



A STUDY CASE OF ACCOMPLISHED COUNTRIES TO ENTER A MEMBER OF UPOV

MALAYSIA

Hosted by Thailand on 28 February 2023

Presented during

The Virtual Meeting to Introduce the Actual Information about the
UPOV System



PREPARED BY DEPARTMENT OF AGRICULTURE, MALAYSIA

content



AGRICULTURE IN MALAYSIA

Explaining seed industry, breeding industry and the need of an efficient PVP system



THE PROCESS OF AMENDING ACT 634

Status Quo and Features in New Act



CHALLENGES

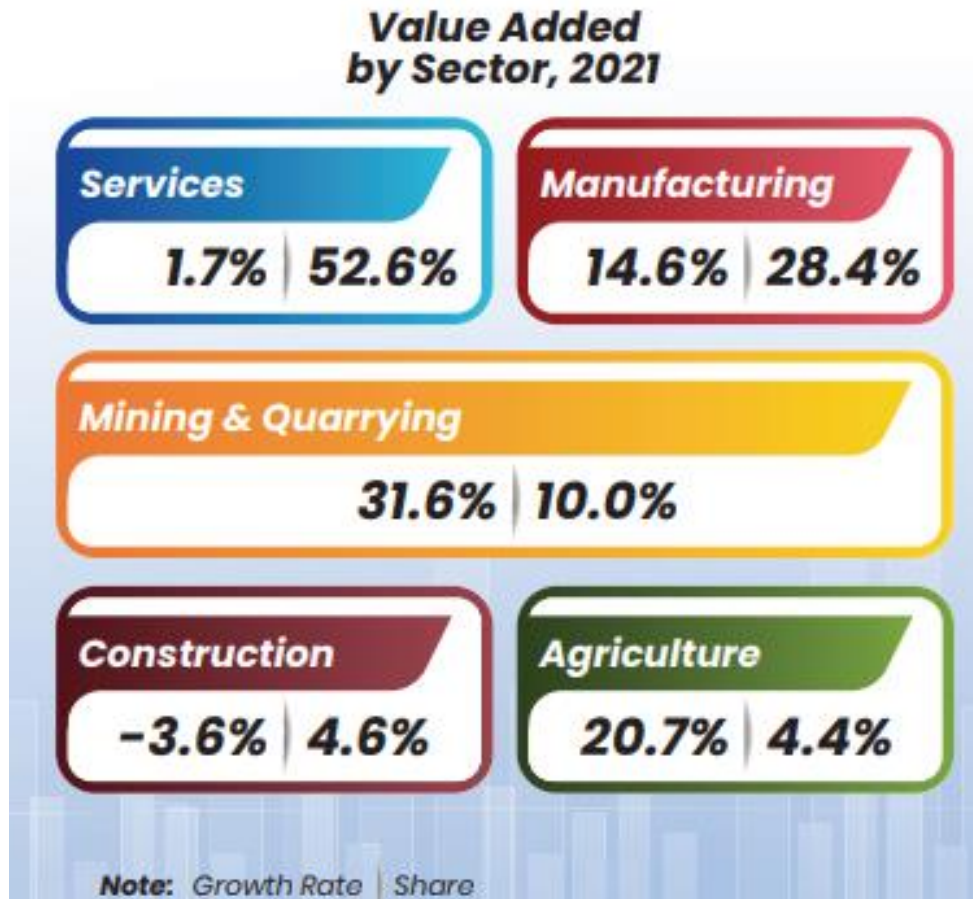
Common Public Perception on UPOV Convention 1991 and FAQs



