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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

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**Genève, 21 octobre 2004**

**EXAMEN DE LA CONFORMITE DU PROJET DE LOI DE  
LA REPUBLIQUE DE MAURICE RELATIF AU DROIT D'OBTENTEUR  
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Par lettre du 23 mars 2004, reçue le 15 avril 2004, Mme S. Hanoomanjee, secrétaire permanent au Ministère de l'agriculture, de la technologie alimentaire et des ressources naturelles de la République de Maurice (ci-après dénommée "Maurice"), a demandé l'examen du projet de loi sur le droit d'obtenteur (ci-après dénommé "projet de loi") du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). Le texte de cette lettre figure dans l'annexe I du présent document. L'annexe II contient le texte anglais du projet de loi communiqué par le Gouvernement mauricien.

2. Maurice n'a pas signé l'Acte de 1991. Conformément à l'article 34.2) de cet acte, elle doit donc déposer un instrument d'adhésion pour devenir Partie contractante sur la base de l'Acte de 1991. Conformément à l'article 34.3) de l'Acte de 1991, un instrument de ce type ne peut être déposé que si l'État en question a demandé l'avis du Conseil au sujet de la conformité de ses lois avec les dispositions de l'Acte de 1991 et si la décision du Conseil qui exprime cet avis est positive.

### Fondement de la protection des obtentions végétales à Maurice

3. À Maurice, la protection des obtentions végétales sera régie par la loi qui sera adoptée. On trouvera ci-après une analyse du projet de loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

#### Article premier de l'Acte de 1991 : Définitions

4. L'article 2 du projet de loi contient les définitions des termes pertinents employés dans celui-ci. En particulier, la définition de la "variété" est conforme à la définition figurant à l'article 1.vi) de l'Acte de 1991. La définition du terme "obtenteur" est aussi conforme à la définition figurant à l'article 1.iv) de l'Acte de 1991. La définition de l'expression "matériel de reproduction et de multiplication" utilisée dans le projet de loi a la même portée que dans l'Acte de 1991, car elle désigne pratiquement tous les types de matériel végétal utilisables pour la reproduction ou la multiplication.

#### Article 2 de l'Acte de 1991 : Obligation fondamentale des Parties contractantes

5. Le projet de loi prévoit l'octroi de droits sur les obtentions végétales; il satisfait donc à l'obligation fondamentale prévue dans l'article 2 de l'Acte de 1991 (voir à l'annexe II le mémorandum présentant et expliquant le projet de loi).

#### Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

6. L'article 11 du projet de loi prévoit que le ministre de l'agriculture publiera une liste des genres et espèces qui seront régis par la loi. Il convient de noter que, en vertu de l'article 3.2)i) de l'Acte de 1991, Maurice, lorsqu'elle déposera son instrument d'adhésion, devra indiquer au moins 15 genres ou espèces auxquels elle devra appliquer la loi.

7. L'article 3.2)ii) de l'Acte de 1991 indique en outre que, au plus tard à l'expiration d'un délai de 10 ans, Maurice devra appliquer la loi à tous les genres et espèces végétaux. Les obligations énoncées à l'article 3.2) de l'Acte de 1991 doivent être prises en considération dans l'application de l'article 11.3) du projet de loi qui prévoit la possibilité de supprimer un genre ou une espèce de la liste des genres et espèces. Cela ne serait possible que si le nombre minimum de 15 genres et espèces est respecté et aussi s'il est satisfait à l'obligation d'appliquer la loi à tous les genres et espèces, après l'expiration du délai de 10 ans.

#### Article 4 de l'Acte de 1991 : Traitement national

8. L'article 2 du projet de loi définit la notion de "Partie contractante". L'article 13 de ce texte qui a trait aux "personnes habilitées à déposer des demandes" englobe les nationaux d'une Partie contractante ou les personnes ayant leur domicile sur le territoire d'une Partie contractante, et l'article 25 du projet de loi, qui traite du droit de priorité, englobe aussi les personnes ayant déposé une demande dans une Partie contractante. Le projet de loi est donc conforme aux dispositions de l'article 4 de l'Acte de 1991 relatives au traitement national.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

9. Les articles 5 à 10 du projet de loi énoncent les conditions de la protection conformément aux obligations prévues dans l'Acte de 1991.

