

PLANT VARIETY PROTECTION

GAZETTE AND NEWSLETTER

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UPOV

INTERNATIONAL UNION
FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

PLANT VARIETY PROTECTION

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants, which was adopted in 1961.

UPOV Mission Statement

To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only – although some items are quadrilingual (English, French, German and Spanish) – at irregular intervals. Requests for addition to the publication notification list may be placed with:

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Native Finger Lime *Citrus australasica* 'Judy's Everbearing'

C. australasica has the common name Native Finger Lime and is endemic to rainforests on the east coast of Australia. *C. Australasica* 'Judy's Everbearing' is a tall shrub or small tree with dense foliage and as its name suggests, bears fruit throughout the year. It shows resistance to most citrus pests and diseases, is non susceptible to fruit fly and is moderately frost hardy. The cylindrical-fusiform or 'finger-shaped' fruit ranges from 4 to 8 cm in length and has a high Vitamin C content. It is used fresh as a garnish and in seafood and Asian dishes, salads, desserts, marmalades, sauces, jellies, pastries and beverages.

Image by Renee Viola, provided by the Australian Cultivar Registration Authority.

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GAZETTE

NEW MEMBERS OF UPOV

DOMINICAN REPUBLIC*

On May 16, 2007, the Government of the Dominican Republic deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for the Dominican Republic one month after the deposit of its instrument of accession, i.e. on June 16, 2007. The Dominican Republic became the sixty-fourth member of the Union.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to all genera and species.

TURKEY**

On October 18, 2007, the Government of Turkey deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for Turkey one month after the deposit of its instrument of accession, i.e. on November 18, 2007. Turkey became the sixty-fifth member of the Union.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to the genera and species listed below:

ENGLISH	LATIN NAME
Bread wheat	<i>Triticum aestivum</i> L.
Durum wheat	<i>Triticum durum</i> Desf.
Barley	<i>Hordeum vulgare</i> L.
Tricale	<i>Triticosecale</i>
Oat	<i>Avena sativa</i> L.
Maize	<i>Zea mays</i> L.
Rice	<i>Oryza sativa</i> L.
Sunflower	<i>Helianthus annuus</i> L.

* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council of UPOV to advise it in respect of the conformity of its laws with the provisions of the UPOV Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited. The positive advice of the Council of UPOV concerning the Dominican Republic is contained in paragraph 6 of document C/40/19 Rev. based on document C/40/14 (http://www.upov.int/en/documents/c/40/c_40_19_rev.pdf).

** Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, the positive advice of the Council of UPOV concerning Turkey is contained in paragraph 13 of document C/38/16 based on document C/38/14 (http://www.upov.int/export/sites/upov/en/documents/c/38/c_38_14.pdf).

ENGLISH	LATIN NAME
Soya bean	<i>Glycine max. (L.) Merr.</i>
Cotton	<i>Gossypium spp.</i>
Potato	<i>Solanum tuberosum L.</i>
Sugar beet	<i>Beta vulgaris var. altissima Döll.</i>
Opium/seed poppy	<i>Papaver somniferum L.</i>
Alfalfa/Lucerne	<i>Medicago sativa L.</i>
Common vetch	<i>Vicia sativa L.</i>
Chick pea	<i>Cicer arietinum L.</i>
Lentil	<i>Lens culinaris Medik.</i>
French bean	<i>Phaseolus vulgaris L.</i>
Pea	<i>Pisum sativum L.</i>
Globe artichoke	<i>Cynara scolymus</i>
Onion	<i>Allium cepa L.</i>
Eggplant	<i>Solanum melongona L.</i>
Tomato	<i>Lycopersicon lycopersicum L.</i>
Cucumber	<i>Cucumis sativus L.</i>
Pepper	<i>Capsicum annum L.</i>
Lettuce	<i>Lactuca sativa L.</i>
Celery	<i>Apium graveolens L.</i>
Rose	<i>Rosa L.</i>
Carnation	<i>Dianthus L.</i>
Gerbera	<i>Gerbera Cass.</i>
Alstromeria	<i>Alstromeria L.</i>
Apple	<i>Malus Mill.</i>
Apricot	<i>Prunus armeniaca L.</i>
Cherry – Sour cherry	<i>Prunus avium-cerasus L.</i>
Peach – Necatarine	<i>Prunus persica L. – P.persica var. nucipersica</i>
Olive	<i>Olea europaea L.</i>
Pistachio	<i>Pistacia vera L.</i>
Hazelnut	<i>Corylus avellana L. Corylus maxima Mill.</i>
Lemon	<i>Citrus limon (L.) Burm.</i>
Orange	<i>Citrus sinensis (L.) Osbeck</i>
Strawberry	<i>Fragaria vesca L.</i>
Fig	<i>Ficus carica L.</i>
Avocado	<i>Persea americana Mill.</i>
Grapevine	<i>Vitis L.</i>
Safflower	<i>Carthamus tinctorius</i>
Groundnut	<i>Arachis hypogea L.</i>
Sesame	<i>Sesamum indicum L.</i>
Paeony	<i>Paeonia L.</i>
Gypsophila	<i>Gypsophila L.</i>
Anthurium	<i>Anthurium Schott.</i>
Chrysanthemum	<i>Chrysanthemum L.</i>
Iris	<i>Iris L.</i>
Pear	<i>Pyrus communis L.</i>
Quince	<i>Cydonia Mill.</i>
Almond	<i>Prunus amygdalus Batsch</i>
Walnut	<i>Juglans regia L.</i>
Plum	<i>Prunus domestica L.</i>
Chestnut	<i>Castanea sativa Mill.</i>
Pomegranate	<i>Punica granatum L.</i>
Persimmon	<i>Diospyros kaki L.</i>
Garlic	<i>Allium sativum L.</i>

RATIFICATION OF THE 1991 ACT OF THE UPOV CONVENTION

SPAIN

On June 18, 2007, the Government of Spain deposited its instrument of ratification of the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

Spain has been a member of UPOV since May 18, 1980.

The 1991 Act entered into force for Spain on July 18, 2007, one month after the deposit of its instrument of ratification.

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

BELARUS

On October 23, 2007, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and administered by the "State Inspection for Testing and Protection of Plant Varieties of the Republic of Belarus".

ENGLISH	LATIN NAME
Resolution of the Ministry of Belarus No. 526 dated 26.09.1995	
Wheat soft	<i>Triticum aestivum</i> L.
Rye	<i>Secale cereale</i> L.
Barley	<i>Hordeum vulgare</i> L.
Green pea	<i>Pisum sativum</i> L. sensu lato
Red Clover	<i>Trifolium pratense</i> L.
Yellow Lupin	<i>Lupinus luteus</i> L.
Blue Lupin	<i>Lupinus angustifolius</i> L.
Potato	<i>Solanum tuberosum</i> L.
Resolution of the Ministry of Belarus No. 1299 dated 18.08.2000	
Triticale	<i>Triticosecale</i> Witt.
Oats	<i>Avena sativa</i> L.
Naked Oats	<i>Avena nuda</i> L.
Buckwheat	<i>Fagopyrum esculentum</i> Moench.
Long-fibred flax	<i>Linum usitatissimum</i> L. f. <i>elongata</i>
Flax	<i>Linum usitatissimum</i> L. var. <i>intermedia</i> Vav. Et. Ell.
Oilseed Rape	<i>Brassica napus</i> L.
White cabbage	<i>Brassica oleracea</i> convar. <i>capitata</i> L. Alef. var. <i>capitata</i> L.f. <i>alba</i> DC
Red cabbage	<i>Brassica oleracea</i> convar. <i>capitata</i> L. Alef. var. <i>capitata</i> L.f. <i>rubra</i> (L) Thell.
Savoy cabbage	<i>Brassica oleracea</i> convar. <i>capitata</i> (L.) Alef. var. <i>sabauda</i> L.
Tomato	<i>Lycopersicon lycopersicum</i> (L.) Karst ex Farwell
Resolution of the Ministry of Belarus No. 531 dated 19.04.2006	
Onion	<i>Allium cepa</i> L.
Apple	<i>Malus domestica</i> Borkh.
Pear	<i>Pyrus communis</i> L.
Plum	<i>Prunus domestica</i> L.
Cherry-plum	<i>Prunus cerasifera</i> Ehrh.
Apricot	<i>Prunus armeniaca</i> L.
Sweet Cherry	<i>Prunus avium</i> L.
Cherry	<i>Prunus cerasus</i> L.
Black Currant	<i>Ribes nigrum</i> L.
Red Currant	<i>Ribes sylvestre</i> (Lam) Mert. et W. Koch
Strawberry	<i>Fragaria</i> L.
Raspberry	<i>Rubus</i> L.
Gooseberry	<i>Ribes uva-crispa</i> L.

PANAMA

The Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and administered by the *Consejo para la Protección de las Obtenciones Vegetales* (COPOV) (Note COPOV-005-06 of March 13, 2006).

COMMON NAME	LATIN NAME
Café	<i>Coffea arabica</i>
Yuca	<i>Manihot esculenta</i> Crantz.
Ñame	<i>Dioscorea</i> spp.
Plátano	<i>Musa</i> spp.
Banano	<i>Musa cavendishii</i> Lamb.
Caña de Azúcar	<i>Saccharum officinarum</i> L.
Otoé	<i>Xanthosoma</i> spp.

VIET NAM

On August 21, 2007, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and administered by the Plant Variety Protection Office of the Ministry of Agriculture and Rural Development (MARD).

ENGLISH	LATIN NAME
Orange	<i>Citrus</i> L. (<i>Rutaceae</i>)
Strawberry	<i>Fragaria</i> L.
Chili	<i>Capsicum annum</i> L.
Pumpkin	<i>Curcubita maxima</i> Duch.
Ginger	<i>Zingiber officinale</i> Rosc.
Mango	<i>Mangifera indica</i> L.
Gerbera	<i>Gerbera</i> Cass.
Gladiolus	<i>Gladiolus</i> L.
Lily	<i>Lilium</i> L.
Carnation	<i>Dianthus</i> L.
Carrot	<i>Daucus carota</i> L.
Sugarcane	<i>Saccharum</i> L.

LEGISLATION

COLOMBIA

ARTICLES 4 AND 5 OF THE LAW No. 1032 of June 22, 2006* AMENDING ARTICLE 306 OF THE CRIMINAL CODE

The Congress of Colombia

Article 5

HEREBY DECREES:

Repeal and Validity

[...]

This Law shall be in force from the time of its promulgation and shall repeal all the provisions that are contrary to it.

Article 4

Article 306 of the Criminal Code shall be worded as follows:

THE PRESIDENT OF THE HONORABLE NATIONAL SENATE

ARTICLE 306: Usurpation of Industrial Property Rights and Plant Breeders' Rights:

Claudia BLUM DE BARBERI

Any person who fraudulently uses a trade name, a trademark, patent, utility model, industrial design, or infringes Plants Breeders' Rights, which are legally protected or similar to the point of confusion to a right legally protected, shall receive the penalty of prison sentence of four (4) to eight (8) years, and a fine of twenty six point sixty six (26.66) to one thousand five hundred (1,500) minimum monthly legal salaries in force.

THE SECRETARY GENERAL OF THE HONORABLE NATIONAL SENATE

Emilio Ramón OTERO DAJUD

The same punishments shall be imposed on any person who finances, supplies, distributes, offers for sale, markets, transports or acquires for commercial meanings or mediation purposes, goods or plant material which are produced, cultivated or distributed under the circumstances stated in the previous subparagraph.

* Translation provided by the Office of the Union, in consultation with the Colombian Authorities.

JAPAN

THE PLANT VARIETY PROTECTION AND SEED ACT
(Act No. 83 of May 29, 1998)
as amended by Act No. 49/2007*

Chapter 1
General Provisions

Article 1
(Purpose)

The purpose of this Act is to promote the breeding of plant varieties and the rational distribution of propagating material by providing for a system relating to the registration of plant varieties for the protection of new plant varieties and regulations relating to the indication of designated seeds, so as to contribute to the development of agriculture, forestry and fisheries.

Article 2
(Definitions)

(1) The term "agricultural, forestry and aquatic plants" as used in this Act shall mean spermatophyte, pteridophyte, bryophyte, multicellular algae and other plants specified by the Cabinet Order, which are cultivated for the production of agricultural, forestry and aquatic products, and the term "plant" shall mean an individual of agricultural, forestry and aquatic plants.

(2) The term "variety" as used in this Act shall mean a plant grouping which can be distinguished from any other plant grouping by all or parts of the expressions of the important characteristics (hereinafter referred to as "expressions of the characteristics") and which can be propagated while maintaining all its characteristics without change.

(3) The term "propagating material" as used in this Act shall mean entire plants or parts of plants used for propagation.

(4) The term "processed products" as used in this Act shall mean the products which are made directly from the harvested material obtained through the use of propagating material and are specified by the Cabinet Order.

(5) The term "exploitation" in relation to a variety as used in this Act shall mean the following acts:

(i) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of propagating material of the variety;

(ii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the harvested material obtained through the use of propagating material of the variety (limited to cases where the holder of the breeder's right or the holder of the exclusive exploitation right has not had reasonable opportunity to exercise his/her right against the acts prescribed in the preceding item).

(iii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the processed products of the variety (limited to cases where the holder of the breeder's right or the holder of the exclusive exploitation right has not had reasonable opportunity to exercise his/her right against the acts prescribed in the preceding two items).

(6) The term "designated seeds" as used in this Act shall mean seed (excluding that of trees provided for forestry) which is designated by the Minister of Agriculture, Forestry and Fisheries, and appears in the form of seeds, spores, stems, roots, seedlings, saplings, scions, rootstocks, spawn or other parts of plants specified by the Cabinet Order as requiring certain matters to be labeled at the time of sale thereof in order to facilitate identification of its quality, and the term "seed dealer" as used in this Act shall mean any person engaged in the sale of designated propagating material in the course of business.

(7) The Minister of Agriculture, Forestry and Fisheries, shall, after having heard the opinions of the Agricultural Materials Council, determine and publicly notify the important characteristics referred to in paragraph (2) of this Article for each of the classes,

* Translation provided by the Japanese Authorities.

specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, of agricultural, forestry or aquatic plants.

Chapter 2
Variety Registration System

Section 1
Variety Registration and Application
for Variety Registration

Article 3
(Condition for Variety Registration)

(1) Any person who has bred (meaning the fixation or determination of the expression of the characteristics resulting from artificial or natural variation; the same meaning shall apply hereinafter) a variety fully meeting the requirements set forth below or his/her successor in title (hereinafter referred to as "breeder") may obtain a registration for the variety (hereinafter referred to as "variety registration").

(i) the variety is clearly distinguishable, in all or parts of its expressions of the characteristics, from any other variety whose existence is a matter of common knowledge in Japan or in any foreign state at the time of the filing of the application for variety registration.

(ii) all of the plants of the variety at the same propagation stage are sufficiently similar in all of its expressions of the characteristics.

(iii) all of the expression of the characteristics of the variety remain unchanged after repeated propagation.

(2) Where the filing of an application for variety registration or an equivalent application in a foreign state in relation to a variety has lead to the granting of the protection in relation to the breeding of the variety, the existence of the variety shall be deemed to have been a matter of common knowledge retroactively since the time of the filing of the application.

Article 4

(1) A variety may not be registered, if the denomination of the variety pertaining to the application for variety registration (hereinafter referred to as "applied variety") falls under any of the following items:

(i) where there is more than one denomination for the variety;

(ii) where the denomination is identical or similar to a registered trademark pertaining to the propagating material of the variety or a registered trademark pertaining to goods similar to the said propagating material;

(iii) where the denomination is identical or similar to a registered trademark pertaining to services relating to the propagating material of the variety or goods similar to the said propagating material;

(iv) where the denomination is likely to cause misidentification of the variety or confusion in respect of its identification (excluding the cases set forth in the preceding two items).

(2) A variety may not be registered when the propagating material or harvested material of the variety have been transferred in the course of business, in Japan earlier than one year before the date of application for variety registration, or in any foreign state earlier than four years before the date of such an application for variety registration (or earlier than six years in the case of the variety belonging to a genus or species of agricultural, forestry or aquatic plant specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as a perennial plant). However, this shall not apply where such a transfer was made for the purpose of experiment or research, or where such a transfer was made against the will of the breeder.

Article 5
(Application for Variety Registration)

(1) A person intending to obtain a variety registration shall submit an application to the Minister of Agriculture, Forestry and Fisheries, pursuant to the

provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, stating the following matters:

- (i) the name and the domicile or residence of the applicant for the variety registration;
- (ii) the genus or species of the agricultural, forestry or aquatic plant to which the applied variety belongs;
- (iii) the denomination of the applied variety;
- (iv) the name and the domicile or residence of the person who has bred the applied variety; and
- (v) matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries in addition to what is listed in the preceding items.

(2) The application set forth in paragraph (1) of this Article shall be attached with a written explanation stating the matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and photographs of the plant of the applied variety, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(3) Where two or more persons have bred a variety jointly, they shall file an application for variety registration pertaining to the variety jointly.

Article 6 (Application Fee)

(1) The applicant shall pay an application fee in an amount specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 47,200 yen per application.

(2) The provision set forth in the preceding paragraph shall not apply where the applicant is the national government (including Independent Administrative Institution defined by the Act on General Rules of Independent Administrative Institution (Act No.103 of 1999) Article 2 paragraph (1) which are specified by the Cabinet Order as dealing with activities relating to breeding of plant varieties; the same shall apply to the paragraph (3) of this Article, Article 45 paragraphs (2) and (3), and Article 54 paragraph (2)).

(3) Notwithstanding the provision of paragraph (1) of this Article, where the national government and

other person jointly file an application for variety registration and they have an agreement on the sharing of the breeder's right to be granted by variety registration, the amount of the application fee set forth in paragraph (1) of this Article shall be the amount calculated by multiplying the amount of the application fee specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries pursuant to paragraph (1) of this Article by the percentage of the share of such other person, which shall be paid by such other person.

(4) Where there is a fraction less than 10 yen in the amount of the application fee as calculated pursuant to the provision of paragraph (3) of this Article, such a fraction shall be discarded.

Article 7 (Transfer of the Title of Applicant)

(1) The title of applicant may be transferred.

(2) Any transfer of the title of applicant shall not come into effect without a notification to the Minister of Agriculture, Forestry and Fisheries pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, except in the case of inheritance or other general succession.

(3) Where the title of applicant has been transferred as a result of inheritance or other general succession, the successor in title shall notify, without delay, the Minister of Agriculture, Forestry and Fisheries accordingly, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Article 8 (Employee-bred Variety Bred as part of his/her Duties)

(1) With respect to a variety bred by an employee, an executive officer of a juridical person, or a national or local governmental officer (hereinafter referred to as the "employee etc."), any contractual provision, service regulation or any other stipulation providing in advance that the employer, juridical person, or national or local government (hereinafter referred to as the "employer etc.") shall file an application for variety registration, or have the title of applicant transferred, or have, if the employee etc. obtain a variety registration, the breeder's right transferred or

an exclusive exploitation right granted shall be null and void. However, this shall not apply where the breeding of the variety, by its nature, falls within the scope of the business of the employer etc. and, moreover, the acts which have led to the said breeding fall within the duties of the employee etc. (hereinafter referred to as an “employee-bred variety as part of his/her duties”).

(2) An employee etc. may make a claim on the employer etc. for the payment of compensation to be determined in consideration of the profit receivable by the employer etc. from the employee-bred variety as part of his/her duties and the extent to which the employer etc. has contributed to the breeding of that variety, when, in accordance with a contract, service regulation or any other stipulation, the employer etc. filed an application with respect to the said employee-bred variety as part of his/her duties or had the title of applicant transferred or, had, after the employee etc. obtained a variety registration, the breeder’s right transferred or an exclusive exploitation right granted.

(3) Where an employee etc. or his/her successor in title has obtained a variety registration relating to an employee-bred variety as part of his/her duties, his/her employer etc. or his/her general successor shall be granted a non-exclusive exploitation right on the variety concerned.

Article 9 (First-to-file Rule)

(1) Where two or more applications for variety registration has been filed for an identical variety or for varieties that are not clearly distinguishable from each other on the basis of the expressions of the characteristics, only the applicant who filed the application for variety registration first shall be entitled to obtain a variety registration.

(2) Where an application for variety registration has been withdrawn or dismissed, such an application shall, for the purpose of paragraph (1) of this Article, be deemed never to have been filed.

(3) An application for variety registration filed by a person who is not the breeder of the variety concerned shall, for the purpose of paragraph (1) of this Article, be deemed not to be an application for variety registration.

Article 10 (Enjoyment of Rights by Foreign Nationals)

(1) A foreign national who has neither domicile nor residence (nor registered office, in the case of a juridical person) in Japan may not enjoy a breeder’s right or any other rights relating to a breeder’s right, except in cases falling under any of the following items:

(i) where the State to which the person belongs or the State in which the person has domicile or residence (in the case of a juridical person, registered office) is a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (hereinafter referred to as a “State Party”) or a member State of an intergovernmental organization which is bound by the said Convention (hereinafter referred to as an “Intergovernmental Organization Party”; “State Parties and member states of an Intergovernmental Organization Party” being hereinafter collectively referred to as “Contracting Parties”)

(ii) where the State to which the person belongs or the State in which the person has domicile or residence (in the case of a juridical person, its registered office) is a States party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended at Geneva on November 10, 1972 and on October 23, 1978 (including States in relation with which Japan is to apply the Convention pursuant to the provision of Article 34 (2) of the said Convention; hereinafter referred to as a “Member State”) and if the said State provides protection for the plant genus or species to which the person’s applied variety belongs (except for the case prescribed in the preceding item).

(iii) where the State to which the person belongs provides Japanese nationals with the protection of varieties under the same conditions as for its own nationals (including States which provide Japanese nationals with such protection under the condition that Japan allows nationals of that State to enjoy a breeder’s right and other rights related to a breeder’s right) and if the said State provides protection for the plant genus or species to which the person’s applied variety belongs (except for the cases prescribed in the preceding two items).

Article 11
(Right of Priority)

(1) Any person listed in any of the following items may, if the conditions prescribed respectively in those items are met, claim a right of priority at the time of filing the application referred to respectively in those items, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(i) a person who has filed an equivalent application(s) to the application for variety registration in a State Party, an Intergovernmental Organization Party or a Member State (hereinafter collectively referred to as "application in a State Party") or his/her successor in title (limited to a Japanese national, a person belonging to a Contracting Party or a Member State, or a person having a domicile or residence (in the case of a juridical person, registered office) in Japan, a Contracting Party or a Member State): where the person or his/her successor in title files an application for variety registration, on the variety pertaining to the said application in a State Party, within one year from the day following the date of filing of the first application in a State Party (hereinafter referred to as the "date of application in a State Party"); or

(ii) a person who has filed an equivalent application(s) to the application for variety registration in a State prescribed in item 3 of Article 10 which allows Japanese nationals to claim a right of priority under the same conditions as Japan does (excluding State Party and Member State; hereinafter referred to as a "Designated State") or his/her successor in title (limited to a Japanese national or a person belonging to a Designated State): where the person or his/her successor in title files an application for variety registration, on the variety pertaining to the said application in a Designated State, within one year from the day following the date of the filing of the first application in a Designated State (hereinafter referred to as the "date of application in a Designated State").

(2) Where the applicant has claimed the right of priority in relation to an applied variety pursuant to the provisions of paragraph (1) of this Article, any application for variety registration, publication, transfer or any other acts made in relation to any variety which is identical to or not clearly

distinguishable from the applied variety on the basis of its expressions of the characteristics, within a period from the date of application in a State Party or the date of application in a Designated State to the date of the application for variety registration in relation to the said applied variety, shall not constitute a ground for preventing the said applied variety from registration.

Article 12
(Correction of Application for Variety Registration)

(1) The Minister of Agriculture, Forestry and Fisheries may order the applicant to correct the application for variety registration, designating an adequate time limit, in any of the following cases;

(i) where the application for variety registration does not comply with the formal requirements prescribed in this Act or in orders or ordinances thereunder; or

(ii) where the applicant does not pay the application fee payable under the provisions of paragraph (1) of Article 6.

(2) The Minister of Agriculture, Forestry and Fisheries may dismiss the application for variety registration, if the person who has been ordered to correct the application for variety registration pursuant to the provisions of paragraph (1) of this Article does not correct it within the time limit designated pursuant to the provision of the said paragraph.

Section 2
Publication of Application

Article 13
(Publication of Application)

(1) When an application for variety registration is received (or when a corrected application for variety registration is received if, pursuant to the provision of paragraph (1) of Article 12, correction of the application for variety registration has been ordered), the Minister of Agriculture, Forestry and Fisheries shall publish the application for variety registration without delay by publicly notifying the following matters:

(i) the application number and the filing date of the application for variety registration;

(ii) the name and the domicile or residence of the applicant;

(iii) the genus or species of the agricultural, forestry or aquatic plant to which the applied variety belongs;

(iv) the denomination of the applied variety;

(v) the date of the publication of the application; and

(vi) other necessary matters in addition to those listed in the preceding items.

(2) Where the application for variety registration has been abandoned, withdrawn or dismissed after the publication of the application, or when the application for variety registration has been rejected, the Minister of Agriculture, Forestry and Fisheries shall publicly notify that effect.

Article 14

(Effects etc. of Publication of Application)

(1) Where the applicant has, after the publication of his/her application, given warning by presenting a written statement setting forth the particularities of the applied variety, he/she may claim, against a person who has exploited in the course of business, after the warning and prior to the variety registration, that applied variety, a variety which is, on the basis of its expressions of the characteristics, not clearly distinguishable from that applied variety, or a variety to which the provisions of each item of Article 20 paragraph (2) would apply if the said applied variety were registered, compensation in an amount equivalent to the amount which the applicant would be entitled to receive if that applied variety were registered. Even in the absence of such warning, the same shall apply to a person who has exploited in the course of business an applied variety (including a variety which, on the basis of its expressions of the characteristics, is not clearly distinguishable from the applied variety and a variety to which the provision of each item of Article 20 paragraph (2) would apply if the applied variety were registered) with knowledge that the variety which he exploited was an applied variety pertaining to the publication of application, prior to the variety registration.

(2) The right to claim compensation prescribed in paragraph (1) of this Article can be exercised only

after the variety registration with respect to the variety concerned.

(3) The exercise of the right to claim compensation prescribed in paragraph (1) of this Article shall not preclude the exercise of the breeder's right.

(4) Where the application for variety registration has been abandoned, withdrawn or dismissed after the publication of application, or where the application for variety registration has been rejected, or where the variety registration has been revoked pursuant to the provisions of either item 1 or 4 of Article 49 paragraph (1), or where a decision to revoke the variety registration has become final and binding, which upholds the ground for an objection to the variety registration pursuant to the Administrative Appeal Act (Act No. 160 of 1962), or where a judgment to cancel or to confirm nullity of the variety registration has become final and binding, the right to claim compensation under paragraph (1) of this Article shall be deemed never to have established.

(5) Article 36, 37, 38, 40, 41, 42 and 43 of this Act as well as Articles 719 and 724 of the Civil Code (Act No.89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim compensation as prescribed in paragraph (1) of this Article. In this case, where a holder of the right to claim compensation has become aware of the fact that the applied variety pertaining to the application for the variety registration has been exploited and of the person who had exploited the applied variety prior to the variety registration with respect to that variety, the term "the time when the victim or his/her legal representative became aware of such damage and perpetrator" in Article 724 of the said Code shall be deemed to be replaced with "the date of the variety registration."

Section 3 Examination

Article 15 (Examination of Applied Variety)

(1) The Minister of Agriculture, Forestry and Fisheries may order the applicant to submit entire plants or parts of plants of the applied variety or other material necessary for examination of the applied variety.

(2) The Minister of Agriculture, Forestry and Fisheries shall, in the course of the examination of the applied

variety, cause officers of the Ministry of Agriculture, Forestry and Fisheries to carry out on-site inspections or the Independent Administrative Institution National Center for Seeds and Seedlings (hereinafter referred to as NCSS) to carry out growing tests. However, this shall not apply where it is found unnecessary to do so for the examination of the applied variety.

(3) The Minister of Agriculture, Forestry and Fisheries may request relevant administrative organizations, educational institutions or other persons whom he/she finds appropriate, to carry out such on-site inspections as prescribed in paragraph (2) of this Article.

(4) Items to be tested, test methods and other matters necessary for the carrying-out of the growing tests set forth in paragraph (2) of this Article shall be specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(5) The NCSS may, with the consent of the Minister of Agriculture, Forestry and Fisheries, request relevant administrative organizations, educational institutions or other persons whom he/she finds appropriate, to carry out such growing tests as set forth in paragraph (2) of this Article.

(6) The Minister of Agriculture, Forestry and Fisheries may, where he/she finds it necessary in order to ensure the proper carrying-out of the growing tests, issue orders to the NCSS in relation to such tests as set forth in paragraph (2) of this Article.

Article 16

(Order to Change Denomination)

(1) Where the denomination of the applied variety falls under any of the items of Article 4 paragraph (1), the Minister of Agriculture, Forestry and Fisheries may order the applicant to change it to another denomination which does not fall under any of the items of the said paragraph, designating an adequate time limit.

(2) Where the denomination, after the publication of application, has been changed pursuant to the provision of the preceding paragraph, the Minister of Agriculture, Forestry and Fisheries shall publicly notify information to that effect.

Article 17

(Rejection of Application for Variety Registration)

(1) Where an application for variety registration falls under any of the following items, the Minister of Agriculture, Forestry and Fisheries shall reject, in writing, the application for variety registration, when the applied variety falls under any of the following items:

(i) the applied variety is not registerable pursuant to the provisions of Article 3 paragraph (1), Article 4 paragraph (2), Article 5 paragraph (3), Article 9 paragraph (1) or Article 10; or

(ii) the applicant, without justifiable grounds, fails to comply with the order prescribed in Article 15 paragraph (1), refuses the on-site inspection as prescribed in paragraph (2) of the said Article or fails to comply with the order prescribed in paragraph (1) of Article 16.

(2) When the Minister of Agriculture, Forestry and Fisheries intends to reject application for variety registration is to be rejected pursuant to the provision of paragraph (1) of this Article, he/she shall notify the applicant of the reason for the rejection and give him/her an opportunity to submit a written opinion of his/her arguments, designating an adequate time limit.

Article 18

(Variety Registration)

(1) The Minister of Agriculture, Forestry and Fisheries shall register the variety unless the application for variety registration shall be rejected pursuant to the provision of paragraph (1) of Article 17.

(2) A variety registration shall be completed upon the entry of the following matters in the Register of Plant Varieties:

(i) the registration number and the date of variety registration;

(ii) the genus or species of the agricultural, forestry or aquatic plant to which the variety belongs;

(iii) the denomination of the variety;

- (iv) the characteristics of the variety;
- (v) the duration of the breeder's right;

(vi) the name and domicile or residence of the person obtaining the variety registration; and

(vii) in addition to what is listed in the preceding items, the matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(3) When he/she registered a variety pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the person who obtains the said variety registration accordingly, and publicly notify the matters prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Section 4 Breeder's Right

Article 19 (Grant and Duration of the Breeder's Right)

- (1) A breeder's right shall become effective upon a variety registration.
- (2) Duration of a breeder's right shall be twenty-five years (thirty years, in the case of varieties prescribed in Article 4 paragraph (2)) from the date of variety registration.

