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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COUNCIL

### Thirty-Seventh Ordinary Session

Geneva, October 23, 2003

#### EXAMINATION OF THE CONFORMITY OF THE DRAFT PLANT VARIETY PROTECTION ACT OF THE REPUBLIC OF SINGAPORE WITH THE 1991 ACT OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

#### Introduction

1. By letter dated September 23, 2003, addressed to the Secretary-General of UPOV, Ms. Liew Woon Yin, Director-General, Intellectual Property Office of the Republic of Singapore (hereinafter referred to as "Singapore"), requested the examination of the 'Draft Plant Variety Protection Act' (hereinafter referred to as the "Draft Act") for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains the Draft Act in English provided by the Government of Singapore.

2. Singapore did not sign the 1991 Act. In conformity with Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in Singapore

3. In Singapore, the protection of new plant varieties will be governed by the Plant Variety Protection Act once adopted. An analysis of the Draft Act follows in the order of the substantive provisions of the 1991 Act.

Article 1 of 1991 Act: Definitions

4. Section 2 of the Draft Act contains definitions of relevant terms used in the Draft Act. In particular, the definition of “variety” conforms with the definition in Article 1(vi) of the 1991 Act. Also the definition of “breeder” conforms with the definition in Article 1(iv) of the 1991 Act.

5. It is recommended to change the term “UPOV country” to the term “UPOV member” in Section 28(6)(a) and (b), in line with the definition provided in Section 2 of the Draft Act and in Article 1(xi) of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

6. The Draft Act provides for the grant of plant variety rights; this fulfills the basic obligation provided by Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

7. Section 4(1) indicates that the Draft Act applies to the genera and species listed in the Schedule. It should be noted that, in accordance with Article 3(2)(i) of the 1991 Act, when depositing its instrument of accession, Singapore must notify a list of at least 15 genera or species to which it has to apply the 1991 Act.

Article 4 of the 1991 Act: National Treatment

8. There are no restrictions concerning nationality or country of residence in the Draft Act. Hence, the Draft Act conforms with the requirements of the national treatment provisions of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

9. The Draft Act provides in Section 21(4)(a), (b), (c), (d) and (e) for the conditions of “Novelty”, “Distinctness”, “Stability” and “Uniformity” in conformity with Articles 6, 7, 9 and 8, respectively, of the 1991 Act.

Article 10 of the 1991 Act: Filing of applications

10. Section 13 of the Draft Act provides for the contents and procedure for the filing of applications. The Draft Act does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

11. Section 14 of the Draft Act contains provisions concerning the right of priority in conformity with Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

12. Section 17 of the Draft Act contains essential provisions of Article 12 of the 1991 Act. It is recommended to clarify in the implementing regulations concerning the request under Section 17(3) and Section 21(2) that information, documents or reproductive material of any other similar variety may be provided by the applicant, if available. To furnish information, documents or reproductive material of other similar varieties is not a requirement under the UPOV Convention; they may be provided by the applicant to facilitate the examination of the candidate variety.

Article 13 of the 1991 Act: Provisional Protection

13. Section 20 of the Draft Act contains provisions on provisional protection that conforms with Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

14. Section 28 of the Draft Act incorporates the substance of Article 14 of the 1991 Act. Sections 27 and 34 of the Draft Act provide for the extension of the scope of the breeder's right to cover essentially derived varieties and certain other varieties, in conformity with the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

15. Section 29 of the Draft Act contains provisions concerning the exceptions to the breeder's right, which are in conformity with Article 15 of the 1991 Act.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

16. Section 35 of the Draft Act contains provisions concerning the exhaustion of the breeder's right, which are in conformity with Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restriction on the Exercise of the Breeder's Right

17. Section 32(4) to (7) of the Draft Act provide for provisions concerning compulsory licenses which incorporates the essential elements of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

18. The Draft Act does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

19. Section 23 of the Draft Act contains provisions concerning the duration of the breeder's right in line with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

20. Section 33 of the Draft Act includes provisions on variety denominations which incorporate most of the elements of Article 20 of the 1991 Act. It is to be noted that Section 43(2) of the Draft Act dealing with regulations provides in paragraph (l) that the Minister for Law may make rules "prescribing the requirements to be met in selecting the denomination of varieties, and providing for the approval, rejection, or amendment of any denomination by the Registrar."

21. In order to fully incorporate the essential provisions of Article 20, it is recommended to include the following provision of Article 20(2) of the 1991 Act in Section 33(2)(d) of the Draft Act: "The denomination 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."