10. L'article 10 du projet de loi prévoit la protection des variétés connues grâce à la mise en œuvre d'un régime transitoire sur le plan de la nouveauté pour les variétés de création récente conformément à l'article 6.2) de l'Acte de 1991. Le texte devrait renvoyer à l'article 6 (nouveauté) au lieu de l'article 7.

Article 10 de l'Acte de 1991 : Dépôt de demandes

11. Les articles 12 à 15 et l'article 24 du projet de loi traitent du dépôt de demandes. Le projet de loi ne contient aucune disposition incompatible avec celles de l'article 10 de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

12. Les articles 25 et 26 du projet de loi contiennent des dispositions relatives au droit de priorité qui sont conformes à l'article 11 de l'Acte de 1991.

13. En ce qui concerne l'article 26.3) du projet de loi qui traite du cas dans lequel une demande antérieure a été retirée ou rejetée dans la Partie contractante où elle a été déposée, il est recommandé d'indiquer, dans le texte du règlement d'application de la loi ou de la loi elle-même, que, en pareil cas, le directeur de l'enregistrement devrait donner au déposant un délai suffisant, après le rejet ou le retrait de la demande, pour lui permettre de communiquer tout renseignement, document ou matériel nécessaire aux fins de l'examen.

Article 12 de l'Acte de 1991 : Examen de la demande

14. Les articles 24.2), 32 et 33 du projet de loi contiennent les dispositions essentielles de l'article 12 de l'Acte de 1991. L'article 42.1)a) du projet de loi prévoit que le ministre de l'agriculture édictera des règles relatives à la réalisation de l'examen des variétés.

Article 13 de l'Acte de 1991 : Protection provisoire

15. L'article 35 du projet de loi contient des dispositions relatives à la protection provisoire qui sont conformes à l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

16. L'article 16 du projet de loi reprend en substance l'article 14 de l'Acte de 1991.

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

17. L'article 17 du projet de loi contient des dispositions relatives aux exceptions au droit d'obtenteur qui sont conformes à l'article 15 de l'Acte de 1991.

18. L'article 17.2) du projet de loi contient l'exception facultative prévue à l'article 15.2) de l'Acte de 1991. Le projet de loi prescrit déjà que les dispositions réglementaires tendant à appliquer l'exception en question doivent être subordonnées à des limites raisonnables et que les intérêts légitimes de l'obtenteur doivent être sauvegardés. Compte tenu de la pratique suivie par d'autres États membres de l'UPOV, il est recommandé que le règlement d'application de la loi prévoit l'application de cette exception à certaines espèces ou en limite l'application en fonction de critères tels que la taille de l'exploitation de l'agriculteur ou le volume de la production.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

19. L'article 18 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui sont conformes à celles de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

20. L'article 41 du projet de loi contient des dispositions relatives aux licences obligatoires qui reprennent les éléments essentiels de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

21. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

22. L'article 20 du projet de loi contient des dispositions relatives à la durée du droit d'obtenteur qui sont conformes à l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

23. Les articles 28 (demande et procédure concernant la dénomination d'une variété), 29 (utilisation de la dénomination de la variété), 30 (droits antérieurs de tiers), 31 (radiation d'une dénomination variétale enregistrée), 34.2) (octroi et refus du droit d'obtenteur), 36.2d) (opposition), 39 (non-respect ou utilisation abusive de la dénomination variétale), 42.a) (réalisation de l'examen des dénominations variétales) et 42.f) (promulgation de règles supplémentaires en vue d'interpréter les dispositions sur les dénominations variétales) du projet de loi contiennent des dispositions sur les dénominations variétales qui reprennent les éléments essentiels de l'article 20 de l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

24. L'article 22 du projet de loi contient des dispositions relatives à la nullité qui reprennent les dispositions de l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

25. L'article 23 du projet de loi contient des dispositions sur la déchéance de l'obtenteur qui reprennent les dispositions de l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

26. Le projet de loi prévoit les recours juridiques appropriés pour l'application effective du droit d'obtenteur dans ses articles 38 (procédure civile), 39 (non-respect ou utilisation abusive de la dénomination variétale) et 44 (atteintes), ce qui satisfait à l'obligation découlant de l'article 30.1)i) de l'Acte de 1991.

