS A RESULT OF  
THAILAND'S JOINING WTO**

**PART II:  
IMPLEMENTATION OF ARTICLE 27.3(B)  
OF THE TRIPS AGREEMENT**

# TRIPS Obligations

**TRIPS Article 27.3(b) provides that**

**“Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or any combination thereof”**





# TRIPS Obligations

- TRIPS creates flexibilities as to PVP options
- Members must introduce some kind of IP regimes over plant varieties.



# Implementing TRIPS

- **Look at flexibilities provided by TRIPS**
  - Three options available through art. 27.3(b)
- **Consider existing PVP regimes in the world**
  - US Plant Patent Act
  - UPOV-style law of European Nations
- **Respect major principles under CBD**
  - TK protection
  - Local communities' rights



# **DEVELOPING OWN *SUI GENERIS* SYSTEM**

**WHAT IS *SUI GENERIS* SYSTEM?**

# *Sui Generis* PVP Law

- *Sui Generis* is a Latin term meaning “uniqueness”
- No need to adopt all provisions from TRIPS
- Members can tailor IP rights over PVR suited to their needs and priorities
- Developing countries follows this approach!



# Introducing PVP in Thailand

- **Introduced in 1999**
- **Incorporated some principles from UPOV and CBD**
- **The Law is divided into two parts:**
  - New Plant Varieties (based on provisions from UPOV 1991)
  - Existing Varieties (incorporated some principles of CBD)

# Special Characteristics

- PVP law that is different from UPOV and Patent
- It is in compliance with TRIPS standards
- Reflect some principles from CBD



**PART III:  
PLANT VARIETY PROTECTION IN  
THAILAND**



# Major Provisions of the Thai PVP Law

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## New Varieties

- Plant breeders' rights (art. 12)



## Existing Varieties

- Local domestic varieties (art. 42)
- General domestic varieties
- Wild varieties



# New Varieties in Thailand

- To be protected under the law, varieties have to be new, distinct, uniform and stable.



# Novelty Requirements

- To be new, varieties must not be sold in or outside Kingdom of Thailand for more than one years.
- Novelty standard is defined in terms of commercial novelty.
- The exact scope is similar to the criteria of novelty under the UPOV Convention.

# DUS Requirements

- To be eligible for protection, new varieties must also meet the so-called “DUS” criteria, namely distinctiveness, uniformity and stability.
- The criteria of DUS in Thailand’s PVP law are also adopted from the UPOV Convention.

# Scope of Breeders' Rights

- Under the Thai PVP law, breeders have exclusive rights over new plant varieties. Scope of rights is similar to those of patent rights' holders.
- Thailand does not recognise EDVs in the current PVP regime!



# Term of Protection

- Thailand provides different durations of protection.
- New varieties have a term of 12 or 17 years depending on the type of varieties. (shorter than that of UPOV)
- The reason for this may be to ensure that IP system does not contribute to create monopoly over food crop.



# Term of Protection (cont.)

- Thailand's PVP law provide longer term of protection for trees.
- Protection term provide for trees is 27 years.
- The extra term of protection is offered for trees because new and better tree is difficult to develop.
- This term of protection is longer than provided in the UPOV (25 years)



**NEW VARIETIES REFLECT UPOV-  
STYLE LAW**



# Existing Varieties

Three types of existing varieties protected under the Thai PVP law:

- Local domestic plant varieties
- General domestic plant varieties
- Wild plant varieties



# Rationale behind protection

- A set of these provisions attempts to protect farmers' rights and local communities.
- Incorporated concepts from CBD provisions.



# **WHAT IS LOCAL DOMESTIC PLANT VARIETIES?**

# Local Domestic Plant Varieties

## Definition:

- A plant variety which exists only in a particular locality within the Kingdom and has never been registered as a new plant variety.



# Local Domestic Plant Varieties

- The protection of such varieties was introduced in Thailand as a means to provide IP rights to farmers and local communities that take care of existing varieties.



# Local Domestic Plant Varieties

- There is no mention of rights of farmers or local communities but the term “local domestic plant varieties” is used as a way to reflect the recognition of rights of farmers and local communities (concept ignored by UPOV)

# Protectable Subject Matter

- Local domestic plant variety must not need to be new.
- DUS criteria must still be satisfied.



# **ANOTHER DEVIATION FROM UPOV**



# General Domestic Plant & Wild Plant Varieties

- General domestic plant varieties “means a plant variety existing in the Kingdom and used in Thailand”.
- Wild plant varieties means “a plant variety which currently exists in Thailand and has not been commonly cultivated”



**ANY EXISTING VARIETIES**

# Existing Varieties

- No registration is required.
- It is meant to cover all types of plant varieties found within Thailand and to enhance TK protection.



**CLEARLY ADHERENCE TO CBD  
PRINCIPLES**



# **SIGNIFICANT FEATURES & CURRENT PROBLEMS**

# Special Features of the PVP Law

Reflect in three areas:

- Farmers' saved seed exemptions
- Disclosure of Origin
- ABS Mechanisms



# Farmers' Privileges

- The law recognises farmers' traditional rights to save and re-use seeds from their harvests by incorporating the concept of farmers' rights.
- The law permits farmers to retain seeds from crops grown in subsequent seasons to produce more crops.
- Such exemption is extremely important to a country like Thailand with a high population of small-scale farmers.



# Disclosure of Origin

- The law sets out a disclosure of source and legal provenance requirement for the registration of new plant varieties. (different from UPOV Convention)
- The law requires every application to include details of the origin of the new plant variety, and all information regarding the use of genetic material in the breeding process
- It is served as a passport for transfer of biological materials.





# ABS Mechanism

- The law contains provisions regarding access and benefit sharing (ABS)
- Any person intended to use existing varieties must obtain permission from local authorities and to accept profit-sharing agreement.



# Current Problems

- PBRs provisions provide less incentive for breeders to register new varieties (101 applications stood at present)
- No local domestic plant varieties have been registered in Thailand



# Questions

- Should We Abolish Local Domestic Plant Variety Provisions (Farmers' Varieties)?
- Should We Introduce Patents?
- What Exactly Is an Effective *Sui Generis* System?

# Further Reading

- Thailand's sui generis system of plant variety protection (QUNO Publication, 2014)
- A number of publications are available through journals
  - Journal of Intellectual Property Law & Practice
  - Journal of World Intellectual Property
  - Journal of Intellectual Property Rights
  - International Review of Intellectual Property and Competition Law

# **QUESTIONS AND ANSWERS**