Article 20 (Effects of the Breeder's Right)

- (1) The holder of a breeder's right shall have an exclusive right to exploit, in the course of business, the variety which is registered (hereinafter referred to as "registered variety") and varieties which, on the basis of their expressions of the characteristics, are not clearly distinguishable from the registered variety. However, where an exclusive exploitation right is granted in relation to the breeder's right, this shall not apply to the extent where the holder of the exclusive exploitation right is granted an exclusive right to exploit these varieties.
- (2) The holder of the breeder's right for a registered variety shall also have an exclusive right in relation to varieties described in following items, the scope of which shall be the same as the right which the

breeders of the said varieties would, if registered, be granted. In this case, the proviso of paragraph (1) of this Article shall apply mutatis mutandis.

(i) varieties which are bred by changing some of the expressions of the characteristics of the registered variety while retaining their essential expressions of the characteristics using such methods as selection of a mutant, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety on the basis of the expressions of the characteristics; or

(ii) varieties whose production requires the repeated use of the registered variety.

(3) Where a registered variety is bred by changing some of the expressions of the characteristics of a variety other than the registered variety while retaining its essential expressions of the characteristics using methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries prescribed in item 1 of paragraph (2) of this Article, for the purpose of the application of paragraph (2) of this Article and paragraph (2) of Article 21, the words "the following items" in paragraph (2) of this Article and the words "each item of paragraph (2) of Article 20" shall be deemed to be replaced with the words "item 2" and the words "item 2 of paragraph (2) of Article 20," respectively.

Article 21 (Limitation of the effects of the Breeder's Right)

- (1) The effects of a breeder's right shall not extend to the following acts:
 - (i) exploitation of the variety for the purpose of breeding new varieties and for other experimental and research purposes;
 - (ii) production of propagating material of the registered variety, by a person who has a patent right for the process of breeding the registered variety (including varieties which are, on the basis of their expressions of the characteristics, not clearly distinguishable from the registered variety; hereinafter the same shall apply in this paragraph) or by a person who has been granted an exclusive license or non-exclusive license on the said patent right, by means

of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of the said propagating material;

(iii) production of propagating material of the registered variety after the lapse of the patent right set forth in item (ii) of this paragraph, by any person, by means of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of any of these acts, of the said propagating material; or

(iv) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the harvested material obtained through the use of the propagating material set forth in items (ii) and (iii) of this paragraph.

(v) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of any of these acts, of the processed products pertaining to the harvested material set forth in item (iv) of this paragraph.

(2) Where farmers as prescribed by the Cabinet Order obtain harvested material by using the propagating material of a registered variety, varieties which, on the basis of the expressions of the characteristics, are not clearly distinguishable from the registered variety, or varieties listed in each item of paragraph (2) of Article 20 pertaining to the registered variety (hereinafter collectively referred to as "registered variety etc.") which have been transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, and further use, on their own holdings, the said harvested material as propagating material for the next production cycle, the effects of the breeder's right shall not extend to the said propagating material used for the next production cycle, the harvested material obtained through the use of it, and processed products pertaining to such harvested material, unless otherwise agreed upon by contract.

(3) The provision of paragraph (2) of this Article shall not apply where farmers use propagating material of varieties, which belong to any one of the genera or species designated by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as being propagated vegetatively.

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(4) Where propagating material, harvested material or processed products of a registered variety etc. has been transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder of a non-exclusive exploitation right, or as the result of the acts listed in any of the items of paragraph (1) of this Article, the effects of the breeder's right for the said registered variety shall not extend to the exploitation of the transferred propagating material, harvested material or processed products. However, this shall not apply to the acts which involve further propagation of the said registered variety etc., nor to the exporting of propagating material to a State which does not provide protection for the plant genus or species to which the said registered variety belongs nor to the exporting of harvested material to the said State for a purpose other than final consumption.

Article 22

(Obligation to Use the Denomination)

(1) When any person offers for transfer or transfers propagating material of a registered variety (including varieties whose registration have already expired: hereinafter the same shall apply in this Article) in the course of business, he/she shall be obliged to use the denomination of the said registered variety (where the denomination has been changed pursuant to the provisions of Article 48 paragraph (2), the denomination as changed.)

(2) When any person offers for transfer or transfers propagating material of a non-registered variety in the course of business, he/she shall be prohibited from using the denomination of any registered varieties which belong to the same or similar genus or species of agricultural, forestry or aquatic plants to the said non-registered variety.

Article 23

(Jointly Held Breeder's Right)

(1) Each of the joint holders of a breeder's right may neither transfer his/her share nor establish a pledge on it without the consent of all the other joint holders.

(2) Each of the joint holders of a breeder's right may, unless otherwise agreed upon by contract, exploit the registered variety etc. without the consent of the other joint holders.

(3) Each of the joint holders of a breeder's right may grant neither an exclusive exploitation right nor a non-exclusive exploitation right on the breeder's right without the consent of all the other joint holders.

Article 24

(Termination of a Breeder's Right due to the Dissolution of a Juridical person)

A breeder's right shall be terminated in the following cases:

(i) where a juridical person holding a breeder's right dissolves, and the breeder's right shall vest in the national treasury pursuant to the provisions of Article 72 paragraph (3) of the Civil Code or equivalent Acts; or

(ii) where a natural person holding a breeder's right dies, and the breeder's right shall vest in the national treasury pursuant to the provisions of Article 959 of the Civil Code.

Article 25

(Exclusive Exploitation Right)

(1) The holder of a breeder's right may grant an exclusive exploitation right on his/her breeder's right.

(2) The holder of an exclusive exploitation right shall have an exclusive right to exploit the registered variety etc. in the course of business to the extent laid down in contract granting the right.

(3) An exclusive exploitation right may be transferred only where the transfer is together with the transfer of the business in which the variety is exploited, where it is with the consent of the holder of the breeder's right, or where it is as a result of inheritance or other general successions.

(4) The holder of an exclusive exploitation right may establish a pledge or grant a non-exclusive exploitation right on the exclusive exploitation right only with the consent of the holder of the breeder's right.

(5) The provisions set forth in Article 23 shall apply mutatis mutandis to exclusive exploitation rights.

Article 26

(Non-exclusive Exploitation Right)

(1) The holder of a breeder's right may grant a non-exclusive exploitation right on his/her breeder's right.

(2) The holder of a non-exclusive exploitation right shall have the right to exploit the registered variety etc. in the course of business to the extent pursuant to the provision of this Act or laid down by act of establishment.

Article 27

(Non-exclusive Exploitation Right by virtue of Prior Breeding)

A person who has bred, earlier than the breeder of a registered variety, a variety that, on the basis of its expressions of the characteristics, is identical to or not clearly distinguishable from the registered variety shall have a non-exclusive exploitation right on the breeder's right pertaining to the said registered variety.

Article 28

(Arbitration)

(1) Where a registered variety etc. has not been adequately exploited continuously for two years or more in Japan or where the exploitation of a registered variety etc. is especially necessary for the reason of public interest, a person who intends to exploit the said registered variety etc. in the course of business may request the holder of the breeder's right or the holder of an exclusive exploitation right for the said registered variety to hold consultations concerning the grant of a non-exclusive exploitation right thereon.

(2) Where no agreement has been reached by the consultations set forth in paragraph (1) of this Article or if such consultation has been unable to take place, the person prescribed in the said paragraph may apply for an arbitration decision with the Minister of Agriculture, Forestry and Fisheries.

(3) Where an application for the arbitration decision prescribed in paragraph (2) of this Article has been filed, the Minister of Agriculture, Forestry and Fisheries shall notify in writing the holder of the breeder's right, the holder of an exclusive exploitation right, or other persons who have any right registered in relation to

the registered variety pertaining to the said application accordingly and shall give them an opportunity to state their opinion, designating an adequate time limit.

(4) Unless he/she finds the exploitation of a registered variety, etc. especially necessary for the reason of public interest, the Minister of Agriculture, Forestry and Fisheries shall not render an arbitration decision ordering a non-exclusive exploitation right to be granted where there is any justifiable ground why the registered variety etc. has not been exploited adequately.

(5) Before rendering an arbitration decision set forth in paragraph (2) of this Article, the Minister of Agriculture, Forestry and Fisheries shall hear the opinions of the Agricultural Materials Council.

(6) An arbitration decision ordering a non-exclusive exploitation right to be granted shall set forth the scope of the non-exclusive exploitation right as well as the amount of consideration and the method of payment thereof.

(7) When he/she has rendered an arbitration decision in accordance with paragraph (2) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the parties and other persons who have rights registered in relation to the registered variety, accordingly.

(8) Upon the notification of the arbitration decision prescribed in paragraph (6) of this Article has been notified to the parties pursuant to the provisions of paragraph (7) of this Article, an agreement shall be deemed to have been reached between the parties concerned as provided in the arbitration decision.

Article 29

(Transfer of a Non-exclusive Exploitation Right)

(1) A non-exclusive exploitation right, with the exception of such as is granted by an arbitration decision set forth in paragraph (2) of Article 28, may be transferred only where the transfer is together with the transfer of the business in which the variety is exploited, where it is with the consent of the holder of the breeder's right (in the case of a non-exclusive exploitation right on an exclusive exploitation right, both the holder of the breeder's right and the holder of that exclusive exploitation right; the same shall

apply also to paragraph (2) of this Article), or where it is as a result of inheritance or other general succession.

(2) The holder of a non-exclusive exploitation right, with the exception of such as is granted by an arbitration decision set forth in paragraph (2) of Article 28, may establish a pledge on that non-exclusive exploitation right only with the consent of the holder of the breeder's right.

(3) A non-exclusive exploitation right which has been granted by an arbitration decision set forth in paragraph (2) of Article 28 may be transferred only together with the business in which the variety is exploited.

(4) Paragraphs (1) and (2) of Article 23 shall apply mutatis mutandis to non-exclusive exploitation rights.

Article 30

(Pledge)

(1) Where a pledge is established on a breeder's right or an exclusive or non-exclusive exploitation right, the pledgee may not exploit the registered variety etc. unless otherwise agreed upon by contract.

(2) A pledge on a breeder's right, an exclusive exploitation right or a non-exclusive exploitation right may be exercised against consideration money to be paid for the breeder's right or the exclusive or non-exclusive exploitation right or against money or other goods that the holder of the breeder's right or of the exclusive exploitation right would be entitled to receive for the exploitation of the registered variety etc. However, an attachment order shall be obtained prior to the payment of money or delivery of goods.

Article 31

(Waiver of the Breeder's Right)

(1) Where there is any holder of an exclusive exploitation right, any pledgee or any holder of non-exclusive exploitation right under Article 8 paragraph (3), Article 25 paragraph (4) or Article 26 paragraph (1) in relation to a breeder's right, the holder of the breeder's right may waive his/her breeder's right only with the consent of all such persons.

(2) Where there is any pledgee or any holder of a non-exclusive exploitation right under Article 25

paragraph (4) in relation to an exclusive exploitation right, the holder of the exclusive exploitation right may waive his/her exclusive exploitation right only with the consent of all such persons.

(3) Where there is any pledgee in relation to a non-exclusive exploitation right, the holder of the non-exclusive exploitation right may waive his/her non-exclusive exploitation right only with the pledgee's consent.

Article 32
(Effects of Registration)

(1) The following matters shall take no effect unless they are registered:

(i) transfer (other than by inheritance or other general succession), termination by waiver, or restrictions on the disposition, of a breeder's right;

(ii) grant, transfer (other than by inheritance or other general succession), modification, termination (except as a result of a merger or termination of the breeder's right), or restriction on the disposition, of an exclusive exploitation right, or

(iii) establishment, transfer (other than by inheritance or other general succession), modification, termination (except as a result of a merger or termination of a credit secured thereby), or restriction on the disposition, of a pledge on a breeder's right or an exclusive exploitation right.

(2) Inheritance or other general succession referred to in each item of paragraph (1) of this Article shall be notified to the Minister of Agriculture, Forestry and Fisheries without delay, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(3) Once a non-exclusive exploitation right has been registered on a breeder's right or an exclusive exploitation right, it shall also be effective against anyone subsequently acquiring the breeder's right or the exclusive exploitation right, or against anyone subsequently being granted an exclusive exploitation right on the breeder's right.

(4) A non-exclusive exploitation right under Article 8 paragraph (3) or Article 27 shall have the same effects as prescribed in paragraph (3) of this Article without registration.

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(5) The transfer, modification, extinction or restriction on the disposition of a non-exclusive exploitation right, or the establishment, transfer, modification, termination or restriction on the disposition of a pledge on a non-exclusive exploitation right may not be duly asserted against any third party without registration.

Section 5
Infringement

Article 33
(Injunction)

(1) The holder of a breeder's right or the holder of an exclusive exploitation right may demand a person who infringes or is likely to infringe his/her breeder's right or exclusive exploitation right to discontinue or refrain from such infringement.

(2) The holder of a breeder's right or the holder of an exclusive exploitation right, in making the demand prescribed in paragraph (1) of this Article, may demand the destruction of the propagating material, the harvested material or the processed products which is a component of the act of infringement, or the objects used in the commission of the act of infringement, or other measures necessary for the prevention of such infringement.

Article 34
(Presumption of Amount of Damages)

(1) Where the holder of a breeder's right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, compensation for damages caused to him/her by the infringement, if the person has transferred the propagating material, the harvested material or the processed products which is the component of the act of infringement, the amount of damage suffered by the holder of the breeder's right or the holder of the exclusive exploitation right may be presumed, within the limit attainable by the holder of the breeder's right or the holder of the exclusive exploitation right in consideration of his/her capability to exploit such propagating material, harvested material or processed products, to be the amount given by multiplying the quantity of the propagating material, the harvested material or the processed products transferred by the person (hereinafter

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referred to in this paragraph as the “transferred quantity”) by the profit per unit of the propagating material, the harvested material or the processed products which would have been sold by the holder of the breeder’s right or the holder of the exclusive exploitation right if there had been no such an act of infringement. However, if there exists any circumstance under which the holder of the breeder’s right or the holder of the exclusive exploitation right may not be able to sell the transferred quantity in whole or in part, the amount corresponding to the quantity which would not have been sold due to such a circumstance shall be deducted.

(2) Where the holder of a breeder’s right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his/her breeder’s right or exclusive exploitation right, compensation for damages caused to him by the infringement, if the person has gained any profits as a result of the act of infringement, the amount of the said profits shall be presumed to be the amount of damage suffered by the holder of the breeder’s right or of the exclusive exploitation right.

(3) The holder of a breeder’s right or of an exclusive exploitation right may claim, against a person who has intentionally or negligently infringed his/her breeder’s right or exclusive exploitation right, compensation for damage caused to him by the infringement, by regarding the amount of money which he/she would be entitled to receive from the exploitation of the registered variety etc., as the amount of damage suffered by him/her.

(4) The provision of paragraph (2) of this Article shall not preclude a claim for compensation for damages in an amount exceeding the amount prescribed in the said paragraph. In such cases, where the infringer of the breeder’s right or the exclusive exploitation right had neither intent nor gross negligence in the commission of the act of infringement, the court may take such circumstances into consideration in determining the amount of damages.

Article 35 (Presumption of Negligence)

A person who has infringed a breeder’s right or an exclusive exploitation right of another person shall be presumed to have been negligent in the commission of the said act of infringement.

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Article 36 (Obligation to Clarify the Specific Conditions)

In litigation pertaining to the infringement of a breeder’s right or an exclusive exploitation right, in order to deny the specific conditions of the propagating material, the harvested material or the processed products which the holder of a breeder’s right or of an exclusive exploitation right claims as the component of the act of infringement, the adverse party shall clarify the specific conditions of his/her act. However, this shall not apply where the adverse party has reasonable grounds for being unable to do so.

Article 37 (Submission of Documents)

(1) In litigation pertaining to the infringement of a breeder’s right or an exclusive exploitation right, the court may, upon the motion of a party, order the other party to submit documents necessary for proving the said act of infringement or for calculating of the damages caused by the said act of infringement. However, this shall not apply where the person possessing the documents has justifiable grounds for refusing the submission of the said documents.

(2) When the court finds it necessary for determining whether there are justifiable grounds as provided in the proviso of the preceding paragraph, the court may cause the person possessing the documents to present such documents. In this case, no person shall request the disclosure of the documents presented.

(3) In the case referred to in the preceding paragraph, where the court finds it necessary to hear opinions concerning the existence of justifiable grounds as provided in the proviso of paragraph (1) by disclosing the documents as provided in the second sentence of the preceding paragraph, the court may disclose the documents to the parties, etc. (the parties (or, in the case of juridical persons, their representatives), their agents (excluding attorneys and assistant), or their employees or any other workers; the same shall apply hereinafter), attorneys or assistant.

(4) The preceding three paragraphs shall apply mutatis mutandis to the presentation of objects to be inspected necessary for proving the act of infringement in litigation pertaining to the infringement of a breeder’s right or an exclusive exploitation right.

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Article 38

(Expert Opinion for Calculation of Damages)

In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, when, upon the motion of a party, the court orders an expert opinion necessary for the calculation of the damages caused by the said act of infringement, the other party shall explain to the expert witness the matters necessary for the expert opinion.

Article 39

(Determination of a Reasonable Amount of Damage)

In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, where the court has determined that damage actually arose and where it is extremely difficult for the holder of a breeder's right or of an exclusive exploitation right, due to the nature of the facts, to prove the facts necessary for proving the amount of damage, the court may determine a reasonable amount of damage based on the entire import of oral argument and the result of the examination of evidence.

Article 40

(Protective Order)

(1) In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, where there is prima-facie evidence of the fact that trade secrets (refers to trade secrets as provided in Article 2(6) of the Unfair Competition Prevention Act (Act No. 47 of 1993), the same shall apply hereinafter) possessed by a party satisfy all of the following conditions, the court may, upon the motion of the party, order by a ruling that the parties, etc., attorneys or assistants shall neither use the trade secrets for any purpose other than those for the proceedings of the litigation nor disclose the trade secrets to any person other than those who receive the order regarding the trade secrets under this provision. However, this shall not apply where the parties, etc., attorneys or assistants have, prior to the filing of the motion, already obtained or been in the possession of the trade secrets by a method other than by reading of the briefs under item (i) or through the examination or disclosure of evidence under the said item.

(i) where the trade secrets possessed by the party were or are contained in the briefs already submitted

or to be submitted or in the evidence already examined or to be examined (including documents disclosed pursuant to the provision in Article 37 paragraph (3) or Article 43 paragraph (4)); and

(ii) where it is necessary to restrict the use or the disclosure of the trade secrets prescribed in the preceding item to prevent any possible interference with the party's business activities based on the trade secrets, which might arise if the trade secrets are used for any purpose other than proceedings of the litigation or if the said trade secrets are disclosed.

(2) A motion requesting the order under the preceding paragraph (hereinafter referred to as a "protective order") shall be made in writing specifying the following matters:

(i) the person(s) to whom the protective order is to be issued;

(ii) the facts that clearly identify the trade secrets to be protected by the protective order; and

(iii) the facts corresponding to the reasons each of the items in the preceding paragraph is applicable.

(3) Where the protective order is issued, a written ruling thereof shall be served to the person(s) to whom the protective order is issued.

(4) The protective order shall take effect as of the date the written ruling is served to the person(s) to whom the protective order is issued.

(5) The decision dismissing a motion requesting the protective order shall be subject to immediate appeal.

Article 41

(Rescission of Protective Order)

(1) A person(s) who has filed a motion requesting a protective order or to whom a protective order is issued may file a motion with the court where the record of a case is maintained (or, in the case of no such court maintaining the record of a case(s), the court issuing the protective order), requesting the rescission of the protective order on the ground that the requirements as provided in the previous Article paragraph (1) are not met or are no longer met.

(2) Where a decision on a motion requesting the rescission of a protective order is rendered, a written ruling thereof shall be served to the person who filed the motion and the adverse party in the case.

(3) The decision on a motion requesting the rescission of a protective order shall be subject to immediate appeal.

(4) A decision to the effect that a protective order is to be rescinded shall have no effect unless the decision becomes final and binding.

(5) Where a decision to the effect that a protective order is to be rescinded is rendered, the court shall immediately notify the person(s) who, in the litigation in which the said protective order was issued, received the protective order pertaining to the trade secrets who are neither the person filing the motion requesting the rescission of the protective order nor the adverse party, if any, of the fact that the decision to the effect that the protective order is to be rescinded was rendered.

Article 42

(Notice of a Request Inspection of Record)

(1) Where a ruling under Article 92 (1) of the Code of Civil Procedure (Act No.109 of 1996) was rendered concerning the record of litigation in which a protective order was issued (excluding litigation in which all protective orders have been rescinded), where a party to whom the protective order was not issued in the litigation requests inspection etc. of a part of the record in which the confidential information is contained, etc under the said Article, immediately after the filing of the request, the court clerk shall notify the party who filed the motion (restricting access to the record) under the said Article (excluding the person who filed the request, the same in paragraph (3)) of the fact that the said request has been filed.

(2) In the case of the preceding paragraph, the court clerk shall not allow the person who filed the request to inspect etc. the part in which confidential information is contained under Article 92 (1) of the Code of Civil Procedure before a lapse of two weeks from the date of filing of the said request (or, where a motion requesting a protective order is filed prior to the day in which two weeks have lapsed, against

the person who filed the request, before the decision on the motion becomes final and binding).

(3) The preceding two paragraphs shall not apply where the consent of all the parties who filed a motion under Article 92 (1) of the Code of Civil Procedure is obtained, allowing the person who filed a request under paragraph (1) to inspect etc. the part in which confidential information is contained.

Article 43

(Ban on Open Examination of Parties)

(1) When a party, etc., to litigation concerning the infringement of a patent right or exclusive license is to be examined as a party to the litigation, as its statutory representative or as a witness, with regard to matters that will be a basis for the determination of the existence or non-existence of the said infringement, and such matters are trade secrets possessed by a party, the court may, by a ruling, elect to hold closed examinations of such matters where the court, upon the unanimous consent of all judges, finds that the parties, etc. will be unable to make sufficient statements regarding the matters due to the obvious fact that making statements regarding the matters at an open examination will significantly interfere with the business activities of the party based on such trade secrets and that, without such statements, a proper decision on the fact of the existence or non-existence of the infringement of a patent right or exclusive license that ought to be made based on the said matters may not be made based solely on other evidence.

(2) The court shall, in rendering the ruling as provided in the preceding paragraph, hear the opinions of the parties, etc. in advance.

(3) In the case of the preceding paragraph, where necessary, the court may cause the parties, etc., to present a document stating the gist of the matters to be stated. In such a case, no person may request the disclosure of the document presented.

(4) When the court finds it necessary to hear opinions by disclosing the document as provided in the latter sentence of the preceding paragraph, the court may disclose the document to the parties, etc., their attorneys or assistants.

(5) Where the examination on certain matters is to be closed under paragraph (1), the court shall declare such fact and reasons therefor prior to requiring the public to leave the court. Upon completion of the examination on said matters, the court shall allow the public to re-enter the court.

Article 44
(Measures for Recovery of Credit)

Upon the request of the holder of a breeder's right or of an exclusive exploitation right, the court may, in lieu of the compensation for damages or in addition thereto, order the person who has harmed the credit of the holder of the breeder's right or of the exclusive exploitation right by intentionally or negligently infringing his/her breeder's right or exclusive exploitation right, to take measures necessary for the recovery of the credit of the holder of the breeder's right or of the exclusive exploitation right.

Section 6
Maintenance and Cancellation of
a Variety Registration

Article 45
(Registration Fee)

(1) The holder of a breeder's right shall pay a registration fee, the amount of which shall be specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 36,000 yen for each variety registration each year until the expiration of the duration as provided in Article 19 paragraph (2).

(2) The provision of paragraph (1) of this Article shall not apply where the holder of a breeder's right is the national government.

(3) Notwithstanding the provision of paragraph (1) of this Article, where the national government and other person jointly hold a breeder's right and they have an agreement on the sharing of the breeder's right, the amount of the registration fee set forth in paragraph (1) of this Article shall be the amount calculated by multiplying the amount of the registration fee specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries pursuant to paragraph (1) of this Article by the percentage of the share of such other person, which shall be paid by such other person.

(4) Where there is a fraction less than 10 yen in the amount of the registration fee as calculated pursuant to the provision of paragraph (3) of this Article, such a fraction shall be discarded.

(5) The registration fee for the first year prescribed in paragraph (1) of this Article shall be paid within 30 days from the date of public notice in accordance with the provisions of Article 18 paragraph (3).

(6) The registration fee for each year after the second year prescribed in paragraph (1) of this Article shall be paid by the end of the previous year.

(7) Where the holder of the breeder's right fails to pay registration fee within the time limit prescribed in paragraph (6) of this Article, he/she may make a late payment of the registration fee within 6 months from the expiration of the said time limit.

(8) The holder of a breeder's right who makes a late payment of the registration fee pursuant to the provision of paragraph (7) of this Article shall pay, in addition to the registration fee to be paid under the provision of paragraph (1) of this Article, a registration surcharge of the same amount as the registration fee.

Article 46
(Payment of the Registration Fee
by Interested Persons)

(1) An interested person may pay the registration fee even against the will of the holder of the breeder's right.

(2) The interested person who has paid the registration fee pursuant to the provision of paragraph (1) of this Article may claim reimbursement of the expenses to the extent of the actual profit gained by the holder of the breeder's right.

Article 47
(Examination of a Registered Variety)

(1) The Minister of Agriculture, Forestry and Fisheries may order the holder of a breeder's right or of an exclusive exploitation right to submit entire plants or parts of plants of the registered variety or other material, where he/she finds it necessary in order to verify the maintenance of the characteristics of the registered variety.

(2) The Minister of Agriculture, Forestry and Fisheries shall cause officers of the Ministry of Agriculture, Forestry and Fisheries to carry out on-site inspections or cause the NCSS to carry out growing tests in the case prescribed in paragraph (1) of this Article.

(3) The provisions of paragraphs (3) to (6) inclusive of Article 15 shall apply mutatis mutandis to the on-site inspections or growing tests set forth in paragraph (2) of this Article.

Article 48

(Change of Denomination of a Registered Variety)

(1) When it is found that the denomination of a registered variety falls under any of the provisions of items 2 to 4 inclusive of Article 4 paragraph (1), the Minister of Agriculture, Forestry and Fisheries may, upon the request of an interested person or ex officio, order the holder of the breeder's right to submit another denomination which does not fall under any of the items of the said paragraph, designating an adequate time limit.

(2) When a denomination falling under none of the items of Article 4 paragraph (1) has been submitted pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall change the denomination of the said registered variety to the submitted denomination by entering it in the Register of Plant Varieties.

(3) When the Minister of Agriculture, Forestry and Fisheries has changed the denomination of a registered variety pursuant to the provision of paragraph (2) of this Article, he/she shall notify the holder of the breeder's right for the said registered variety and publicly notify information to that effect.

Article 49

(Cancellation of the Variety Registration)

(1) The Minister of Agriculture, Forestry and Fisheries shall cancel a variety registration in any one of the following cases:

(i) where it has turned out that the variety was registered in violation of the provisions of Article 3 paragraph (1), Article 4 paragraph (2), Article 5 paragraph (3), Article 9 paragraph (1) or Article 10;

(ii) where it has turned out that, after the variety registration, the registered variety no longer satisfies Japan

the requirements listed in item 2 or 3 of Article 3 paragraph (1);

(iii) where, after the variety registration, the holder of the breeder's right has become a person who may not enjoy a breeder's right pursuant to the provisions of Article 10;

(iv) where the registration fee for the first year is not paid within the period prescribed in Article 45 paragraph (5);

(v) where the registration fee and the registration surcharge are not paid within the period prescribed in Article 45 paragraph (7);

(vi) where the person who was ordered to submit material pursuant to the provisions of Article 47 paragraph (1) fails to comply with the order without justifiable grounds; or

(vii) when the person who was ordered to submit another denomination of the registered variety pursuant to the provisions of paragraph (1) of this Article fails to comply with the order without justifiable grounds.

(2) A hearing pertaining to the cancellation of a variety registration pursuant to any of the provisions of items 1, 2, 3, 6, or 7 of paragraph (1) of this Article shall be held upon giving a notice sufficiently before the hearing, to the holder of an exclusive exploitation right or of any other rights registered in relation to the breeder's right pertaining to the said variety registration.

(3) Where the persons prescribed in paragraph (2) of this Article request to participate in the said hearing pursuant to the provisions of Article 17 paragraph (1) of the Administrative Procedure Act (Act No. 88 of 1993), the chairperson of the hearing set forth in paragraph (2) of this Article shall permit him/her to do so.

(4) When the variety registration has been cancelled pursuant to the provisions of paragraph (1) of this Article, the breeder's right shall be extinct at the time of cancellation. However, in the case of any of the following items, the breeder's right shall be deemed to have been extinct retroactively from the time specified respectively in those items.

(i) the case falling under item 1 or 4 of paragraph (1) of this Article: the time of variety registration;

(ii) the case falling under item 3 of paragraph (1) of this Article: the time when the said item became applicable; or

(iii) the case falling under item 5 of paragraph (1) of this Article: the time when the time limit provided in Article 45 paragraph (6) has elapsed.

(5) When the variety registration has been canceled pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall notify the holder of the breeder's right pertaining to the said variety registration and publicly notify information to that effect.

(6) With respect to the cancellation of a variety registration under the provisions of item 4 or 5 of paragraph (1) of this Article, the provisions of Chapter 3 (excluding Articles 12 and 14) of the Administrative Procedure Act shall not apply.

Section 7 Miscellaneous Provisions

Article 50 (Jurisdiction for an Overseas Resident)

With respect to the breeder's right or any other rights relating to a breeder's right held by a person who has neither domicile nor residence (nor registered office, in the case of a juridical person) in Japan, the location of the Ministry of Agriculture, Forestry and Fisheries shall be deemed to be the location of the property under Article 5 paragraph (4) of the Code of Civil Procedure.

Article 51 (Special Provisions for filing of an Objection to a Variety Registration)

(1) The provision of Article 45 of the Administrative Appeal Act shall not apply to filing of an objection to a variety registration and, notwithstanding the provision of Article 48 of the said Act, the provision of Article 14 paragraph (3) of the said Act shall not apply.

(2) The hearing of an objection to a variety registration pursuant to the Administrative Appeal Act shall be held upon giving a notice sufficiently before the hearing, to the holder of the breeder's right or of the exclusive exploitation right or of any other rights registered in relation to the said variety registration.

(3) Where the person who received a notice pursuant to the provisions of paragraph (2) of this Article requests to participate in the said filing of an objection, the Minister of Agriculture, Forestry and Fisheries shall permit him/her to do so.

Article 52 (Registration in the Register of Plant Varieties)

(1) The following matters shall be registered in the Register of Plant Varieties kept in the Ministry of Agriculture, Forestry and Fisheries:

(i) grant, transfer, extinction or restriction on the disposition, of a breeder's right;

(ii) grant, preservation, transfer, modification, extinction or restriction on the disposition, of an exclusive exploitation right or of a non-exclusive exploitation right; or

(iii) establishment, transfer, modification, extinction or restriction on disposition, of a pledge on a breeder's right, on an exclusive exploitation right or on a non-exclusive exploitation right.