27. L'article 3 du projet de loi prévoit la constitution par le ministre, au sein du ministère, d'un service du droit d'obtenteur responsable de toutes les questions relatives à l'administration du droit d'obtenteur et la désignation d'un directeur de l'enregistrement qui assumera comme il se doit les fonctions et les responsabilités du service en question. L'article 34.1) du projet de loi prévoit que le directeur de l'enregistrement est responsable de l'octroi des droits d'obtenteur. Par conséquent, le projet de loi satisfait à l'obligation énoncée dans l'article 30.1)ii) de l'Acte de 1991.

28. En ce qui concerne l'obligation d'assurer l'information du public par la publication périodique de renseignements sur les demandes de droit d'obtenteur et les droits d'obtenteur délivrés ainsi que les dénominations proposées et approuvées, le projet de loi contient, à l'article 34.1), des dispositions relatives à la publication des décisions concernant l'octroi de droits d'obtenteur et, à l'article 28.5), des dispositions relatives à la publication des dénominations variétales proposées, enregistrées ou radiées.

29. Il semble que le projet de loi satisfasse à l'obligation de publier les demandes de droit d'obtenteur étant donné qu'il y est question à l'article 24.4) de la publication, dans une gazette officielle, des demandes rejetées ou retirées; par ailleurs, l'article 35 relatif à la protection provisoire fait état du délai entre la publication de la demande d'octroi d'un droit d'obtenteur et l'octroi effectif de ce droit et l'article 36 traite des oppositions relatives à des points figurant dans la demande. D'une façon générale, les procédures d'opposition se déroulent après la publication de la demande. Par souci de clarté, il est recommandé d'ajouter dans l'article 24.4) que la demande devra aussi être publiée dans la gazette officielle ou d'apporter cette précision dans le règlement d'application. Le projet de loi satisfait donc aux obligations énoncées dans l'article 30.1)iii) de l'Acte de 1991.

*Conclusion générale*

30. De l'avis du Bureau de l'Union, le projet de loi incorpore en substance l'Acte de 1991 et permet à Maurice de "donner effet" aux dispositions de cet acte, comme l'exige l'article 30.2) de ce dernier.

31. *Le Conseil est invité à*

a) *prendre note des renseignements ci-dessus;*

b) *prendre, quant à la conformité du projet de loi de la République de Maurice sur le droit d'obtenteur avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, une décision positive, conformément à l'article 34.3) de cet acte, qui permette à la République de Maurice de déposer son instrument d'adhésion une fois que le projet de loi aura été adopté et aura force de loi;*

c) *autoriser le secrétaire général à informer le Gouvernement mauricien de cette décision.*

[L'annexe I suit]

ANNEXE I

**Traduction d'une lettre datée du 23 mars 2004**

**adressée par :** Ministère de l'agriculture, de la technologie alimentaire  
et des ressources naturelles, Port Louis (Maurice)

**à :** Secrétaire général  
Conseil de l'Union internationale pour la protection  
des obtentions végétales (UPOV)  
Genève  
Suisse

**Objet :** Projet de loi sur le droit d'obtenteur

Le Gouvernement mauricien, par l'intermédiaire du ministère susmentionné, va prochainement proposer l'adoption d'un projet de loi sur le droit d'obtenteur.

2. Conformément aux dispositions de l'article 34.3) de l'Acte de 1991 de la Convention UPOV, je vous saurais gré de bien vouloir examiner ledit projet de loi et de nous faire part de votre avis quant à la conformité de ce texte avec les dispositions de la Convention UPOV.

Le texte du projet de loi est joint en annexe.

Veillez agréer, Monsieur, l'assurance de ma considération distinguée.

(Signé : F. Juhoor)  
pour le Secrétaire permanent

[L'annexe II suit]

ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

**THE PLANT BREEDER'S RIGHT BILL**

(No. .... of 2003)

**Explanatory Memorandum**

The object of this Bill is to -

- (1) To provide for the protection of plant breeder's right on new varieties in the Republic of Mauritius;
- (2) More specifically to provide for
  - (i) the legal framework and the mechanism to protect the rights of plant breeders,
  - (ii) the economic and the personal non-economic relations arising out of the creation, use and legal protection of plant varieties,
  - (iii) to encourage the development of new varieties of plants; and
  - (iv) to give effect to the proper implementation of governmental policies and enforcement provisions necessary therefor.

..... 2003

**P.K. Jugnauth**  
Minister of Agriculture,  
Food Technology and Natural Resources

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**THE PLANT BREEDER'S RIGHT BILL**

(No. .... of 2003)

**ARRANGEMENT OF CLAUSES**

*Clause*

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THE BREEDER'S RIGHT

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## **A BILL**

To .....