I: AGRICULTURE IN MALAYSIA

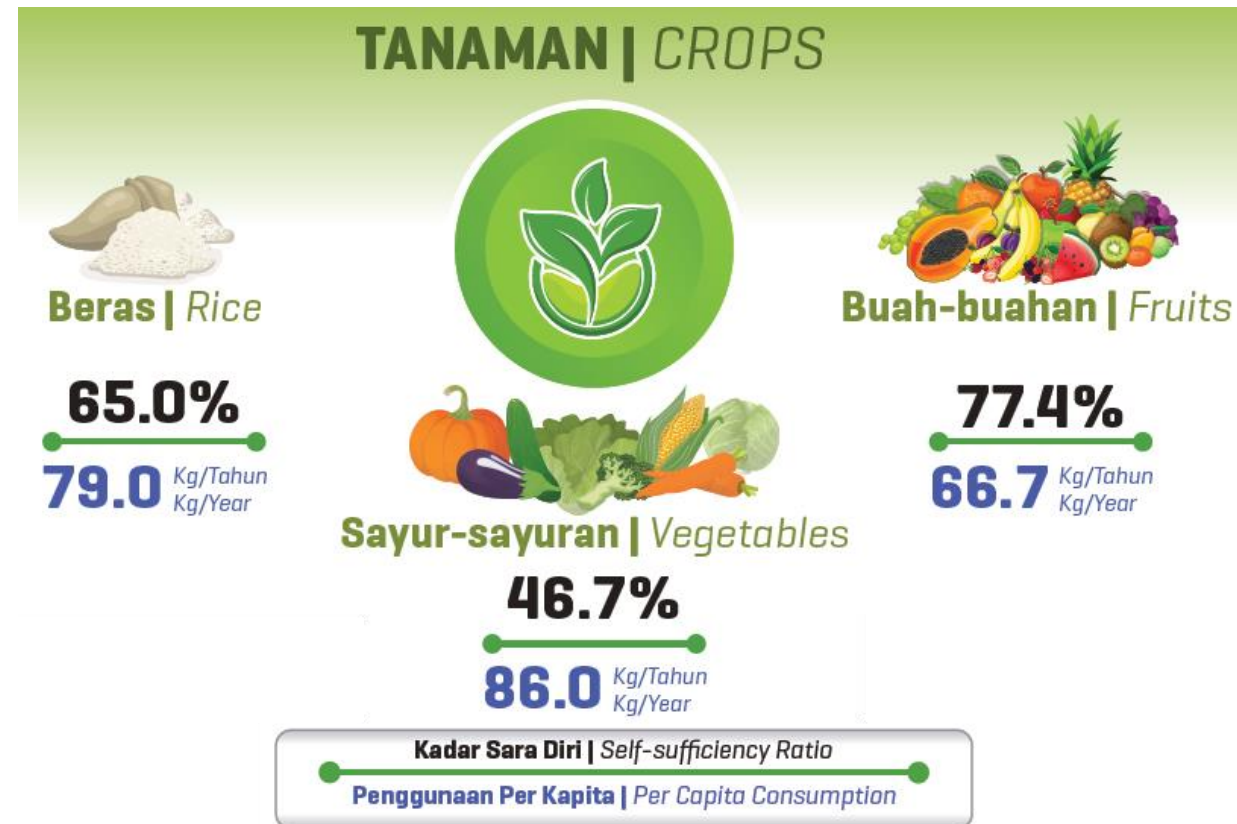


ECONOMY CONTRIBUTION (GDP BY SECTOR)



Source: Annual Economic Statistics, All Sectors, 2022, Department of Statistics Malaysia (DOSM)

SELF SUFFICIENCY LEVEL



Main Commodity Crops
— oil palm, rubber

Important Agro-food
— rice, fruits and vegetables

SEED DEMAND IN AGROFOOD CROPS

VEGETABLES

Cabbage	602 kg
Chili	1,867 kg
Chinese Broccoli	3,125 kg
Okra	13,276 kg
French Beans	38,466 kg
Long Beans	39,690 kg
Spinach	65,553 kg
Water Spinach	320,160 kg

FRUITS

Pineapple	816 unit
Papaya	2,091 unit
Langsat	2,706 unit
Mango	3,321 unit
Sapodila	6,519 unit
Starfruit	15,290 unit
Guava	21,250 unit
Mangosteen	24,742 unit
Pomelo	26,000 unit
Jackfruit	63,968 unit
Rambutan	70,971 unit

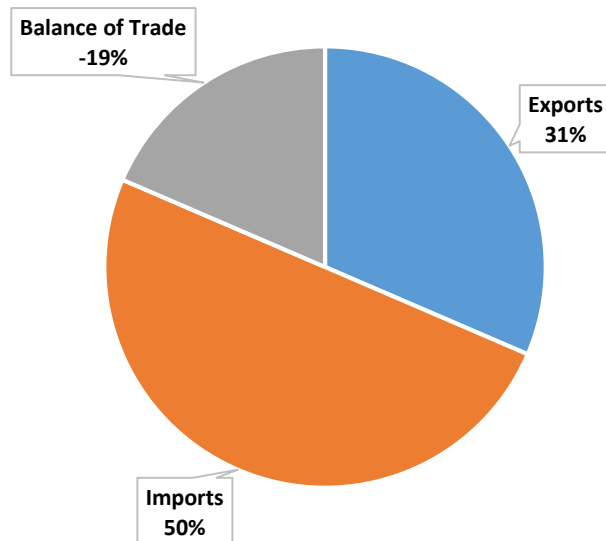
BREEDING STRENGTH & FOCUS



Breeding activities in Public Sector

Agency	Crops
Malaysian Palm Oil Board (MPOB)	Oil Palm
Malaysian Rubber Board (MRB)	Rubber
Malaysian Cocoa Board (MCB)	Cocoa
Forest Research Institute of Malaysia (FRIM)	Forest Trees, Herbs
Malaysian Nuclear Agency (MNA)	Mutation breeding
Malaysian Agricultural Research & Development Institute (MARDI)	Rice, Horticultural Crops, Root Crops, Herbs, Coconut, Beverages, Kenaf, Field Crops, Underutilized crops.