22. Section 13(2)(b) of the Draft Act provides that denominations should be submitted to the Registrar, and Section 15(1) of the Draft Act already provides for the publication of proposed denominations in the Gazette. Furthermore, Section 16(1) of the Draft Act allows for objections to the approval of those denominations. In order to fully comply with Article 20(3) of the 1991 Act, it should be added that if the denomination does not satisfy the requirements for registration, the Registrar shall refuse to register it and shall require the applicant to propose another denomination within a prescribed period. It should also be added that the denomination shall be registered at the same time as the breeder's right is granted.

23. In order to incorporate the provisions on prior rights of third persons of Article 20(4) of the 1991 Act, it is recommended, in the second line of Section 33(2)(e) of the Draft Act to change "denomination" to "right" and to add after the words "an obstacle against" the following: "the use of the denomination as required in Section 33(4). The Registrar shall require the breeder to submit another denomination for the variety;". As a consequence, the remainder of the sentence "the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind;" should be deleted.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

24. Section 24 of the Draft Act contains provisions on the "Grounds of invalidity of grants" incorporating the majority of the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

25. Section 25 of the Draft Act contains provisions on the cancellation of grants incorporating the majority of the provisions of Article 22 of the 1991 Act.

26. In order to fully incorporate the contents of Article 22 of the 1991 Act, it is recommended to insert the contents of Article 22(1)(b)(iii) "the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination" in Section 25 of the Draft Act. It is also recommended to incorporate in subsection 25(1)(b) the contents of subsection 25(1)(d), as both subsections relate to the same subject matter.

Article 30 of the 1991 Act: Implementation of the Convention

27. The Draft Act provides for appropriate legal remedies for the effective enforcement of the breeder's right in Section 28(3)(5)(6)(8)(9)(10)(11) and Part V concerning "Offences" which comply with the obligation under Article 30(1)(i) of the 1991 Act.

28. The Registrar is the authority entrusted with the task of granting breeders' rights in conformity with the obligation under Article 30(1)(ii) of the 1991 Act.

29. As regards the obligation to ensure that the public is informed through a regular publication of information concerning applications for and grants of breeders' rights, and proposed and approved denominations, the Draft Act contains provisions in Section 15 concerning the publication of applications for the grant and proposed denominations in the Gazette. It is recommended to clarify, if possible, in the Draft Act that the Gazette should also include information on the grant of the breeder's right and approved denominations in order to fully comply with Article 30(1)(iii) of the 1991 Act. Section 43(2)(k) of the Draft Act concerning Regulations already provides that implementing regulations would provide more information on the mode of publishing any matters required by this Draft Act.

*General Conclusion*

30. The Office of the Union therefore suggests that the Council may wish to advise the Government of Singapore that the Draft Act, in its main provisions, incorporates the substance of the 1991 Act, but that it still needs to include complementary provisions in Section 33 concerning variety denominations, as provided in paragraphs 21, 22 and 23 of this document, and in Section 25 concerning cancellation of grants, as provided in paragraph 26 of this document, in order to fully conform with the 1991 Act. Once the Act has been enacted with the incorporation of the above-mentioned complementary provisions, Singapore may deposit its instrument of accession to the 1991 Act.

*31. The Council is invited to take note of the information given above and to adopt the decision set in the preceding paragraph.*

[Annex I follows]

ANNEX I



Intellectual Property Office of Singapore

51 Bras Basah Road #04-01  
Plaza By The Park Singapore 189554  
Tel: (65) 63398616 Fax: (65) 63390252  
<http://www.ipos.gov.sg>

In Reply Please Quote Our Reference

Your Ref :

Our Ref : TMC 109/03

Date : 23rd Sept '03.

Writer's Direct Line : 63302720

Dr Kamil Idris  
Secretary-General  
International Union for the Protection of New Varieties of Plants (UPOV)  
34 chemin des Colombettes  
CH-1211 Geneva 20  
Switzerland

Dear Dr Kamil Idris

**PROPOSED ACCESSION TO THE INTERNATIONAL  
CONVENTION FOR THE PROTECTION OF PLANT VARIETIES**

I have pleasure to inform you that Singapore intends to adhere to the International Union for the Protection of New Varieties of Plants {UPOV Convention of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (Act of 1991)}.

2 Pursuant to the provisions of Article 34(3) of the 1991 Act, I would appreciate if the Council of UPOV could examine the conformity of the Law of Singapore with the provisions of the 1991 Act. A copy of our draft Plant Variety Protection Act is enclosed herewith.