ENACTED by the Parliament of the Republic of Mauritius, as follows

## **PRELIMINARY**

### **1. Short title**

This Act may be cited as the Plant Breeder's Right Act 2003.

### **2. Interpretation**

In this Act –

**Authority of a Contracting Party** means the Authority entrusted with the grant of Plant Breeder's Right;

**Breeder** means

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be;

**Competent Authority** means the Permanent Secretary of the Ministry

**Contracting Party** means a State other than the Republic of Mauritius or an intergovernmental organization party to any of the Acts of the International Convention for the Protection of New Varieties of Plants (UPOV Convention);

**Convention** means the International Convention for the protection of new varieties of plants.

**Member State** means a State member of the World Trade Organization, which came into existence on 1.1.1995

**“National Catalogue of Varieties”** means the list of varieties recommended for production on the whole territory of Mauritius or in certain regions thereof.

**Plant Breeder's Right** means the right of the plant breeder provided under this Act;

**Propagating material** in relation to any plant variety means its propagules, namely, any plant or plants in whole or component or part thereof, including seed, vegetative part, tissue culture or cell culture, and this includes an intended seed which is capable of or suitable for regeneration into a plant;

**Register** means the register of plant breeder's rights in which the matters specified in subsection 3(4) are required to be recorded;

**Registrar** means the Registrar of the Office of Plant Breeder's Right;

**Third party** means someone, other than the holders of the plant breeder's right, who benefits from the grant of an exclusive license to exploit the variety;

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

defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

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

considered as a unit with regard to its suitability for being propagated unchanged;

## **ADMINISTRATION**

### **3. Administration of Plant Breeder's Right**

(1) For the purposes of this Act, the Minister shall designate and authorise in writing an Office of Plant Breeder's Right in the Ministry to be responsible for all matters concerning the administration of Plant Breeder's Right.

(2) The Minister may give such directions of a general character, not inconsistent with the Plant Breeder's Right Act, for

(a) the proper discharge of functions of the Office, and

(b) the implementation of such policies as may be determined.

(3) There shall be posted to the Office, A Registrar and other such officers as may be necessary for the proper discharge of the functions and duties of the office.

(4) The Registrar shall maintain a register in the Office, to be known as the Register of Plant Breeders' Rights, in which the following shall be entered:

(a) any grant of a breeder's right;

(b) any change in the holder of that right;

(c) any declaration of nullity or cancellation;

(d) any compulsory license; and

(e) any license contract at the request of one of the parties to such contract;

(f) any other particulars related to plant breeder's right.

### **4. Examination of Register**

A person who has paid the prescribed fee shall be entitled, during normal business hours, to examine the Register kept in accordance with subsection 3(4), and to make copies of or extracts from the information contained therein.

## **THE BREEDER'S RIGHT**

### **5. Criteria for Protection**

Subject to this Section and any other formal requirements of this Act, a right to be known as a breeder's right shall be granted where the variety is:

(a) new;

(b) distinct;

- (c) uniform;
- (d) stable; and
- (e) given a variety denomination which is acceptable for registration in accordance with section 28.

## **6. Novelty**

A variety shall be considered new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety before the filing date:

- (a) in the Republic of Mauritius for longer than one year before the date on which protection is applied for under this Act; and
- (b) outside the Republic of Mauritius, for longer than six years in the case of trees or vines or longer than four years in the case of varieties of other genera or species.

## **7. Distinctness**

- (1) A variety shall be considered 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 or where relevant, at the priority date.
- (2) In particular, the filing, in any State, of an application for a breeder's right, or for entry in a catalogue of varieties admitted to trade, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the grant of the breeder's right or the entry in the catalogue, as the case may be.

## **8. Uniformity**

A variety shall be considered 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.

## **9. Stability**

A variety shall be considered 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 such cycle.

