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PLANT BREEDERS' RIGHTS IN KENYA:
Protecting and Commercialising New Plant Varieties

Agriculture, Food & Estates (AFE) Practice | Intellectual Property, Brands & Commercialisation (IPBC) Practice

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EXECUTIVE SUMMARY

Plant breeding innovation is increasingly important to agricultural productivity, food security, climate resilience and the competitiveness of global seed and horticultural markets. For breeders, seed companies, research institutions and agribusiness investors, developing a commercially successful plant variety requires years of research, substantial financial investment and extensive field testing.

Kenya is an important market for agricultural innovation, particularly in horticulture, floriculture, commercial seed production and crop improvement. Its position within East Africa also makes it a strategic market for international plant breeders and agricultural technology businesses seeking to establish production, licensing and distribution arrangements across the region.

However, the commercial value of a new plant variety depends substantially on the breeder's ability to protect the underlying intellectual property, control authorised propagation and establish enforceable licensing and royalty arrangements.

Plant breeders' rights (PBR) provide a specialised form of intellectual property protection for qualifying new plant varieties, enabling rights holders to control specified commercial activities involving protected material, subject to statutory exceptions.

This Regulatory Alert examines the legal framework for protecting and commercialising new plant varieties in Kenya, including registration, eligibility, licensing, royalties, enforcement, cross-border protection and investment considerations.

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1. PLANT BREEDERS' RIGHTS: THE LEGAL FRAMEWORK IN KENYA

Plant breeders' rights are a specialised form of intellectual property protection designed to encourage the development of new plant varieties and reward investment in plant breeding.

In Kenya, the principal legislation is the Seeds and Plant Varieties Act, Cap. 326 (Seeds and Plant Varieties Act) and the relevant Schedules. The Kenya Plant Health Inspectorate Service (KEPHIS) administers plant variety protection framework.

Kenya is also a contracting party to the International Convention for the Protection of New Varieties of Plants 1991 (UPOV) which entered into force for Kenya on 11th May , 2016. The UPOV framework provides internationally recognised principles for protecting plant breeding innovations. However, plant breeders' rights remain territorial: protection obtained in Kenya does not automatically extend to other countries and foreign registrations do not automatically confer protection in Kenya.

For international breeders, this makes coordinated intellectual property protection essential when entering Kenyan and wider African markets.

2. WHICH PLANT VARIETIES QUALIFY FOR PROTECTION?

Under section 18 and the Fourth Schedule to the Seeds and Plant Varieties Act, a plant variety must satisfy the statutory eligibility requirements. These are commonly described as novelty, distinctness, uniformity and stability (NDUS).

a. Novelty

A new variety must satisfy statutory restrictions on prior commercialisation under the Act. The statutory novelty grace periods distinguish between domestic commercialisation within Kenya (1 year) and exploitation abroad, which allows 4 years for general plant varieties and an extended 6 years for trees and vines.

b. Distinctness

The variety must be distinguishable from other varieties whose existence is a matter of common knowledge. This assessment may involve morphological, physiological and other relevant characteristics.

c. Uniformity

The variety must be sufficiently uniform in its relevant characteristics, taking into account the variation expected from its particular method of propagation.

d. Stability

The variety's relevant characteristics must remain unchanged after repeated propagation or, where applicable, at the end of each propagation cycle.

3. HOW TO REGISTER PLANT BREEDERS' RIGHTS IN KENYA?

The registration process generally involves the following stages;

- ***First***, establish ownership and entitlement. The applicant must demonstrate the legal basis for claiming the breeder's rights, including where the variety was developed by employees, researchers, contractors or collaborating institutions.
- ***Second***, assess eligibility. The variety should be reviewed for novelty, distinctness, uniformity and stability before filing.
- ***Third***, prepare the application. This includes the prescribed application information, technical questionnaire, proposed denomination, supporting documents and applicable fees.
- ***Fourth***, undertake technical examination. KEPHIS assesses the variety's characteristics through the distinctness, uniformity and stability testing procedures.
- ***Fifth***, complete the statutory process. The application is considered in accordance with the applicable examination, publication, objection and registration requirements.

- ***Finally***, manage the registered right. The rights holder must maintain the necessary reproductive material, pay the annual maintenance fee for the protection period and monitor commercial exploitation.