Yours sincerely

LIEW WOON YIN (MS)  
DIRECTOR-GENERAL  
INTELLECTUAL PROPERTY OFFICE OF SINGAPORE

Enc.

A statutory board of the Ministry of Law



[Annex II follows]

## ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

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PART 1 PRELIMINARY

Short title and commencement

- 1.(1) This Act may be cited as the Plant Variety Protection Act.
- (2) The Act shall come into operation on such date as the Minister may, by notification in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires-

"applicant", in relation to any application, means the person by whom or on whose behalf that application is made;

"application" means

(a) an application for a grant of protection right in a plant variety to which this Act extends; and

(b) an application for a declaration under section 24;

"breeder", in relation to any variety, means-

(a) a person who bred or discovered and developed that variety; or

(b) a person who is the employer of the aforementioned person or who has commissioned the latter's work; or

(c) a successor in title to the first or second aforementioned person, as the case may be;

"court" means the High Court;

"denomination", in relation to any protected variety that is a subject matter of an application made under this Act, means the distinguishing name or identification approved for that variety by the Registrar under section 21(2)(a);

"grant" means a grant of plant variety rights under this Act;

"grantee" means the holder of a grant and, in relation to a protected variety, means the holder of a grant in respect of that variety;

"plant" means-

(a) any multi cellular vascular organism;

(b) any algae;

(c) any fungi;

But does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;

"prescribed" means prescribed or provided for by regulations made under section 43;

“prescribed examination authority” means a plant variety examination authority or such equivalent official authority recognised in any UPOV Member or any other examination authority as the Minister may from time to time appoint;

“propagation”, in relation to a plant or its components, means the growth, culture or multiplication of that plant or component;

"protected variety" means a variety in respect of which a grant is in force;

"publication" means public notification in the manner prescribed.;

"register" means the Register of Plant Variety Rights maintained under section 8(1);

"Registrar" means the Registrar of Plant Variety Rights;

"reproductive material", in relation to any variety, means any portion of a plant of that variety by means of which plants of that variety may be reproduced or propagated;

"term" means the duration that a grant is in force under section 23;

"UPOV member" means a State party or a Contracting Party that is a member of the International Union for the Protection of New Varieties of Plants, constituted pursuant to the international agreement called the International Convention for the Protection of New Varieties of Plants;

"variety" means a plant grouping within a single botanical taxon of the lowest rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged.

Binding effect of the Act

3. This Act shall bind the Government but nothing in this Act shall render the Government liable to be prosecuted for an offence.

Application

4.(1) This Act applies to the genera and species listed in the Schedule.

(2) The Minister may, by notice in the Gazette, amend the Schedule.

PART II REGISTRAR OF PLANT VARIETY RIGHTS AND REGISTER

Registrar of Plant Variety Rights

5.(1) The [Director General of the Intellectual Property office of Singapore 'IPOS'] shall be the Registrar of Plant Variety Rights for the purposes of this Act.

(2) The Registrar may authorize in writing any public officer to perform or exercise all or any of the functions which are imposed or conferred on him by this Act.

Appeals against decisions of the Registrar

6. Except as otherwise prescribed, an appeal lies to the court, to the extent and in the manner provided in Part IV, against any decision of the Registrar made under this Act.

Registrar not liable in respect of official acts

7.(1) The Registrar shall not be taken to warrant the correctness or validity of the registration of a plant variety right under this Act or under any international agreement, or convention, which has been applied to the Republic of Singapore.

(2) The Registrar is not subject to any liability by reason only of the fact of any examination required or authorized by this Act, or any such international agreement or convention, or any report or other proceedings consequent on such examination.

(3) No proceedings lie against any public officer authorized by the Registrar under section 5(2) in respect of any matter for which, by virtue of this section, the Registrar is not liable.

Register to be maintained

8.(1) The Registrar shall maintain a register of Plant Variety Rights.

(2) There shall be entered in the register in accordance with this Act-

- a) notice of every decision of the Registrar to make or decline to make a grant of a plant variety right;
  - b) such particulars as may be required to be entered by this Act or as may be prescribed by rules made under this Act; and
  - c) any other matters and information relating to plant varieties or plant variety rights whose entry in the register appears to the Registrar to be essential.
- (3) The register may be kept in whole or in part using a computer.
- (4) Any record of a particular or other matter made by using a computer for the purpose of keeping the register is taken to be an entry in the register.