## **10. Protection of Known Varieties**

Notwithstanding Section 6, a breeder's right may also be granted for a variety that is no longer new on the date of entry into force of this Act in respect of the relevant species, subject to the following conditions:

- (a) the application shall be filed within the year following the said date; and
- (b) the variety must
  - (i) have been entered in the National Catalogue of Varieties or in a register of varieties held by a professional organization recognized by the Office, for the purposes of this Section,
  - (ii) have been the subject of a breeder's right in a Contracting Party, or be the subject of an application in a Contracting Party, provided that the application subsequently leads to the granting of the breeder's right, or
  - (iii) be the subject of proof acceptable to the Office concerning the date on which the variety ceased to be new under the provisions of Section 7.
- (2) The duration of the breeder's right granted under this Section shall be calculated from the date of the entry referred to in paragraph (1)(b)(i), above, the date of the grant of the breeder's right referred to in paragraph (1)(b)(ii), above, or the date upon which the variety ceased to be new referred to in paragraph (1)(b)(iii), above. Where relevant, the earliest of those dates shall be used.
- (3) Where a breeder's right is granted under this Section, the holder shall be under the obligation to grant licenses on reasonable terms in order to allow the continuation of any exploitation initiated in good faith by a third party before the said filing.

## **ENTITLEMENT TO PROTECTION**

### **11. List of genera and species to which this Act applies**

- (1) The Minister, may by order, subject to subsection (2), publish a list of those genera and species to which this Act applies and may also amend such list by adding new genera or species to it, modifying the names of the genera or species already published or by deleting such names, with effect from any prospective date specified in the Order.
- (2) In compiling the list under Subsection (1), the Minister may exclude certain genera or species.
- (3) Where a genus or species is deleted from the list of genera and species to which this Act applies with effect from a given date, the deletion shall not affect the rights of the applicants who have filed applications for the protection of varieties of that genus or species before that date.

### **12. Right to apply for protection**

The breeder of a variety or his successor in title shall be entitled to apply for protection under this Act.

### **13. Persons entitled to file applications**

(1) An application for the grant of a breeder's right may be filed by the breeder of a variety who is a national or resident of:

- (a) the Republic of Mauritius;
- (b) a Contracting Party; or
- (c) any State which, not being a Contracting Party, grants reciprocity of treatment to the Republic of Mauritius.

(2) For the purposes of subsection (1)(b), "national" means, where the Contracting Party is a State, a national of that State, and where the Contracting Party is an intergovernmental Organization, the nationals of the States that are members of that Organization.

(3) An agent shall be given the power to act on the breeder's behalf before the office and in legal proceedings relating to the plant breeder's right.

### **14. Joint applicants and joint holders**

Where there are two or more applicants for the grant of a plant breeder's right or where there are two or more holders of such a right in any protected variety, in the absence of any agreement to the contrary, each applicant or holder may separately transfer his shares, or exploit the variety as the case may be, or subject to this Act, exclude others from exploiting it.

## **ASSIGNMENT AND TRANSFER OF THE APPLICATION OR OF THE BREEDER'S RIGHT**

### **15. Assignment and transfer**

(1) An application for the grant of a breeder's right or the breeder's right may be assigned or otherwise transferred.

(2) The assignment or transfer shall be in writing, shall be signed by the parties and shall be registered in the Register.

## **SCOPE AND DURATION OF THE BREEDER'S RIGHT**

### **16. Scope of the breeder's right**

(1)(a) Subject to Sections 17 and 18, the following acts in respect of the propagating material of a protected variety shall require the authorization of the holder of the breeder's right:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;

- (iv) selling or other marketing;
  - (v) exporting;
  - (vi) importing; and
  - (vii) stocking for any of the purposes referred to in paragraphs (i) to (vi).
- (b) The holder may make his authorization subject to conditions and limitations.
- (2) Subject to Sections 17 and 18, the acts referred to in paragraphs (i) to (vii) of subsection (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material.
- (3)(a) The provisions of subsections (1) and (2) shall also apply in relation to varieties:
- (i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
  - (ii) which are not clearly distinguishable in accordance with Section 7 from the protected variety; and
  - (iii) whose production requires the repeated use of the protected variety.
- (b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when:
- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotypes or combination of genotypes of the initial variety;
  - (ii) it is clearly distinguishable from the initial variety; and
  - (iii) 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 the initial variety.
- (c) 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, backcrossing, or transformation by genetic engineering.



## **17. Exceptions to the breeder's right**

- (1) The breeder's right shall not extend to:
  - (a) acts done privately and for non – commercial purposes;
  - (b) acts done for experimental purposes; and
  - (c) acts done for the purpose of breeding other varieties, and, except where the provisions of subsection 16(3) apply, acts referred to in subsections 16(1) and (2) in respect of such other varieties.
- (2) The Minister may, within reasonable limits and subject to safeguarding the legitimate interests of the breeder, make regulations restricting the breeder's right in relation to any variety in order to permit farmers to make personal use of the variety on their own holdings for propagating purposes.