SEED TRADING IN MALAYSIA (IMPORT/EXPORT) 2020



We buy seeds from:

- Thailand, Vietnam, Indonesia, China, Japan, Taiwan, Hong Kong, India

We buy seeds for:

- SSR: vegetables
- Export market: flower

Source: *Sistem Data Trade, Unit Perangkaan, Jabatan Pertanian*

BREEDING COMPANIES IN MALAYSIA



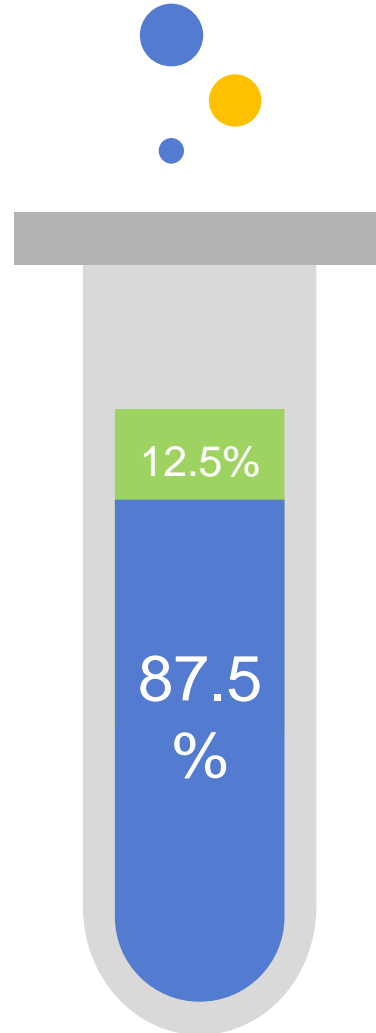
**MAIZE
VEGETABLES
MELON**

CURRENT IPR LEGISLATION IN MALAYSIA



Malaysian Intellectual Property Organisation (MyIPO)

- Trademark
- Copyright
- Trade Secret
- Patent
- Geographical Indication
- Industrial Design
- IC Layout Design



Department of Agriculture, Malaysia

- New Plant Varieties Protection and grant of Plant Breeder's Right

CURRENT LEGISLATION IN PLANT VARIETY PROTECTION

PROTECTION OF NEW PLANT VARIETIES ACT 2004 (ACT 634)

1994 – Drafting of PNPV Act

2004 – Published in Gazette

2008 – Entered into force

Protection of New Plant Varieties Regulations 2008
: forms, fee, prescribed period etc.

Protection of New Plant Varieties Regulations 2008
(Prescribed Size of A Holding) 2008