(2) In addition to what is provided for in this Act, matters necessary for variety registration and the Register of Plant Varieties shall be prescribed by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Article 53 (Request for Certification)

(1) Any person may file a request for any of the following from the Minister of Agriculture, Forestry and Fisheries, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries:

(i) certificate relating to an application for variety registration or a registered variety;

(ii) issue of an transcript or extract of the Register of Plant Varieties or

(iii) inspection or copying of the Register of Plant Varieties or an application filed set forth in Article 5 paragraph (1), photograph or other material attached thereto (excluding those which the Minister of Agriculture, Forestry and Fisheries considers necessary to be kept confidential).

(2) The provisions of Rules of Act Concerning Access to Information Held by Administrative Organs (Act No. 42 of 1999) shall not apply to the Register of Plant Varieties, to applications filed under Article 5 paragraph (1), nor to photographs or other material attached thereto (referred to in the next paragraph as "the Register of Plant Varieties, etc.")

(3) The provisions of Chapter 4 of the Act on Protection of Information on Individual Natural Persons Possessed by Administrative Organs (Act No. 58 of 2003) shall not apply to possessed personal information (referring to possessed personal information as prescribed in Article 2 paragraph (3) of the said Act) recorded in the Register of Plant Varieties, etc.

Article 54 (Fees)

(1) The person filing a request pursuant to the provisions of paragraph (1) of Article 46 shall pay the fee in an amount to be specified, in consideration of the actual costs, by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(2) The provisions of paragraph (1) of this Article shall not apply where the person who should pay the fee pursuant to the provision of the said paragraph is the national government.

Article 55 (Mark of Registered Variety)

Any person who transfers propagating material in the course of business shall make efforts to place a mark, on the propagating material of a registered variety he/she transfers or the package thereof, which indicates the said propagating material is of a registered variety (hereinafter referred to as a "mark of registered variety"), pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Article 56 (Prohibition of False Marking)

Any person shall be prohibited from doing any of the following acts;

(i) placing a mark of registered variety or a confusing mark therewith on propagating material of anon-registered variety or the package thereof,

(ii) transferring or displaying for the purpose of transfer the propagating material of a non-registered variety with a mark of registered variety or a confusing mark therewith on them or on the package thereof,

(iii) giving in an advertisement, for the purpose of transferring the propagating material of a non-registered variety, an indication that the propagating material is of a registered variety or a confusing indication therewith.

Article 57 (Effects of Convention)

Where there are specific provisions relating to the protection of new plant varieties in any convention, such provisions shall prevail.

Chapter 3 Designated Seed

Article 58 (Notification by Seed Dealers)

(1) A seed dealer shall notify the Minister of Agriculture, Forestry and Fisheries of the following matters, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries. However, this shall not apply to those seed dealers specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(i) the name and the domicile of the seed dealer;

(ii) the kinds of designated seeds which the seed dealer handles; and

(iii) other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(2) The same shall apply whenever any change is made in the matters set forth in paragraph (1) of this Article.

(3) The notification under paragraphs (1) and (2) of this Article shall be due, where business has been newly commenced, within two weeks after the commencement, and whenever any change is made in the matters referred to in paragraph (1) of this Article, within two weeks after such change.

Article 59
(Indication of Designated Seeds)

(1) Designated seeds shall not be sold unless its package is furnished with an indication containing the following matters or it is attached with a voucher indicating the said matters. However, this shall not apply where the matters listed in items 1 to 4 inclusive and item 6 of this paragraph pertaining to designated seeds are indicated by a notice or other readily visible means, or where designated seeds are sold by a person other than seed dealers.

(i) the name and the domicile of the seed dealer providing these matters;

(ii) the type and the variety name (in the case of grafted saplings, the types and the variety names of scion and rootstock);

(iii) the place of production;

(iv) in the case of seed, the date of production or the time limit of validity and the germination percentage;

(v) the quantity; and

(vi) any other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(2) The indication of the place of production under item 3 of paragraph (1) of this Article shall be done, in the case of a domestic product, by stating the prefecture in which the said place of the production is located, and, in the case of a foreign product, by stating the country in which the said place of the production is located.

(3) In addition to what is prescribed in paragraphs (1) and (2) of this Article, with regard to certain designated seeds for which he/she finds an indication is necessary for users to identify its suitable location for cultivation, usage and other features relevant to

cultivation or exploitation in the selecting seeds of varieties suitable to the natural and economic conditions, the Minister of Agriculture, Forestry and Fisheries shall determine and publicize the matters to be indicated for such identification and any other standard relating to the said indication, with which the seed dealers should comply.

(4) The Minister of Agriculture, Forestry and Fisheries may, where any seed dealer fails to comply with the standards determined pursuant to the provisions of paragraph (3) of this Article, issue to the seed dealer a recommendation concerning the standards to be complied with.

Article 60
(Order relating to Designated Seeds)

(1) The Minister of Agriculture, Forestry and Fisheries may order any seed dealer who has violated the provisions of paragraphs (1) and (2) of Article 50 to indicate the matters listed in each item of paragraph (1) of the said Article or to change the contents of the indicated matters, or may prohibit the sale of the designated seeds pertaining to the act of violation.

(2) The Minister of Agriculture, Forestry and Fisheries may, where any seed dealer fails to comply with the recommendation issued pursuant to the provisions of paragraph (4) of Article 50, order the seed dealer to comply with the standards set out under paragraph (3) of the said Article, designating a time limit.

Article 61
(Standards relating to the Production of Designated Seeds)

(1) The Minister of Agriculture, Forestry and Fisheries shall, where he/she finds it particularly necessary in order to secure the distribution of designated seeds of good quality, determine and publicize standards relating to the production, conditioning, stocking or packaging, of the said designated seeds, that should be complied with by persons producing the said seeds in the course of business and seed dealers.

(2) The Minister of Agriculture, Forestry and Fisheries may, where a person producing the designated seeds in the course of business or a seed dealer fails to comply with the standards determined under the provisions of paragraph (1) of this Article, issue to such a person a recommendation concerning the standards to be complied with.

(3) The Minister of Agriculture, Forestry and Fisheries may, where any person producing the designated seeds in the course of business or any seed dealer fails to comply with the recommendation issued under paragraph (2) of this Article, publish the fact of non-compliance.

Article 62
(Collection of Designated Seeds)

(1) The Minister of Agriculture, Forestry and Fisheries may cause officers of the Ministry of Agriculture, Forestry and Fisheries to collect from seed dealers such quantities of designated seeds as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

(2) In the case referred to in paragraph (1) of this Article, such officers shall, where the seed dealer so requests, show a certificate to identify his/her official status.

Article 63
(Collection of Designated Seeds made by the NCSS or the National Livestock Breeding Center)

(1) The Minister of Agriculture, Forestry and Fisheries may, where he/she finds it necessary, cause the NCSS or the Independent Administrative Institution National Livestock Breeding Center (hereinafter referred to as "NLBC") in accordance with the classes, specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries to collect from seed dealers such quantities of designated seeds as are necessary for inspection. However, compensation equivalent to the market value shall be paid.

(2) Where the collection is conducted by the NCSS or the NLBC pursuant to the provisions of paragraph (1) of this Article, the Minister of Agriculture, Forestry and Fisheries shall issue an instruction to the NCSS or the NLBC to designate the date, place and other relevant items of information.

(3) The NCSS or the NLBC, having conducted the collection referred to in paragraph (1) of this Article in accordance with an instruction set forth in paragraph (2) of this Article, shall report the result of the inspection to the Minister of Agriculture, Forestry and Fisheries pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(4) In the case referred to in paragraph (1) of this Article, officials of the NCSS or the NLBC performing the collection pursuant to the provisions of the said paragraph shall, if the seed dealer so requests, show a certificate to identify his/her status.

Article 64
(Orders to the NCSS or the NLBC)

The Minister of Agriculture, Forestry and Fisheries may, where he/she finds it necessary in order to ensure an appropriate implementation of the collection under paragraph (1) of Article 52, issue orders to the NCSS or the NLBC in relation to the collection.

Article 65
(Collection of Reports)

The Minister of Agriculture, Forestry and Fisheries may, within such limits as are necessary for the enforcement of this Act, order seed dealers to submit reports relating to their business or to submit ledgers or other documents.

Article 65
(Delegation of Authority to Prefectural Governors)

(1) Part of the authority of the Minister of Agriculture, Forestry and Fisheries under the provisions of Article 59 paragraph (4), Article 60, Article 61 paragraph (2) and (3), Article 62 and Article 65 may be delegated to Prefectural Governors, pursuant to the provisions of the Cabinet Order.

(2) Part of the authority of the Ministry of Agriculture, Forestry and Fisheries prescribed in this Chapter may be delegated to the Regional Agricultural Administration Offices, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

Chapter 4
Penal Provisions

Article 67
(Crime of Infringement)

Any person who has infringed a breeder's right or an exclusive exploitation right shall be punished by imprisonment with work for not more than ten years or by a fine of not more than 10,000,000 yen, or combination thereof.

Article 68
(Crime of Fraud)

Any person who has obtained a variety registration by means of a fraudulent act shall be punished by imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

Article 69
(Crime of False Marking)

Any person who fails to comply with the provision of Article 56 shall be punished by imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

Article 70
(Crime of Breach of Protective Order)

(1) Any person who fails to comply with the protective order shall be punished by imprisonment with work for not more than five years or by a fine of not more than 5,000,000 yen, or combination thereof.

(2) The prosecution of the crime under the preceding paragraph may not be initiated unless a complaint is filed.

(3) The crime prescribed in paragraph (1) of this Article shall also apply to a person who commits the said crime abroad.

Article 71
(Crime of Sales of Designated Seeds
with False Labeling)

Any person who falls under any of the following items shall be punished by a fine of not more than 500,000 yen.

(i) a person who has sold designated Seeds with false indication concerning the matters to be shown pursuant to the provisions of paragraphs (1) and (2) of Article 59; or

(ii) a person who has sold designated Seed in violation of the measures taken pursuant to the provisions of Article 60 paragraph (1) or (2).

Article 72
(Crime of False Notification)

Any person who falls under any of the following items shall be punished by a fine of not more than 300,000 yen.

(i) a person who failed to notify pursuant to the provisions of Article 58 or made false notification;

(ii) a person who, without justifiable grounds, has refused, obstructed or evaded the collection set forth under Article 62 paragraph (1) or Article 63 paragraph (1); or

(iii) a person who failed to submit a report or document specified pursuant to the provision of Article 65 or submitted a false report or document.

Article 73
(Dual Liability)

(1) Where a representative of a juridical person, or an agent, an employee or any other worker of a juridical person or an individual has committed an act in violation of provisions prescribed in any of the following items with regard to the business of the juridical person or the individual, not only the offender shall be punished but also the said juridical person shall be punished by the fine prescribed respectively in those items, or the said individual shall be punished by the fine prescribed in the respective Articles.

(i) Article 67 or Article 70 paragraph (1): fine of not more than 300,000,000 yen;

(ii) Article 68 or Article 69: fine of not more than 100,000,000 yen;

(iii) Articles 71 or item 1 or 3 of Article 70: fine prescribed in any of these Articles.

(2) In the case referred to in the preceding paragraph, the complaint under Article 70 paragraph (2) against the offender shall also be effective against the juridical person or individual and the complaint against the juridical person or individual shall also be effective against the offender.

(3) When a juridical person or an individual is to be punished by fine due to the act of violation prescribed in Article 67 or Article 70 paragraph (1) pursuant to the provision of paragraph (1) of this Article, the period of prescription shall be the one for the crime prescribed in those provisions.

Article 74
(Civil Fine for Violation of the Order)

Where the NCSS or the NLBC violated the order prescribed in Article 15 paragraph (6) (including the cases where it is applied *mutatis mutandis* pursuant to Article 47 paragraph (3)) or Article 64, members of the executive organ that directed the violation shall be punished by a civil fine of not more than 200,000 yen.

Article 75
(Civil Fine for Violation of the Obligation of
Using a Denomination)

Any person who violated the provisions of Article 22 shall be punished by a civil fine of not more than 100,000 yen.

SUPPLEMENTARY PROVISIONS (EXTRACT)

Supplementary Provisions
(Extract from the Act No.49 of May 18, 2007)

Article 1
(Effective Date)

This Act shall come into force as from December 1st, 2007. However, the provision of Article 6 of the Supplementary Provisions of this Act shall come into force as from the day of promulgation.

Article 2
(Transitional Measure concerning the Application of
the Provisions on Infringement)

The provisions of Chapter 2, Section 5 (including the cases where they are applied *mutatis mutandis* under Article 14 paragraph (5) of the New Act) of the Plant Variety Protection and Seed Act as revised by this Act (hereinafter referred to as "New Act") shall also apply to matters arose prior to the enforcement of this Act,

unless otherwise provided for by this Act. However, this shall not preclude the effect given by the provisions of Chapter 2, Section 5 (including the cases where they are applied *mutatis mutandis* under Article 14 paragraph (5) of the Former Act) of the Plant Variety Protection and Seed Act before the revision by this Act (hereinafter referred to as "Former Act").

Article 3

(1) The provisions of Article 34 paragraph (1) and Article 39 of the New Act shall not apply to cases in which the oral argument has, prior to the enforcement of this Act, been concluded in the High Court or the District Court as the second instance and cases in which an agreement has, prior to the enforcement of this Act, been reached to reserve the right to appeal against the judgement of the Summary Court or the judgement of the District Court as the first instance.

(2) The provisions of Article 40 to Article 42 of the New Act shall not apply to cases in which the court procedure has, prior to the enforcement of this Act, terminated, cases in which the oral argument has, prior to the enforcement of this Act, been concluded in the High Court or the District Court as the second instance and cases in which an agreement has, prior to the enforcement of this Act, been reached to reserve the right to appeal against the judgement of the Summary Court or the judgement of the District Court as the first instance.

Article 4
(Transitional Measure concerning Asset Arising
from a Criminal Act Committed prior to the
Enforcement of this Act)

In the case where this Act enters into force after the enforcement of the Act for Partial Revision of the Penal Code to Respond to an Increase in International and Organized Crimes and Advancement of Information Processing (Act No. of 2007), the provisions of Article 9 paragraph (1) to (3), Article 10 and Article 11 of the Act for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (Act No. 136 of 1999) shall also apply to acts committed after the enforcement of this Act with regard to assets arising from or acquired through a criminal act constituting of Article 56 of the Former Act (including a criminal act committed outside Japan, which would constitute any of these offenses if it

were committed in Japan and which constitutes an offense under the laws and regulations of the place of the act) that was committed prior to the enforcement of this Act in order to acquire illicit gains, or assets acquired as a reward for Article 56 of the Former Act. In this case, these assets shall be deemed as criminal gains under Article 2 paragraph (2) item (i) of the Organized Crime Punishment Act.

Article 5

(Transitional Measure concerning Penal Provisions)

With regard to a period of statute of limitations of a crime that was committed prior to the enforcement of this Act, notwithstanding the provision of Article 73 paragraph (3) of the new Act, the provisions then in force shall remain applicable.

Article 6

(Delegation to the Cabinet Order)

In addition to what is provided for in Articles 2 to 5 of the Supplementary Provisions of this Act, the transitional measures necessary for the enforcement of this Act shall be specified by the Cabinet Order.

Article 7

(Review)

After five years have passed since the enforcement of this Act, the government, where it finds it necessary by taking into consideration the state of enforcement of the New Act, shall review the provisions of the New Act, and shall take necessary measures based on the review results.

Article 8

(Partial Revision of the Act on the Independent Administrative Institution National Center for Seeds and Seedlings and Act on the Independent Administrative Institution National Livestock Breeding Center)

The term "Article 53-2 paragraph (1)" in the provisions of the following Acts shall be replaced with the term "Article 63 paragraph (1)";

(i) Act on the Independent Administrative Institution National Center for Seeds and Seedlings (Act No. 184 of 1999) Article 11 paragraph (2) item (i)

(ii) Act on the Independent Administrative Institution National Livestock Breeding Center (Act No. 185 of 1999) Article 11 paragraph (2) item (ii)

LATVIA

**CONSOLIDATED TEXT
PLANT VARIETIES PROTECTION LAW OF 2005***

**Chapter I
General Provisions**

Section 1
Purpose of this Law

The purpose of this Law is to specify the procedures for granting the breeder's right and to ensure the protection of breeder's rights.

Section 2
Scope of Application of this Law

(1) The Law shall be applied to all varieties of plant genus and species (including hybrids).

(2) A variety is an aggregate of cultivated plants which is included in the last position within the limits of a botanical taxon (botanical system) irrespective of whether the requirements for granting the breeder's right have been fully complied with. It may be defined as a manifestation characterising a genetic type or a combination of genetic types, as an aggregate that differs from any another aggregate of plants with at least one specific characteristic. A variety shall be regarded as a unit that remains constant when propagated.

Section 3
Conditions for Granting the Breeder's Right

(1) Breeder's right shall be granted if a variety is:

- 1) new;
- 2) distinct;
- 3) uniform; and
- 4) stable.

(2) In order to grant the breeder's right, a variety shall be assigned a denomination in accordance with the provisions of Section 20 of this Law. A breeder or his or her authorised representative shall comply with the procedures provided for in this Law. No other conditions shall be set for the granting of the breeder's right.

Section 4
Novelty of a Variety

A variety shall be deemed to be new if a breeder or his or her authorised representative, or someone else with his or her permission has not sold, or in any other way transferred the seeds, planting stock, propagating material (hereinafter - propagating material) or the harvest product of the variety to a third party for commercial use prior to the day of registration of an application for granting the breeder's right (hereinafter - application):

1) in Latvia - earlier than one year before the registration of an application;

2) outside of Latvia - earlier than six years before the registration of an application in relation to vines and tree varieties;

3) outside of Latvia - earlier than four years before the registration of an application in respect of other plants which are not referred to in Clause 2 of this Section.

Section 5
Distinctness of a Variety

(1) A variety shall be deemed to be distinct if it clearly differs from any other variety that has become a matter of common knowledge before the date of registration of the application.

* Translation provided by the Latvian authorities. The Law came into force on December 21, 2005. If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

(2) In particular, a variety shall be deemed to be a matter of common knowledge if an application for granting the breeder's right or for inclusion of the variety in the official catalogue of varieties has been registered in any state and if according to such application the breeder's right have been granted or the variety has been included in the official catalogue of varieties. A variety shall be deemed to be a matter of common knowledge as of the date of registration of an application.

Section 6 Uniformity of a Variety

A variety shall be deemed to be uniform if plants thereof, which have been propagated observing the particular features of the variety propagation, are sufficiently uniform in respect of the characteristic features of the variety.

Section 7 Stability of a Variety

A variety shall be deemed to be stable if after the repeated propagation or at the end of each propagation cycle (if a special propagation cycle is utilised) the characteristic features of the variety do not substantially change.

Section 8 Breeder

(1) In accordance with this Law the following persons are breeders:

1) a natural person who has derived or isolated the relevant variety;

2) an employer or a commissioning party who has entered into a contract with a person referred to in Clause 1 of this Section regarding the derivation or isolation of the relevant variety;

3) a successor to the rights of persons referred to in Clauses 1 and 2 of this Section.

(2) If a variety has been derived as a result of the joint activities of several breeders, they shall have joint breeder's right which have been specified by a written

agreement. If an agreement has not been entered into, each of them is entitled to exercise breeder's right at his or her own discretion, with the exception of the granting of a licence, as well as of transferring the breeder's right to another person. The joint owners of the breeder's right shall carry out such activities only by mutual agreement or in accordance with a court adjudication.

Section 9 Owner of Breeder's Right

A person referred to in Section 8 of this Law who has acquired the breeder's right in accordance with the procedures specified in this Law is an owner of breeder's right.

Section 10 Authorised Representative

The State Plant Protection Service shall register an authorised representative based on the authorisation of a breeder.

[17 November 2005]

Section 11 Personal Rights of a Breeder

(1) A breeder (a natural person), irrespective of who is the owner of breeder's right, has personal rights, which shall not be transferred to other persons and inherited. These are rights:

1) to be mentioned in materials and publications regarding the relevant variety, as well as the certificate regarding the granting of a breeder's right;

2) to submit a proposal for the denomination of a variety; and

3) to apply for an equitable remuneration for the utilisation of a variety in cases provided for in a contract entered into with an employer.

(2) The rights specified in Paragraph one of this Section in case of violation thereof may be protected in a court in accordance with the same procedures by which copyright is protected.

[17 November 2005]

Section 12

Tasks of the National Council Plant
Variety Council and the State Plant
Protection Service in the Field of
Protection of Varieties

(1) The National Plant Variety Council shall submit to the Ministry of Agriculture and other institutions proposals on the breeding directions of agricultural cultivated plants and the protection of breeder's rights.

(2) The State Plant Protection Service shall:

1) accept and examine applications and other documents related thereto;

2) perform expert-examinations of the conditions for granting the breeder's right;

3) take a decision regarding the recognition of results of a variety distinctness, uniformity and stability examination (hereinafter – variety examination);

4) organise, perform or control variety examination;

5) take a decision regarding the granting, loss of effect and cancellation of the breeder's right;

6) issue certificates on granting the breeder's right;

7) register licences for the transfer of the breeder's right;

8) maintain the Latvian State Register of Protected Plant Varieties;

9) in conformity with its competence co-operate with international organisations;

10) perform other functions provided for in this Law;

11) perform all activities in conformity with European Union legislation regarding plant variety protection.

[17 November 2005]

Section 13

The Latvian State Register of
Protected Plant Varieties

(1) The Latvian State Register of Protected Plant Varieties (hereinafter – Register) shall include information on applications and protected varieties.

(2) The following information regarding applications shall be included in the Register:

1) the registration number and date of the application;

2) the name and address of the breeder;

3) if it is an authorised representative – the name and address of the authorised representative, the date, number and term of validity of the authorisation;

4) the proposed denomination of a variety or temporary designation;

5) the description of the variety technical form registration number and date or the official description of the variety registration number and date that is prepared after the performance of a variety examination (hereinafter – description of the variety);

6) the variety examination report registration number and date;

7) the date of publication of the registered application;

8) the date of publication of the applied for and registered variety denomination;

9) the priority date; and

10) information regarding the course of the examination of the application.

(3) The following information regarding protected varieties shall be included in the Register:

1) the number by which the variety has been included in the Register;

2) the name and address of the owner of breeder's right, breeder, and authorised representative;

- 3) the denomination of the variety;
- 4) the description of the variety;
- 5) a reference to the components of the variety if they are utilised for the propagation of the variety;'
- 6) the date of the granting of the breeder's right, the time period for which the breeder's right has been granted, loss of effect of the breeder's rights and cancellation thereof;
- 7) the information regarding compulsory licences, registered licences and registered licence contracts issued;
- 8) information regarding the change of the name of the owner of a licence; and
- 9) information regarding the payment of the State fee for protection of breeder's rights.'

(4) The applicant and the owner of breeder's rights shall be liable for the provision of information to be included into the Register, the veracity, amendment and alteration thereof.
[17 November 2005]

Chapter II Application for Granting the Breeder's Right and Examination Thereof

Section 14 Application for Granting the Breeder's Right

- (1) A breeder or his or her authorised representative (hereinafter – applicant) shall submit an application to the State Plant Protection Service. The Cabinet shall determine the procedures for acceptance and examination and registration of an application.
- (2) An application shall consist of a completed application form and the following appended documents:
 - 1) a description of the variety;
 - 2) [17 November 2005]
 - 3) a copy of a payment document of the payment made for the examination of the application;

4) an authorisation if the applicant is not the breeder;

5) the documents referred to in Section 15 of this Law if a convention priority has been requested; and

6) a copy of the first certificate for granting the breeder's right if the breeder's right is protected in other states.

(3) An application shall be registered if a description of the variety technical form has been submitted and the following information has been provided in the application form and a copy of the payment document regarding the examination of the application:

- 1) the name and address of the applicant;
- 2) the name and address of the breeder if the applicant is not the breeder;
- 3) the submitted denomination of the variety;
- 4) the State in which the application has been registered and the registration date if a convention priority is requested; and

5) the person referred to in Section 8, Paragraph two, Clause 1 of this Law if the breeder is the person referred to in Section 8, Paragraph two, Clause 2 of this Law.

(4) An application form shall be completed in the Latvian language. If documents appended to the application are completed in any foreign language, the State Plant Protection Service has the right to request their translation into the Latvian language.

(5) If a variety has been derived utilising other varieties (components), the applicant has the right to request that the information regarding the components of the variety be regarded as restricted access information.

(6) After the registration of an application the variety shall be deemed to be a matter of common knowledge and temporary protection shall be applied thereto.

[17 November 2005]

Section 15 Convention Priority

(1) An applicant who in accordance with specified procedures has submitted an application to another Member State of the International Union for the Protection of New Varieties of Plants (UPOV) has the right within a time period of 12 months to submit an application in Latvia in relation to the same variety utilising the priority of the first application. The specified time period of 12 months shall be calculated from the day of registration of the first application.

(2) In order to certify the priority, an applicant, within a time period of three months after the registration of the application with the State Plant Protection Service, shall submit a copy of the registered application certifying the priority date.

(3) An applicant within a time period of three years after the priority date has the right to submit to the State Plant Protection Service additional information, documents or materials necessary for the evaluation of the application and the examination of the variety.

(4) The registration of another application regarding the variety referred to in the first application, the utilisation of such variety or publication of information thereof shall not be a reason for rejection of the second application. The referred to activities shall not be a basis for the arising of any rights for a third party to the variety.

[17 November 2005]

Section 16 Examination of Applications

(1) Within a time period of a month from the day of registration of an application, the State Plant Protection Service shall:

1) examine the right of the applicant to submit an application and the conformity of the variety to the provisions of Section 4 of this Law;

2) inform the applicant in writing regarding the necessity to supplement the registered application with the documents referred to in Section 14, Paragraph two of this Law and to submit a translation into the Latvian language of the documents

appended, as well as regarding the procedures for the examination of the variety.

(2) If during the examination of an application the State Plant Protection Service determines that the variety does not comply with the provisions of Paragraph one, Clause 1 of this Section, it shall reject the application informing the applicant in writing thereof.

Section 17 Submission of Objections

(1) Interested persons have the right within a time period of three months after information regarding the application has been published to submit objections to the State Plant Protection Service. Objections may relate to the novelty, distinctiveness, uniformity, and stability of a variety or to the right to submit an application. Objections shall be submitted in writing, adding the documentary justification thereto.

(2) An applicant within a time period of two months after the receipt of objections shall provide an explanation regarding the objections. If an applicant does not provide an explanation, the State Plant Protection Service shall reject the application.

(3) If the objections relate to the distinctiveness, uniformity and stability of a variety, the State Plant Protection Centre has the right to request a repeat examination of the variety.

Section 18 Examination of a Variety

(1) The State Plant Protection Service shall, according to the procedures specified by the Cabinet, organise or perform a variety examination and take a decision regarding the recognition of the results of the variety examination.

(2) The Cabinet shall approve the methodology of the examination cultivated plants, for which the referred to examination is performed in Latvia.

(3) If for the variety regarding which an application is submitted, the variety examination has been performed in another state, the State Plant Protection Service shall ensure the receipt of the variety

description and the variety examination report from the official institution performing the variety examination and shall request an original sample of the variety seed therefrom.

[17 November 2005]

Section 19

Decision regarding Granting of the Breeder's Right

(1) After completion of the examination of the variety (if such was required), the State Plant Protection Service shall send a notification on the results of the examination to an applicant. Within a time period of two months an applicant has the right to submit objections regarding the examination of the variety performed to the State Plant Protection Service.

(2) The breeder's right shall be granted:

1) if a fully completed application form has been submitted and the documents referred to in Section 14, Paragraph two of this Law have been appended; and

2) in accordance with the provisions specified in Sections 3, 4, 5, 6 and 7 of this Law.

(3) The breeder's right shall be granted by a decision of the State Plant Protection Service that comes into force on the day of the taking thereof. The State Plant Protection Service shall inform an applicant in writing regarding the referred to decision, issue a certificate regarding the granting of the breeder's right and include the variety in the Register.

[17 November 2005]

Section 20

Denomination of a Variety and Procedures for Registration Thereof

(1) The denomination of a variety shall be applied for by submitting an application. If a variety is a matter of common knowledge, it shall be applied for with a denomination previously used. If an application has been concurrently submitted in several states, the applicant shall use the same denomination of the variety. The registered denomination of the variety shall be used after the granting of the breeder's right and the expiry of the protection of the variety.

(2) The denomination of a variety shall conform to the requirements of the International Union for the

Protection of New Varieties of Plants (UPOV) in relation to the international nomenclature of cultivated plants. The denomination of a variety may consist of words, combinations of letters and figures, as well as of figures if such is the recognised practice in the designation of denominations. The denomination shall be such as the variety may be recognised by it and such as the denomination may be clearly distinguished from the denominations of varieties of the same or related plant species and the registered firm names, as well as it shall comply with linguistic standards.

(3) The State Plant Protection Service shall examine the conformity of the denomination applied for to the provisions of Paragraphs one and two of this Section. If an applied for denomination:

1) conforms, it shall be published. Interested persons have the right to submit objections to the State Plant Protection Service regarding the applied for denomination of a variety within a time period of three months from the day of publication thereof. The State Plant Protection Service shall inform the applicant regarding the objections received and if they are justified, shall act in accordance with Clause 2 of this Paragraph. The State Plant Protection Service shall inform regarding a decision, which is taken in relation to the objections, to the submitter of the objection and member states of UPOV and the European Union; or

2) does not conform, the applicant, within a time period of a month, shall submit a proposal regarding a new denomination of the variety. If the applicant does not submit a proposal, the application shall be rejected and the applicant informed in writing thereof.

(4) The denomination of a variety shall be registered concurrently with the granting of the breeder's right or by a separate decision.

(5) The State Plant Protection Service shall recognise the denomination of a variety as unsuitable if:

1) the denomination has been registered without complying with the provisions of Paragraphs one and two of this Section;'

2) a written request of the owner of the breeder's right has been received; and

3) a relevant decision of a higher institution or an adjudication of a court has been received.

(6) The denomination of a variety, which has been recognised as unsuitable, shall be cancelled and a new denomination shall be registered.
[17 November 2005]

Section 21 Publications

(1) The State Plant Protection Service shall publish the following information in the newspaper *Latvijas Vēstnesis* (the official Gazette of the Government of Latvia):

- 1) registered, recalled and rejected applications;
- 2) denominations of varieties proposed and changes of denominations of protected varieties;
- 3) granting, loss of effect or cancellation of the breeder's right;
- 4) change of the breeder, owner of breeder's right or authorised representative; and
- 5) other notices associated with this Law.

(2) The State Plant Protection Service shall publish the information referred to in Paragraph one of this Section also in the periodical publication "Latvijas Augu Skirnu Biletens" [Latvian Plant Variety Bulletin], which shall be sent to all member states of UPOV and the European Union.
[17 November 2005]

Section 22 State Fee

An owner of breeder's right or an authorised representative shall pay a State fee for the protection of the breeder's right in accordance with the procedures and in the amount specified by the Cabinet and shall submit a payment certification document to the State Plant Protection Service.
[17 November 2005]

Chapter III Breeder's right

Section 23 Scope of Application of the Breeder's Right

(1) No other person shall turn a variety into a source of income without a permit (licence contract) from an owner of the breeder's right. In compliance with the provisions of Section 24 of this Law a permit from the owner of the breeder's rights shall be necessary for the performance of the following activities related to the propagating material of a variety:

- 1) production and propagation;
- 2) preparation in conformity with sowing requirements in order to propagate the variety;
- 3) offer for sale;
- 4) sale or other type of marketing;
- 5) exportation and importation; and
- 6) storage for the purposes referred to in Clauses 1, 2, 3, 4 and 5.