## **18. Exhaustion of the breeder's right**

- (1) A 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 16(3), which has been sold or otherwise marketed by the breeder or with his consent in the Republic of Mauritius, 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.

## **19. Maintenance of the protected variety**

- (1) The holder of a breeder's right shall, throughout the period for which the right is exercisable, be under an obligation to make available, at the request of the Registrar, reasonable samples of the protected variety capable of producing plants which correspond to the characteristics defined for the variety when the right was granted.
- (2) The holder of a breeder's right shall also provide the Registrar with all such information and assistance as the Registrar may request for the purpose of ensuring that the holder of the breeder's right is fulfilling his obligations under subsection (1), including facilities for the inspection by or on behalf of the Registrar of the measures taken for the maintenance of the variety.

## **20. Duration of protection**

- (1) Subject to subsection (2), the breeder's right in respect of varieties of trees and vines, shall expire twenty five years after the grant of the breeder's right.

(2) Protection for all other varieties of genera or species shall expire twenty years after the grant thereof.

## **TERMINATION, NULLITY AND CANCELLATION**

### **21. Termination of Protection**

(1) The breeder's right shall terminate before the term expires when the holder of that right renounces it by written declaration addressed to the Registrar.

(2) The date of termination shall be that specified in the declaration or, if none is specified, the date on which the declaration is received by the Registrar.

### **22. Nullity**

(1) The Registrar shall declare a breeder's right granted null and void when it is established:

(i) that the conditions laid down in Sections 6 or 7 were not complied with at the time of the grant of the breeder's right;

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections 8 or 9 were not complied with at the time of the grant of the breeder's right; or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(iv) The request for the annulment of the plant breeder's right shall be addressed to the office at the prescribed fee.

### **23. Cancellation**

(1)(a) The Registrar shall cancel the breeder's right granted by him if it is established that the conditions laid down in Sections 8 or 9 are no longer fulfilled, and

(b) furthermore, the Registrar may cancel the breeder's right, if the breeder fails to comply with the following within a reasonable period determined by the Registrar:

(i) the breeder does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;

(ii) the breeder fails to pay such fees as may be payable to keep his right in force; or

(iii) breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in subsection 23 (1).

## APPLICATIONS

### **24. Application**

- (1) An applicant for the protection of a variety shall file an application with the Registrar in the prescribed form.
- (2) At the request of the Registrar, the applicant shall, on the date and at the place fixed by the Registrar, submit for the purpose of the examination any necessary information, document or material determined by the Registrar. The application form shall be accompanied by the technical questionnaire in the prescribed form, for the relevant genus or species, which shall be completed by the applicant to the best of his knowledge.
- (3) The Registrar shall accord, as the filing date of the application, the date of receipt of the application duly filed.
- (4) The refusal or withdrawal of an application shall be published in a government gazette.

### **25. Priority**

- (1) The applicant may avail himself of the priority of an earlier application (hereinafter referred to as the “right of priority”) that has been duly filed for the same variety with the Authority of a Contracting Party.
- (2) Where the application filed with the Registrar is preceded by several such applications, priority may be based only on the earliest application.
- (3) The right of priority shall be expressly claimed in the application filed with the Registrar and may only be claimed within a period of twelve months from the date of filing of the earliest application, but the day of filing shall not be included in the said period.

### **26. Documents and material to be furnished for priority**

- (1) In order to avail himself of the right of priority, the applicant shall submit to the Registrar within three months of filing the application in the Republic of Mauritius, a copy of the documents that constitute the earlier application, certified to be a true copy by the Authority with which that application was filed.
- (2) The effect of the right of priority shall be that, with respect to the conditions of protection attached to the variety, the application shall be deemed to have been filed at the date of the filing of the earlier application.
- (3) The applicant may declare that he will submit the information, document or material referred to in Section 24(2) required by the Registrar at a later date, but no later than two years after the end of the priority period unless the earlier application referred to in subsection (1) has been withdrawn or refused in the Contracting Party in which it was filed.
- (4) If any of the provisions of this Section are not complied with, the application shall be dealt with as if no priority has been claimed.

## **27. Fees**

The Registrar perceives fees for the execution of his duties according to this Act and annual fees will be due at the beginning of each year of the period of protection.