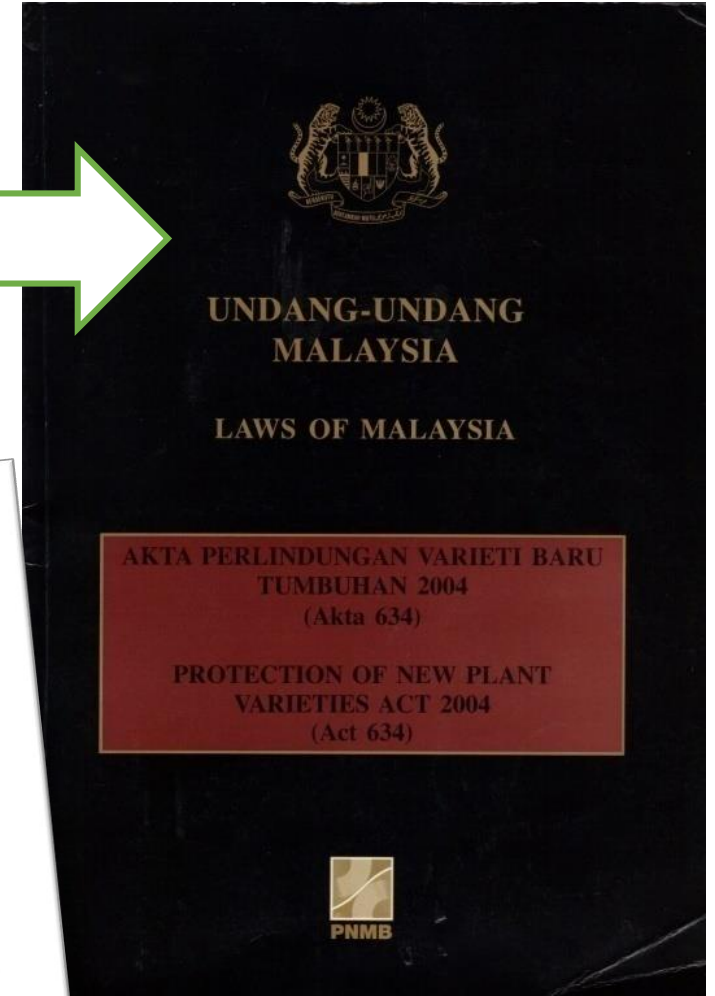
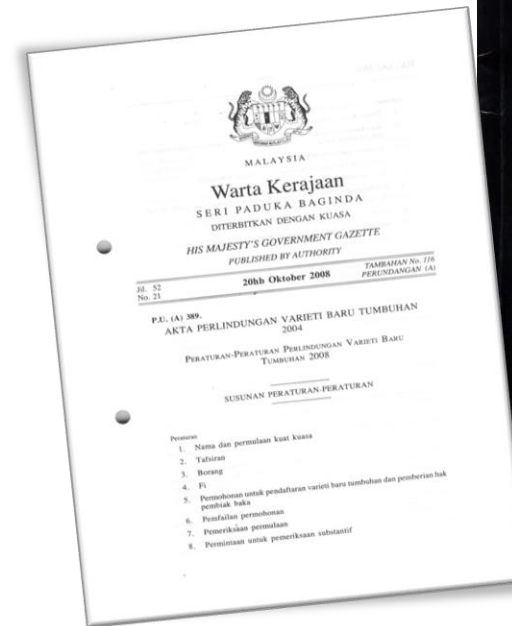
: size of small farmer's holding i.e. less than 0.2 ha

Modeled after:

- **UPOV 1978;**
- **Provision of Convention of BioDiversity (CBD);**
and
- **IPR system of reference countries e.g. India,**
Thailand, Japan etc.