#### Inspection of and extract from register

- 9.(1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.
- (2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part of the register.
- (3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of the prescribed fee; and any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of the prescribed fee.
- (4) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection(3) above is a right to a copy or extract in a form in which it can be taken away.
- (5) In this section, “certified copy” and “certified extract” mean a copy and extract certified by the Registrar and sealed with the seal of the Registrar.

#### Rectification of the register

- 10.(1) Any person having a sufficient interest may apply to the Registrar for the rectification of an error or omission in the register.
- (2) Except where the Registrar directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.
- (3) An application for rectification may not be made in respect of a matter affecting the validity of a grant of a plant variety right.

- (4) The Registrar may make any correction in the Register pursuant to any Court order affecting a grant of a plant variety right.
- (5) The Registrar may remove from the register matter appearing to him to have ceased to have effect.

Entries including changes in the register

11. The Registrar may, on request made in the prescribed manner by the grantee of a registered plant variety right, enter the following in the register:

- (1) any change in the name or address of the grantee as recorded in the register;
- (2) any change in ownership of a grant of a plant variety right;
- (3) any license effected under section 30.

Registration to be prima facie evidence of validity

12. In any proceedings before the court relating to a registered plant variety right, the registration of a person as grantee of a plant variety right shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

PART III GRANT OF PLANT VARIETY RIGHTS

Application for grant

13.(1) An application for a grant of plant variety rights shall be made by a breeder in the prescribed manner to the Registrar.

- (2) The application shall contain or be accompanied by the following:
- (a) a description of the variety;
  - (b) the proposed denomination for the variety;
  - (c) an address for service in relation to that application being an address within Singapore,
  - (d) If a right of priority is claimed under section 14, full particulars of the relevant priority application.
- (3) The application shall be subject to the payment of the application fee and such other fees as may be necessary.
- (4) An application that complies with subsection (1) at the time it is received at the office of the Registrar shall, for the purposes of this Act, be deemed to be made at that time.

(5) An application that does not comply with this section at the time it is received shall nevertheless be deemed to be made at that time provided that it is rectified within such time and in such manner as prescribed by the Registrar.

Priority resulting from earlier applications

14.(1) Where-

- (a) any breeder makes an application for a grant in the Republic of Singapore in respect of a variety in respect of which that person has earlier in a UPOV member made an equivalent application under the law of that UPOV member that has been accepted; and
- (b) that application for a grant in the Republic of Singapore is made not more than 12 months, the date of filing shall not be included in the later period, after that equivalent application or, if more than 1 equivalent application has been made, whether in more than one country, the earliest of them, was made; and
- (c) a claim for priority in relation to that equivalent application accompanies the application for a grant in the Republic of Singapore; and
- (d) within 3 months of the making of that application for a grant in the Republic of Singapore, a copy of any documents constituting that equivalent application, certified as correct by the authority to which it was made, is submitted to the Registrar;

Sections 21 and 22 shall apply to that application for a grant in the Republic of Singapore as if it had been made when that equivalent application was accepted.

(2) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the earlier application is rejected or withdrawn, a period of two years after such rejection or withdrawal, in which to furnish to the Registrar any necessary information, document or material required for the purpose of the examination under Section 17.

Publication of Application

15. If satisfied that an application complies with Section 13 the Registrar shall:

- (1) publish the application and the proposed denomination for the variety in the prescribed manner; and
- (2) advise the applicant accordingly.

### Objections to Registration

16.(1) Any person who considers that the Registrar should not approve a proposed denomination may, within 90 days of its publication in the prescribed manner, by notice in writing to the Registrar, object to the approval of that denomination.

(2) Any person who considers that an application has been made in respect of a variety that is not new may, within 90 days of its publication in the prescribed manner, by notice in writing to the Registrar, object to the making of a grant in respect of that variety.

### Examination of the Application

17.(1) The variety shall undergo a technical examination the purpose of which shall be:

- (a) to verify that the variety belongs to the stated botanical taxon,
- (b) to establish that the variety is distinct, uniform and stable, and
- (c) where the variety is found to meet the aforesaid requirements, to establish an official description of the variety.

(2) Subject to Section 18, within the prescribed period after making an application, the applicant shall give to the Registrar or such receiving authority as appointed by the Registrar:

- (a) in such detail as the Registrar may require for examination purposes, a description of
  - (i) the origin and breeding of the variety concerned;
  - (ii) the botanical features of the variety; and
  - (iii) at least one variety that is, to the knowledge of the breeder, most similar to the candidate variety and at least one characteristic which distinguishes that candidate variety from the most similar variety, and;
- (b) reproductive material of the plant variety.