(2) In compliance with the provisions of Section 24 of this Law, a permit from the owner of the breeder's right for the activities referred to in Paragraph one, Clauses 1, 2, 3, 4, 5 and 6 of this Section with the harvested product (including entire plant and parts of the plant) obtained by unauthorised utilisation of the propagating material of a protected variety is required unless he or she has had no opportunity to exercise his or her rights in relation to the referred to propagating material of the variety.

(3) The provisions of Paragraphs one and two of this Section shall also apply to such a plant variety:

- 1) which is essentially derived from the protected variety if this protected variety is not itself essentially derived in such manner;
- 2) which, in compliance with the provisions of Section 5 of this Law, insufficiently differs from the protected variety; and

3) in the production of which the protected variety must be repeatedly utilised.

(4) The variety referred to in Paragraph three, Clause 1 of this Section shall be deemed to be essentially derived from another (initial) variety, if it:

1) is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety, while retaining the essential characteristics the origin of which has been determined by the genotype or combination of genotypes of the initial variety;

2) is clearly distinguishable from the initial variety; and

3) conforms to the essential characteristics of the initial variety the origin of which has been determined by the genotype or combination of genotypes of the initial variety, except for the differences that have arisen during the process of derivation.

(5) A variety may essentially be derived by selecting natural or induced mutants, somaclonal variants or individuals that differ from the initial variety, as well as by utilising backcrossing or transformation by genetic engineering or other methods.

Section 24

Restrictions of the Breeder's right

(1) In order to ensure agricultural production, the producers of agricultural products have the right without the permission of the owner of the breeder's right to utilise for propagation of harvested products, which are acquired in the fields in his or her ownership or possession from a variety protected in Latvia that they have sown themselves (which is not a hybrid or synthetic variety), if the following plant species are grown: yellow lupine (*Lupinus luteus* L.), lucerne (*Medicago sativa* L.), peas (*Pisum sativum* L.), field beans (*Vicia faba* L.), common vetch (*Vicia sativa* L.), oats (*Avena sativa* L.), barley (*Hordeum vulgare* L.), rye (*Secale cereale* L.), triticale (x *Triticosecale Wittm.*), soft wheat (*Triticum aestivum* L. *emend. Fiori et Paol.*), potatoes (*Solanum tuberosum* L.), turnip rape [*Brassica napus* L. (*partim*)], flax (*Linum usitatissimum* L.), except for fibre flax.

(2) The producers of agricultural products, who have small holdings, may utilise the plant species referred

to in Paragraph one of this Section for the propagation of harvested products in their own holdings without paying a reimbursement to the owners of breeder's rights.

(3) A small holding within the meaning of this Law is such a holding in which ownership or possession the total area of the plant species referred to in Paragraph one of this Section (except for potatoes) does not exceed 20 hectares, but for potatoes – three hectares.

(4) If other producers of agricultural products without the permission of the owner of the breeder's right utilise for propagation the plant species referred to in Paragraph one of this Section, they shall pay a remuneration in the amount of 50 per cent from the remuneration for a licensed propagating material of the same variety for the same area.

[17 November 2005]

Section 25

Exceptions of the Breeder's right

Breeder's right shall not apply to operations:

1) which have been performed privately and for non-commercial purposes;

2) which have been carried out for experimental purposes;

3) the objective of which is to derive new varieties, except in cases where the provisions of Section 23, Paragraph three of this Law are applied in respect of the operations with varieties referred to in Section 23, Paragraphs one and two of this Law; and

4) with the propagating material of the protected variety, the harvested product (including entire plant and parts of the plant) and any material acquired from the harvested product or varieties referred to in Section 23, Paragraph three of this Law if the breeder has sold or otherwise put into circulation (or if such has taken place with his or her consent) such material or varieties, unless any of the following operations have been performed:

a) further propagation of the protected variety, or

b) exportation of the propagating material of the protected variety, harvested product (including entire plant and parts of the plant) and any material acquired

from the harvested product, which would provide an opportunity to propagate the variety in a state which does not protect varieties of the genera and species to which the referred to variety belongs, except in cases where such material to be exported is intended for final consumption.

Section 26 Term of Validity of the Breeder's Right

(1) Breeder's rights shall be acquired on the day when a decision on the granting of the breeder's rights is taken and shall be in effect until the end of the twenty-fifth calendar year, but for potatoes and with respect to the species of vine and tree varieties, until the end of the thirtieth calendar year from the year of granting the right.

(2) After the receipt of a reasoned application from the owner of the breeder's right, the State Plant Protection Service has the right to extend the term referred to in Paragraph one of this Section for another five years.

[17 November 2005]

Section 27 Transfer of the Breeder's right

(1) An owner of the breeder's right is entitled to transfer the granted breeder's right:

1) fully – to a successor to the breeder's right;

2) in part – with an authorisation or a licence contract in accordance with the provisions of Section 28 of this Law.

(2) The breeder's right shall be transferred in writing and they shall be in effect from the day of registration in the State Plant Protection Service.

Section 28 Licence Contract

(1) An owner of the breeder's right may transfer his or her right to utilise the protected variety as a source of income to another person upon mutual agreement entering into a non-exclusive licence contract or an exclusive licence contract, or by announcing the free right of use.

(2) A licence (also compulsory licence) contract and the change of the owner of the licence shall be registered in the State Plant Protection Service by making an entry in the Register. An unregistered licence contract shall not be valid. If the operation of a licence is terminated, the relevant entry shall be made in the Register.

Section 29 Non-exclusive Licence

In issuing a non-exclusive licence, that is, in granting the right to utilise a variety to a owner of a licence (licensee), an issuer of a license (licensor) shall retain the right to grant a licence for the same variety to third parties. The licensee is not entitled to transfer his or her rights to another person unless such agreement is provided for in the licence.

Section 30 Exclusive Licence

Upon receiving an exclusive licence, the licensee shall acquire exclusive rights to utilise a variety in accordance with the provisions provided for in a licence contract. The licensor shall retain the right to utilise the variety to the extent provided for in the agreement.

Section 31 Free Right of Use

(1) An owner of the breeder's right upon an agreement with the State Plant Protection Service has the right to publish a notice that any person for an appropriate remuneration is entitled to utilise a variety from the day the owner of the breeder's right has been informed in writing thereof and the licence contract has been registered in the State Plant Protection Service.

(2) If the free right of use has been announced, the fee for the protection of a plant variety shall be reduced by 50 per cent starting with 1 January of the following year.

(3) Based on an application of an owner of the breeder's right and after receiving the consent of all owners of free right of use, the State Plant Protection Service is entitled to cancel the operation of the free right of use.

Section 32 Compulsory Licence

(1) If the market is not provided with propagating material of a protected variety that is significant for the State economy or the interests of the public, any person who wishes to produce and sell such a variety in Latvia, has the right to bring an action in a court for the granting of a compulsory licence. The compulsory licence shall also include the right to receive the propagating material from the owner of the breeder's right.

(2) The State Plant Protection Service shall issue a compulsory licence on the basis of a court adjudication and make a relevant entry in the Register thereof. The court shall also determine the level of utilisation of the variety and other licensing provisions. The remuneration for utilisation of a variety shall be the same as for a non-exclusive licence for the relevant species. Depending on the circumstances of the case, the court may cancel the compulsory licence or determine new licensing provisions.

Section 32.¹

Implementation of Breeder's Rights if a Biotechnological Invention is Protected by a Patent

(1) If a breeder wants to acquire breeder's rights to a plant variety or to utilise it using a protected biotechnological invention, he or she shall obtain a licence for the utilisation of the biotechnological invention and pay a remuneration for this.

(2) A breeder may apply for a compulsory licence for the non-restricted utilisation of an invention protected by a patent if:

1) the acquisition of an ordinary licence from the owner of the patent has not been successful; and

2) he or she can prove that the protected variety constitutes significant technical progress of considerable economic importance compared with the invention claimed in the patent.

(3) If the owner of the patent utilises a variety protected with a breeder's right, the owner of the breeder's right has the right to apply for a cross-licence and remuneration.

[17 November 2005]

Section 33 Certification or Conformity Assessment of Propagating Material

The certification or conformity assessment of the propagating material of varieties for which the breeder's right has been granted in Latvia or they are protected by European Union breeder's rights shall be carried out if the grower or the processor of the propagating material is an owner of breeder's right or he or she has a licence contract registered with the State Plant Protection Service.

[17 November 2005]

Section 34 Examination of Variety During Protection Period Thereof

(1) In order to examine the uniformity and stability of a variety during its protection period, the State Plant Protection Service has the right to request that the owner of breeder's right provides the propagating material, documentation and other information that is necessary for the performance of an examination.

(2) [17 November 2005]

[17 November 2005]

Section 35 Provision of Information regarding Utilisation of a Protected Variety

Upon a request of the owner of breeder's right, agricultural production producers, processors and providers of other services, as well as the State Plant Protection Service shall provide him or her with the necessary information regarding the production, propagation, processing and sale of the propagating material of protected varieties.

Chapter IV Loss of Effect and Cancellation of Breeder's right

Section 36 Loss of Effect of Breeder's right

(1) Breeder's right shall lose effect if at least one of the following circumstances arise:

1) the owner of breeder's right has not paid the State fee in accordance with Section 22 of this Law.

2) the owner of breeder's right does not provide the propagating material, documentation or other materials that are necessary for the examination of maintenance of a variety;

3) provisions of Sections 6 or 7 of this Law are no longer complied with;

4) the owner of breeder's right himself or herself notifies in writing that he or she waives the breeder's right; and

5) the State Plant Protection Service has recognised the denomination of a variety as unsuitable and the owner of breeder's right within a time period of three months has not proposed a new denomination conforming to the provisions of Section 20 of this Law.

(2) If there is a legal basis to construe that the breeder's right has lost effect, the State Plant Protection Service prior to taking the decision shall notify the owner of breeder's right thereof by specifying the reason of such an action, as well as by providing a time period for the rectification of the circumstances referred to in Paragraph one of this Section.

Section 37 Cancellation of Breeder's right

The breeder's right shall be cancelled in any of the following cases:

1) in taking a decision on the granting of the breeder's right the provisions of Sections 4 or 5 of this Law have not been complied with;

2) the granting of the breeder's right has been mainly based on the information and documents provided by a breeder, but in taking a decision on granting the breeder's right the provisions of Sections 6 or 7 of this Law have not been complied with; or

3) the breeder's right has been granted to a person who has no legal rights thereto.

Chapter V Liability for Infringement of Breeder's right

Section 38 Compensation for Losses Caused Due to Infringement of Breeder's right

A person who has infringed the breeder's right shall compensate, for the utilisation of a variety, the losses to the owner of breeder's right, which losses have resulted due to non-compliance with this Law.

Section 39 Compensation for Losses Caused in Relation to the Temporary Protection of a Variety

If a third party utilises a propagating material of a variety, provisions of this Law in relation to the infringement of the breeder's right shall be applied from the day of publication of the application. In such case, only such losses shall be compensated as relate to the remuneration for the utilisation of a variety, unless the owner of the breeder's right has warned the relevant persons of the registration of the application prior to its publication. The losses shall be compensated from the day of receipt of the warning, but not earlier than from the day of registration of the application in the State Plant Protection Service.

Section 40 Liability for Infringement of Breeder's right

Persons who have infringed the breeder's right shall be held liable in accordance with the procedures prescribed by law.

Transitional Provisions [17 November 2005]

1. The Law On the Protection of Plant Varieties (*Latvijas Republikas Augstakās Padomes un Valdības Zinotājs*, 1993, No. 18; *Latvijas Republikas Saeimas un Ministru Kabineta Zinotājs*, 1995, No. 22; 1999, No. 23) is repealed.
[17 November 2005]

2. The Cabinet shall:

1) by 1 January 2006 issue the regulations referred to in Section 18, Paragraph one of this Law;

2) by 1 June 2006 issue the regulations referred to in Section 14, Paragraph one of this Law; and

3) by 1 December 2007 issue the regulations referred to in Section 18, Paragraph two of this Law.
[17 November 2005]

3. The provisions of Section 33 of this Law in relation to the conformity assessment of propagation materials shall come into force on 1 April 2006.

Informative Reference to European Union Directives

The legal norms arising from Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions has been included in this Law [17 November 2005]

This Law has been adopted by the *Saeima* on 2 May 2002.

Disclaimer: The English language text below is provided by the Translation and Terminology Centre for information only; it confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published. Only the latter is authentic. The original Latvian text uses masculine pronouns in the singular. The Translation and Terminology Centre uses the principle of gender-neutral language in its English translations. In addition, gender-specific Latvian nouns have been translated as gender-neutral terms, e.g. *chairperson*.

LITHUANIA

LAW ON THE PROTECTION OF PLANT VARIETIES
(No. IX-618)
(as last amended by 19 October 2006 No. X-862)*

CHAPTER ONE
 GENERAL PROVISIONS

Article 1
 Purpose of the Law

1. The Law shall regulate relationships of natural and legal persons relating to the legal protection and use of plant varieties.
2. The Law shall apply to the varieties included in the list of plant genera and species approved by the Minister of Agriculture.
3. This Law shall implement the legal act of the European Union referred to in the Annex to the Law.

Article 2
 Definitions

For the purposes of this Law

1. Harvested material shall mean entire plants or parts of plants.
2. Plant genus shall mean a grouping of organisms constituting a systematic unit and uniting closely related plant species descended from a common ancestor.
3. Plant species shall mean a grouping of related organisms constituting a systematic unit, occupying a relatively constant place in nature and fulfilling its functions in the universal biological metabolism in the manner specific only for that grouping.
4. Plant variety (hereinafter – variety) shall mean 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 plant variety right are fully met, can be:

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

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

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

5. List of Plant Genera and Species shall mean the list approved by the Minister of Agriculture, which includes plant genera and species the varieties whereof are protected under this Law.

6. Plant taxon shall mean any taxonomic grouping of plants (class, rank, family, genus, species, subspecies, variety, form).

7. Propagating material shall mean a seed, an entire plant or a vegetative part of a plant (grafts, stocks, shoots, parts of rootstocks, tubers, etc.) intended for the propagation of plants of a certain variety.

8. Genotype shall mean the sum of hereditary factors of an organism.

9. Licensing agreement shall mean a written agreement concluded by the breeder with natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area whereby these persons are granted the right to propagate and market the propagating material of the protected variety under agreed conditions within the defined territory.

10. Licence fee shall mean the fee payable under a licensing agreement.

* Translation provided by the Lithuanian authorities.

11. Breeder shall mean:

1) one or several natural persons who bred or discovered and developed a new plant variety;

2) a legal person whose one or several employees, working under an employment contract or fulfilling an assigned task, bred or discovered and developed a new plant variety;

3) branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area, which bred or discovered and developed a new plant variety;

4) a successor in title who has acquired property rights to the variety from the persons indicated in subparagraphs 1-3 of this paragraph.

12. Breeder's remuneration shall mean the remuneration paid to the breeder by a farmer or another land user for the propagating material of the protected variety grown on one's own holding and used for further reproduction or multiplication purposes on one's own holding.

13. Protected variety of significance for the national economy shall mean a variety required for guaranteeing the supply of the propagating material possessing certain characteristics to the market.

14. Application for a plant variety right shall mean a written request for the granting of a plant variety right filed with the manager of the List of Protected Plant Varieties in the Republic of Lithuania.

15. Commonly known variety shall mean a variety which becomes a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

Article 3

Conditions for the Grant of Plant Variety Rights

Plant variety rights shall be granted to the breeder where the variety is established to comply with the requirements of novelty, distinctness, uniformity and stability and also designated by a denomination in

accordance with the requirements laid down in Article 18 of this Law.

Article 4

Novelty

1. The variety shall be deemed to be new if, prior to the date of filing of the application for a plant variety right (hereinafter – application), propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by the initiative or with the consent of the breeder, for purposes of exploitation of the variety:

1) in the Republic of Lithuania – earlier than one year before that date;

2) in the territory of another country – earlier than four years or, in the case of trees, vines or berry shrubs, earlier than six years before the said date.

2. The variety shall satisfy the condition of novelty in selling or otherwise transferring the right of disposal of the propagating or harvested material of the variety to other persons if:

1) damage has been caused to the breeder or his successor in title;

2) the breeder's right has been transferred on the basis of a contractual relationship;

3) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area reproduce the propagating material of the relevant variety on behalf of the breeder, provided that the breeder preserves his property right to the propagating material, and the propagating material is not used in the production of propagating material of another variety;

4) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area conduct field trials or laboratory tests with a view to evaluating the variety;

5) this has been done for the purpose of implementing laws or administrative obligations, particularly in relation to biological safety or the entry of the variety in the National List of Plant Varieties; 6) the harvested material of the variety produced in the course of breeding the variety or carrying out the activities listed in subparagraphs 3-5 of this paragraph is sold or otherwise disposed of as a by-product or surplus product without making reference to the variety.

Article 5 Distinctness

1. The variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of at least one of its characteristics from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

2. Any other variety shall be deemed to be a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

Article 6 Uniformity

The 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 uniform in its relevant characteristics.

Article 7 Stability

The 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 such cycle.

Article 8 List of Protected Plant Varieties in the Republic of Lithuania

1. The List of Protected Plant Varieties in the Republic of Lithuania (hereinafter – the List of Protected Varieties) shall be a list of plant varieties covered by plant variety rights in the Republic of Lithuania.

2. The List of Protected Varieties shall be comprised and administered by the manager of the List of Protected Varieties – the institution authorised by the Ministry of Agriculture.

CHAPTER TWO APPLICATION FOR THE GRANT OF A PLANT VARIETY RIGHT

Article 9 Filing of the Application

1. The breeder or the person authorised by him (hereinafter – the applicant) wishing to be afforded protection for the variety bred or discovered and developed by him shall file an application for the grant of a plant variety right with the manager of the List of Protected Varieties.

2. The application shall contain a request for the grant of a plant variety right and other documents the list, form and procedure for filing whereof shall be established by the manager of the List of Protected Varieties.

3. A separate application shall be filed in respect of every variety. The request for the grant of a plant variety right and other related documents shall be filed in the Lithuanian or another language determined by the manager of the List of Protected Varieties. In this case, an official translation into the Lithuanian language shall be submitted.

4. Where several natural or legal persons bred or discovered and developed the variety jointly, one application shall be filed indicating the share of each owner. Foreign natural or legal persons shall file their applications through their authorised representative in the Republic of Lithuania.

5. The filing of an application in a Member of the International Union for the Protection of New Varieties of Plants or in a Member State of the European Union shall not restrict the applicant's right to file an application to the manager of the List of Protected Varieties without waiting for a reply concerning the grant of a plant variety right.

6. The date of filing of the application shall be the date on which the manager of the List of Protected

Varieties received and registered an application for the grant of a plant variety right which complies with the requirements laid down in paragraph 2 of this Article.

Article 10 Right of Priority of an Application

1. The right of priority of an application shall be determined by the date of filing of the application.

2. The applicant shall have the right to file his first application with the competent authority of any Member of the International Union for the Protection of New Varieties of Plants or any Member State of the European Union. If, prior to filing an application with the manager of the List of Protected Varieties in Lithuania, the applicant has already applied for the grant of a plant variety right for the same variety in any Member of the International Union for the Protection of New Varieties of Plants or in any Member State of the European Union, the right of priority of the application may, at the applicant's request, be determined by the date of filing of the first application. In this case the application must be filed with the manager of the List of Protected Varieties within 12 months from the date of filing of the first application. The day of filing of the application shall not be included in the latter period.

3. In order to benefit from the right of priority of the application in the case referred to in paragraph 2 of this Article, the applicant shall, within a period of three months from the date of filing of the subsequent application with the manager of the List of Protected Varieties, submit a copy of the first application certified by the foreign competent authority with which that application was filed. The manager of the List of Protected Varieties may request the applicant to furnish additional documents or other evidence that the variety which is the subject matter of both applications is the same.

4. The breeder shall be allowed a period of two years after the expiration of the period of priority specified in paragraph 2 of this Article or, where the first application is rejected or withdrawn, the period set by the manager of the List of Protected Varieties after such rejection or withdrawal, in which to furnish, in accordance with the procedure laid down in this Law, to the manager of the List of Protected Varieties with which he has filed the subsequent application, any

necessary documents or material required for the purpose of the examination under Articles 11, 12, and 13 of this Law.

5. Events, occurring within the period provided for in paragraph 2 of this Article, such as the filing of another application for protection for the same variety, the publication of the application or the use of the variety that is the subject of the first application, shall not give the manager of the List of Protected Varieties a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

6. Where the breeder lodges an appeal in accordance with the procedure established in Article 36 of this Law against the applicant who was not entitled to a plant variety right and the manager of the List of Protected Varieties takes a decision to refuse protection for the variety on these grounds, the breeder shall have the right to require that the date of the refused application be deemed to be the date of his application. In this case, the breeder must file an application with the manager of the List of Protected Varieties within one month of the date of the decision to refuse the grant of a plant variety right.

CHAPTER THREE EXAMINATION OF THE APPLICATION AND TECHNICAL EXAMINATION OF THE VARIETY

Article 11 Preliminary Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the preliminary examination of the application within one month from the date of filing of the application. The examination shall determine the priority of the application, as well as verify whether the application complies with the requirements set by the manager of the List of Protected Varieties.

2. Having established within one month that the submitted documents do not comply with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. If the applicant corrects the identified deficiencies within the time limit specified by the manager of the List of Protected Varieties, the date of filing of the application shall be the date on which the manager of the List of Protected Varieties received and

registered the application for the grant of a plant variety right. If the deficiencies are not corrected, the application shall be deemed not to have been filed and the applicant shall be notified thereof in writing.

3. If the application complies with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing.

Article 12

Substantive Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the substantive examination of the application within the period set by the manager of the List of Protected Varieties, which is computed from the data of filing of the application.

2. The substantive examination shall verify whether the variety indicated in the application for the grant of a plant variety right is new, whether the applicant is entitled to file this application and whether the proposed variety denomination complies with the requirements laid down in Article 18 of this Law.

3. Having established that the variety does not comply with the requirements laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. Should the applicant fail to correct the deficiencies that may have been identified, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

Article 13

Technical Examination of the Variety

1. Following the preliminary and substantive examinations of the application, technical examination of the variety shall be carried out. It shall be verified through tests whether the variety complies with the conditions of distinctness, uniformity and stability.

2. By decision of the manager of the List of Protected Varieties, the technical examination of the variety shall also be deemed to have been carried out if the distinctness, uniformity and stability of the variety have been assessed and recognised by the competent authority of any other country and the applicant has furnished all the documents supporting this fact as

well as the consent of the relevant authority to use the findings of its technical examination of the variety.

Article 14

Arrangement of the Technical Examination of the Variety and Examination Results

1. Responsibility for the technical examination of a variety shall rest with the manager of the List of Protected Varieties. The manager of the List of Protected Varieties may conduct the technical examination of the variety itself or avail itself of the services of national or foreign competent bodies.

2. The applicant shall pay a fee for the technical examination of the variety to the manager of the List of Protected Varieties or the national or foreign competent body that has conducted this technical examination, in the amounts fixed by them.

3. If the results of the technical examination of the variety comply with the requirements of distinctness, uniformity and stability laid down by this Law and the applicant has paid the fee for the technical examination of the variety in accordance with the procedure laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall compile an official description of the variety and take a reference sample of the propagating material of the variety for keeping.

4. Where it is established that the variety does not comply with the requirements referred to in paragraph 3 of this Article and/or the applicant has not paid the fee for the technical examination of the variety, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

5. The manager of the List of Protected Varieties shall keep the documents relating to the examination of the application and the technical examination of the variety for the entire duration of the plant variety right.

Article 15

Provisional Protection

The breeder's interests shall also be protected during the period from the date of filing of the application for the grant of a plant variety right to the grant of that right. During the period of such provisional protection, the breeder shall be entitled to claim

damages from any person who has infringed his rights specified in Article 26 of this Law.

Article 16 Publication of Information

The manager of the List of Protected Varieties shall publish information relating to:

- 1) received, withdrawn and rejected applications;
- 2) variety denominations proposed in the applications;
- 3) varieties covered by the plant variety right, their breeders and/or authorised representatives of the breeders;
- 4) varieties afforded provisional protection;
- 5) change of the breeders and/or their authorised representatives;
- 6) decisions on the nullification of the plant variety right, cancellation or extension of that right;
- 7) other information specified by the manager of the List of Protected Varieties.

CHAPTER FOUR DESIGNATION AND USE OF A VARIETY DENOMINATION

Article 17 Variety Denomination

1. A variety shall be designated by a denomination which will be its generic designation. The denomination shall be indicated in the application filed by the applicant.
2. Upon the entry of the variety in the List of Protected Varieties, it must in all cases be referred to by the designated denomination. The same variety denomination must be used even after the expiration of the plant variety right.

Article 18 Characteristics of the Denomination

1. The variety denomination must enable the variety to be identified. It may not consist solely of figures

except where this is an established practice for designating varieties. 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 breeders. It must be different from every denomination which designates, in the Republic of Lithuania or any other country, an existing variety of the same plant species or of a closely related species.

2. Prior rights of third persons shall not be affected. The new variety may not be designated by the denomination of the variety whose protection has expired.

3. The denomination must comply with the norms of the standard Lithuanian language.

Article 19 Change of the Variety Denomination

The variety denomination may be changed by a decision of the manager of the List of Protected Varieties or by a court decision.

CHAPTER FIVE GRANT, DURATION AND TERMINATION OF THE PLANT VARIETY RIGHT

Article 20 Entry into Force of the Plant Variety Right

1. Having established that the plant variety satisfies the conditions for plant variety rights laid down in Article 3 of this Law, the manager of the List of Protected Varieties shall take a decision to enter the variety in the List of Protected Varieties under the proposed denomination and inform the applicant thereof in writing. The decision shall specify the denomination of the variety, its breeder, the variety description and the duration of the plant variety right.

2. Upon the entry of the variety in the List of Protected Varieties, the breeder shall be issued a certificate of the plant variety right. The manager of the List of Protected Varieties shall define the form of the certificate.

3. The plant variety right shall be granted for the variety from the date of its entry in the List of Protected Varieties.

Article 21
Refusal to Grant the Plant Variety Right

Where the variety does not comply with the requirements laid down by this Law, the manager of the List of Protected Varieties shall refuse to enter the variety in the List of Protected Varieties and shall notify the applicant thereof in writing.

Article 22
Duration of the Plant Variety Right

1. The term of the plant variety right shall run for a period of 25 years, or, in the case of potatoes, trees, berry shrubs and vines, for a period of 30 years from the date of their entry in the List of Protected Varieties.

2. The manager of the List of Protected Varieties shall be entitled, at the request of the breeder or his authorised representative, to extend the term of the plant variety right for up to further five years. The duration of the plant variety right shall be extended if the breeder or his authorised representative files with the manager of the List of Protected Varieties a written request for the extension of this term before the expiry thereof.

3. The plant variety right shall lapse before the expiry of the terms laid down in this Article if the breeder surrenders it by sending a written declaration to such effect to the manager of the List of Protected Varieties. The date of the expiration of the plant variety right may be indicated in the breeder's application. Where the date is not indicated, the surrender shall be effective from the day following the date of receipt of the application.

Article 23
Nullity of the Plant Variety Right

1. The plant variety right shall be declared null and void from the day of entry of the variety in the List of Protected Varieties if:

1) it is established that the variety did not comply with the requirements of novelty or distinctness at the time of the grant of the plant variety right;

2) the grant of the plant variety right has been based only upon information and documents furnished by the breeder, while the variety did not

comply with the requirements of uniformity or stability under Articles 6 and 7 of this Law at the time of the grant of the plant variety right;

3) it is established that the plant variety right has been granted to a person who is not entitled to it.

2. Having established the reasons referred to in paragraph 1 of this Article, the manager of the List of Protected Varieties shall take a decision to declare the plant variety right null and void and notify the breeder thereof in writing.

Article 24
Cancellation of the Plant Variety Right

1. The plant variety right shall be cancelled if:

1) the breeder or his authorised representative files a written request with the manager of the List of Protected Varieties to delete the variety from the List of Protected Varieties;

2) the manager of the List of Protected Varieties establishes that the variety does not comply with the requirements of uniformity and stability under Articles 6 and 7 of this Law;

3) the breeder has not provided the manager of the List of Protected Varieties at the latter's request with the information, documents or other material necessary for verifying the maintenance of the variety;

4) the manager of the List of Protected Varieties establishes that the variety denomination no longer complies with the requirements laid down by this Law, and the breeder does not propose another suitable denomination;

5) the breeder fails to pay the state fee for the plant variety right.

2. The manager of the List of Protected Varieties must notify the breeder in writing that his plant variety right may be cancelled for reasons referred to in paragraph 1 of this Article and set the time limit for eliminating these reasons.

3. If the breeder fails to eliminate the reasons for cancelling the plant variety right within the time limit specified in paragraph 2 of this Article, the manager of the List of Protected Varieties shall take a decision

to cancel the plant variety right and notify the breeder thereof in writing.

4. The breeder shall lose his rights referred to in Article 26 of this Law from the date of cancellation of the plant variety right.

Article 25 State Fees

State fees shall be established and paid for the services provided by the manager of the List of Protected Varieties in accordance with the procedure laid down by the Law on Fees and Charges and by the Government.

CHAPTER SIX RIGHTS AND OBLIGATIONS OF THE BREEDER

Article 26 Rights of the Breeder

1. Subject to the provisions of Articles 28 and 29 of this Law, the breeder shall be entitled to authorise the performance of the following acts in respect of the propagating material of the protected variety:

- 1) production and reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting;
- 6) importing;

7) stocking for any of the purposes mentioned in subparagraphs 1-6 of this paragraph.

2. A person who has not concluded a licensing agreement or has not obtained the written authorisation of the breeder for the use of the propagating material of the variety covered by the plant variety right shall be prohibited from performing any acts referred to in paragraph 1 of this Article in respect of the propagating material of the protected variety.

3. Persons using the variety under a licensing agreement must notify the breeder of the propagating material reproduced, sold or otherwise marketed, unless the licensing agreement provides otherwise.

4. The use of harvested material obtained through the use of the propagating material of the protected variety without a licensing agreement shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to this propagating material.

Article 27 Application of Breeder's Rights to Essentially Derived Varieties and Certain Other Varieties

1. The provisions of Article 26 of this Law shall also apply in relation to:

- 1) varieties which are essentially derived from the protected variety, where this protected variety is not itself an essentially derived variety;
- 2) varieties which are not clearly distinguishable in accordance with the provisions of paragraph 1 of Article 5 of this Law from the protected variety;

3) varieties whose production requires the repeated use of the protected variety.

2. A variety shall be deemed to be essentially derived from another variety, hereinafter referred to as the initial variety, when:

1) 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 genotype or combination of genotypes of the initial variety;

2) it is clearly distinguishable from the initial variety but 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, except for the differences which result from the act of derivation of this 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, backcrossing, or transformation by genetic engineering.

Article 28 Exceptions to the Breeder's Right

1. A variety may be used without the breeder's authorisation:

- 1) privately and for non-commercial purposes;
- 2) for scientific purposes;

3) for the purpose of breeding new varieties and carrying out acts referred to in Article 26 of this Law in respect of these varieties, except for the cases where the provisions of Article 27 of this Law apply.