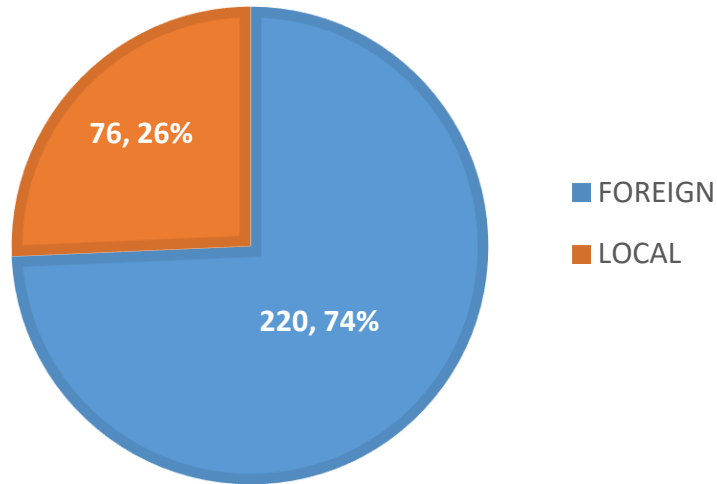
Sui Generis / Non UPOV Member

UPOV **PLUS**
PVP
Legislation

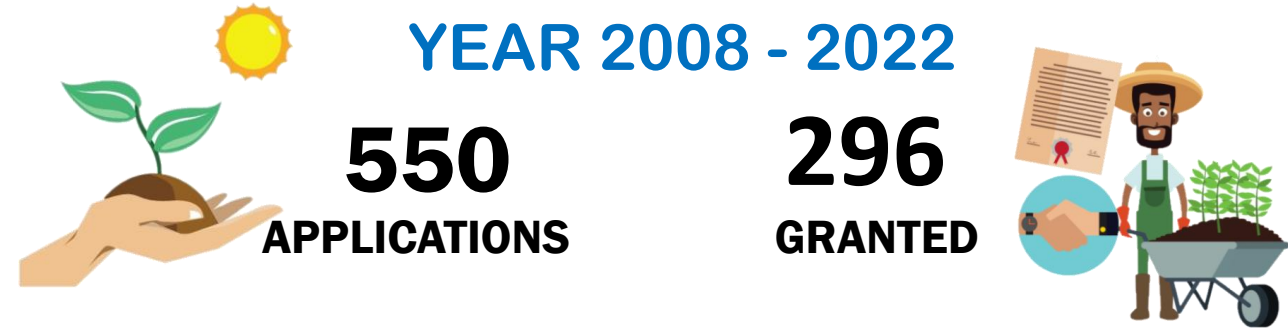
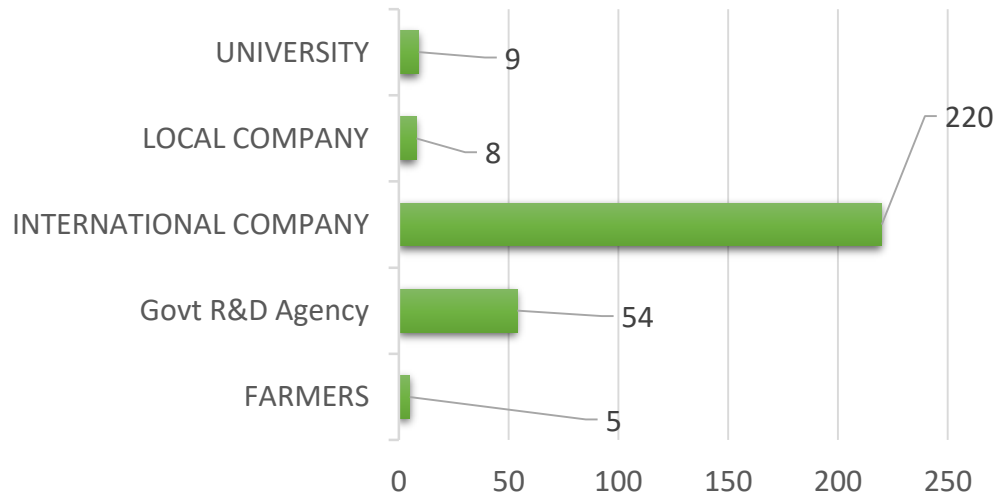