(3) Within the prescribed period after being requested by the Registrar or such receiving authority as appointed by the Registrar to do so, the applicant shall furnish such further information, documents or reproductive material of the variety concerned and of any other similar varieties as required.

### Corresponding Examination

18. For the purpose of Section 17, the breeder may, instead of complying with the provisions in Section 17, lodge with the Registrar in such manner and within such time as prescribed, an examination report issued and certified by a prescribed examination authority.

Withdrawal or lapse of applications

19.(1) Any application may be withdrawn by the applicant at any time before a grant is made in respect of it.

(2) The withdrawal of an application shall not affect the liability of the application for any fees that may have become payable up to the date of that withdrawal.

(3) If any information or material required to be given to the Registrar under the provisions of this Act is not supplied within the prescribed period stipulated in a written notice issued by the Registrar, the application concerned shall lapse upon the expiration of that period.

Provisional protection

20.(1) Subject to subsection (2), on and after the day on which an application is published, the breeder shall have the same rights to take proceedings under this Act as if on that day a grant had been made to the breeder in respect of the variety concerned.

(2) The rights conferred by subsection (1) shall be treated as never having been conferred if the-

- (a) application concerned is withdrawn or lapses; or
- (b) the Registrar declines to make a grant in respect of that application.

Making of grants

21.(1) The Registrar shall-

- (a) subject to section 19, make a grant in respect of every application that is eligible for the making of a grant; and
- (b) decline to make a grant in respect of every application that is not eligible for the making of a grant.

(2) An application shall be treated as being eligible for the making of a grant if, and only if, the applicant has given the Registrar all the necessary information and reproductive material of the variety concerned and, if necessary, of other similar varieties requested by the Registrar, and the Registrar-

- (a) has approved for that variety a denomination proposed by the applicant;
- (b) is satisfied that that applicant is an breeder of that variety; and
- (c) is satisfied that that variety is new, distinct, stable, and uniform.

(3) The Registrar shall approve a proposed denomination for a variety if, and only if, in the opinion of the Registrar, it complies with the prescribed requirements.

## (4) For the purposes of subsection (2)(c)-

- (a) subject to subsection (5) and (6), a variety is new if at the date of filing of the application, harvested or reproductive material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeders for purposes of exploitation of the variety
  - (i) in the Republic of Singapore, earlier than 12 months before the date on which that application was made; and
  - (ii) outside the Republic of Singapore, earlier than 6 years before that date in the case of trees or vines, or earlier than 4 years before that date in any other case;
- (b) subject to paragraph (c) 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 the filing of the application;
- (c) The filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be;
- (d) a variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle;
- (e) a variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

## (5) For the purposes of subsection 4(a), where, to increase the stock of a variety or for tests of a variety, its owner makes arrangements under which-

- (a) reproductive material of that variety is to be sold to or used by some other person;
- (b) any unused portion of that reproductive material, and all the material of any sort produced from that reproductive material, is
  - (i) to be sold to that breeder, by that other person; or
  - (ii) otherwise to become the property of that breeder,

no account shall be taken of any sale under that arrangement of-

- (i) reproductive material of that variety by that breeder to that other person; or
- (ii) material of any sort of that variety by that other person to that owner.

(6) For the purposes of subsection (4)(a), a variety does not cease to be new by virtue only of the sale at any time of-

- (a) material that is not reproductive material; or
- (b) reproductive material disposed of as a by-product or a surplus product of the creation of the variety, provided that the said material is sold or disposed of without variety identification for purposes of consumption, and that, having been produced during the breeding, increase of stock, tests, or trials, of that variety, is not or no longer required for any of those activities.

Varieties bred or discovered and developed by 2 or more persons independently

22. Subject to section 14, where-

- (a) before a grant is made in respect of a variety, 2 or more applications in respect of that variety have been made;
- (b) the Registrar is satisfied that the 2 or more applicants concerned are persons who, or successors of persons who, bred or discovered and developed that variety independently; and
- (c) the Registrar is satisfied that, but for this section, each of those 2 or more applicants is or would be entitled to a grant in respect of that variety,

the Registrar shall make a grant to that 1 of those 2 or more applicants whose application in respect of that variety was made first.

Duration of grant

23.(1) The Registrar shall endorse on every grant the date of the grant.

(2) Subject to Sections 24 and 25 and subject to the payment of an annual renewal fee which is required to be paid as prescribed, the plant variety right subsists from the date of the grant and may be maintained for 25 calendar years from such date.