2. Farmers and other land users may use the protected variety without the breeder's authorisation when:

1) they use the propagating material from the harvest of the protected variety obtained on their own holdings or on land plots used by them for their own agricultural purposes;

2) they pay remuneration to the breeder. The amount of such remuneration and the payment procedure shall be established by mutual agreement between the breeder or his authorised representative and the farmer or another land user. In the absence of such an agreement, the remuneration shall amount to at least 50 percent of the average licence fee charged in Lithuania for the propagating material of the lowest category of the same plant species, subject to certification.

3. The provisions of paragraph 2 of this Article shall apply to farmers and other land users only in the cases when they:

1) are growing on their own holdings or land plots used by them the following plant species: oats, barley, rye, spelt wheat and durum wheat, triticale, rape, linseed (with the exclusion of flax), peas, beans, vetch, lupine, lucerne, potatoes;

2) use for further propagating purposes on their own holdings the product of the harvest which they have obtained by planting, on their own holdings or

land plots used by them, propagating material of a variety of the species referred to in subparagraph 1 of this paragraph (other than a hybrid or synthetic variety) protected in Lithuania.

4. Farmers and other land users shall not be required to pay the remuneration specified in subparagraph 2 of paragraph 2 of this Article if their own holding or land plot used by them is not larger than the area defined by the Minister of Agriculture.

5. Farmers and other land users who are propagating the certified propagating material of protected varieties must, on the request of breeders, provide them with information relating to the use of the propagating material of the protected variety.

Article 29 Exhaustion of the Breeder's Right

The breeder's right shall not extend to acts concerning any propagating or harvested material of the protected variety, or of a variety referred to in Article 27, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the country which is a member of the International Union for the Protection of New Varieties of Plants, or any material derived from the said material, unless such acts:

1) involve further production of the propagating material of the variety in question;

2) involve an export of the propagating or harvested material 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 harvested material is exported for final consumption purposes.

Article 30 Assignment of the Breeder's Rights

1. Natural and legal persons who have acquired the property right to the variety must submit to the manager of the List of Protected Varieties documents supporting this fact.

2. The manager of the List of Protected Varieties shall examine the received documents and register the new breeder within one month from the receipt of the application.

Article 31 Obligations of the Breeder

At the request of the manager of the List of Protected Varieties, the breeder must provide samples of the propagating material of the protected variety for the purpose of renewing the reference sample or verifying the identity and other characteristics of the propagated variety.

CHAPTER SEVEN LICENSING AGREEMENTS

Article 32 Conclusion of Licensing Agreements

1. The breeder of the protected variety (licensor) may authorise another person (licensee) to perform the acts referred to in Article 26 of this Law. A licensing agreement shall be concluded to this effect.

2. The licensee may not transfer the rights to perform the acts referred to in Article 26 to the third person, unless the licensing agreement provides otherwise.

3. Upon the conclusion of the licensing agreement, the breeder of the protected variety shall submit it to the manager of the List of Protected Varieties for registration.

Article 33 Types of Licensing Agreements

1. The breeder shall have the right to conclude:

- 1) an exclusive licensing agreement;
- 2) a non-exclusive licensing agreement.

2. The conclusion of an exclusive licensing agreement shall restrict the breeder's right to use the variety by rights transferred to the licensee.

3. The conclusion of a non-exclusive licensing agreement shall not restrict the breeder's rights established by this Law.

Article 34 Requirements of Licensing Agreements

A licensing agreement shall be concluded in writing. A licensing agreement shall set out the following:

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- 1) the requisites of the parties to the agreement;
- 2) the denomination of the plant species and variety;
- 3) purposes, ways or methods of exploitation of the variety;
- 4) the territory of exploitation of the variety;
- 5) the period of validity of the licensing agreement;
- 6) rights, obligations and liability of the parties to the agreement;
- 7) the amount of the licence fee, terms and procedure for payment thereof;
- 8) the procedure for settling disputes;
- 9) other conditions in conformity with laws and other legal acts.

Article 35 Compulsory Licensing Agreement

1. A compulsory licensing agreement may be concluded if there is a lack in the country of the propagating material of the protected variety of significance for the national economy or if the breeder has not propagated the variety of significance for the national economy for a period of three years after its entry in the List of Protected Varieties. A natural or legal person who wishes to conclude a compulsory licensing agreement may apply to the manager of the List of Protected Varieties.

2. A compulsory licensing agreement shall be concluded and terminated by the decision of the manager of the List of Protected Varieties.

3. The licence fee payable for the exploitation of the variety under a compulsory licensing agreement shall be fixed by the decision of the manager of the List of Protected Varieties and shall be equal to the average licence fee charged for the propagating material of the same plant species in Lithuania.

4. The breeder must sell to the licensee the initial propagating material required for the reproduction (multiplication) of the variety for the price that is paid on the average for the propagating material of other varieties of the same plant species.

No. X-862 of 2006

5. A compulsory licensing agreement may be concluded for a maximum period of four years. The breeder may request the manager of the List of Protected Varieties to shorten the period of the compulsory licensing agreement or to terminate the agreement, if the reasons for concluding the licensing agreement cease to exist or the licensee violates the conditions laid down in the licensing agreement.

6. The conclusion of a compulsory licensing agreement shall not restrict the breeder's rights established by this Law.

7. Disputes arising in relation to the conclusion and termination of a compulsory licensing agreement shall be settled by court.

CHAPTER EIGHT DECISION MAKING, APPEALS AGAINST DECISIONS AND EXAMINATION OF APPEALS

Article 36 Appeals against the Application

1. After the publication of the registration of the application every interested person shall have access the application documents, the results of the technical examination of the variety and the variety description.

2. Prior to a decision to grant the plant variety right or to refuse granting that right, the interested persons may lodge an appeal with the manager of the List of Protected Varieties against the ineligible applicant, as well as on the contention that the variety does not comply with the conditions for the grant of plant variety rights referred to in Article 3 of this Law. Appeals against the variety denomination may be lodged within three months from the date of the publication of the application. The appeal shall be accompanied by the documents or other material justifying the appeal. The person who has lodges the appeal shall have the right to withdraw it at any time.

3. The manager of the List of Protected Varieties must notify the applicant in writing of the received appeal or the withdrawal thereof.

Article 37 Board of Appeal

1. For the purposes of deciding on appeals by applicants from the decisions of the manager of the List of Protected Varieties, also on appeals against unsatisfactory examinations of applications and technical examinations of varieties, as well as on other issues relating to plant variety rights, the Minister of Agriculture shall set up the Board of Appeal composed of five members and appoint the chairman of the Board. The Board of Appeal shall be appointed for a period of three years and comprised of representatives from the Ministry of Agriculture, agricultural, farmers' non-profit organisations, as well as scientific institutions.

2. The activities of the Board of Appeal shall be governed by the regulations approved by the Minister of Agriculture.

3. Decisions of the Board of Appeal shall be binding on the manager of the List of Protected Varieties.

Article 38 Procedure of Making Decisions, Appealing against Decisions and Examining Appeals

1. The time limits and procedure for appealing against the decisions of the manager of the List of Protected Varieties, as well as the time limits for correcting the identified deficiencies in the applications, taking decisions and notifying of such decisions, filing the received and withdrawn appeals shall be specified in the regulations of the List of Protected Varieties.

2. Decisions of the manager of the List of Protected Varieties shall be appealed against to the Board of Appeal, whereas decisions of the Board of Appeal shall be appealed against in court.

CHAPTER NINE INTERNATIONAL CO-OPERATION

Article 39 International Treaties

Where international treaties to which the Republic of Lithuania is a party establish other requirements

for plant variety rights than those laid down in this Law, the provisions of the international treaties of the Republic of Lithuania shall apply.

Article 40
International Co-operation

The manager of the List of Protected Varieties shall co-operate with institutions of other states, exchange information and documents relating to plant variety rights, as well as perform other acts for the fulfilment of international obligations.

CHAPTER TEN
ENFORCEMENT OF THE BREEDER'S RIGHTS AND
LIABILITY FOR VIOLATIONS OF THE LAW ON THE
PROTECTION OF PLANT VARIETIES

Article 41
Remedies for Infringement

1. Breeders or their authorised representatives, with the aim of defending their rights, as well as licensees, with the aim of defending the rights assigned to them, shall be entitled in accordance with the procedure established by law to apply to court and request to:

- 1) recognise the rights;
- 2) issue an injunction aimed at prohibiting the continuation of unlawful acts;
- 3) prohibit the performance of acts likely to cause an actual infringement of the rights or to inflict damage;
- 4) compensate for material damage, including lost profits and other expenses incurred;
- 5) apply other remedies provided for by this Law and other laws.

2. In order to ensure the enforcement of an injunction prohibiting the continuation of unlawful acts, as well as a prohibition to perform acts likely to cause an actual infringement of the rights or to inflict damage, the court may, at the request of persons referred to in paragraph 1 of this Article, apply provisional protection measures.

3. Where the person, against whom an injunction aimed at prohibiting the continuation of unlawful acts

is issued or who is liable to be subject to the corrective measures provided for in Article 41⁽⁴⁾, acted without fault as regards the infringement of the rights established by this Law, the court may, at the request of that person, order pecuniary compensation to be paid to the injured party, if execution of the measures provided for in paragraph 1 of this Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 41⁽¹⁾
Right of Information

When adjudicating a dispute concerning an infringement of the rights established by this Law and in response to a justified request of the claimant, the court may, in the course of proceedings, order persons to provide immediate information on the infringement of the claimant's rights provided for in this Law, as well as the origin and distribution networks of protected plant varieties, also the quantities and prices of the used propagating material of those varieties.

Article 41⁽²⁾
Evidence

1. The court may, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, order in accordance with the procedure laid down in the Code of Civil Procedure that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of the propagating material of the protected plant variety shall be considered by the court to constitute reasonable evidence of an infringement of the rights established by this Law.

2. Under the conditions specified in paragraph 1 of this Article, in the case of an infringement of the rights established by this Law committed for commercial purposes, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, order the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information. In the event of failure to communicate such evidence without valid reasons within the time limit set by the court or refusal of

access to such evidence, the court shall be entitled to take a decision on the basis of the evidence submitted to it.

Article 41⁽³⁾
Provisional Measures and Measures for
Preserving Evidence

1. The application of provisional measures and measures for preserving evidence shall be governed by the Code of Civil Procedure and this Law.

2. Where there are sufficient grounds to suspect that an infringement of the rights established by this Law has been committed, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, apply provisional measures necessary to prevent any imminent unlawful acts, to forbid the continuation of the unlawful acts and to enforce the final decision of the court, that is to:

1) forbid persons to commit any imminent infringement of the rights established by this Law;

2) order persons to discontinue, on a provisional basis, any infringement of the rights established by this Law;

3) seize, forbid the entry into or remove from the channels of commerce the propagating material of the protected variety suspected of possible or actual infringement of the rights established by this Law;

4) seize the property of the persons allegedly infringing the rights established by this Law, which is possessed by the said persons or third persons, including bank accounts and accounts at other credit institutions; as well as require to communicate banking, financial or commercial documents or to grant access to these documents, if an infringement has been committed for commercial purposes;

5) apply other measures provided for by the Code of Civil Procedure.

3. If the applied provisional measures referred to in subparagraphs 1 and 2 of paragraph 2 of this Article are infringed and such infringement continues, the court may order the alleged infringers to ensure adequate compensation for damages to the person who requested the application of provisional measures.

4. The court shall be entitled to require the person, who requests the application of provisional measures, to provide any reasonably available evidence in order to satisfy itself with a sufficient degree of certainty that he or the person, in respect of whose interests the application of provisional measures is requested, is the holder or user of the rights established by this Law and that the applicant's rights are being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence sufficient to support its claims that his rights established by this Law have been infringed or are about to be infringed, order provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information, that is:

1) the detailed description of the propagating material of the protected variety infringing the rights established by this Law, with or without the detention thereof;

2) the arrest and seizure of the propagating material of the protected variety infringing the rights established by this Law and the documents relating thereto;

3) the application of other prompt and effective provisional measures provided for by the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been informed and heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied without the defendant having been informed and heard, the defendant must be notified thereof without delay after the execution of those measures at the latest. At the request of the parties, including the right to be heard, provisional measures and measures for preserving evidence may be reviewed with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

7. Where the applied provisional measures or measures to preserve evidence are revoked by the

court, or where they lapse due to any act or omission by the person who has applied for those measures, or where a court decision becomes effective stating that there has been no infringement or threat of infringement of the rights established by this Law, or the person, who has requested the application of provisional measures or measures for preserving evidence, does not institute, within the period determined by the court, proceedings, the defendant shall be entitled to claim compensation for any injury caused by those measures.

Article 41⁽⁴⁾ Corrective Measures

1. The persons referred to in paragraph 1 of Article 41 of this Law shall be entitled to apply to court and request to recall, to remove from the channels of commerce the propagating material of protected plant varieties in such a way that they would not incur any injury and the protection of their rights would be safeguarded, or to destroy the propagating material of plant varieties which the court found to be infringing the rights established by this Law.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other claims by a person, requesting the application of these measures, for compensation for any injury suffered by him as a result of the infringement of his rights. Moreover, these measures shall be carried out without compensation, at the expense of the infringer, taking into account the proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third persons.

Article 41⁽⁵⁾ Compensation for Material Damage

1. The procedure for compensation for material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost profits, expenses incurred and other important circumstances. The profits made by the infringer may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, be recognised as losses. The propagating

material of the protected variety infringing the rights established by this Law may be handed over to the holders of those rights, at their request.

3. The amount of lost profits of persons referred to in paragraph 1 of Article 41 of this Law shall be assessed taking into account the income that would have been received through authorised use of the propagating material of protected plant varieties.

4. Instead of claiming compensation for the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, persons referred to in paragraph 1 of Article 41 of this Law may claim remuneration or fees which would have been due if the infringer had requested authorisation to use the propagating material of the protected variety (i.e. concluded a licensing agreement or obtained authorisation), and where the infringer acted intentionally or with negligence – up to double remuneration or fees.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in activities infringing the rights established by this Law (i.e. acted without fault), the court may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the recovery of profits. The profits of the infringer shall include all that the infringer has saved and/or received by infringing the rights established by this Law. The profits of the infringer shall be determined and recovered regardless of the fact whether or not the holder of the rights would have gained similar profits himself. When determining the profits of the infringer, the holder of the rights must present only the evidence which would support the gross earnings received by the infringer; the amount of the net profits (profits after the deduction of expenses) must be proved by the infringer himself.

Article 41⁽⁶⁾ Publication of Judicial Decisions

The court taking a decision on the infringement of the rights established by this Law may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the infringer to disseminate, at his own expense, the information concerning the decision, including publishing the decision in full or in part in the mass media, or in any other way. The court decision may be published or the information concerning the court decision disseminated after the

court decision becomes effective, unless otherwise established by the court. The court decision shall define the manner and extent of its publication. Persons referred to in paragraph 1 of Article 41 of this Law may request that the infringer makes to the account indicated by the court an advance payment of the amount necessary to disseminate the information concerning the court decision or to publish the court decision itself.

Article 41⁽⁷⁾
Establishment of Non-infringement of
Plant Variety Rights

The person concerned shall be entitled to bring an action to court requesting to establish that his activities do not infringe plant variety rights.

Where the persons concerned proves that his activities do not infringe the provisions of plant variety rights, the court shall take a decision establishing non-infringement of plant variety rights.

Breeders or their authorised representatives must inform all licensees about the proceedings initiated for establishing non-infringement of plant variety rights. Unless the licensing agreement provides otherwise, licensees shall be entitled to participate in these proceedings.

Article 41⁽⁸⁾
Liability for Violations of this Law

Natural and legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area shall be held liable for violating the provisions of this Law in accordance with the procedure laid down by laws of the Republic of Lithuania.

Article 41⁽⁹⁾
Application of Border Measures

The propagating material of the protected plant varieties the import whereof from third countries into the Republic of Lithuania or the export whereof from the Republic of Lithuania to third countries is considered an infringement of the rights of persons referred to in paragraph 1 of Article 41 shall be subject to border measures defined by legal acts of the European Union and the Republic of Lithuania.

CHAPTER ELEVEN
FINAL PROVISIONS

Article 42
Entry into Force of the Law

The Law shall enter into force on 1 April 2002.

Article 43
Repeal of Laws

The following laws shall be repealed as of 1 April 2002:

1) Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;

2) Law Amending Articles 3, 6, 17, 18, 19, 20, 24, 25 and 27 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;

3) Law Amending Article 23 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC
VALDAS ADAMKUS

Annex to the Republic of Lithuania Law on the Protection of Plant Varieties

EU LEGAL ACTS IMPLEMENTED BY THE LAW ON THE
PROTECTION OF PLANT VARIETIES

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 Special edition, Chapter 17, Volume 02, p. 32).

SLOVENIA

**ACT AMENDING THE PROTECTION OF NEW VARIETIES OF PLANTS ACT
(Official Gazette RS, No. 61/2006)***

Article 1

In the Protection of new varieties of plants act (Official Gazette RS, No 86/98 and 52/02-ZDU-1) the first paragraph of Article 1 should be amended to read as follows:

"This Act regulates the procedure for the protection of new varieties of plants, the granting and the protection of the plant variety right and the competent body for the protection of new varieties of plants and its authorisations, the carrying out of the cumulative protection prohibition, the authorisation granted to a holder of a plant variety right for acts in relation to the material of a protected variety, and the fines for infringements for implementing Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L No 227 of 1. 9. 1994, p 1, as amended)."

Article 2

In Article 2 the following new points 10 and 11 are added:

"10. Export shall mean export from the European Community (further on as: the Community).

11. Import shall mean import into the Community."

Article 3

After Article 2, the following new Article 2.a is inserted:

" Article 2.a

Rights of all plant varieties protected under the scheme for Community plant variety rights shall be given the same treatment as rights of plant varieties protected under this Act, including measures aimed at ensuring their implementation."

Article 4

Article 3 is amended to read as follows:

" Article 3

The proceeding for the protection of a new variety, register of applications for the protection of new varieties (further on as: register of applications) and register of protected plant varieties shall be kept by a body responsible for administrative, expert and development tasks in the field of protection and registration of varieties of plants (further on as: competent body) as a body within the ministry for agriculture and forestry (further on as: the ministry)."

Article 5

In Article 4 the following third paragraph is added:

"A variety which has been applied for a plant variety right in the Community or protected under the scheme for Community plant variety rights may not, pursuant to this Act, be subject to additional protection."

Article 6

In the first paragraph of Article 5 the wording "in the Republic of Slovenia" is replaced by the wording "in the Community", and the wording "outside the Republic of Slovenia" is replaced by the wording "outside the Community".

Article 7

In the first and the second indent of the second paragraph of Article 6 the wording "in any other country" is replaced by the wording "in any other country or in the Community".

* Translation provided by the Slovenian authorities.

Article 8

Article 13 is amended to read as follows

"Article 13

A plant variety right shall be exercised by the person entitled referred to in the previous Article who is domiciled or have its seat or establishment in a Community Member State.

Rights of a legal or natural person who is domiciled or have its seat or establishment outside the Community (further on as: foreign legal or natural person) shall be, as regards the protection of a plant variety right, the same in the Republic of Slovenia as that of a person entitled referred to in the previous Article, providing this to result from international treaties and conventions, which had been signed or accessed to by the Republic of Slovenia, or under the conditions of actual reciprocity. The reciprocity shall be proved by the person referring to it.

A legal or natural person shall file an application through an authorised person, who is domiciled or have its seat or establishment in a Community Member State."

Article 9

In the first paragraph of Article 15 the third indent is amended to read as follows:

"– offering for sale, selling or other marketing,"

Article 10

In Articles 19, 20, 21, 22, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, and 46 the word "office" in all cases is replaced by the word the »competent body« in corresponding cases.

Article 11

The second paragraph of Article 48 is amended to read as follows:

"An action shall be brought before the court that has jurisdiction in disputes relating to intellectual property rights."

Article 12

Article 49 is amended to read as follows:

"Article 49

Supervision of the implementation of provisions of Articles 11, 15, 16 and 46 of this Act shall be exercised by phytosanitary, agricultural and forestry inspectors pursuant to competencies provided for with acts governing agricultural seeds and propagating material, forestry reproductive material and plant health.

When a phytosanitary, agricultural or forestry inspector, exercising the supervision, has reasons to believe that provisions of the Act have been violated, he shall prohibit production, reproduction, sale or other marketing of the material of a protected variety and order other appropriate measures."

Article 13

Article 51 is amended to read as follows:

"Article 51

A fine between SIT 500,000 and 30 million shall be imposed on a legal person or sole proprietor for committing any breach in relation to affecting the acts specified in the first paragraph of Article 15 of this Act without a permission given by the holder of the plant variety right.

A fine between SIT 100,000 and 1 million shall be imposed on the responsible person of a legal person or the responsible person of a sole proprietor for committing any breach referred to in the preceding paragraph.

A fine between SIT 100,000 and 300,000 shall be imposed on an individual person for committing any breach referred to in the first paragraph of this Article."

Article 14

Article 52 is amended to read as follows:

"Article 52

A fine between SIT 350,000 and 30 million shall be imposed on a legal person or sole proprietor for

committing a breach:

- if, contrary to the first paragraph of Article 11, putting on the market material of a protected variety without stating the designated denomination or stating it incorrect;

- if, contrary to the fifth paragraph of Article 11, using denomination of a variety, which is protected under this Act, or any denomination which might be confused with it, in connection with another variety of the same or biologically related botanical species;

- if, contrary to the second paragraph of Article 16 or Article 46 of this Act, not providing a holder with the required information.

A fine between SIT 70,000 and 1 million shall be imposed on the responsible person of a legal person or the responsible person of a sole proprietor for committing any breach referred to in the preceding paragraph.

A fine between SIT 70,000 and 300,000 shall be

imposed on an individual person for committing any breach referred to in the first paragraph of this Article."

Article 15

This Act shall come into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.

No. 801-12/98-3/2

Ljubljana, 30 May, 2006-10-13

EPA 734-IV

TURKEY

**LAW No. 5042 ON THE
PROTECTION OF BREEDER'S RIGHTS FOR NEW PLANT VARIETIES*
(January 8, 2004)***

PART ONE

General Provisions

CHAPTER ONE

Objective, Scope, Definitions

Objective and Scope

ARTICLE 1- The purpose of this Law is to encourage the development of plant varieties, and to ensure protection of new varieties and breeder's rights.

This law covers all plants.

Definitions

ARTICLE 2- For the purposes of this Law following definitions shall apply:

- a) Ministry: Ministry of Agriculture and Rural Affairs
- b) Court: Specialized Courts on Intellectual Property Rights
- c) Breeder: the person who bred or discovered and developed a new plant variety.
- d) Holder of the Right: any breeder or his legal successors,
- e) Variety: 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 plant variety right are fully met, can be defined by the expression of the characteristics that results 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.
- f) Seed: vegetative and generative plant parts used for propagation of plants

g) Propagation or reproduction: derivation of a new generation plants having the same characteristics with initial and parent plants.

h) Production: cultivation of plants with the aim of obtaining product or propagating material.

1) Propagating material: all plants or their parts used for propagating plants.

i) Grant (Registration): entering the varieties covered by this Law in the Register of Breeder's Rights.

j) Bulletin: Plant Varieties Bulletin

k) Register: the registers where breeder's right applications and grant of rights are recorded.

l) Catalogue: list published for varieties traded under relevant legislation.

m) UPOV Convention: International Convention For The Protection of New Varieties of Plants

CHAPTER TWO

Conditions of Protection and Persons Benefitting from Protection

General Conditions

ARTICLE 3- Plant varieties that are found to be new, distinct, uniform and stable shall be protected by granting breeders right, provided that other requirements under this Law are met.

Persons Benefitting from Protection

ARTICLE 4- The protection under this Law shall be provided to persons who are the nationals of Republic of Turkey or natural or legal persons having

* Translation provided by the Government of Turkey.
Turkey

their residences or offices within the territory of Republic of Turkey or those having the right to apply within the scope of the UPOV Convention.

In line with the reciprocity principle, natural and legal persons who does not meet the requirements given in paragraph 1 but are nationals of any other state that grants legal or actual protection to the nationals of Republic of Turkey shall also enjoy the same protection provided by this Law.

Novelty and the Cases that do not affect the Novelty

ARTICLE 5- The variety shall be deemed to be 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 public, by or with the consent of the breeder, for purposes of using exploitation of the variety, at home where the application has been filed earlier than one year before that date, and abroad earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

Following cases shall not affect the consideration of variety as new:

- a) Sales or statements that can be considered, against the holder of the right, as misuse of right,
- b) Sales or statements that are within the scope of a transfer contract of breeder's right.
- c) Acts, on behalf of the holder, under a propagating contract of material, provided that the breeder preserves the right on propagating material and material is not exploited for production of any other variety.
- d) Field or laboratory trials carried out, under a contract, in order to determine the characteristics of the variety or acts related with small size product processing trials.
- e) Acts arising from legal procedures for biological security or from the obligations such as entering tradable varieties in the official catalogue.
- f) Sales or disposal to the public, for consumption and without defining the variety concerned, of residual products resulting from production of variety

or of harvested material of subproduct nature, or materials resulting as the consequence of acts under paragraph (c), (d) and (e) of this Article.

Distinctness

ARTICLE 6-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 on the date of application or on the date of priority right.

A variety shall in particular be deemed to be a matter of common knowledge on the date of application provided that an application filed in any State has led to the granting of breeders right or entering the variety in the register.

Common knowledge may also be determined by taking into account the commencement of variety exploitation or existence of a variety in a variety catalogue of a professional institution or inclusion in a reference collection.

Uniformity

ARTICLE 7 - A variety shall be deemed to be uniform if it is sufficiently uniform in its relevant characteristics, except those possible variations that are subject to propagation method used.

Stability

ARTICLE 8-A variety shall be deemed to be stable if its relevant characteristics remain unchanged during the repeated propagation or at the end of particular propagation cycles.

Denomination and Use of denominations

ARTICLE 9- Denomination of a protected variety shall be its generic designation.

The denominations shall consist of one or more words, meaningful or meaningless, word and figures, or letter and figures, provided that the variety can easily be recognized. The denominations submitted should not contain indications, which may hamper the entitlement for marks for the products of the variety in question, in accordance with the legislation on Marks.

The applications shall be made with the denomination designated in the cases where the denomination is registered and used in Turkey or in a country that is a party to the UPOV Convention. Without prejudice to the provisions of Article 42, denominations used for the variety in other countries shall also be entered in Application Register and Breeder's Right Register.

The same denomination, which has already been used for a variety in Turkey or any other country party to the UPOV Convention or a similar denomination, which may cause confusion, shall not be designated for the same plant species or closely related species. This provision shall also apply to the denominations already registered in any country that is a party to the UPOV Convention.

Any person who offers for sale or markets propagating material of a protected variety is obliged to use the denomination of that variety. This provision shall also apply to the varieties covered under Article 14 paragraph 5(b).

Obligation to use the denomination shall apply even after the termination of the breeder's right.

Prior rights of third persons with regard to the use of the variety shall not be affected. If, by reason of a prior right of third persons, the use of the denomination of a variety is forbidden to a person who is obliged to use this denomination, the Ministry shall require the breeder to submit another denomination for that variety.

Where a variety is offered for sale or marketed, the use of a designated denomination associated with a trademark, trade name or similar indications shall be permitted provided that the denomination of variety is written in such a way that it is easily recognizable.

CHAPTER THREE Duration of Protection

Duration of Protection

ARTICLE 10- The duration of protection is 25 years from the grant of the right. For trees, vines and potatoes, the said period is 30 years from the said date.

Ending date of protection period shall be calculated as to run from the end of the calendar year.

PART TWO

Holder, Scope and Restrictions of Right

CHAPTER ONE

Holder of the Right and Rights Conferred to the Holder

Holder of Right

ARTICLE 11- The breeder and his legal successor shall be entitled to the breeder's right of a variety.

In case of breeders more than one person, the entitlement shall be vested jointly in them provided that there is no contrary agreement between respective parties.

Each holder of the right is entitled to do following on his own right, independently of other shareholders:

- a) He may exercise his right freely in proportion to the respective share held.
- b) He may exploit the variety in question after written notification to other holders of the right.
- c) He may take any measure necessary for protection of variety concerned.
- d) He may institute legal and criminal proceedings against 3rd persons in cases where infringement of the right which results from joint application to the Ministry or granting of the right.

In cases where the holder institutes legal or criminal proceedings against 3rd persons, the plaintiff shall inform other shareholders, within one month from date of the institution of the proceedings, in order to enable them to participate to the proceedings.

In case of transfer of right to 3rd parties, other shareholders have the priority purchase right. The transfer of right shall be made in writing and entered in the register. The Ministry shall inform other shareholders, within 2 months, of the situation to

ensure them to exercise their priority purchase right. The priority purchase right shall be exploited within one month from the date of receipt of such notification.

In cases where transfer of the right with regard to exploitation of the variety to 3rd persons is not possible with the consent of all holders, the decision on the transfer of such right shall be taken by the Court.

Entitlement under Employment

ARTICLE 12- Where the varieties are bred or discovered and developed by employees during the execution of their duties, the breeder's right shall be vested in their employers unless otherwise provided by the contract or understood from the nature of the work.

The breeder's right shall be vested in the employers for the variety that has been bred, discovered or developed by the employee, using the information and equipment available at work, who were not required by the contract.

The employees who bred or discovered and developed the varieties may claim a certain amount of remuneration determined by breeder and employer by taking into account the economic value of the variety. When the parties do not agree on the level of remuneration, it shall be decided by the Court. The parties may determine the level beforehand and so include in the contract.

Which employees of public institutions and agencies will benefit from the breeder's right, to what extent and how, shall be determined by a Regulation to be adopted by the Ministry after receiving the observations of relevant ministries.

Entitlements Under Contracts other than Service Contracts

ARTICLE 13- For the varieties that have been bred or discovered and developed within the framework of employment contacts other than service contracts, the right shall be vested in the client unless otherwise provided by the contact.

Rights Conferred on the Holder

ARTICLE 14- Breeder's right shall confer on the holder following exclusive rights for protection of the variety:

- (a) production or reproduction.
- (b) conditioning for the purpose of propagation.
- (c) offering for sale.
- (d) selling or other marketing.
- (e) exporting or importing.
- (f) stocking .

In respect of harvested material obtained through the unauthorized use of propagating material of a variety under protection, authorization of the holder shall be required for any activity laid down in the first paragraph of this Article. However, authorization shall not be required if the holder has had reasonable opportunity but he has not exercised his right in relation to the said propagating material.

Provisions of paragraph 2 of this Article shall also apply in respect of products obtained directly from the harvested material through the unauthorized use of propagating material of the protected variety.

The holder may subject his rights referred in the provisions mentioned above to conditions and restrict these rights.

The provisions of abovementioned paragraphs shall also apply in relation to the varieties:

- (a) which are essentially derived from the protected variety, provided that the protected variety is not itself an essentially derived variety.
- (b) varieties which are not distinct from the protected variety.
- (c) varieties whose production requires repeated use of the protected variety.

Following cases cover the varieties which are essentially derived from other varieties as described in paragraph 5 (a) of this Article:

(a) it shall be predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety. In both cases, essentially derived variety conforms to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety

(a) it must be distinct from the initial variety, except for the differences which result from the act of derivation, and it must conform essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained by the methods of selection of a natural or induced mutant, of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering

Acts between the Application and Grant

ARTICLE 15- Any person who effects the acts that require the authorization of the right and holder of the right should pay a reasonable compensation to the holder, in the time between the application date for the breeder's right and grant thereof, and after the right, specified in article 14, has been granted.