STATUS OF GRANTED PBR IN MALAYSIA

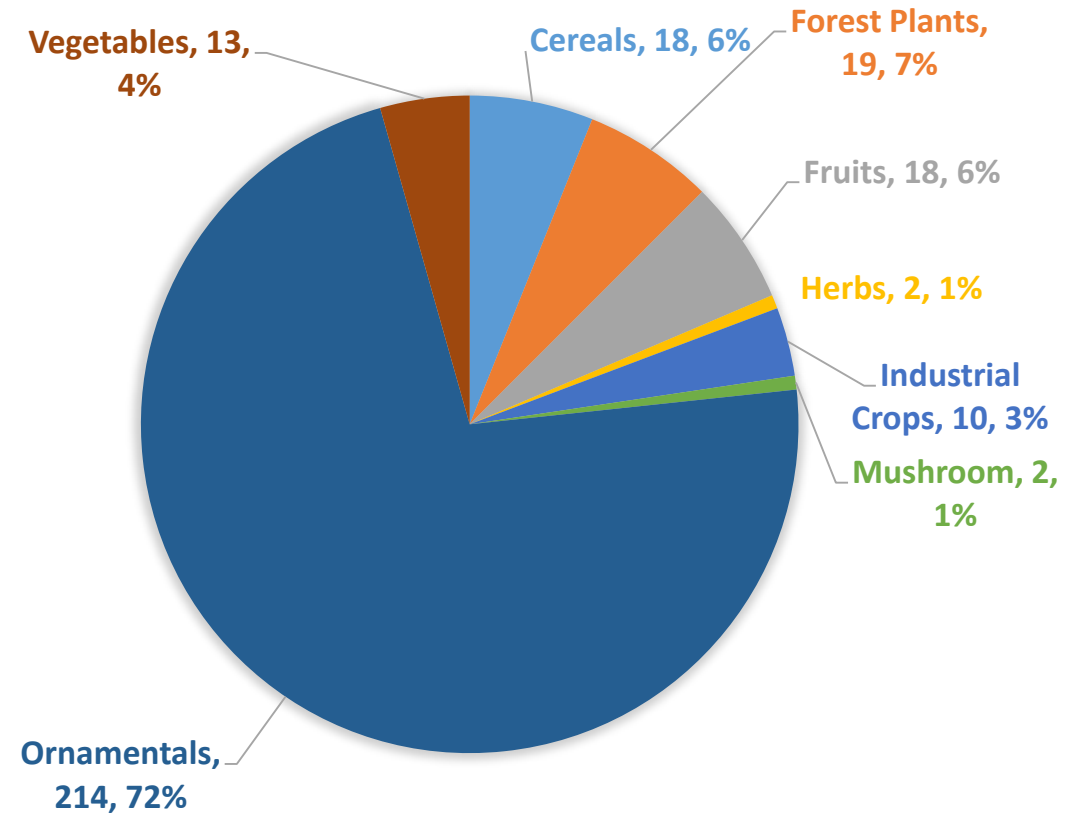
NUMBER OF GRANTED PBR



NUMBER OF PBR BY TYPES OF BREEDER



NUMBER OF PBR BY TYPES OF CROP



THE NEED OF REVISIT ACT 634

TO IMPROVE OPERATIONAL AND FUNCTIONAL MECHANISME OF PLANT VARIETY PROTECTION SYSTEM IN MALAYSIA AND TO INLINE WITH INTERNATIONAL STANDARD

Current Issues:

1. Current system is not on par with the breeding technology development and the breeding industries' needs, either local or private.
2. A few provisions are no longer relevant.
3. The duration PBR granting process is long.
4. Repetition of DUS Tests for the same applications received by other countries.
5. Require higher public funding in sustaining the national PBR system.

STATUS QUO OF ACT REVISION



May 2019 – Breeders & IP Law Agent
May 2019 – Farmers Association, individual farmers & growers
May 2019 – Non Governmental Organisations
Sep 2019 – Genetic Association & Seed Company
Oct 2019 – Top mgmt. in Department of Agriculture
Feb 2021 – Department & Agencies representing Sabah & Sarawak



2011 – 2014
Revisit Act
634 and
Study of
UPOV
Membership
(SWOT)

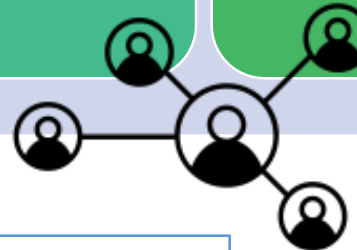
2015
Cabinet
approval for
UPOV
Accession



2015
Forming of
PNPV Bill
Drafter Team

2017
New Bill
Drafted

2018 – 2021
Stakeholders'
Consultation
Sessions



2022
Report for
*Regulatory
Impact Study
(RIS)*

2023 - 2024
Arrangement
for
Parliament
debate by
Attorney
General
Chamber

CPTPP Malaysia entered into force 29 Nov. 2022

Grace Period UPOV Membership: 4 year

By latest 28 Nov. 2026

Concurrent Activities

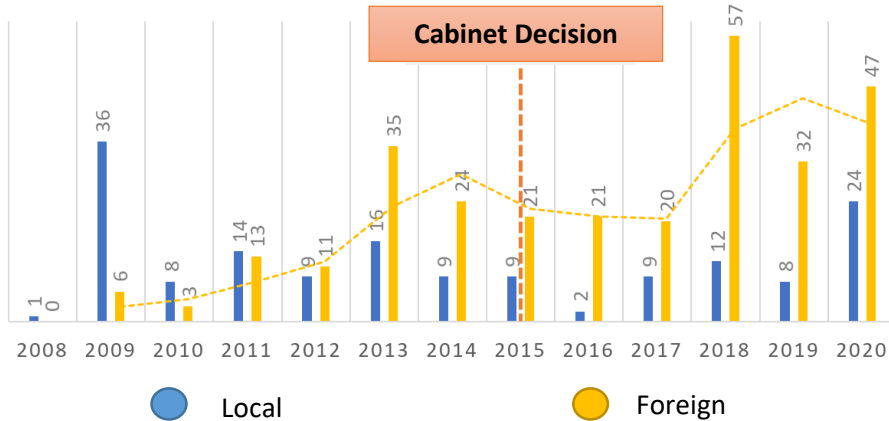
- Regulations and Guidelines
- Cabinet Notes
- Instrument ratification to UPOV accession

WHY JOINING UPOV?

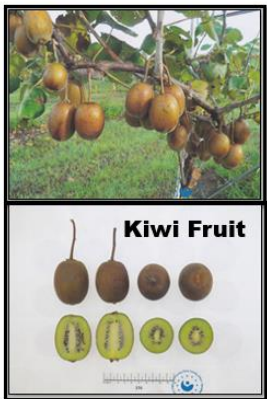


REASON 1: CURRENT TECHNICAL CHALLENGES

1. Influx of foreign applications



2. Introduction of new crops for protection



3. To actively participate in UPOV activities

- To voice out in UPOV technical forum especially for tropical species.
- Not many Test Guidelines and Protocols in UPOV are focused in tropical crops.