Grounds of invalidity of grants

24.(1) The Registrar shall declare invalid a granted plant variety right when it is established-

- (a) that the variety concerned was not, at the time of the application concerned, new and distinct within the meaning of Section 21;
- (b) that, where the grant of the plant variety right has been essentially based upon information and documents furnished by the applicant, the variety is not stable and uniform within the meaning of Section 21; or

(c) that the plant variety right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) An application for a declaration of invalidity of any plant variety may be made by any person to the Court.

#### Cancellation of grants

25.(1) Subject to subsection (2), the Registrar shall cancel a grant at any time during its term in the event that –

- (a) it is established that the conditions stipulated in Section 21 subsections 4(d) or 4(e) are no longer fulfilled;
- (b) the grantee, after being requested by the Registrar to allow the Registrar within a period specified by the Registrar to inspect the measures taken for the maintenance of that variety, or to provide documents or information in relation to that variety, has failed to do so;
- (c) in any particular year any annual grant fee in relation to the variety concerned which is required to be paid as prescribed, has not been paid; or
- (d) any stock of reproductive material in relation to the variety concerned which is required to be maintained as prescribed, has not been maintained.

(2) Before canceling a grant under subsection (1), the Registrar shall give the grantee written notice of intention to do so and, unless that grantee shows sufficient cause within 28 days of the date of the notice why that grant should not be cancelled, shall cancel that grant on the expiration of that period.

#### Renunciation of a plant variety right

26. The grantee may, in writing to the Registrar, renounce his rights.

#### Application of the Breeder's Right

27. A plant breeder's right applies to any plant variety which has been registered in accordance with the provisions of this Act, and include essentially derived varieties and certain other varieties as described in Section 34.

Scope of the Breeder's Right

28.(1) Subject to Sections 29 and 35, the following acts in respect of the propagating material of the protected variety shall require the authorization of the grantee-

- (a) production or reproduction (multiplication),
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,
- (d) selling or other marketing,
- (e) exporting,
- (f) importing,
- (g) stocking for any of the purpose mentioned in (a) to (f) above.

(2) The grantee may make his authorization subject to conditions and limitations.

(3) The right of a grantee is infringed by a person who, not being entitled by any license or transfer or otherwise, does in Singapore, or authorizes the doing in Singapore of, any act described in subsection (1).

(4) Subject to the exceptions to, and the exhaustion of, the breeder's right, the acts that require the authorization of the breeder, should also apply in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(5) Where there is imported into the Republic of Singapore any reproductive material of a protected variety, any propagation, sale, or use, of that material-

- (a) as reproductive material; and
- (b) without the authority of the grantee concerned, constitutes an infringement of the rights of that grantee under this Section.

(6) The importation into the Republic of Singapore-

- (a) from a country that is not a UPOV country of harvested material of a protected variety; or
- (b) from a UPOV country of harvested material of a protected variety in respect of which, under the law of that country, it is not possible to make the equivalent of a grant,

without the consent of the grantee is an infringement of the grantee's rights under this Act,

(7) The sale under the denomination of a protected variety of reproductive material of some other variety constitutes an infringement of the rights under this Section of the grantee of that protected variety.

(8) Subject to the provisions of this Act, the relief that a court may grant in an action for an infringement of a plant variety right includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.

(9) Where, in an action under this Section —

(a) an infringement of the plant variety right is established; and

(b) the court is satisfied that it is proper to do so, having regard to —

(i) the flagrancy of the infringement;

(ii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iii) all other relevant matters,

the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

(10) Where, in any proceedings under this Section for the infringement of the rights of a grantee, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this Section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(11) Nothing in subsection (10) affects any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this Act other than damages.

#### Exceptions to the breeder's rights

29.(1) Notwithstanding Section 28 the plant variety right shall not extend to

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental or research purposes; or

(c) acts done for the purposes of breeding other varieties, and except where the provisions of essentially derived varieties in Section 34 apply, acts that require the authorization of the grantee in respect of such other varieties.

(2) Notwithstanding Section 28 it shall not be an infringement of the rights of a grantee for any person to engage in farming activities for the purpose of safeguarding agricultural or horticultural production, to use for reproductive purposes on his own holdings, reproductive

material from a protected variety or a variety covered by Section 34(1)(a) or (b) where the genera or species within which the protected variety is classified has been prescribed for the purposes of this section as exempt from the rights of a grantee and where such reproductive material

- (i) has been legitimately obtained by purchase or otherwise with the authority of the grantee concerned; or
- (ii) having been so legitimately obtained has subsequently been propagated or grown on his own holdings.