4. HOW LONG DO PLANT BREEDERS' RIGHTS LAST IN KENYA?

Section 19 of the Seeds and Plant Varieties Act provides for the following protection periods:

- 20 years from the date of grant for plant varieties generally.
- 25 years from the date of grant for trees and vines.

5. WHAT EXCLUSIVE RIGHTS DOES REGISTRATION CONFER?

Section 20 of the Seeds and Plant Varieties Act grants rights holders' exclusive control over specified commercial activities involving protected varieties. These include production or reproduction, conditioning for propagation, offering for sale, selling or other marketing, exporting, importing and stocking for the specified purposes.

The Act also extends protection in defined circumstances to harvested material and other material falling within the applicable statutory provisions.

6. PLANT BREEDERS' RIGHTS VERSUS SEED CERTIFICATION AND VARIETY RELEASE

One of the most important regulatory distinctions is between protecting a plant variety as intellectual property and obtaining approval to market seed or planting material.

Plant breeders' rights establish proprietary protection over qualifying varieties. On the other hand, **seed certification**, **variety release** and **related regulatory processes** address matters such as seed quality, performance, suitability and lawful commercial marketing.

A registered plant breeders' right does not automatically authorise the sale or distribution of seed. Equally, regulatory approval for commercial release does not necessarily establish proprietary ownership of the variety.

Breeders and seed companies should therefore coordinate their intellectual property protection, variety testing, seed certification, importation and commercial distribution strategies.

This is particularly important for international seed companies introducing new varieties into Kenya.

7. COMMERCIALIZING PLANT VARIETIES THROUGH LICENSING AND ROYALTIES

Plant breeders' rights are not merely defensive intellectual property assets. They form the foundation of commercially valuable licensing, technology transfer and investment arrangements.

a. Plant variety licensing

A breeder may authorise a seed company, nursery, propagator, commercial grower or distributor to exploit a protected variety under agreed terms. A comprehensive licensing agreement should address:

- The identity and registration status of the protected variety.
- The licensed activities and permitted territory.
- Exclusivity and sublicensing rights.
- Authorised propagation and production volumes.
- Quality control and regulatory compliance.
- Royalty calculations, payment and reporting.
- Recordkeeping and audit rights.
- Restrictions on unauthorised multiplication and distribution.
- Ownership of improvements and related intellectual property.
- Termination, enforcement and dispute resolution.

b. Royalty arrangements
Commercial returns may be structured through per-seed, per-plant, per-unit, sales-based or other agreed royalty models. The appropriate structure depends on the crop, propagation method, distribution arrangements and ability to monitor commercial use.

c. Joint ventures and technology transfer
Breeders may collaborate with Kenyan research institutions, agricultural enterprises, seed producers and commercial growers. These arrangements should allocate ownership of existing genetic material, newly developed varieties, research results, improvements, confidential information and commercialisation rights.

8. PROTECTING FLOWER, FRUIT, VEGETABLE AND COMMERCIAL SEED VARIETIES

Plant breeders' rights are particularly relevant to Kenya's floriculture, horticulture and commercial seed industries.

Floriculture
Breeders of roses and other ornamental varieties may use plant breeders' rights to regulate authorised propagation, commercial production and distribution. Licensing arrangements should address propagation volumes, royalties, plant material traceability and unauthorised multiplication.

Fruit and vegetable production
Breeders of fruit and vegetable varieties may establish licensing arrangements with nurseries, commercial growers, seed producers and distributors. The commercial strategy should consider both proprietary protection and applicable phytosanitary, seed and plant health requirements.

Field crops and commercial seeds
Breeders developing improved maize, wheat, rice, potato and other crop varieties should coordinate plant variety protection with seed certification, variety release and commercial distribution arrangements.

Climate-resilient agriculture
Varieties developed for drought tolerance, disease resistance, improved yields or other commercially valuable characteristics may represent significant agricultural research investments.

9. PROTECTING PLANT VARIETIES ACROSS EAST AFRICA AND OTHER AFRICAN MARKETS

International breeders seeking regional expansion should adopt a coordinated country-by-country protection strategy.

Kenyan registration does not automatically confer enforceable rights in Uganda, Tanzania, Rwanda, Zambia, Ethiopia, South Africa or other African jurisdictions.

Regional frameworks, including the African Regional Intellectual Property Organization (ARIPO) system and its Arusha Protocol, may be relevant where applicable to the countries concerned.