• Problem arose from the influx and intro of new crops

- limitation of land, experts, infrastructure for growing test.
- may delay the granting of Plant Breeder's Right
- Test result may be not uniform due to:
 - (i) different set of Example Varieties used
 - (ii) Limitation of varieties for comparison
- Require higher cost in testing
- Redundant of DUS test
- **Current solution:** Access of Test Reports from UPOV countries (Not all reports are available)
- **Better solution :** UPOV provides cooperation under Central Testing

- To stand a chance to continuously improve the PVP mechanism that would provide better protection coverage among well- developed and developing member countries.



4. Capacity Building through knowledge sharing.

- Trainings are conducted among UPOV members.
- To improve testing quality and update new protocol in variety testing.



WHY JOINING UPOV?

REASON 2: FARMERS' BENEFITS

1. Easier access to improved varieties of crops.

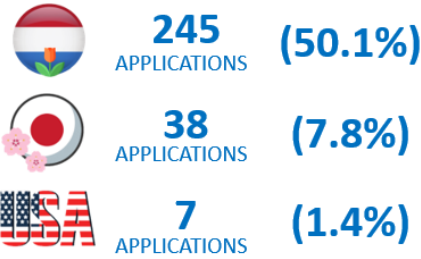
- Domestic breeding focus: Oil Palm, Cacao, Rubber, Rice
- Produce for Export: Vegetables, Cut Flowers
- Malaysian farmers are business oriented, bald to try new things
- demand on seeds is high

SEED DEMAND IN MALAYSIA

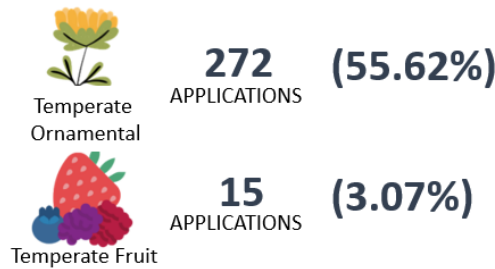
	Crop	Seed demand
1	Rice	100% local produced
2	Fruits	- Mostly <u>vegetatively</u> propagated - Local variety - Watermelon (100% imported seeds)
3	Vegetables	95% imported seeds
4	Field crop	- Mostly locally produced (sweet potatoes, cassava, yam & ginger) - Maize (mostly imported hybrid seeds)
5	Forage & cover crops	Mostly imported seeds
6	Flowers	Mostly imported seeds, grown for foreign market

Source: Wan Jusoh Wan Mahmood (2006), *Developing Malaysian Seed Industry: prospects and challenges*

Foreign Applications



CROP CATEGORIES (FOREIGN APPLICATIONS)



2. Better access to global market

- new varieties come with market
- favour environment for growing
- For example: Cameron Highlands provide sub-temperate climate all year round. 300 ha farmland produces Chrysanthemum for domestic and export markets.



3. Enable competitiveness

- more choices of varieties to grow
- = less competitiveness within / amongst with more choices
- = better opportunity to compete in global market

Crop	Planting standard	Planting area (ha)	Total demand
Cabbage	200g/ha	4,845	0.97 ton
Tomato	200g/ha	2,831	0.57 ton
Watermelon	250g/ha	11,032	2.76 ton
Maize	10kg/ha	9,720	97.20 ton
Pineapple	40,000 suckers/ ha	10,580	423.2 million suckers
Banana	1,600 plantlet/ha	27,085	43.3 million plantlets

4. Save cost and time in farming operation.

- use of superior varieties

5. Creating business opportunities.

- Trying new crop type

6. Technology transfer to growers.

- introduction of new varieties included technology transfer in package



WHY JOINING UPOV?



REASON 3: LOCAL BREEDER'S BENEFIT

1. Easier access to improved varieties of crops & Plant Genetic Resources for breeding
→ Enable further breeding locally.
2. Increase in number and diversity of local breeders



Public
Research
Agency
(MARDI)



International
Seed
Company



University



Farmer's
Breeder

3. **Enable competitiveness**
→ Local breeders have to compete to stay significant in business
4. **Creating business opportunities.**
→ Local varieties are easy to access international market
→ benefit from cross protection in UPOV member countries.
→ for important crops : oil palm, rubber, pepper etc.



REASON 4: ATTRACT MORE FOREIGN INVESTORS

1. **Increase confidence level of investors**
- known system of protection
2. **Creating business opportunities**
- creating more job opportunities e.g. contract farming, logistic etc.