CHAPTER TWO

Restrictions on Exercise of Breeder's Right

General Restrictions

ARTICLE 16- Breeder's rights shall not extend to the following acts:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts done for the purpose of breeding other varieties, except acts referred in Article 14 paragraph 5 of this Law.

Derogation for Farmers

ARTICLE 17- for the purposes of protecting and safeguarding agricultural production, farmers are

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authorized to use for new production, on their own holdings, the product of the harvest which they have obtained by planting propagating material of a protected variety, except hybrid and sythetic varieties, without infringing the legitimate rights of breeder, provided that it is not contrary to paragraph 1 of Article 14.

The provisions of paragraph 1 shall apply to following species:

(a) Cereals

- 1- Wheat "Triticum spp"
- 2- Barley "Hordeum vulgare L."
- 3- Red rice "Oryza sativa L."
- 3- Oats "Avena sativa"
- 4- Rye "Secale cereale L."
- 5- Tricale "Triticosecale"

(b) Grain Legumes

- 1- Common bean "Phaseolus vulgaris L."
- 2- Chickpea milkvetch "Cicer arietinum L."
- 3- Lentil "Lens Culinaris Medic"
- 3- Field pea "Pisum sativum L."
- 4- Field bean "Vicia faba"

(c) Fibre Plants

- 1- Lucerne "Medicago sativa L."
- 2- Sainfoin "Onobrychis Sativa L."
- 3- Common vetch "Vicia sativa L."
- 4- Clover "Trifolium spp."

(d) Industrial Plants

- 1- Cotton "Gossypium spp."
- 2- Tobacco "Nicotina tacacum L."
- 3- Potato "Solanum tuberosum"
- 3- Rape "Brassica tuberosum L."
- 4- Peanut "Arachic hypogaea L."
- 5- Soybean "Glycine Max L."

Conditions to give effect to the derogation provided for in paragraph 1 of this Article shall be applied on the basis of following criteria in order to safeguard the legitimate interests of the holder of the right and of the farmer:

- a) There shall be no quantitative restriction of the level of the farmer's holding to the extent necessary for the requirements of the holding. Farmers' own holding shall be considered to be any holding which the farmer actually exploits for plant growing,

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whether as his property or otherwise managed under his own responsibility and on his own account in particular in the case of leaseholds, or as a sharecropper.

b) Only small farmers may benefit from the farmers derogation. Small farmers are those who grow maximum 92 tonnes of wheat or, in respect of those plant species referred in paragraph 2, who meet comparable appropriate criteria. Comparable appropriate criteria shall be laid down in the Regulation. These farmers are not required to pay any remuneration to the holder.

c) Other farmers who are not under the scope of derogation shall be required to pay a certain amount of remuneration to the holder. The level of remuneration shall be determined by an agreement between the holder and the farmer concerned.

d) Persons who are farmers under the scope of derogation or process the products, are obliged to provide any information and document to the holders on their request. When necessary, the holder may ask the help of the Ministry. The Ministry, in that case, may provide, with a charge, relevant information and documents to the holder. If the Ministry refuses to provide such information and documents requested, it shall inform the holder, in writing, about the refusal decision together with the basis for refusal.

The rules and procedures for implementation of farmers derogation shall be laid down in a regulation to be adopted.

CHAPTER THREE Compulsory Licences and Exhaustion of Breeder's Rights

Compulsory Licences

ARTICLE 18- Breeder's right may be subjected to compulsory licence, on the grounds of public interest, at the end of the 3rd year from the grant of breeder's right.

In cases where commencement of exploitation of the protected variety, increasing its exploitation or spreading of its exploitation are of great importance for national defence or public health purposes, public interest shall be deemed to be involved

In cases where the non exploitation of protected variety or its insufficient exploitation in terms of quality and quantity causes serious damage to the economic or technological development, public interest shall also be deemed to be involved.

Compulsory licence shall be decided by the Council of Ministers upon the proposal of the Ministry. In case, where the exploitation of the protected variety is important for national defence or public health, the proposal is prepared jointly by the Ministry and Ministry of Defence or the Ministry of Health.

The decision to grant compulsory license, may, on grounds of its importance for national defence, restrict the exploitation of the variety by one or several enterprises.

Exportation of a protected variety shall not be accepted as a basis for compulsory licence.

Implementation rules and procedures with regard to compulsory licence shall be determined by a Regulation.

Request for Mediation on Compulsory Licence

ARTICLE 19- A person desirous to apply for a compulsory license may in the first instance resort to the Ministry asking for its mediation with a view to obtaining a contractual license for the same variety.

For applying to the Ministry for mediation, the fee set forth in the regulation shall be paid. Following particulars shall be included in the application for mediation:

- a) Information about the applicant;
- b) Information on the variety, subject for mediation and the holder;
- c) Conditions justifying the grant of compulsory license;
- d) Scope of the license requested and reasons for such a request;
- e) Information sufficient enough for deciding whether the applicant is capable to efficient exploitation of the variety and whether he can supply

a reasonable guarantee required by the holder for granting the license.

Mediation by the Ministry

ARTICLE 20- The Ministry shall decide on the request for mediation within one month from the date of application.

The Ministry shall accept to mediate when from the application for mediation and the documents attached to it, and after due investigation, it is convinced that there is in fact a situation requiring the grant of compulsory license, that the applicant is solvent and has all the necessary means for exploiting the variety.

The Ministry shall notify its decision on the mediation to the applicant and also to the holder with a copy of the application for mediation.

Mediation Procedure

ARTICLE 21 - When the Ministry accepts the mediation request, it shall make a call without delay for the participation of the parties in the contractual license negotiations in which it will act as mediator. The negotiations shall not last longer than two months.

Where, despite of two months term following the notification to the parties of the acceptance of the mediation request, it has not been possible to conclude a contractual license, the Ministry shall declare that its mediation and examination activities have come to an end and notify the interested parties thereof.

If the Ministry is convinced that the license agreement can indeed be concluded, it may accept the request for an extension of term to maximum 1 month to be filed jointly by the parties.

Prior to final decision to be reached by the Ministry, only the parties are entitled to have access to the documents related to the procedure of mediation and ask for copies thereof. The parties and the Ministry are obliged to comply with the rules of confidentiality in respect of the contents of the documents.

Effects of Mediation activities

ARTICLE 22 -When the negotiations where the Ministry has acted as mediator result in that the parties conclude an agreement on the license for exploitation of the variety, the licensee shall be given a term for commencing the exploitation.

The term given for commencing the exploitation of the variety shall not exceed one year and the following conditions shall be required for the activity of mediation to come to an end :

a) The license agreed upon by the parties shall be an exclusive one and shall not constitute an obstacle for being subject to compulsory license.

b) Filing of documents evidencing that the person, having applied for mediation, has the opportunity for commencing the exploitation of the variety and that as of its subject matter, a period is needed to commence the exploitation;

c) Supply of a guarantee, in the amount set forth in the Regulation, to cover the liability that arises when the applicant for mediation fails to commence the exploitation of the variety within the term foreseen;

d) Payment of the fee set forth in the Regulation.

Where on the basis of the documents submitted by the parties, the Ministry comes to a firm conviction that the requirements set forth in the second paragraph are met and that the parties have the will to immediately take action for commencing the exploitation of the variety, it will finalize the mediation procedure and enter the license granted, as a result of the mediation, in the Register.

The applicant is obliged to notify the Ministry of the preparations relative for commencing the exploitation of the variety and of the prevailing situation. The Ministry is entitled to inspect, if it deems it necessary.

The licensee having obtained the license through the mediation of the Ministry may request the court to suspend the procedure relative to the grant of compulsory license for the variety in question within the term foreseen for the commencement of variety exploitation.

Upon bringing evidence; that the decision for suspending the procedure for the grant of compulsory license has been reached on the basis of a considerable deceit or, on an opinion according to which the parties could not be in a position to carry out, on a serious and continuous basis, the activity for commencing the exploitation within the prescribed term, the court may cancel the decision of suspension.

At the end of the term, where the licensee, having obtained the license through the mediation of the Ministry, fails to commence the exploitation of variety, the Ministry may decide on the payment of a fee by the licensee to the licensor. The fee shall be calculated according to the license fee, the licensee has to pay the holder in a license agreement of a term equivalent to the term during which the variety was not exploited.

Request for Compulsory License

ARTICLE 23 – Upon expiry of a term of three months, from the expiry of the term foreseen in Article 21 or from the date of the decision of the Ministry refusing the request for mediation, or when the parties fail to conclude the license agreement within the term of the mediation activity conducted by the Ministry, the court may be asked to grant compulsory license.

The applicant for compulsory license may claim on the basis of the preceedingly conducted mediation procedure and the documents submitted to this effect that the conditions for the grant of compulsory license are fulfilled.

The applicant shall also indicate the opportunities he has for effectively exploiting the variety and the guarantee he will be in a position to produce in case the license is granted.

The following documents shall be enclosed to the application for compulsory license :

- a. Documents substantiating convincingly the application for compulsory license, in case documents related to the preceedingly conducted mediation procedure are not available.
- b. Documents attesting to guarantee the amount set forth in the Regulation for meeting the costs of the compulsory license transactions.

- c. Document attesting the payment of the fee set forth in the Regulation.

Engaging the procedure for compulsory license

ARTICLE 24- Where the conditions provided under Article 23 are fulfilled, the court shall engage the procedure pertaining to the request for compulsory license. A copy of the application and copies of each attached documents shall be sent to the holder. The holder may raise objections against said documents, within one month at the latest, as of the date of receipt of them.

Where an application for compulsory license has been filed as a consequence of the Ministry's refusal of the request for mediation, the term given to the holder for raising objections shall not be shorter than two months.

In the objection raised by the holder the documents related to the mediation procedure preceedingly conducted by the Ministry shall be taken into consideration and the evidences which have been put forward with regard to said procedure, but are not included among said documents, shall also be submitted. Copies of the evidences shall be sent by the court to the applicant.

Compulsory License Decision

ARTICLE 25-The court shall notify the objection raised by the holder, to the applicant for compulsory license. Within one month from the receipt of notification, refusal of the application or grant of the compulsory license shall be decided. This term shall not be extended. Where the holder has raised no objection against the application for compulsory license, the court shall rule without any further delay to grant the compulsory license.

The decision to grant the compulsory license shall include the scope, the remuneration, the term of the license which cannot be less than two years and more than 4 years, the guarantee produced by the licensee, the date when licence is to commence and other issues concerning the exploitation of the variety .

When the court decision is appealed against, in case where the evidences put forward by the holder for suspending the execution of decision are deemed adequate by the court, the exploitation of variety shall

be postponed until the decision on license is finalized. The appeal shall not postpone the execution of the finalized decision.

Suspending the Procedure for Compulsory License

ARTICLE 26- Following the filing of the application for compulsory license, the court shall engage the necessary procedure for reaching decision to grant a license. The court can suspend the compulsory license procedure for a maximum period of three months, at any time, and only for once, upon the duly motivated request, made jointly by the holder and the applicant. Upon the expiry of said term, the court shall notify the parties thereof and shall resume the procedure.

Legal nature of Compulsory License

ARTICLE 27- Compulsory license shall not be exclusive. However, it may be granted as an exclusive license provided that it satisfies the requirements of the purpose of granting .

In case of granting a compulsory license, the holder shall be paid a reasonable remuneration. The level of remuneration for the license shall be determined especially by taking into consideration the economic importance of the variety.

The holder of the right is obliged to supply the propagating material to compulsory licensee, within the term of the compulsory licence.

Where the holder infringes the mutual trust relationship established, as a consequence of compulsory license, between the holder and licensee, the licensee may ask for deduction, determined in accordance with the impact of infringement on exploitation of the variety, from the remuneration requested by the holder, .

Licensee or the holder may request the Court to amend the level of remuneration for compulsory license or conditions on the grounds of circumstances arised later and justifies such an amendment. He may particulary request the amendment if he concludes a contractual license with better conditions after the grant of the compulsory license.

After the compulsory license term has expired, extension of the term may be requested from the

Court. If the court decides that circumstances determining the decision taken are still prevailing, the term for the license may be extended in accordance with second paragraph of Article 25.

Where the licensee sunstantially violates the obligations set forth in the compulsory license or does not continuously fulfil them, holder of the right, without prejudice to the compensation right, may apply to the Court for cancellation of the compulsory license.

Transfer of Compulsory License

ARTICLE 28- A compulsory license may be transferred to another person. Transfer of compulsory license may only be valid provided that it is transferred together with the business or the part of the business where it is being valourized. The transfer of compulsory license shall be entered in the Register by the Ministry.

The beneficiary of compulsory license is not permitted to sub-license. Any actions performed to this effect shall be deemed to be invalid.

Compulsory License for Essentially Derived Varieties

ARTICLE 29- In line with abovementioned rules, compulsory license may also be granted for essentially derived varieties on ground of public interest. In case of granting the compulsory licence for essentially derived varieties, the holder of the initial variety shall also be informed about the mediation procedure or the appeal. The decision on compulsory license for an essentially derived variety shall also include the indication of payment of a remuneration to the holder of the initial variety.

Applicability of Provisions on Contractual License

ARTICLE 30- The relevant provisions for contractual licenses, referred in Articles 50 and 51, shall also apply to compulsory licence, provided that they are not contrary to the scope.

Exhaustion of Breeder's Rights

ARTICLE 31- Since the breeder's right shall be considered as exhausted in cases where any material of the protected variety, or of a variety covered by the provisions of Article 14, or any material obtained

from that material has been disposed of to others or otherwise marketed, by the holder or with his consent, in any part of Turkey. No claim can be made for later exercises of breeder's right about the said materials or products.

However, breeder's right may be claimed in cases where acts involve further propagation of the variety in question or involve an export of materials, for propagating purposes, to a country which does not protect varieties of the plant genus or species to which the variety belongs. If export material is for final consumption purposes again breeder's right shall be considered as exhausted.

The concept of material, referred in paragraph 1 of this Article, in relation to a variety, shall cover propagating material of any kind, harvested material including entire plants and parts of plants, and any product obtained directly from the harvested material.

PART THREE

Application, Grant, Publication, Objections and Fees

CHAPTER ONE

Conditions Governing the Applications and Objections to Applications

The place for Applications

ARTICLE 32-

Owner of the variety shall apply the Ministry, in writing, in order to benefit from the protection provided under this Law.

Conditions governing applications

ARTICLE 33- The application for a breeder's right to be granted shall contain the following information and documents:

(a) Name and address of applicant or, where appropriate, his legal representative.

(b) if the applicant is not the breeder himself, the name and address of the breeder and any relevant information and document indicating how the entitlement to the breeder's right came into his possession.

(c) Turkish and Latin name of variety in the botanical taxon.

(d) the denomination proposed for the variety or provisional designation used by the breeder.

(e) if priority right is requested for a previous application the date and office of such application.

(f) technical description of the variety.

(g) where appropriate, details of any previous commercialisation of the variety.

(h) the document proving that the application fee has been paid.

(i) the geographic origin of the variety;

Rules and procedures governing the application shall be laid down in the Regulation.

The right of priority

ARTICLE 34- If the applicant or his predecessor in title has already applied for a property right for the variety in a country party to the UPOV Convention, and the date of application is within 12 months of the filing of the earlier application, the applicant shall enjoy a right of priority for the earlier application as regards the application for the breeder's right in Turkey. In such a case the date of the application in any party to the UPOV Convention shall be deemed to be the date of application in Turkey.

In order to benefit from the right of priority of the first application, the breeder shall so inform, in the subsequent application, the Ministry in writing. Priority rights not exercised within the prescribed time-period shall be considered to be void.

The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, certified copies and translations of the documents which constitute the first application, and samples or other evidence that the variety which is the subject matter of both applications is the same.

The Ministry, upon the request of the applicant, may provide up to two years period after the expiration of duration of priority to furnish any necessary information, document or material required for the purpose of technical examination. Where the first application is refused or withdrawn, the Ministry may decide to cancel the extension period and require the applicant to furnish the necessary information, document or material required for technical examination in 12 months after the date of rejection or withdrawal.

Examination of Application

ARTICLE 35- The Ministry shall carry out formal and substantive examination of the application:

a) During formal examination of application, following shall be examined:

- 1) the application has effectively been filed pursuant to Article 32;
- 2) the application complies with the conditions laid down in Article 33.
- 3) where appropriate, a claim for priority complies with the provision laid down in Article 34.
- 4) the fees due pursuant to Article 46 have been paid within a time limit specified.

If the application is incomplete or incorrect, the Ministry shall give the applicant an opportunity to correct any deficiencies within 30 days from the date of receiving such a communication. If deficiencies are not corrected by the applicant within that period, application shall be considered as not been made.

b) During the substantive examination of the application, the following shall be examined:

- 1) the variety is new pursuant to provisions of Article 5,
- 2) the applicant is entitled to file an application
- 3) the proposed variety denomination is suitable pursuant to provisions of Article 9 and 42 (a).

If the Ministry finds, at the end of the examination,

that there is an impediment to granting the breeder's right, it shall refuse the application. In 30 days from the date of such decision the Ministry shall inform the applicant, in writing, on the refusal decision together with its reasons.

All applications that are complete and accurate shall be entered in the register and given an application number. The date on which documents referred in Article 33 are received by the Ministry shall be deemed as the application date.

Publication of Application on the Bulletin

ARTICLE 36- Within 30 days following the entering the application in the Register, the Ministry shall publish, on the bulletin, the documents required in paragraph 1 indents (a) to (e) of Article 33

Objections to the Application

ARTICLE 37- Any objection to the application shall be lodged with the Ministry, within three months following the publication of the application on the Bulletin.

Objections shall be lodged, in writing, with a petition, associated with evidences and documents in support of objection lodged, on the grounds that the variety is not new, not uniform and not stable, or the applicant is not entitled as holder or the variety denomination is not suitable pursuant to Article 9 and subparagraph (a) of Article 42.

Examination of Objection to Application

ARTICLE 38- Upon the expiry of the period for objection to the breeder's right application, the Ministry shall notify the applicant on the objections lodged and require the applicant to furnish, within 3 months, his observations against the objections and inform the Ministry whether he still maintains his application or claims amendment to the application. The period given to applicant may be extended for a maximum two months term provided that applicant so requests and this request is based on valid grounds.

Where applicant does not respond within the period given, the application is deemed to be withdrawn. If the applicant informs that he will maintain his application or amend it, the person who lodged objection shall be informed and required to provide

information, within 30 days, on whether he maintains his objections.

When the objector still maintains his objections and the objection is made on the grounds that:

a) the variety is not new, applicant is not entitled as holder, or the denomination proposed for the variety is not pursuant to Article 9 and paragraph (a) of Article 42, then the Ministry shall immediately arrange the examination.

b) the variety is not distinct, not uniform or not steady, examination of objection shall be done in the course of technical examination.

The Ministry, itself, shall lay down the method of technical examination in order to carry out the examination as required by the grounds of objection.

The objector may be required to furnish, in support of his objection, additional information, document or propagating material that is the subject of technical examination. In such cases, provisions set forth in paragraph 4 and 5 of Article 39 shall apply.

If the objection is within the scope of paragraph 3(a) of this Article, within 30 days of Ministry decision, the decision may be brought before the court for appeal.

Within one month from notification of decision on the acceptance of the objection based on actual entitlement, authentic holder that files an application for the same variety may request the Ministry to consider the refusal date for previous application as his application date, if so Ministry shall accept this request.

CHAPTER TWO

Technical Examination, Grant, Publication, and Objections to Grant

Technical Examination of Variety

ARTICLE 39- After the decision on arranging the technical examination of variety, the variety shall be subjected to technical examination in order to:

a) verify that the variety belongs to designated botanical taxon.

b) establish that the variety is distinct, uniform and steady,

c) prepare characteristics document if the variety complies with the conditions set in subparagraph (a) and (b)

The manner of examination shall be established by the Ministry and examination shall be conducted under the supervision of the Ministry. When planting tests or other necessary tests necessary for technical examination have already been conducted by the competent authority of a party to the UPOV Convention, technical examination may be based upon the results of these tests provided that the results of these tests are submitted to the Ministry. However these tests are expected to be conducted in countries with the same agricultural climatic conditions.

Where the examination can not be based on these test results:

a) Ministry may entrust main administrative units or affiliated and related institutes with conduction such technical examination. When the examination is conducted by other institutes, the fee determined pursuant to the provision of Article 46 shall be paid.

b) The Ministry may also entrust the applicant with conduction of such technical examination. The applicant, upon the request of the Ministry, shall submit the results of the breeding and other tests conducted by himself or any other one entrusted by him. The technical examination may be based upon the results of these tests.

New parts may be included or amendments may be done on the characteristics document of variety, referred in paragraph 1(c) of this Article, depending upon any changes in agricultural and botanical information. However, object of protection shall not be affected.

The Ministry shall require the applicant to submit all kinds of information, documents and material necessary for technical examination. If the applicant fails to submit required information, documents and material, within the time limit specified by the Ministry, application shall be refused unless there is a valid reason.

Rules and procedures governing the implementation of technical examination of the variety shall be laid down by the Regulation.

Examination Reports

ARTICLE 40- Where the institute which conduct the technical examination on behalf of the Ministry deems the results are sufficient to evaluate the characteristics of the variety, it shall submit the ministry an examination report constituting the results of the investigation of situations referred in Article 6, 7 and 8 and characteristics document for the variety.

Where the Ministry does not consider that the examination report to constitute a sufficient basis for final decision, it shall inform the applicant and carry out complementary examination on its own motion, or have this examination carried out. Any complementary examination, carried out until a decision on refusal or acceptance is taken, shall be considered to be part of the examination referred in subparagraphs (a) to (c) of Article 39 (1).

The results of the technical examination may only be used by the institutes conducting the technical examination in so far as this is permitted by the Ministry.

Final Designation of Provisional Denomination

ARTICLE 41- In cases where a provisional denomination has been proposed in the application petition for the variety, the Ministry shall request the applicant, just before the registration phase, to submit a final denomination pursuant to the provisions of Articles 9 and 42(a). The applicant shall submit, within 30 days, final denomination for the variety.

When the Ministry approves the denomination, it shall communicate the denomination to countries party to the UPOV Convention and publish it on the Bulletin.

Objections may be lodged, within 3 months from publication date of the denomination in the Bulletin, against the denomination in accordance with provisions of Articles 9 and 42(a). Authorities of countries party to the UPOV Convention may address their observations on the denomination. Objections and observations shall be communicated to the applicant and he shall be given 30 days term to respond.

When a new denomination is proposed by the applicant, the procedures referred in paragraphs 2 and 3 of this article shall be repeated. If no response is received, in both cases, the application shall be refused. Motivated decision taken by the Ministry on acceptance or refusal of the objection shall be notified to the parties involved. A court appeal may be instituted within 30 days of notification.

Reasons for Refusal of Applications

ARTICLE 42- The Ministry shall refuse suo sponte the application in the existence of one of the following:

- a) Proposed denomination for the variety:
 - 1) does not comply with provisions of Article 9, except paragraph 7 of Article 9.
 - 2) does not constitute a different denomination or it is insufficient in respect of linguistics, to recognize the variety.
 - 3) is against to public security and common moral values
 - 4) consists of figures indicating species, quality, quantity, objective, value, geographical origin or the production date which is the only case for the plant variety and seed sector.
 - 5) misleads or create confusion in respect of the properties of the variety, its value and geographical origin or the relationship between the variety and its breeder or between the variety and applicant,
 - 6) The denomination, is identical to or very similar to, leading to confusion, a variety of the same or of a related species is registered in Turkey or in any State party to the UPOV Convention, except the variety has no longer been cultivated or it is not commonly identified.
- b) Non-compliance with the provisions of Article 35
- c) non-compliance with the provisions of paragraph 5, Article 39.
- d) the conditions set out in Article 6, 7 and 8 are found, pursuant to the examination reports prepared in line with Article 40, not to be met

e) violation of Article 41 (1).

Grant

ARTICLE 43- When the Ministry establishes, on the basis of examination, the applicant is within the scope of Article 4 and has followed the procedures laid down in this Law, it shall enter the breeder's right in the Register and supply the holder a certified Breeder's Right Document.

Publication of the Grant

ARTICLE 44- The grant of the Breeder's right for a protected variety shall be published in the bulletin within 30 days from the date of grant.

Objections to Grant

ARTICLE 45- Third persons may lodge, within 30 days from the date on which the breeder's right is published on the Bulletin, with the ministry, an objection to the grant of a right on the grounds that there were deficiencies in the procedures laid down in Articles 32, 33, 34, 36, 39,40,41 and 44.

During the course of examination conducted by the Ministry, if it is established that one of the procedures for granting the right has not been fulfilled, or a significant deficiency occurred in procedures, the Ministry may decide on that the granting procedure is invalid and go back to the point of procedure where the deficiency arised and renewal of the procedures.

CHAPTER THREE

Fees

Fees

ARTICLE 46- The Ministry shall charge 2 types of fees, namely processing and annual fees.

a) Fees for processing shall be charged for the acts given below:

- 1- application fee.
- 2- technical examination fee.
- 3- fee for examination of denomination.

4- objection fee.

5- registration fee.

6- Mediation fee for compulsory licences.

7- Fees charged for the certified copies.

8- Publication fees.

9-Other fees

b) Annual fees shall be paid in advance in January for each year of the duration of the breeder's right protection.

Rules and procedures governing the implementation of fees shall be laid down in the Regulation.

PART FOUR

Obligations of the Holder After Grant, Inspections by Ministry and

Cancellation of Breeder's Right *suo sponte*

Obligations of the Holder After Grant

ARTICLE 47- The holder shall be required, during the term of the right, for the maintenance of genetic forms of protected variety or where appropriate its genetic parts.

The Ministry shall investigate whether, within the protection period, the variety or where appropriate its genetic parts are maintained. The holder, upon the request of the Ministry, is obliged to provide information, documents and material necessary to assess the continuing maintenance of genetic forms of the variety to the Ministry or an institution designated by Ministry.

When there are suspicions about the maintenance of genetic form of the variety and these suspicions can not be eliminated by the information, document and material referred in paragraph 2 of this Article, the Ministry shall request an examination to be conducted for maintenance of genetic forms of the variety. This examination shall constitute the comparison between material submitted by the holder and samples and information on the characteristics

document of the variety, by conducting growing and other tests.

When the examination conducted indicates that the holder failed in the maintenance of genetic form of the variety concerned, the observation of the holder shall be requested before cancellation of breeder's right pursuant to provisions of Article 48.

The holder shall submit, within the period prescribed, the Ministry or a competent institute entrusted by the Ministry, appropriate amount of sample of protected variety or, where appropriate, its genetic parts as for the sample of the variety or renewal of the existing sample or enabling a comparative examination, for the protection of the variety, with other varieties to be conducted.

If required by the Ministry, the holder shall maintain, on behalf of the Ministry, the sample of the variety.

Inspection by Ministry and Cancellation suo sponte

ARTICLE 48- Where it is established that the holder does not fulfill the obligations laid down in paragraph 1 of Article 47, or the variety has lost its uniformity and steadiness characteristics, breeder's right may be cancelled suo sponte by the Ministry.

The breeder's right shall also be cancelled suo sponte by the Ministry in following cases:

a) the holder did not provide the information, documents and material required under Article 47 (2) within the time limit specified by the Ministry.

b) In cases where although Court has cancelled the variety denomination, the holder did not propose a new denomination for the variety, within the time limit specified by the Ministry.

Cancellation of breeder's right shall enter into force from the date of registration in Bulletin.

Cancellation decision shall be published on the bulletin within 30 days from the date of its entry in the Register.

PART FIVE

Transfer and Inheritance of Right Conferred by Application and Grant, Determination of Security Right, Seizure and Contractual Licences

CHAPTER ONE

Transfer and Inheritance, Security and Seizure

Transfer and Inheritance, Security and Seizure

ARTICLE 49- The right conferred by an application for a variety or registration under this Law may be transferred to third parties, and is subject to inheritance. Exercise of these rights due to death is also possible.

The inheritance or transfer of an application or a registration right shall be entered in the Register and published upon payment of the fee to be determined in accordance with Article 46.

The right conferred by such an application and registration may be the subject of legal or contractual security right and seizure. Upon a request of one of the parties, respective rights shall be entered in the Register and published. Related provisions of the Turkish Civil Code no. 4721 of 22 November 2001 and the Bankruptcy and Execution Law no. 2004 of 9 June 1932 shall have effect with respect to security rights and seizure.

The transactions on the application and registration rights between the parties who are alive shall be done in writing.

CHAPTER TWO CONTRACTUAL LICENSES

Contractual License

ARTICLE 50- Right resulting from application and registration may be the subject of a contractual license to have effect within the entirety of the national boundaries. Licenses may be exclusive or non-exclusive.

Unless otherwise agreed upon in the Contractual license, the licence is non-exclusive. The licensor may

exploit the protected variety on his own as well as he may grant other licenses for the same variety to third persons.

In case of exclusive licences, licensor shall not grant licenses to others and he shall exploit the variety only when he has specifically reserved such right.

The rights conferred by an application or grant of the right may be exercised through a court action instituted by the holder against the licensee who violates the terms of the license agreement prescribed in paragraph 1 of this Article.

Unless otherwise agreed upon in the Contact, holders of contractual licenses may not transfer their rights conferred by a license to other parties nor grant sub-licenses.

Unless otherwise agreed upon in the Contact, holders of contractual licenses shall have the right to exercise their rights to exploit the variety concerned within the entirety of the national boundaries, for the whole term of the variety protection.

Contractual Licence shall be in writing. Contractual licence shall be entered, upon the request of one of the parties, in the register and published in the Bulletin by the Ministry.

In cases of infringement of rights by third person, the holder of an exclusive licence may institute, in his own name, proceedings which can be instituted by the holder under this Law, unless otherwise agreed upon in the Licence Contract.

The holder of non-exclusive license shall not be entitled to institute such proceeding.

In the case of an infringement, the holder of a non-exclusive license may request, by a notice through a notary public, the holder to institute such proceedings. In the event the holder refuses to initiate or within three months of the reception of the notice fails to institute proceedings, the holder of non-exclusive license holder shall have the right to institute proceedings, in his own name, by enclosing thereto, his notice to the holder in this regard and shall inform the holder that he has already instituted the proceeding. The licensee may, in the face of likelihood

of serious damage, request the court to issue an injunction for precautionary measures without waiting the expiry 3 months period.

Obligation Arising from transfer of a Right and Grant of a Licence

ARTICLE 51- In cases where a person, who transferred rights conferred by an application or grant of the right, with a charge or free of charge, is subsequently understood not to be entitled, or application is refused or cancelled or invalidity decision achieved, he shall be liable for compensation of the transferee and licensee.

The time-period within which a compensation may be claimed shall run as from the date of receipt of information on refusal, cancellation or invalidity decision or non-entitlement.

The transferor or licensor shall be liable, at any time, for their acts effected in bad faith. Bad faith shall be deemed to exist where the other party has not been informed of the existence of reports or decisions available or known to the transferor or licensor concerning the application filed for breeder's right or protection provided for the variety concerned; and where the documents including declarations on such reports or decisions have not been specifically mentioned in the contract.

PART SIX

Grounds for Invalidity and Termination of Right

CHAPTER ONE

Invalidity

Grounds for Invalidity

ARTICLE 52- 1. The Court shall declare the breeder's right invalid in the presence of following grounds: (a) where the variety does not meet the requirements laid down in Articles 5 and 6 at the time of application or right of priority. (b) where the conditions laid down in Articles 7 and 8 were not fulfilled (c) where it was understood that the breeder's right has been granted to a person who is not entitled to it, except those referred in Articles 11, 12 and 13.