## **VARIETY DENOMINATION**

### **28. Application and procedure for variety denomination**

(1) The applicant for a breeder's right shall propose a variety denomination in accordance with this Section.

(2) No person shall use as a variety denomination a designation which:

- (a) does not enable the variety to be identified;
- (b) consists solely of figures except where this is an established practice for designating varieties;
- (c) is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder;
- (d) is identical to a variety denomination which in the Republic of Mauritius or in another Contracting Party designates an existing variety of the same plant species or of a closely related species;
- (e) by a reason of a prior right, the use of the variety denomination is forbidden.

(3) Where a variety is already protected by a Contracting Party or where an application for the protection of the same variety is filed in such Contracting Party, only the variety denomination which has been proposed or registered in that other Contracting Party may be proposed and registered, and the Registrar shall not register any other designation as a denomination for the variety unless the Registrar considers the denomination unsuitable within the territory of the Republic of Mauritius.

(4) Where the variety denomination used in the other Contracting Party is inappropriate for linguistic reasons, or for any reason specified in subsection (2), the Registrar may request the applicant to propose another variety denomination.

(5) The Registrar shall publish in a periodical the variety denominations which have been proposed, or registered or cancelled.

### **29. Use of variety denomination**

(1) Any person who offers for sale or markets the protected material of a variety protected in the Republic of Mauritius shall, even after the expiration of the protection, use the registered variety denomination only in so far as prior rights do not prevent such use.

(2) When a protected variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination provided that the denomination is easily recognizable.

(3) The holder of a breeder's right may not invoke his rights (trademark, trade name or other right) against the legitimate use of his variety denomination in the offering for sale or marketing of the variety by another person, even after the expiration of the protection of the breeder's right.

### **30. Prior rights of third parties**

Prior rights of third parties in a designation shall not be affected by this Act.

### **31. Cancellation of registered variety denomination**

(1) The Registrar shall cancel any registered variety denomination if the denomination should not have been registered or if, subsequent to registration, facts become known which would have justified the rejection of the denomination.

(2) Where he cancels the variety denomination, the Registrar shall request the holder of a breeder's right to submit, within the time specified by him, a proposal for a new variety denomination, and shall, if the proposal is acceptable, register it.

## **EXAMINATION OF THE APPLICATION**

### **32. Examination of the application**

The Registrar shall examine the variety to determine whether it fulfills the requirements of novelty, distinctness, uniformity and stability, and where those requirements are not fulfilled, the Registrar shall reject the application.

### **33. Examination of novelty, distinctness, etc.**

(1) The Registrar for the purposes of the examination may enter into arrangements with relevant institutions or persons both in or outside the Republic of Mauritius to carry out scientific tests to determine the distinctness, uniformity or stability of the variety or may use the results of such tests that have already been carried out.

(2) The Registrar shall invite the applicant, on a date fixed by him before the beginning of each year or testing period to pay the prescribed fee, for that year or testing period and failure to do so, shall cause the application to be rejected.

### **34. Grant and refusal of the breeder's right**

(1) Where the examination shows that the application satisfies the requirements of novelty, distinctness, uniformity and stability and that the proposed denomination of the variety can be registered, the Registrar shall grant a breeder's right and publish that decision in a periodical.

(2) Where the examination shows that the proposed denomination of the variety cannot be registered, the Registrar shall request the applicant to submit another denomination within a period fixed by him, failing which he shall reject the application.

### **35. Provisional protection**

When a breeder's right is granted, the holder of the right shall be entitled to equitable compensation for acts specified in Section 16 done during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

### **36. Opposition**

(1) The opposition procedure should be available to any interested persons as prescribed in the Regulations on the payment of the prescribed fee

(2) The opposition shall be based on any of the following grounds, namely that:

- (a) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled;
- (b) the variety is not new or distinct at the filing date, or priority date if applicable;
- (c) the variety is neither uniform nor stable;
- (d) the variety denomination that the Registrar intends to register is unsuitable.

## **APPEALS AND ENFORCEMENT PROCEEDINGS**

### **37. Appeals**

1. Any person who feels aggrieved by any decision or action taken by the Registrar may within 30 days and upon the payment of the prescribed fee, appeal against such decision or action to the Minister.

2. The Minister shall appoint an appeal board comprising of at least three persons with expert knowledge in the field to give its recommendation.