#### Rights under license

30. Where a person has been authorized by license or otherwise under section 28(2) that person so authorized shall have the same rights as that grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the variety concerned affecting the rights given under that license and committed after it was granted.

#### Notice of protection

31.(1) Any person who

- (a) has acquired rights in respect of a variety under Section 20 or 21; and
- (b) sells any reproductive material of that variety, shall take all reasonable steps, by means of suitable labeling or other identification of that material, to inform the purchaser concerned of those rights.

(2) In determining, for the purposes of Section 28(10), whether or not any person had reasonable grounds for supposing that any action was an infringement of the rights of a grantee, a court may take into account the extent, if any, to which that grantee or, as the case requires, the licensee concerned had complied with subsection (1) in respect of any material in respect of which, or in respect of material propagated from which, that infringement occurred.

#### Licenses

32.(1) If the grantee of a plant variety right has granted another person a right to commercially exploit a registered plant variety (license) the licensee may transfer his right further only if there is an agreement to this effect.

(2) Where a plant variety right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the National Register of Plant Variety Rights. This provision shall apply accordingly to compulsory licenses.

(3) The grantee of the plant variety right shall, for the purposes of legal or administrative proceedings in relation to the plant variety, be deemed the person who has last been recorded in the National Register of Plant Variety Rights as provided in subsection (2).

(4) Where there is not a supply of reproduction material of a registered plant variety available on the market on reasonable terms and to the extent necessary for the national economy or otherwise from the point of view of the public interest and there is no acceptable reason for the lack of supply, a compulsory license may be granted to any person who wants to exploit the plant variety in Singapore. The compulsory license includes also a right to obtain reproduction material from the grantee of the plant variety right to the extent reasonable.

(5) A compulsory license may not be granted to persons other than those who can be presumed to be able to exploit the plant variety in an acceptable manner and in conformity with the license.

(6) A compulsory license does not prevent the grantee of the plant variety right from exploiting the plant variety himself or from granting a license in this respect. A compulsory license may be transferred to another person only together with the business activity in which it is exploited or was intended to be exploited.

(7) A compulsory license shall be granted by a Court which also determines the extent to which a plant variety may be exploited and decides the equitable remuneration and other conditions for the license.

#### Use of Plant Variety Denomination

33.(1) Any registered plant variety shall have a plant variety denomination. This denomination shall be such as to enable the distinction of that plant variety from other varieties.

(2) A plant variety denomination shall not be accepted where it

- (a) consists solely of figures, except where this is an established practice for designation of varieties;
- (b) is likely to mislead the public;
- (c) is contrary to laws or other regulations or public order or is likely to cause offence;
- (d) is likely to cause confusion with a variety denomination which has, for a variety of the same plant species or of a closely related species, been entered into, or has been proposed for entrance into, the National Register of Plant Variety Rights, any corresponding foreign Register or any other official list of varieties, or which is used as propagating material of such a variety;
- (e) is likely to cause confusion with a trademark, a name, a business or any other denomination for which any person other than the applicant enjoys protection and which would have constituted an obstacle against the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind; or

- (f) is likely to cause confusion with such a trademark for material of a plant variety or for goods of a similar kind for which the applicant enjoys protection.
- (3) On condition of reciprocity the Government may prescribe that a variety denomination which has been registered, or for which an application for registration has been filed, in a foreign State may be registered in Singapore notwithstanding the provisions in subsections 2(a) and (b), where there are no valid reasons for not doing so.
- (4) Any person who offer for sale or otherwise disposes of reproductive material of a registered plant variety shall use the registered variety denomination. This applies also where the term of protection has lapsed or the grant of the plant variety right has expired.
- (5) A registered denomination for a variety or a denomination which is confusingly similar to that denomination must not be used for any other variety of the same plant species or for a plant species which is closely related thereto or for material of such a variety as long as the registration of the denomination is in force or unless the denomination is still used for commercial exploitation of the variety.
- (6) No rights in the designation registered as a denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the grantee's right.
- (7) The plant variety denomination must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.
- (8) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

#### Essentially derived varieties and certain other varieties

34.(1) The acts that require the authorization of the breeder as provided in Section 28 shall also apply in relation to –

- a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
  - b) varieties which are not clearly distinguishable in accordance with the distinctness provision from the protected variety; and
  - c) varieties whose production requires the repeated use of the protected variety.
- (2) For the purposes of this Section a variety shall be treated as being an essentially derived variety of another variety if-
- a) it is predominantly derived from that other variety, or from a variety that is itself predominantly derived from that other variety;

- b) it retains the expression of the essential characteristics that result from the genotype or combination of genotypes of that other variety;
  - c) it is clearly distinguishable from that other variety; and
  - d) Except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of that other variety.
- (3) Essentially derived varieties may be obtained, for example, by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, back-crossing, or transformation by genetic engineering.