Application for Invalidation

ARTICLE 53- Persons with a legal interest, may request, within the period of protection of the right from the court the invalidation of the right for the variety concerned. In accordance with subparagraph (c) of Article 52, this invalidity request may only be claimed by the person who is the actual holder of the right.

Effects of Invalidation

ARTICLE 54- A (Court) Decision ruling that the breeder's right is invalid, shall have retroactive effect and thus, within the context of invalidation, the legal protection secured under this Law shall be deemed not to have been borne at all.

Such an invalidation decision shall be entered in the register and shall form a provision against others.

The retroactive effects of invalidity, without prejudice to claims for compensation for damage caused by acts of bad faith on the part of the holder, shall not extend to following cases :

- a) Any final decision for infringement of the right reached and enforced prior to the decision of invalidity;
- b) Contracts concluded and executed prior to the decision of invalidity.

However, reimbursement, in whole or in part, of sums paid under the contract may be claimed on grounds of legitimate reasons and of equity.

CHAPTER TWO

Termination of Breeder's Right

Causes for Termination of Breeder's Right

ARTICLE 55- A breeder's right shall terminate upon:

- a) expiry of the term of protection.
- b) surrender, by the holder , of the right.
- c) non-payment of yearly fees and additional fees, within the prescribed time-periods.

The subject matter of a breeder's right having terminated shall become public property as from the moment when the ground for termination materializes. Such cases shall be published, by the Ministry, in the Bulletin.

The holder may surrender breeder's right. The surrender shall be declared in writing to the Ministry. The surrender shall have effect as of the date of entry in the Register.

The holder cannot surrender his right without having the consent of the holders and licensees of rights entered in the Register.

Where a third party claims the ownership of the right, surrender of right cannot be requested without the consent of the concerned third party.

In case of non-payment of yearly fees, the ground for termination of a breeder's right shall be deemed to materialize as of the date when the payment is due.

Where a right terminates for non-payment of yearly fees; with the holder of right bringing evidence of force majeure for reasons of which the said fee could not be paid, the right shall be revalidated.

The claim related to force majeure shall be put forward within six months as from the publication, in the bulletin, of the announcement pertaining to the termination of right. This request shall be published in the bulletin. The parties involved may express their observations on the matter within 30 days from the date of publication.

Revalidation of right shall be upon the decision of the Ministry and published in the Bulletin. The revalidation of right shall not affect the acquired rights of third parties who have secured such rights as a result of the termination of the right.

Where a right is revalidated, the holder of the right shall be obliged to pay the fees he failed to pay and the additional fees.

PART SEVEN

Acts Constituting Infringement of Rights Conferred,
Proceedings and Competent Court

CHAPTER ONE

Acts Constituting Infringement of Rights

Acts Constituting Infringement of Rights Conferred

ARTICLE 56- The following acts shall be considered as infringement of breeder's rights:

- a) Exploitation of the rights referred in Article 14 without the consent of the holder
- b) Despite having aware or being in a position to know that propagating material of a protected variety is produced by virtue of the infringement of the exclusive rights of the holder, preparing the propagating material for propagation, reproduction, offering for sale, selling or other marketing, importing or exporting, or storing the variety for these purposes.
- c) Extension of the scope of exploitation rights granted by contractual license or compulsory license or transfer them to third persons without permission.
- d) Violation of paragraphs 4 and 5 of Article 9.
- e) Usurpation of right
- f) Involving in acts foreseen above or assisting or encouraging them or facilitating in any way and under any circumstances, their occurrence
- g) Refraining from declaring the source from where and the manner the products, found in his possession, manufactured or commercialised, unlawfully, were obtained.

CHAPTER TWO
Legal ProceedingsClaims of the Holder and Competent
Courts for Legal Proceedings

ARTICLE 57- A holder of a right whose rights are infringed may, in particular, appeal to the Court for the following:

- a) the cessation of the acts in infringement of right conferred by the breeder's right.

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b) remedies of infringement and compensation of material and moral damages incurred,

c) confiscation of products manufactured directly or as a consequence of the infringement of rights conferred and of means directly used in manufacturing such products,

d) recognition of ownership over the products and means confiscated in accordance with subparagraph (c) of this Article. In such cases, the value of said products shall be deducted from the amount of compensation awarded. Where the value of said products happen to be above the amount of compensation determined in accordance with subparagraph (b), the holder shall repay the excedentary balance to other party.

e) precautionary measures for preventing the continued infringement of rights; modification of the shapes of the products and means, or, where inevitable for the preclusion of acts of infringement, the destruction of the products and means confiscated according to subparagraph (c).

f) the disclosure, by means of publication, to the public and to those related, of the court's judgment rendered against the party infringing the rights who shall bear the costs for such publication.

The competent court, for the institution of legal proceedings by the holder, is the court of the domicile of the plaintiff or of the place where the offence was committed or of the place where the act of infringement produced effect.

Where the plaintiff is not domiciled in Turkey, the competent court is Ankara courts

The Competent Court, for the institution of proceedings by third parties against the applicant or the holder, is the court of domicile of the defendant. Where the applicant or patent right holder is not domiciled in Turkey, the provisions of the 3rd paragraph of this Article shall apply .

Where several courts are competent, the court before which the proceedings are first initiated shall be the competent court.

Where the Ministry is the plaintiff or defendant, the competent court is the court where the headquarters is located.

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Compensation

ARTICLE 58 - A person who, without the consent of the holder, produces, sells, distributes or markets under any form or imports for these purposes or keeps in his possession for commercial purposes, a protected variety or exploits it shall be liable to remedy the unlawful situation and to compensate the damages he has caused.

A person exploiting, in any way, a protected variety, who has been informed by the holder of the existence and infringement of the right, and who has been requested to cease such infringement, or where such exploitation constitutes a faulty behaviour, shall be liable to compensate the damages he has caused.

Non-realized Income

ARTICLE 59- The damage suffered by the holder includes, not only the value of the effective loss, but also the income non-realized as a consequence of the infringement of the right.

The non-realized income shall be calculated in accordance with one of the following evaluation methods, depending on the option of the holder who has suffered damage:

- a) According to the income that the holder might have possibly generated if the competition of the infringing party did not exist;
- b) According to the income generated by the infringing party from the exploitation of the right;
- c) According to a license fee that would have been paid if the party, infringing the right, would have lawfully exploited the variety under a licensing contract.

In calculating the non-realized income, circumstances having effect on the case, such as, in particular the economic value of the variety, the term of protection remaining at the time of infringement, the type and number of licences granted in respect of the variety shall be taken into consideration.

Where the court establishes that the holder of right, has not fulfilled his obligation to exploit the variety, in compliance with the provisions of this Law, the

non-realized income shall be calculated according to paragraph 2(c) of this Article.

Appeals for Remuneration

ARTICLE 60 - Applicant or the holder of right may institute a proceeding, of private nature, for payment of a reasonable remuneration by those exploiting the variety.

Proceeding for remuneration to be paid by farmers, other than those within the scope of farmers derogation, may also be instituted by the professional organisations of breeder's rights.

In the calculation of remuneration, referred in Article 15, the amount that would have been paid if a contractual licence had been concluded shall not be exceeded.

The appeal shall be instituted within 1 year from being informed about the act that requires payment of remuneration.

Proceedings for non-infringement of rights and its conditions.

ARTICLE 61- Any interested person may institute proceedings against the holder of a variety to obtain a judgement of non-infringement of breeder's rights.

Prior to the institution of proceedings, the holder may be requested, through the notary public, to express his observation on whether the activities, with respect to the protected variety, carried out or that will be carried out forms an infringement to breeder's rights.

Where the holder upon receiving such a notice does not respond within one month of receiving the notice, or the content of the response is not found acceptable by the requesting party, the appealing party may institute proceedings according to the first paragraph.

Persons, against whom action of infringement has been brought in respect of the breeder's right, cannot institute proceedings with respect to first paragraph.

Institution of proceedings shall be communicated to all holders who are entitled and entered in the Register.

The actions referred to in this Article may also be instituted jointly with a claim for invalidity of the right.

Action for Securing of Evidences

ARTICLE 62 - Any person entitled legally to bring action as prescribed by this Law, may appeal the court to determine the acts that can be considered as infringement of the breeder's right.

Request for Precautionary Measures and Nature of Precautionary Measures

ARTICLE 63- Any person who has already instituted a proceeding or will institute it as prescribed by this Law, may appeal the court to order precautionary measures provided that they can prove the existence of acts in Turkey of actual exploitation of the variety or serious and effective preparations to exploit it in Turkey which would constitute an infringement.

The request for precautionary measures may be filed before or with the institution of proceedings or be filed later. The request for precautionary measures shall be examined separately from the proceeding.

Precautionary measure shall be in nature to enable securing of the judgement and particularly provide the following:

- a) cessation of the acts of infringement of the breeder's rights,
- b) injunction to arrest within the borders of Turkey, including the customs, free ports or free trade areas and keep in custody, and preserve the produced or imported goods which have infringed the breeder's rights.

Enforcement of Code of Civil Procedures

ARTICLE 64- With respect to securing of evidences, precautionary measures and other relevant matters, the provisions of the Code of Civil Procedures no.1086 of 18 June 1927 shall apply.

Prescription of Time-Limit

ARTICLE 65- The provisions of the Code of Obligations no.818 of 22 April 1926 on prescription of time-limit shall apply in respect of the requests, concerning private law, resulting from this Law.

Turkey

CHAPTER THREE

Penalties and Procedural Provisions

Infringement Cases and Penalties

ARTICLE 66- Infringement cases and penalties to be imposed in those cases are given below:

whosoever effects, intentionally, one of the acts set out in subparagraphs (a), (b), (e) and (f) of Article 56 shall be sentenced to 13 months to 2 years of imprisonment or shall be fined heavily 5 billion to 10 billion Turkish Liras or both, and businesses of those who involved in commercial activities shall be terminated for at least 1 year and they shall be prohibited from such an activity for the same period.

b) whosoever violates, intentionally, subparagraphs (c), (d), (e) and (g) of Article 56 shall be fined heavily 5 billion to 10 billion Turkish Liras.

whosoever introduces, on contrary to realities, himself as the applicant or holder shall be fined heavily 5 billion to 10 billion Turkish Liras.

In cases where the employee of the businesses effected, directly or upon an order, one of the acts set out in subparagraphs (a), (b) and (c) of Article 56 during fulfilment of their duties, employees, the owner of the business, his representative or operator or anybody managing actively the business, who did not prevented such acts, shall be sentenced with the same penalties. If one of the acts referred in Article 56 is effected while a natural person carries out his work, the natural person shall be jointly liable for the costs and fines.

Procedures and Prescription

ARTICLE 67- Legal proceedings for infringement cases referred in Article 66 shall be subject to complaint of the holder. The Ministry, unions of breeder's rights, consumer associations and establishments under the jurisdiction of Law no.5590 of 8 March 1950 on "Chambers of Commerce and Industry", "Chambers of Commerce", "Chambers of Industry", "Chambers of Maritime Trade", "Commodity Exchanges", "the Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges" of Turkey and Law no.507 of 17 July 1964 on Confederation of Turkish Trades and Craftsmen have also the right to complain where the act specified in Article 66(c) is effected.

Law No. 5042 of 2004

The complaint shall be made within two years of the date of being informed of the act and the actor. Complaints shall be considered urgent. The procedure under Law no. 3005 of 8 June 1936 on the Code of Procedures for Flagrant Offences shall apply to such offences.

For the enforcement of the provisions of Article 66, Article 344 paragraph 1(8) of Law no.1412 of 4 April 1929 on Criminal Procedures shall not apply..

CHAPTER FOUR Specialized Courts

Competent Court

ARTICLE 68- The competent court, for the institution of legal proceedings prescribed in this Law, is the specialized courts on intellectual and industrial property rights.

Upon the request of the Ministry of Justice, the High Council of Judges and Prosecutors shall determine which of the Civil Courts of the First Instance and the Criminal Courts of the First Instance shall have competence as special courts and indicate their respective jurisdictions.

Publication of the Court's Decision

ARTICLE 69 - Where a court judgment becomes res judicata, provided it has a legitimate ground or interest the successful party may request the publication, in full or in summary, of the final judgment in a daily paper, or by similar means, the costs of which are to be met by the other party.

The nature and extent of the publication shall be determined in the judgment. The right of publication shall be void, if not exercised within three months after the judgment becomes res judicata.

PART EIGHT Other and Final Provisions

Breeder's Right Register

ARTICLE 70- The Ministry shall establish Breeder's Right Register constituting Application and Breeder's right registers.

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Any person may examine the documents relating to the application, grant of breeder's rights, and any other documents on the Register.

The owner of the variety the production or reproduction of which requires repeated use of other varieties may request for withholding of all documents and tests, relating to the variety, from the inspection of register.

Plant Varieties Bulletin

ARTICLE 71- The bulletin to be published by the Ministry shall include at least the following:

- (a) applications for the breeder's right
- (b) the denomination proposed or, where appropriate, provisional designation of the variety
- (c) surrender of application
- (d) refusal of application
- (e) registration of breeder's right and registered denomination
- (f) changes in the identity of holder or his procedural representative;
- (g) Expiration of right
- (h) Licences
- (i) Official notices
- (j) Other issues

The Ministry shall publish an annual report, containing information on, in respect of the protected variety, owner of the variety, protection period, dates of grant and denomination and other information that the Ministry finds necessary.

Regulations

ARTICLE 72- The regulations relating to rules and procedures governing enforcement of this Law shall be prepared by the Ministry within 6 months from the entry into force of this Law.

Law No. 5042 of 2004

ARTICLE 73- Subparagraph (a), Article 5 of the Law no.308 of 21 August 1963 on Seed Registration, Control and Certification shall be replaced by the following:

a) Registration; indication of morphological, biological and agricultural characteristics of varieties, bred, by field trials and laboratory analysis, and after it is established that it distinct from existing and new, the entering in the register for certification purposes.

Legislation Repealed and Amended

Article 74- Subparagraph (s), (t) and (u) of Article 5 and paragraph 3 of Article 6 of Law no. 308 are hereby repealed.

PROVISIONAL ARTICLE 1 - As of 26 February 1994, the breeder of a variety which is established to be new, distinct uniform and steady, takes the advantage of Article 6(3) of Law no. 308, and applies the Ministry within 6 months from entry into force of this Law and fulfils other requirements specified therein, he shall be protected under this Law.

PROVISIONAL ARTICLE 2- When examination on novelty is carried out for the applications made within 1 year from entry into force of this Law, one year period given, in respect of domestic exploitation, in Article 5 shall be taken as 5 years only once.

Entry into Force

ARTICLE 75- This law shall enter into force upon publication.

Enforcement

ARTICLE 76- The provisions of this Law shall be enforced by the Council of Ministers

VIET NAM

**INTELLECTUAL PROPERTY LAW
(Law No. 50/2005/QH11)***

Adopted by the National Assembly on November 29, 2005,
and entered into force on July 1, 2006
(Article 1 to 5 of Part One, Part Four and Part Five of the Law)

Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Session of the 10th National Assembly dated 25 December, 2001;

conductor integrated circuits; business secrets; trademarks; trade names and geographical indications.

3. Objects of rights to plant varieties are plant varieties and its propagating materials.

This Law stipulates intellectual property rights.

Article 4

Interpretation of terminologies

PART ONE
GENERAL PROVISIONS

[Extract from Part One: Articles 1 to 5 only]

In this Law, the following terminologies shall be understood as follows:

Article 1
Scope of regulation

This Law stipulates copyright, copyright - related rights; industrial property rights; rights in plant varieties and for the protection of these rights.

1. Intellectual property rights are the rights of organizations, individuals to their intellectual property, including copyrights and copyright - related rights, industrial property rights and rights to plant varieties.

2. Copyrights are the rights of organizations, individuals to works created or owned by them.

Article 2
Applicable subjects

This Law applies to Vietnamese organizations and individuals, foreign organizations and individuals that satisfy the requirements stipulated in this Law and international treaties to which the Socialist Republic of Vietnam is party.

3. Copyright - related rights (hereinafter referred to as related rights) are the rights of organizations, individuals to performances, phonograms, broadcasting programs, satellite signals carrying encrypted program.

4. Industrial property rights are the rights of organizations, individuals to inventions; industrial designs; layout-designs of semi-conductor integrated circuits; trademarks; trade names, geographical indications, business secrets created or owned by them and rights to repression of unfair competition.

Article 3
Objects of intellectual property rights

1. Objects of copyright include literary, artistic and scientific works; objects of copyright - related rights include performances, sound recordings, video recordings; broadcasting programs; satellite signals carrying encrypted program.

5. Rights to plant varieties are the rights of organizations, individuals to the new plant varieties which are created or discovered and developed by and fall under the ownership right of such organization or individuals.

2. Objects of industrial property rights include inventions; industrial designs; layout-designs of semi-

* Translation provided by the Vietnamese authorities.

Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, the positive advice of the Council of UPOV concerning the legislation of Viet Nam is contained in paragraph 7 of document C(Extr.)/23/4, based on document C(Extr.)/23/2 (http://www.upov.int/en/documents/c_extr/index_c_extra_23.htm).

6. Intellectual property right holder is the owner of the intellectual property right or an organization, individual that is assigned the right by the owner.
7. Work is every production created in the literary, artistic and scientific domain, whatever may be the mode or form of its expression.
8. Derivative work is a work translated from one language to another, adapted, modified, transformed, compiled, annotated and selected work.
9. Published work, phonogram is a work or a phonogram already released with consent of copyright owner, related right owner for the purpose of being disseminated to the public with a reasonable amount of copies.
10. To reproduce means the making of one or more copies of a work or a phonogram in whatever mode or form, including permanent or provisional backup of the work in electronic form.
11. Broadcasting means the transmission by wire or wireless means, including through the satellite, of sounds or images and sounds of a work, a performance, a phonogram or a broadcasting program to the public for its reception at a place or at a time select by them.
12. Invention is a technical solution, in form of a product or a process, to resolve a specific problem by utilizing laws of nature.
13. Industrial design is appearance of a product expressed in shapes, lines, dimensions, colors or any combination thereof.
14. Semiconductor integrated circuit is a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".
15. Layout-design of a semiconductor integrated circuit (hereinafter referred to as "layout-design") is a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.
16. Trademark is any sign used to distinguish goods or services of different organizations and individuals.
17. Collective mark is a mark used to distinguish goods or services of members from those of non-members of an organization that is the owner of the mark.
18. Certification mark is a mark licensed by its owner to other organizations, individuals to use for their goods or services in order to certify characteristics in respect of origin, materials, raw materials and methods of goods production or methods of services supply, quality, accuracy, safety or other characteristics of such goods or services.
19. Associated marks are marks that are registered by the same owner, identical or similar to each other and are used for identical or similar or inter-related goods and services.
20. Well-known mark is a mark widely known throughout territory of Vietnam.
21. Trade name is a designation of an organization or individual used in business to distinguish the business entity bearing such designation from other business entities acting in the same field and area of business.
- The area of business stipulated in this paragraph shall be the geographical area where business entity has business partners, clients or reputation.
22. Geographical indication is a sign used to indicate a product originating from a specific area, locality, region or country.
23. Business secret is information obtained from financial, intellectual investment which is undisclosed and susceptible to application in business.
24. Plant variety is a plant grouping within a single botanical taxon of the lowest known rank, uniform of morphological, stability in the propagation circle, which can be distinguished by the phenotype expressed by a genotype or the combination of genotypes and distinguished from other plant grouping in at least one genetic phenotype.
25. Protection title is a document granted by a State authority to an organization, individual to establish industrial property rights to inventions, industrial

designs, layout designs, marks, geographical indications; and rights to plant varieties.

Article 5
Application of laws

1. Where there are intellectual property related civil issues not being stipulated in this Law, the provisions of Civil Code shall be applied.
2. Where there is any difference between provisions on intellectual property rights of this Law and those of other laws, the former shall be applied.
3. Where the provisions of the international treaties to which the Socialist Republic of Vietnam is party contravene the provisions of this Law, the former shall be applied.

PART FOUR
RIGHTS FOR THE PLANT VARIETY

Chapter XI
CONDITIONS FOR PROTECTION OF PLANT
VARIETIES

Article 157
Organization or Individual who can be protected
the rights for plant variety

1. Organization or Individual who can be protected rights for plant variety are Organizations, Individuals which bred or discovered and developed the plant variety or invested in the task to breed or discover and develop the plant variety or the person to who was transferred the rights over the plant varieties.
2. Organizations, Individuals mentioned in the Provision 1 of this Article include Vietnamese and organizations and individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Vietnam; and foreign organizations and individuals which register a permanent residence in Vietnam or have a business or production establishment of plant variety in Vietnam.

Article 158
General conditions for plant varieties over which
rights are protected

The plant variety over which rights are to be protected is a variety which is bred or discovered and developed, Viet Nam

belonging to the List of species able to be protected by State issued by the Ministry of Agriculture and Rural Development, that variety is new, distinct, uniform, stable and has a proper denomination.

Article 159
Novelty of the plant variety

The variety shall be deemed to have novelty if the propagating or harvested material of the variety has not been sold or distributed in other ways for the purpose of exploitation by or with the consent of the holder of the registration right as referred to in Article 164 of this Law in the territory of Vietnam more than one year before the date of the application form is submitted; or outside Vietnam more than six years before the date of application form is submitted for trees or grape and 4 years for other species.

Article 160
Distinctness of the plant variety

1. The variety shall be deemed to have distinctiveness if it is clearly distinguishable in one or more major characteristics from any other variety whose existence is common knowledge at the time of filing or on the priority date, as the case may be.
2. The common knowledge varieties as stipulated in paragraph 1 mean the varieties of one of the following cases:
 - a) Propagating materials or harvested products of such variety have been widely used in the market of any country in the world at the time of filing of the registration application;
 - b) The variety has been protected or registered into the List of plant species in any country;
 - c) The plant variety is still the subject of an application for protection or for the List of plant species in any country provided that application form was not refused.
 - d) The plant variety which has had its description published.

Article 161
Uniformity of the plant variety

The variety shall be deemed to have uniformity in the propagation if there is the same expression of the Law No. 50/2005/QH11

relevant phenotype unless the variation is permitted for certain characteristic in its propagation process.

Article 162
Stability of the plant variety

The variety shall be deemed to be stable if the relevant phenotypic characteristics of that variety retain the same expression as originally described, and remain unchanged after each propagation crop or propagation cycle, as the case may be.

Article 163
Denomination of plant variety

1. The registrant must propose an appropriate name for the plant variety which name must be the same as the denomination registered in any country upon filing of a protection registration application

2. The variety shall be deemed to be properly denominated if it is distinguishable from all other varieties of common knowledge in the same species or similar species.

3. The denominations of plant varieties shall not be considered proper in the following cases:

a) Consisting of numerals only, except where such numerals relate to the particularity or the establishment of such plant variety;

b) Violating social morality;

c) Being liable to misrepresent the feature or characteristics of that variety

d) Easy to misunderstand about Breeder's identification.

d') Being identical or confusingly similar to a trade mark, trade name or geographical indication already protected before the date of filing of a registration application for protection of such plant variety;

e) Being identical or similar to the name of harvested products of such varieties.

g) Affecting prior rights of any other organization or individual.

4. Any organization or individual that offers for sale or brings to the market propagating materials of the plant variety must use the name of the plant variety as the name in the Protection Certificate even after the expiry of the protection period stated.

5. When the name of a plant variety is combined with a trademark, a trade name or an indication similar to the name of plant variety already registered for sale or offer in the market, such name must be easily distinctive.

Chapter XII
ESTABLISHING THE RIGHTS FOR PLANT VARIETY

Section 1
Establishing the rights for a plant variety

Article 164
Registration of the rights over plant varieties

1. To obtain protection of the rights over for a new plant variety, organizations and individuals must submit the registration for protection to the State administrative authority for plant variety rights.

2. The organizations and individuals holding the right to register the protection of plant variety (to be referred to as registrant) include:

a) Breeder who directly bred or discovered and developed the variety by their expenses by way of his/her own efforts and expenses.

b) Organizations or individuals which invested for the breeder to breed or discover and develop the plant variety by contract unless otherwise agreed.

c) Organizations and individuals transferred or inherited the right of registration for Plant variety protection

3. For the plant variety which is bred or discovered and developed by way of using the State's budget or the finance of the project under the State management, the rights over such plant variety will belong to the State. The Government shall make specific provisions for the registration of the right over the plant variety as referred to in this Article.

Article 165

Submission of the application form for rights over a plant variety

1. Vietnamese organizations or individuals or foreign organizations or individuals with a permanent address of residence in Vietnam or with a plant variety business or production establishment in Vietnam may file an application for registration of rights over a plant variety (hereinafter referred to as an application for protection) either directly or through its legal representative agency in Vietnam.
2. Foreign organizations and individuals without a permanent address of residence in Vietnam or not having a plant variety business and production establishment in Vietnam may file an application for protection through a lawful representative in Vietnam.

Article 166

The principles for submitting the first application form for plant variety

1. In case more than one independent person submits an application for protection on different days, the plant variety protection certificate will be given to the applicant who obtains the earliest valid registration.
2. In case there are many application forms for protection certificate of the same variety submitted in the same day, the plant variety protection certificate will be given to the registrant who is agreed by all the others. If all the registrants could not agree, a plant variety protection certificate will be given by the State management authority of rights over plant varieties to the first breeder who bred or discovered and developed the variety.

Article 167

Priority principle for the application form

1. The registrant may request priority rights in case an application form was submitted within 12 months from the date on which the application form of the same variety has been submitted in a country which and the Socialist Republic of Vietnam both enter into an agreement on plant variety protection. The filing date of the first application shall not be included in this time limit.

2. In order to claim priority, the registrant must specify that claim in the registration application for protection. Within no more than 3 months from submitting the application for protection, the registrant must produce copies of documents as certified by the competent office and samples or other evidence proving that the variety in both application forms is the same and must pay the fees. The registrant must be allowed to supply the information or necessary materials to the State management office of the rights over plant varieties for examination according to the stipulations in Articles 176 and 178 of this Law after 2 years from the date when the priority ends, or in proper time, depending on the species of the plant variety stated in the application, after the first application form is refused or rejected.

3. If the registration application for protection is entitled to the right of priority, the priority date shall be the date when the first application form was submitted.

4. Within the time limit referred to in clause 1 of this Article, the filing of another application or the publication or use of the plant variety being subject of the first application shall not be regarded as a basis for refusing the registration application for protection which is entitled to priority.

Article 168

Plant variety Protection Certificate and National Registration Book of protected plant varieties

1. The contents of a Protection certificate include the name of the variety and species; name of the right holder (hereinafter referred to as the Certificate Holder) and Breeder's name as well as the duration of protection of the right over the plant variety.

2. The state management office of the rights over plant varieties will record the contents of the protection certificate into the National Registration Book for protected plant varieties which is established and kept by the State management office of the plant variety.

Article 169

The effectiveness of the plant variety protection certificate

1. The Plant variety protection certificate will apply in the whole territory of Vietnam.

2. The plant variety protection certificate will take effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.

3. The plant variety protection certificate may be cancelled or nullified in accordance with Articles 170 and 171 of this Law.

Article 170

Cancellation and reinstatement of the effectiveness of plant variety protection certificate

1. The plant variety protection certificate may be cancelled in one of the following cases:

a) The uniformity and stability of the protected variety no longer meets the requirements as at the time of granting the certificate;

b) Certificate Holder does not pay the annual fees in accordance with the regulations;

c) Certificate Holder does not supply the necessary documents and propagating materials for maintaining as prescribed.

d) Certificate Holder does not change the name of the plant variety as requested by the State management office of the rights over plant varieties;

2. For the case stipulated in subparagraph a, c and d paragraph 1 of this Article, the State management office of the rights over plant varieties shall issue a decision for cancellation of the plant variety protection certificate.

3. For the case stipulated in paragraph 1.b of this Article, upon the expiry date of the time limit for payment of annual fee, the State management office of the plant variety shall issue a decision on cancellation of the plant variety protection certificate from the first date of the next effective year in which the annual fees is not paid.

4. For the cases stipulated in clause 1(a) of this Article, any organization and individual shall have the right to request the State management authority of the rights over plant varieties for cancellation the effectiveness of the plant variety protection certificate.

Based on the results of the application to request the cancellation of the plant variety protection certificate and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision to cancel the certificate or to refuse the cancellation of the protection certificate.

5. For the cases stipulated in paragraph 1 this Article, the State management office of the rights over plant varieties shall promulgate the cancellation in a specialized bulletin and specify the reasons for such cancellation and at the same time shall serve a notice to the certificate holder. Within 30 days from the date of publication, the certificate holder has the right to submit a request to the State management office of the rights over plant varieties to explain the reasons why the plant variety protection certificate is cancelled and must pay the fee in order to reinstate the plant variety protection certificate. Within 90 days from the date of filing the request for reinstatement, the variety protection owner must solve the reasons for which the certificate was cancelled, with regard to the cases stipulated in subparagraphs b, c and d paragraph 1 of this Article. The State management office of the rights over plant varieties shall then consider reinstating the validity of the protection certificate and making it public in the specialized bulletin.

For the cases stipulated in paragraph 1.a of this Article, the effectiveness of the plant variety protection certificate shall be reinstated if the holder succeeds in proving that the plant variety has met the requirements as to the uniformity and stability and has been so certified by the State management office of the rights over plant varieties.

Article 171

Nullity of the effectiveness for plant variety protection certificate

1. The effectiveness of the plant variety protection certificate will be nullified in the following circumstances:

a) The application form belongs to an applicant who does not have the right to file, except where the right over a plant variety has been assigned to the owner of the plant variety;

b) The protected variety did not meet the conditions for novelty or distinctness at the time of granting the plant variety protection certificate.

c) The protected variety did not meet the conditions for uniformity or stability if the plant variety protection certificate is granted on the basis of technical test results which were supplied by the registrant.

2. Any organization or individual can request the state administrative authority of the rights over plant varieties to nullify the plant variety protection certificate during the effectiveness of the plant variety protection certificate.

Based on the results of examining the requirement of the nullity and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision on refusal to annul or shall issue a decision on the nullity the effectiveness of the plant variety protection certificate or to refuse such nullification.

3. In case of the plant variety protection certificate is nullified, all the transactions arising on the basis of the plant variety right are null and void. Such null and void transactions shall be dealt with in accordance with the Civil Law.

Article 172

Amendment or re-issue of the plant variety protection certificate

1. The owner of a protection Certificate has the right to request the State management office of the rights over plant varieties to change or rectify any error relating to the name and address of the holder of the protection certificate, provided that prescribed fees and charges must be paid. If such errors are made by the State management office of the rights over plant varieties, this office must rectify such errors and the holder of the protection certificate shall be liable for payment of any fees and charges.

2. The holder of a protection certificate may request the State management office of the rights over plant varieties to re-issue such plant variety protection certificate it is lost or damaged provided that prescribed fees and charges must be paid.

Article 173

Publishing the decisions related to the protection certificate

All the decisions related to the grant, re-issue, cancellation, nullity, amendment the variety protection

certificate shall be published by the State management office of the rights over plant varieties in a specialized bulletin within 60 days from date when the decision is issued.