3.(a) The Minister shall designate one of the members as chairman of the board.

(b) A person appointed under sub section (2) shall recuse himself as a member of the appeal board if he has any direct or indirect interest in the subject matter of the appeal.

The recommendation of an appeal board, together with the reasons thereof, shall be communicated to the Minister, who shall make his decision on the appeal.

### **38. Civil proceedings**

(1) The plaintiff in proceedings for infringement shall be entitled to relief by way of:

(a) a preliminary injunction and/or civil action to prohibit the committing or continuation of committing, an infringement of the breeder's right;

(b) forfeiture, seizure or destruction of material which has been produced in contravention of the breeder's right; and

(c) damages taking into account the pecuniary and non-pecuniary loss suffered by the holder of the breeder's right.

### **39. Non – compliance or misuse of variety denomination**

(1) Any person who willfully offers for sale or markets material of a variety protected in the Republic of Mauritius without using the registered variety denomination commits an offence and is liable to a fine.

(2) Any person who willfully makes use of the registered variety denomination of a variety protected in the Republic of Mauritius for another variety of the same plant species or closely related species commits an offence and is liable to a fine.

## **LICENSES**

### **40. License contracts**

(1) The applicant for or the holder of a breeder's right may grant, to any person, an exclusive or a non-exclusive license relating to all or any of the rights provided for under this Act.

(2) A license contract shall be registered at the Office on request and on payment of the prescribed fee.

### **41. Compulsory licenses**

(1) Any interested party may apply to the Registrar for the grant of a compulsory license on the payment of the prescribed fee in respect of any breeder's right on the ground that it is necessary to safeguard the public interest in the Republic of Mauritius.

(2) Any person to whom a license is granted under this Section shall pay the holder of the breeder's right an equitable remuneration.

### **42. Regulations**

(1) The Minister may, in addition to the following matters, make regulations for any matter required to be prescribed by this Act, or for giving effect to the purposes of this Act:

(a) the procedure of the Office in respect of the receiving and handling of applications, the conduct of the examination of varieties and of variety denominations, the handling of oppositions, and the refusal of applications of the grant of breeder's rights;

(b) the nullity and cancellation of breeder's rights, the transfer of an application, or the breeder's right, to the entitled person;

- (c) the maintenance and conservation of samples, the cooperation with germplasm banks or other institutions for the conservation of genetic material;
- (d) the establishment, administration and maintenance of the Register and the receiving and filing of any documents concerning breeder's rights;
- (e) the amounts and the collection of fees;
- (f) the making of additional rules to interpret the provisions of variety denominations;
- (g) the list of genera or species required to be published under this Act;
- (h) any other matters relating to the administration of this Act.

## MISCELLANEOUS

### **43. Measures for regulating standards for the production, certification and marketing of seed or other propagating material of varieties**

- (1) Notwithstanding the provisions of the section 42 the Minister may make Regulations and notify standards for the production, certification and marketing of seed or other propagating material of varieties within the territorial limits of the Republic of Mauritius or for their importation or exportation.
- (2) The measures provided in subsection (1) to regulate the standards for the production, certification and marketing of seed or other propagating material of varieties shall not affect the plant breeder's right granted in accordance with this Act.

### **44. Powers of the Minister to make regulations**

- (1) The Minister may make such regulations as may be necessary for the purpose of this Act.
- (2) Any regulation and rules made under this Act may provide for
  - (a) Forms for application and for other purposes of the Act;
  - (b) Fees payable in terms of this Act;
  - (c) Institutional arrangements, entitlement application, right of holder, trade duration, transfer of ownership, licensing, lapse and organisational procedure for the implementation of the breeders' rights;
  - (d) The manner in which any notice or order shall be or may be served;
  - (e) Regulations required or permitted for matters related to section 42.
- (3) Generally any matter which the Minister may deem necessary or expedient to prescribe in order to further the objects of this Act.



**45. Offence**

(1) Any person who –

(a) for the purposes of this Act makes any declaration or gives or makes use of any certificate which is false in a material particular;

(b) otherwise contravenes any other provision of this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Notwithstanding subsection (1), where the offence committed is an infringement of a breeder's rights, the fine shall not exceed 25,000 rupees and a term of imprisonment not exceeding 5 years.

**46. Commencement**

This Act shall come into force on a date to be fixed by Proclamation.

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End of Annex II and of document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]