#### Exhaustion of the Breeder's Right

35.(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Section 34, which has been sold or otherwise marketed by the holder or with his consent in Singapore, or any material derived from the said material, unless such acts

- (a) Involve further propagation of the variety in question or
  - (b) Involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (1) For purposes of Section 35(1), 'material' means, in relation to a variety,
- (a) Reproductive material of any kind;
  - (b) Harvested material, including entire plants and parts of plants, and
  - (c) any product made directly from the harvested material.

### PART IV APPEALS

#### Rights of appeal

36.(1) Except as provided under subsection (2) or by rules made under this Act, there shall be no appeal from a decision of the Registrar for any matter under this Act or the rules made thereunder.

- (2) The following shall be subject to appeal to the Court:
- (a) decision of the Registrar to decline to make a grant of a plant variety right;

- (b) decision of the Registrar in the making of a grant of a plant variety right;
- (c) decision of the Registrar in the cancellation of a grant made under Section 25;
- (d) decision of the Registrar relating to a proposed denomination;
- (e) decision of the Registrar relating to a declaration of invalidity under Section 24.

## PART V OFFENCES

### Falsification of register

37. Any person who —

- (a) makes, or causes to be made, a false entry in the register;
- (b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or
- (c) produces or tenders or cause to be produced or tendered in evidence any thing referred to in paragraph (b);

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

### Falsely representing plant variety right as registered

38.(1) Any person who —

- (a) falsely represents that a plant variety is a protected variety; or
- (b) makes a false representation as to the reproductive material for which a plant variety right is registered;

knowing or having reason to believe that the representation is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

### Misuse of denomination on sale of reproductive material

39. Any person who willfully or negligently sells reproductive material otherwise than in compliance with the requirements of section 33 commits an offence and is liable on conviction to a fine not exceeding \$10-000.

PART VI MISCELLANEOUS

Forms

40. The Minister may prescribe the forms to be used for any purpose relating to the registration of a plant variety right or any other proceedings before the Registrar under this Act.

Fees

41.(1) There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed.

(2) The Minister may make rules as to the remission of fees in the prescribed circumstances.

(3) All fees collected shall be paid into the funds of the Register.

Hours of business and excluded days

42.(1) The Minister may make rules to specify the hour at which the Registry shall be taken to be closed on any day for purposes of the transaction by the public of business under this Act or of any class of such business, and may specify days as excluded days for any such purposes.

(2) Any business done under this Act on any day after the hour so specified in relation to business of that class, or on a day which is an excluded day in relation to business of that class, shall be taken to have been done on the next following day not being an excluded day.

(3) Where the time for doing anything under this Act expires on an excluded day, that time shall be extended to the next following day not being an excluded day.

Regulations

43.(1) The Minister for Law may make rules –

- (a) for the purposes of this Act authorizing the making of regulations with respect to any matter;
- (b) for prescribing anything authorized or required by this Act to be prescribed; and
- (c) generally for regulating practice and procedure under this Act.

(2) Without affecting the generality of subsection (1), regulations made under this section may make provision-

- (a) as to the manner of filing of applications and other documents and in respect of anything that is to accompany or be furnished together with any application;
- (b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings before the Registrar, and authorizing the rectification of irregularities of procedure;
- (c) providing for the testing and treatment of plant varieties to which applications relate;
- (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (e) as to the service of documents;
- (f) prescribing time limits for anything required to be done under this Act;
- (g) providing for the extension of any time limit so prescribed, or specified by the Registrar, whether or not it has already expired;
- (h) providing for the forfeiture of any priority given in respect of an application;
- (i) prescribing a form for appeals under Part IV;
- (j) authorizing the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents at the office of the Registrar, and of indexes to and abridgments to them;
- (k) prescribing the mode of publishing any matters required by this Act to be published;
- (l) prescribing the requirements to be met in selecting the denomination of varieties, and providing for the approval, rejection, or amendment of any denomination by the Registrar;
- (m) prescribing fees and charges for anything authorized by this Act.

[(3) No allowance, expense, fee or charge shall be prescribed under this section without the consent of the Minister for Finance.]

#### Schedule 1

#### PLANTS TO WHICH ACT APPLIES [Section 4]

[Fin de l'annexe II et du document/  
End of Annex II and of document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]