10. FARMERS' RIGHTS, RESEARCH AND STATUTORY LIMITATIONS

Plant breeders' rights must be considered alongside the statutory exceptions and limitations that apply to protected varieties.

The legal framework recognises specified activities that do not require the breeder's authorisation, including qualifying private and non-commercial activities, experimental use and certain breeding activities.

The precise scope of these exceptions depends on the relevant statutory provisions and the nature of the activity.

KEPHIS has also clarified that the Seeds and Plant Varieties Act does not generally prohibit the non-commercial saving and sharing of indigenous seeds between farmers.

Accordingly, rights holders should distinguish between unauthorised commercial exploitation of protected varieties and activities that fall within lawful statutory exceptions.

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11. ENFORCEMENT OF PLANT BREEDERS' RIGHTS IN KENYA

Unauthorised commercial propagation, production, distribution, importation or exportation of protected varieties may constitute infringement.

Section 20 of the Seeds and Plant Varieties Act provides for civil enforcement and remedies, including injunctions, damages and an account of profits, where legally justified.

Where suspected infringement involves imported or exported planting material, the rights holder should also consider applicable customs, phytosanitary and other regulatory measures.

12. FREQUENTLY ASKED QUESTIONS (FAQS)

a. What are plant breeders' rights in Kenya?

Plant breeders' rights are statutory intellectual property rights protecting qualifying new plant varieties and granting breeders exclusive control over specified commercial activities.

b. Which law governs plant breeders' rights in Kenya?

The principal legislation is the Seeds and Plant Varieties Act, Cap. 326.

c. How do I register a new plant variety in Kenya?

Applications are administered through KEPHIS and involve eligibility assessment, prescribed documentation, technical examination and compliance with the applicable registration procedures.

d. Can foreign companies register plant breeders' rights in Kenya?

Foreign breeders and companies may seek protection subject to the applicable statutory eligibility and procedural requirements.

e. How long does plant variety protection last in Kenya?

Protection generally lasts 20 years from the date of grant, or 25 years for trees and vines.

f. Does a UPOV registration automatically protect a variety in Kenya?

No. UPOV is an international convention rather than a single worldwide plant variety registration system. Protection must be obtained through the applicable national or regional procedures.

g. Can a breeder license a protected variety to a Kenyan seed company?

Yes. Plant breeders' rights may be commercialised through licensing agreements, subject to applicable statutory and contractual requirements.

h. Can plant varieties be patented in Kenya?

Plant varieties are protected through Kenya's specialised plant variety protection framework. Separate intellectual property protection may be available for other qualifying agricultural technologies, depending on their nature.

i. Can farmers save and share seeds in Kenya?

The position depends on the variety and the activity involved. KEPHIS confirms that non-commercial saving and sharing of indigenous seeds is not generally prohibited under the Act.

j. Can plant breeders' rights be enforced against unauthorised propagation?

Yes. Where the statutory requirements are satisfied, rights holders may pursue civil remedies for infringement, including injunctive relief and financial remedies.

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k. Does Kenyan plant variety protection extend to other African countries?

No. International and regional protection must be assessed separately for the relevant jurisdictions.

HOW WE CAN ASSIST

The Agriculture, Food & Estates (AFE) Practice, working closely with the Firm's Intellectual Property, Brands & Commercialisation (IPBC) Practice, advises Kenyan and international plant breeders, seed companies, horticultural enterprises, floriculture businesses, agricultural research institutions, biotechnology companies and agribusiness investors.

Our services include plant breeders' rights registration and portfolio management, plant variety protection strategies, seed regulatory compliance, licensing and royalty agreements, agricultural technology transfer, cross-border market entry, mergers and acquisitions, intellectual property due diligence and infringement enforcement.

Protecting or commercialising a new plant variety in Kenya or Africa?

Whether you are developing a new seed variety, licensing flower or horticultural varieties, establishing a breeding programme, entering the Kenyan market or expanding across Africa, our specialist legal teams can assist with the applicable intellectual property, regulatory, transactional and commercial requirements.

Contact our specialist teams:

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Disclaimer: *This publication provides general information and does not constitute legal advice. The applicable requirements depend on the plant variety, applicant, proposed commercial activities and law in force at the relevant time. Breeders and investors should obtain specific legal advice before filing applications, commercialising protected varieties or undertaking cross-border transactions.*

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