IMPLICATIONS OF JOINING UPOV



REGULATORY THAT INLINE WITH
UPOV 1991

AMENDMENT OF CURRENT ACT



FINANCIAL

✓ ANNUAL FEE FOR UPOV MEMBERSHIP

- Amount in accordance to country economic weightage during accession

CONVERSION TABLE FOR UPOV MEMBERSHIP FEE

1 contribution unit = 53,641 Swiss Francs
1 swiss franc = RM3.58 (as per December 2014)

Contribution Unit	Membership Fee (Annual)		Working Capital Fund (One Time)		First Year (RM)	Subsequent Year (RM)	Member Countries
	A		B				
	Swiss Francs	RM	Swiss Francs	RM	A+B	A	
0.2	10,728.20	38,406.96	1,666.60	6,416.41	44,823.37	38,406.96	Singapore, Vietnam, ARIPO, Albania, Bolivia, Chile, Columbia, Costa Rica, Croatia, Dominican Republic, Ecuador, Georgia, Iceland, Morocco, Panama, Paraguay
0.25	13,410.25	48,008.70	2,083.25	8,020.51	56,029.21	48,008.70	Brazil, Bulgaria
0.5	26,820.50	96,017.39	4,166.50	16,041.03	112,058.42	96,017.39	Argentina, China, Czech, Denmark, Hungary, Israel, Poland, Russian, Turkey
0.75	40,230.75	144,026.09	6,249.75	24,061.54	168,087.62	144,026.09	Austria, Mexico
1.0	53,641.00	192,034.78	8,333.00	32,082.05	224,116.83	192,034.78	Australia, Canada, Finland, Ireland, New Zealand, Norway, Oman, South Africa
1.5	80,461.50	288,052.17	12,499.50	48,123.08	336,175.25	288,052.17	Belgium, Korea, Sweden, Switzerland
2.0	107,282.00	384,069.56	16,666.00	64,164.10	448,233.66	384,069.56	Italy, Spain, UK
3.0	160,923.00	576,104.34	24,999.00	96,246.15	672,350.49	576,104.34	Netherlands
5.0	268,205.00	960,173.90	41,665.00	160,410.25	1,120,584.15	960,173.90	EU, France, Japan, Germany, USA

THREATS IN JOINING UPOV?



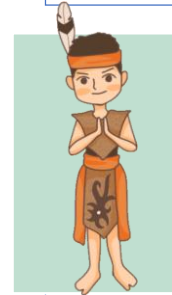
INCREASE OF SEED PRICE



MONOPOLY BY
MULTINASIONAL COMPANIES



FARMER'S RIGHT IN
EXCHANGING SEEDS WILL
BE HINDERED



ETHNIC CULTURE WILL BE
AFFECTED



FARMER'S SEED SAVING
CULTURE WILL BE
PROHIBITED



BIOPIRACY
OCCURRENCE

SUMMARY OF AMENDMENT

ACT 634

11 PARTS (60 Sections)

1. Preliminary (2)
2. Plant Varieties Board (9)
3. Procedure & Conditions of Application (18)
4. Rights & Limitations of Right's Holder (6)
5. Compulsory Licence(3)
6. Nullity, Cancellation Assignment or Transmission of Breeder's Right (5)
7. Appeal (3)
8. Infringement (3)
9. Offences (3)
10. Enforcement (4)
11. Miscellaneous (4)

REPEAL AND RE-DRAFT

PVP BILL

12 PARTS (55 Sections)

1. Preliminary (3)
2. Administration (6)
3. Procedure & Conditions of Application(16)
4. Rights & Limitations of Right's Holder(3)
5. Compulsory Licence(3)
6. Nullity, Cancellation Assignment or Transmission of Breeder's Right (4)
7. Appeal (2)
8. Infringement (3)
9. Offences (5)
10. Enforcement (4)
11. Miscellaneous (5)
12. Transitional (1)

NEW FEATURES IN PVP BILL



Same protection period for variety bred, or discovered and developed by a farmer, local community or indigenous people.



Agricultural Crop List for Breeder's Limitation on Farm Saved Seeds



Introduction of **Annual Right Maintenance Fee**

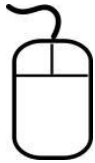
CONCLUSION

1. More opportunities will be easily achieved by joining UPOV.
2. Competitiveness among breeder will become active if Malaysia join UPOV. Farmers can obtain high-quality seeds.
3. Business-oriented farmers
4. Influx of superior varieties from overseas
5. Diversify breeders
6. Increase production and competitiveness of agriculture sector in the country



TERIMA KASIH

FURTHER INFORMATION :



<http://www.doa.gov.my>
<http://pvpbkkt.doa.gov.my>



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