Section 2

Application form and the procedures for processing registration applications for protection

Article 174

Registration applications for protection

1. The application for registering the rights for new plant variety protection must include:

- a) A registration form using the prescribed form;
- b) Photos and technical questionnaires using the prescribed form;
- c) Authorization paper if the application form is filed through a representative;
- d) The documents which demonstrate the registration right if the registrant is a person to whom the right for registering has been transferred;
- d') Documents to prove the priority in case of claiming for priority.
- e) The receipt of the fees.

2. A registration application for protection and any transaction documents between the registrant and the State management office of the rights over plant varieties must be made in Vietnamese, except for the following documents which may be made in another language but must be translated into Vietnamese at the request of the State management office of the rights over plant varieties:

- a) The power of attorney;
- b) Documents evidencing the registration right;
- c) Documents evidencing the priority;
- d) Other documents

3. The documents proving the right of priority for registration of the application form for protection include:

a) The copy of the application form or the first application form certified by the authorized organization.

b) The paper of transfer or inheritance of the right for priority if the right is transferred from another person.

Article 175

Receiving the application form; Submission date

1. The registration application for protection will be accepted by the State management office of the rights over plant varieties with all documents stipulated in paragraph 1 Article 174 of this Law.

2. The filing date for application form is the date on which the application form is received by the State management office of the rights over plant varieties.

Article 176

Examining the validity of the application form.

1. Within 15 days from the filing date, the application form will be examined by the State management office of the rights over plant varieties in order to determine the validity of the application.

2. The registration application for protection shall be regarded as invalid when one of the following cases applies:

a) The application form does not follow the requirements;

b) The variety in the application form does not belong to a species in the List of protected species;

c) The registrant does not have the right for filing including when the registration right belongs to several organizations or individuals where one of them does not agree upon the registration.

3. The State management office of the rights over plant varieties will carry out the procedures as follows:

a) To announce the refusal of accepting the application form for the cases stipulated in subparagraph b) and c) paragraph 2 of this Article with the reasons for refusing;

b) To inform to the registrant to correct the mistakes for the cases stipulated in subparagraph a paragraph 2 of this Article and to inform the time of 30 days from receipt of the notice for the correction to the registrant;

c) To inform the refusal of the application form if the registrant does not correct the mistakes or if the registrant does not have a reasonable appeal against the notice referred to in paragraphs 2.b of this Article;

d) To announce acceptance of the application form, requesting the registrant to submit sample of the variety to the organization in charge of the technical test and follow the procedures stipulated in Article 178 of this Law if the application form is valid or if the registrant has corrected mistakes or gave a reasonable response to the notice as stipulated in subparagraph b of this paragraph.

Article 177

Publication of the application form for protection

1. If the application form is valid, the State management office of the rights over plant varieties shall publish in the specialized bulletin on plant varieties within 90 days from the date such application is accepted.

2. The contents of publication include: No of application form, date of filing, representative agent (if have), name of registrant, name of owner, variety name, species, the date on which the application form was accepted as valid.

Article 178

Examining the content of the application form for registering of plant variety protection

1. The State management office of the rights over plant varieties shall examine the contents of the application form which is accepted as valid. The examination includes:

a) To examine for novelty and the denomination.

b) To examine the results of Technical Test of the variety.

2. Technical Test means the conduct of growing tests in order to determine the distinctness, uniformity and stability of the variety.

The technical test shall be carried out by the competent office or organizations or individuals who have enough capacity for conducting the technical test following the stipulations of the Ministry of Agriculture and Rural Development.

The state administrative authority of the rights over plant varieties may use the results of the previous technical test.

3. The time for examining of the test results shall be 90 days from the date of receiving the technical test results.

Article 179

Modify and supplement the application form

1. The registrant has the following rights before the state administrative authority of the rights over plant varieties decides to grant or not to grant the plant variety protection certificate or decision of the grant:

- a) To modify or amend the application form without changing the nature of the registration application for protection;
- b) To request acknowledging the changes of name and address of the registrant.
- c) To request acknowledging the changes of the registrant due to transfer the application form under a contract or as a result of inheritance or bequest.

2. The person who requests any of the procedures stipulate at paragraph 1 of this Article must be submit fees and annual fee.

Article 180

Withdrawing the application form for registration

1. Before the state administrative authority of the rights over plant varieties decides to grant or refuse to grant the protection certificate, the registrant can withdraw the application form for protection. A request for such withdrawal must be made in writing.

2. From the time which the registrant requests to withdraw the application form for protection, all the next procedures related to the application will be terminated; the fees which have been submitted for the procedures that have not yet been conducted will be refunded following the request from the registrant.

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Article 181

Opinion of the third party for granting the plant variety protection certificate

From the date of publication of the registration application for protection of plant variety in the professional bulletin until the time a decision for granting a plant variety protection certificate is made, any third party can send an opinion as about the issue of a plant variety protection certificate to the State management office of the rights over plant varieties. The opinion must be made in writing accompanied by arguments and evidence to support the opinion.

Article 182

Refusal to grant the plant variety protection certificate

An application form for protection shall be refused for the issue of a plant variety protection certificate in case the variety does not meet any conditions stipulated in Articles 176 and 178 of this Law. In case of refusal, the State management office of the rights over plant varieties shall implement the follow procedures:

1. Announce the proposal to refuse the grant of a Protection Certificate stating the reasons and the deadline for the registrant to amend the shortcomings or appeal against the announcement.
2. Announce the refusal of the grant of protection certificate if the registrant has not amended the shortcomings or have not made an appeal against the announcement stipulated in paragraph 1 of this Article.
3. Implement the procedures stipulated in Article 183 of this Law if the registrant has amended the shortcomings or gives a valid opinion to appeal against the proposal to grant stipulated in paragraph 1 of this Article.

Article 183

Granting plant variety the protection certificate

If a registration application for protection is not refused as set out in Article 182 of this Law and if the registrant pays the fee, the State management office of the rights over plant varieties shall issue the decision for granting the plant variety protection certificate and record this into the National Registration Book of Protected Plant Varieties.

Law No. 50/2005/QH11

2. To grant the protection certificate to the applicant.

Article 184

To complain about the issue or refusal to issue plant variety protection certificates

1. The registrant and any other third party have the right to complain about a decision to grant or the refusal to grant a plant variety protection certificate.

3. Any complaint about decisions to grant or refuse to grant the plant variety protection certificate will be carried out according to the Law on Complaints and Denunciations.

Chapter XIV CONTENTS AND LIMITATIONS OF RIGHTS FOR THE PLANT VARIETY

Section 1

The contents of rights over plant variety

Article 185

Rights of the Breeder

The Breeder of a plant variety has following rights:

1. Name of the Breeder will be recorded on the plant variety protection certification and in the National Register Book for protected plant varieties and in all the published documents relating to the plant variety;

2. To get compensation as stipulated in paragraph 1(a) Article 191 of this Law;

Article 186

Rights of the Protection Certificate Holder

1. The Holder of a protection certificate has the rights to use or permit other persons to use the following rights over the propagating materials of the protected plant variety:

- a. Production or multiplication;
- b. Processing for the purpose of propagation;
- c. Offering for sale;
- d. Selling or other marketing;
- dd. Exporting;

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e. Importing;

g. Stocking for any of the purposes listed in points a, b, c, d, dd and e of this clause.

To prohibit other from using the plant variety in accordance with Article 188 of this Law.

To pass by inheritance or bequest or transfer the rights over the plant variety in accordance with Chapter XV of this Law.

Article 187

Extension of the rights of the protection certificate holder

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties that originate from the protected plant variety except where such protected plant varieties themselves originate from another protected plant variety;

A plant variety is regarded as originating from a protected plant variety if such plant variety has still retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected variety except for the differences resulting from actions on the protected variety.

2. Plant varieties which are not clearly different from the protected plant variety;

3. Plant varieties, the production of which requires the repeated use of protected plant varieties.

Article 188 Acts which infringe the rights over plant varieties.

The following acts shall be considered as infringements upon to the rights of the protection certificate holders:

- 1. Exploiting or using the rights of the protection certificate holder without his permission.
- 2. Using a denomination of the variety which is identical or similar to a protected denomination of the plant variety of the same or other similar species.

Law No. 50/2005/QH11

3. Using the protected plant variety without payment of the compensation amount provided for in Article 189 of this Law.

Article 189

Temporary rights over for the plant varieties

1. The temporary rights over a plant variety are the rights of the registrant for protection of the plant variety which arise from the date of publication of the registration application for protection until the date of grant of a plant variety protection certificate. The registrant will not have the temporary right in case the variety protection certificate is not granted.

2. If the registrant is aware of the fact that another person has been exploiting the plant variety for commercial purposes, the registrant has the right to inform that person in writing of the existence of a registration application for protection of the plant variety lodged by the registrant and must specify the date of submission, the date on which the registration application for protection has been published in order for such another person to terminate the exploitation or continue using it.

3. The user of the variety must pay an amount equivalent to the value of transfer of the right to use such variety within an appropriate scope and using time in case the announcement has been informed as stipulated in Paragraph 2 of this Article and the user continues using.

Section 2

Limitations of rights over plant varieties

Article 190

Limitations to the right of a plant variety protection certificate holder

1. The following acts are not considered as infringements of the rights over a protected plant variety:

- a. Using the variety privately for non-commercial purposes;
- b. Using the variety for breeding and for scientific research purpose;
- c. Using the variety to create new plant varieties distinctive from the protected plant varieties;

d. Production households may use the harvested products of the protected variety for propagation and cultivation in the next season in their own field.

2. Rights over a plant variety shall not be extended to the acts related to any materials of the protected variety which have been sold or otherwise taken out of the Vietnamese or overseas market by the breeder or his or her nominee, except for the following acts:

- a) Relate to the continuous propagation of such a plant variety;
- b) Relate to the export of propagating materials of such plant variety to a country where the genus or species are not protected except where such materials are exported for consumption purpose only;

Article 191

Obligations of the Holders and Breeder

1. The Holder of the protection certificate has the following obligations:

- a) To pay compensation to the breeder as agreed between them, in the absence of such agreement, the compensation must be paid following the stipulations of the Law.
- b) To pay fees for the plant variety protection certificate according to the stipulation.
- c) To preserve the protected variety and to supply propagating material of the protected variety to the state administrative authority of the rights over plant varieties and to maintain the stability of the protected variety as the stipulations.

2. The Breeder of the variety has the obligation to help the protection certificate holder to maintain the propagating material of protected variety.

Chapter XV

TRANSFER OF THE RIGHTS TO A PLANT VARIETY

Article 192

Transfer the rights to use of the plant variety

1. Licensing for use of a plant variety means the permission of the Holder of the plant variety given to another person to conduct one or some acts of his right to use the plant variety.

2. The licensing for use of a plant variety shall be consented by all holders in case the right falls under co-ownership.

3. The licensing for use of a plant variety shall be conducted in the form of a written contract.

A licensing contract for use of a plant variety shall not have such provisions that unreasonably restricts the right of the licensee, particularly those provisions neither deriving from, nor aimed at protecting of, the rights of the licensor to the plant variety.

Article 193

The rights of the parties in licensing contract

1. The licensor shall have the rights to permit or not permit the licensee to assign the license for use to a third party;

2. The licensee shall have the following rights:

a) To assign the license for use to a third party if it is agreed by the licensor;

b) To request to the licensor to carry out necessary measures against any infringements by a third party causing damage to the licensee.

c) To carry out necessary measures to prevent a third party infringements if within a time limit of 3 months from the date of the request, the licensor fails acts as requested the in accordance with sub paragraph b of this clause.

Article 194

Assignment of the rights for plant variety

1. To assign the rights for a plant variety means that the holder of the plant variety transfers all the rights of such plant variety to the assignee. The assignee shall become the owner of the plant variety Protection Certificate from the date for registration of the assignment contract with the state administrative authority of the rights over plant varieties in accordance with the prescribed procedures.

2. Where the right of a plant variety is under co-ownership, the assignment of such rights must be consented by all owners.

3. The assignment of the ownership rights to a plant variety must be made in a written contract.

Article 195

Bases and conditions for compulsory licensing for use of the plant variety

1. In the following cases, the right to use a plant variety shall be licensed to another organization or individuals under a decision of the state competent authority as referred to in Article 196.1 of this Law without having to obtain permission from the protection certificate holder or his nominee (to be referred to as the holder of the exclusive right to use the pant variety):

a) The use of such plant variety is for the public interest, for non-commercial purpose, to satisfy the needs of national defense, national security, disease prevention, treatment and nutrition for people or to meet other social urgent needs;

b) The person having a demand and capacity to use the plant variety fails to reach an agreement with the holder of the exclusive right to use the plant variety upon entering into a licensing contract although best efforts have been made for a reasonable period of time to negotiate the price rate and other commercial conditions.

c) The holder of the exclusive right to use the plant variety is regarded as conducting an act of constraint of competition under the competition legislation.

2. The holder of the exclusive right to use the plant variety has the right to terminate the right has the right to request for termination of such right of use when the bases of compulsory licensing provided for in clause 1 of this Article cease to exist and are unlikely to recur, provided that such termination shall not prejudicial to the licensee.

3. The right to use a plant variety shall be transferred under a decision of a state competent authority in compliance with the following conditions:

a) Such right of use is non-exclusive;

b) Such right of use shall only be limited to such a scope and period sufficient to attain the objectives of the compulsory licensing, and predominantly for

the supply of the domestic market, except for the cases referred to in clause 1(c) of this Article;

c) The licensee shall not assign such right of use to another person, except with the assignment of his or her business premise, or not grant a sub-license to others;

d) The licensee must pay an adequate compensation to the holder of exclusive right to use the plant variety taking into account the economic value of such right of use in each specific case, in compliance with the remuneration frame provided for by the Government;

4. The Government shall make specific provisions for the cases of compulsory licensing of the right to use plant varieties and the compensation frame as referred to in Article 3(d) of this Article.

Article 196

Power and procedures for licensing the right to use plant varieties under compulsory decisions

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing the right to use a plant variety in the fields under the scope of its State administration on the basis of a relevant request in the cases set out in Article 195.1 of this Law.

Ministries, ministerial-level agencies shall issue decisions to license the right to use plant varieties in the fields under the scope of its State administration on the basis of consultation with the Ministry of Agriculture and Rural Development in the cases referred to in Article 195.1 of this Law.

2. A licensing decision must fix the scope and conditions of such use in accordance with Article 195.3 of this Law.

3. The State competent authority that makes a decision on licensing the right to use a plant variety must notify this decision to the holder of the exclusive right to use such plant variety.

4. A decision on licensing the right to use a plant variety or refusal to license the right to use a plant variety may be complained about or subject to a lawsuit in accordance with the law.

5. The Government shall make specific provisions for procedures for licensing of the right to use a plant variety as referred to in this Article.

Article 197

Rights of Protection Certificate holders in case of compulsory licensing

The protection certificate holder being subject of compulsorily licensing of the right to use a plant variety shall have the following rights:

1. To receive an adequate compensation corresponding to the economic value of such right of use or equivalent to the price of contractual licensing of such right with similar scope and term;

2. To request the state administrative authority of the rights over plant varieties to amend, cancel or nullified the validity of the compulsory license when the conditions resulting in such compulsory licensing no longer exist or if such amendment, cancellation or nullity does not cause damages to the compulsory licensee.

PART FIVE

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Chapter XVI

GENERAL PROVISIONS ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 198

Right to protection by oneself

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:

a) Taking technological measures to prevent infringement of intellectual property rights;

b) Requesting organizations, individuals that have committed acts of infringement of intellectual property rights to terminate the infringing acts, apologize, publicly rectify and compensate damages;

c) Requesting the competent state agencies to handle acts of infringement of intellectual property rights in accordance with provisions of this Law and other related laws and regulations;

d) Initiating a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests;

2. Organizations and individuals that suffer from damage caused by acts of infringement of intellectual property rights or discover acts of infringement of intellectual property rights that cause damage to consumers or the society shall have the right to request State competent agencies to handle such acts of infringement in accordance with the provisions of this Law and other related laws and regulations.

3. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request State competent agencies to impose civil remedies provided for in Article 202 of this Law and administrative remedies provided for in the laws on competition.

Article 199

Remedies against acts of infringement of intellectual property rights

1. Organizations and individuals that have committed acts of infringement of other's intellectual property rights are liable to civil, administrative or criminal remedies, depending on nature and extent of such infringement.

2. In appropriate cases, State competent agencies shall have the right to apply provisional measures, intellectual-property-related control measures with regard to imports and exports and preventive measures and shall ensure that administrative penalties shall be imposed as provided for in this Law and other related laws and regulations.

Article 200

Authorities in handling the infringement of intellectual property rights

1. Courts, inspectorate, market management agencies, custom offices, police agencies and the People's Committees of all levels, within its duties and authorities, are entitled to handle acts of infringement of intellectual property rights.

2. The application of civil remedies and criminal remedies shall fall within the authorities of the courts.

In appropriate cases, the courts are entitled to apply provisional measures in accordance with the laws and regulations.

3. The application of administrative remedies shall fall within the authorities of inspectorate, police agencies, market management agencies, custom offices and the People's Committee of all levels. In appropriate cases, the above-mentioned agencies are entitled to apply preventive measures and ensure that administrative penalties shall be imposed in accordance with the laws and regulations.

4. The application of intellectual property border control measures with regard to imports and exports shall fall within the authorities of custom offices.

Article 201

Inspection, assessment on intellectual property

1. Inspection and assessment on intellectual property means the competent organizations or individuals use their knowledge and expertise in intellectual property to make assessment, conclusion on matters related to intellectual property right infringement cases.

2. State competent agencies shall have the right to call for inspection, assessment on intellectual property in order to handle those cases accepted by these agencies.

3. Intellectual property right holders and other related organizations or individuals shall have the right to request for inspection, assessment on intellectual property in order to protect their legitimate rights and interests.

4. The government shall make specific provisions on inspection and assessment on intellectual property.

Chapter XVII

DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS THROUGH CIVIL REMEDIES

Article 202

Civil remedies

The court shall take the following civil remedies to handle organizations and individuals that have committed acts of infringement of intellectual property rights:

1. Compelling termination of the infringement of intellectual property rights;
 2. Compelling public rectification and apology;
 3. Compelling the performance of civil obligations;
 4. Compelling compensation for damages;
 5. Compelling destruction, distribution or use for non-commercial purpose in respect of goods, materials and implements the predominant use of which has been in the creation or trading of intellectual property right infringing goods, provided that such distribution and use does not affect the exploitation of rights by the intellectual property rights holder.
4. In a lawsuit against an infringement of the right to a patented invention, which is a production process, the defendant shall prove that his or her products are made by a process other than the protected process:
 - a) The product made by the protected process is new;
 - b) The product made by the protected process is not new, but the owner of the protected process believes that the product of the defendant is made by the protected process and failed identify the process used by the defendant despite that reasonable measures have been taken.

Article 203

Rights and burden of proof of the litigants

1. The plaintiff and defendant in a lawsuit against infringement of intellectual property rights shall have the rights and burden of proof provided for in Article 79 of the Civil Procedures Code and this Article.
2. The plaintiff shall prove that he or she is the intellectual property right holder with one of the following evidences:
 - a) A valid copy of the Copyright Registration Certificate, Related Right Registration Certificate, Protection Title, or an extract from the National Registers of Copyrights and Related Rights, the National Registers of Industrial Designs, layout-designs and National Registers of Protected Plant Varieties;
 - b) Necessary evidence proving basis the establishment of copyrights, related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the rights to business secrets, trade names or well-known marks;
 - c) Copies of licensing contracts for using intellectual property subject matters in case the right to use is licensed under a contract.
3. The plaintiff shall produce evidence of the infringement of intellectual property rights or acts of unfair competition.
5. In case a party to a lawsuit against an infringement of intellectual property rights has proven that evidence relevant to substantiation of his or her claims lies in the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the later to produce such evidence.
6. In case of a claim for damages, the plaintiff must prove his or her actual damages and specify the basis for his or her claim in accordance with Article 205 of this Law.

Article 204

Principles of determination of damages caused by the infringement of intellectual property rights

1. Damages caused by an infringement comprise:
 - a) Physical damages comprise loss in property, decrease in income and profits, losses in business opportunities, reasonable expenses for prevention and restoration from such damages, reasonable attorney fees and other tangible losses;
 - b) Spiritual damages comprise loss to honor, dignity, prestige, reputation and other spiritual losses caused to the authors of literary, artistic and scientific works; to performers, authors of inventions, industrial designs, lay out designs; and breeders.
2. The level of damage shall be determined on the basis of the actual losses suffered by the intellectual property right holders due to the infringement of his or her intellectual property rights.

Article 205

Bases for determination of damages caused by the infringement of intellectual property rights

1. In case the plaintiff succeeds in proving that an infringement of intellectual property rights has caused physical damages to him or her, he or she shall have the right to request the court to determine the rate of compensation on one of the following bases:

a) The total physical damage determined in an amount of money plus the profits gained by the dependant as a result of infringement if reduced profits of the plaintiff have not yet been included in the total physical damage;

b) The value of the transfer of the right to use the intellectual property subject matter with the presumption that the defendant has been transferred by the plaintiff with the right to use that intellectual property subject matter under an agreement for using such intellectual property subject matter to the extent equivalent to the act of infringement committed;

c) Where it is impossible to determine the rate of compensation in accordance with subparagraphs a) and b) of this paragraph, that rate shall be fixed by the court depending on the loss level but not exceeding VND 500 million.

2. If the plaintiff succeeds in proving that the infringement of intellectual property rights has caused spiritual damage to him or her, he or she shall have the right to request the court to determine the rate of compensation ranging from VND 5 million to VND 50 million, depending on the level of damage.

3. In addition to the damages referred to in clauses 1 and 2 of this Article, an IPR holder may request the court to compel the infringer to pay reasonable costs of hiring attorneys.

Article 206

Right to request the court to apply provisional measures

1. Upon or after initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:

a) There is a threat of irreparable damage to the intellectual property right holder;

b) There is a threat of dispersal or destruction of goods suspected of infringing upon intellectual property rights and relevant evidence if they are not protected in time.

2. The court shall decide to apply provisional measures at the request of the IPR holder as set out in clause 1 of this Article before listening to the opinion of the party liable for such provisional measure.

Article 207

Provisional measures

1. The following provisional measures are shall applicable to goods suspected of infringing upon intellectual property rights or to the materials, raw materials or implements for producing or trading such goods:

a. Seizure;

b. Attachment;

c. Sealing, prohibition of changing status or displacing;

d. Prohibition of transferring ownership;

2. Other provisional measures shall be applied in accordance with the Civil Procedure Code.

Article 208

Obligations of the person who requests for the application of provisional measures

1. A person who requests for the application of provisional measures is obliged to prove his or her right to request as provided for in paragraph 2 Article 206 of this Law, including the production of materials and evidence as provided for in paragraph 2 Article 203 of this Law.

2. A person who requests for the application of provisional measures is obliged to pay compensation for the damages to such provisional measure debtor in case such person is found not to infringe the IPRs. To secure the performance of this obligation, the person who requests for the application of provisional

measures must deposit a sum of security in one of the following forms:

- a) Depositing an amount of money equal to 20% of the value of the goods that is subject to the application of provisional measures, or at least 20 million VND if it is impossible to evaluate those goods;
- b) Submitting a guarantee document issued by a bank or other credit organizations

Article 209
Termination of the application of
provisional measures

1. The court shall decide to terminate the application of a provisional measure in any of the cases referred to in paragraph 1 Article 122 of the Civil Procedure Code or in case that the provisional measure debtor succeeds in proving that the application of such provisional measure is unreasonable.

2. In case of termination of the application of a provisional measure, the court shall consider reimbursement to the requesting person of the deposited amount referred to in paragraph 2 Article 208 of this Law. If the request for the application of provisional measure is unreasonable, causing damage to the provisional measure debtor, the court shall compel the requesting person to compensate the damage.

Article 210
Authorities and procedures for
applying provisional measures

The authorities and procedures for applying provisional measures shall comply with the provisions of Chapter VIII of Part One of the Civil Procedure Code.

Chapter XVII
DEALING WITH INFRINGEMENTS OF INTELLECTUAL
PROPERTY RIGHTS THROUGH ADMINISTRATIVE
AND CRIMINAL REMEDIES; CONTROL OF
INTELLECTUAL-PROPERTY-RELATED
IMPORTS AND EXPORTS

Section 1

Dealing with infringements of intellectual property rights through administrative and criminal remedies.

Viet Nam

Article 211
Acts of IPR infringements liable for
administrative remedies

1. The following acts of IPR infringements shall be subject to the administrative remedies:

a) Committing an act of infringement of intellectual property rights, which causes loss to consumers or the society;

b) Not terminating an act of infringement of intellectual property rights, even if a written notice has been served by the intellectual property right holder;

c) Producing, importing, transporting, and trading in intellectual property counterfeit goods referred to in Article 213 of this Law or assigning others to do so;

d) Producing, importing and trading in articles bearing a mark or a geographical indication that is identical with or confusingly similar to a protected mark or a protected geographical indication or assigning others to do so;

2. The Government shall make specific provisions for acts of IPR infringements to be liable for administrative remedies, form and level of remedies and procedures for imposing such administrative remedies.

3. Organizations and individuals that have committed acts of unfair competition shall be liable to the administrative remedies provided for in the competition legislation.

Article 212
Acts of IPR infringements liable for
criminal remedies

Individuals who have committed acts of infringement of intellectual property rights having factors that constitute a crime shall be liable to the criminal liabilities in accordance with the criminal laws and regulations.

Article 213
Intellectual property counterfeit goods

1. Intellectual property counterfeit goods referred to in this Law include counterfeit mark goods or

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counterfeit geographical indication goods (hereinafter referred to as counterfeit mark goods) referred to in paragraph 2 of this Article and pirated goods referred to in paragraph 3 of this Article.

2. Counterfeit mark goods are goods or their packaging bearing a mark or a sign which is identical with or substantially indistinguishable from a mark or geographical indication which is protected for such goods without consent of the owner of such mark or the management organization of such geographical indication respectively.

3. Pirated goods are copies made without the consent of the copyrights holder or the related rights holder.

Article 214

Administrative penalties and remedies

1. Organizations and individuals that have committed acts of IPR infringement referred to in Article 211.1 of this Law shall be compelled to terminate the infringement and subject to one of the following main remedies:

- a) Warning;
- b) Monetary fine.

2. Depending on nature and level of the infringement, the IPR infringing organizations and individuals are liable to the following complementary remedies:

a) Confiscation of intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods;

b) Suspension of relevant business activities for a definite term.

3. In addition to the remedies referred to in paragraphs 1 and 2 of this Article, organizations and individuals that have committed IPR infringing acts are liable to the following restoration remedies:

a) Compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes and materials, raw materials and implements mainly used for manufacturing or trading

such intellectual property counterfeit goods provided that such distribution and use does not affect the exploitation of rights by intellectual property right holder;

b) Compelling delivery of the transiting goods out of the territory of Vietnam or re-export of the intellectual property counterfeit goods, implements and materials that are imported mainly for manufacturing or trading such intellectual property counterfeit goods, after having removed infringing elements.

4. The monetary fine rates referred to in subparagraph b of paragraph 1 of this Article shall be at least equal to the value of the discovered infringing goods but must not exceed five times of that value.

The Government shall make detailed provisions for the method of determination of the value of infringing goods.

Article 215

Application of preventative measures

1. In the following cases, organizations and individuals shall have the right to request the competent agency to apply administrative remedies and ensure that administrative penalties shall be imposed in accordance with clause 2 of this Article:

a) Acts of infringement of intellectual property rights may cause serious damage to consumers or the society;

b) There is a threat of the infringing means being dispersed or the infringer evading his or her liabilities;

c) In order to guarantee the implementation of administrative remedies.

2. Administrative preventative measures applicable under administrative procedures to the infringement of intellectual property rights comprise the followings:

a) Temporary hold of related individuals;

b) Temporary detention of the goods, means and implements used for such infringement;

c) Search of related individuals;

d) Search of the place where infringing goods, means and implements are stored;

d') Other administrative preventative measures in accordance with the laws and regulations.

Section 2

Control of IP-related imports and exports

Article 216

Border control measures of IP-related imports and exports

1. Border control measures of IP-related imports and exports comprise the followings:

a) Suspension of customs procedures for suspected intellectual property right infringing goods.

b) Supervision to detect goods containing signs of infringement of intellectual property rights.

2. Suspension of customs procedures for suspected intellectual property right infringing goods is a measure taken at the request of the intellectual property right holder for the purpose of collecting information and evidence about the lots of goods which serves as the basis for the intellectual property right holder to exercise the right to request for the handling of the infringement and to request for the application of provisional measures or preventive measures, and to ensure that an administrative penalty is to be imposed.

3. Examination and supervision to detect goods containing signs of infringement of intellectual property rights is a measure taken at the request of the intellectual property right holder for the purpose of collecting information in order to exercise the right to request for the suspension of customs procedures.

4. During the course of application of measures referred to in paragraphs 2 or 3 of this Article, if any goods detected to be intellectual property counterfeit goods in accordance with Article 213 of this Law, the customs offices shall have the right and duty to impose administrative remedies referred to in Article 214 and Article 215 of this Law.

Article 217

Obligations of person who requests for the application of border control measures of IP-related imports and exports

1. A person who requests for the application of border control measure in respect of IP-related imports and exports shall have the following obligations:

a. Proving that he or she is the intellectual property right holder by producing the materials and evidence referred to in paragraph 2 Article 203 of this Law.

b. Providing information sufficient to identify the suspected intellectual property right infringing goods or to discover infringing goods.

c. Lodging an application with the customs office and pay fees and charges prescribed by the laws and regulations.

d. Payment of damages and other incurred expenses to the persons being subject to such measure in case the goods subject to that control measure are found not to infringe upon IPRS.

2. To secure the performance of the obligations set out in clause 1(d) of this Article, a person requesting for the application of measure of suspension of customs procedures must deposit a sum of security in one of the following methods:

a) Depositing an amount of money equal to 20% of the value of the lots of goods that is subject to the suspension of customs procedures; or at least VND 20 million if it is impossible to evaluate such lots of goods;

b) Submitting a guarantee document issued by a bank or other credit organizations.

Article 218

Procedures for the application of suspension of customs procedures

1. When a person who requests for the suspension of customs procedures has properly performed his or her obligations provided for in Article 217 of this Law, the customs office shall issue the decision on suspension of customs procedures with regard to relevant lots of goods.

2. The term of suspension of customs procedures shall be 10 working days from the date of issuing the decision on the suspension of customs procedures. This term may be prolonged up to 20 working days if the person who requests for the suspension of customs procedures has due reasons and having deposited an additional amount of money referred to in paragraph 2 of Article 217 of this Law.

3. At the expiration of the term provided for in paragraph 2 of this Article if the person who requests for the suspension of customs procedures fails to initiate a civil lawsuit and the customs office does not accept the case to handle the importer of the lots of goods under administrative procedures, the customs office shall:

- a) Continue the completion of customs procedures for such lots of goods;
- b) Compel the person who requests for the suspension of customs procedures to compensate all the damages incurred by the owner of the lots of goods due to unreasonable request for the suspension of customs procedures, and to pay expenses for storage and preservation of goods as well as other costs incurred by the customs office and other related organizations and individuals in accordance with the laws and regulations on customs;
- c) Reimburse the person who requests for the suspension of customs procedures the rest of the deposited guarantee amount after having performed obligations and paid all the costs referred to in subparagraph b) of this paragraph.

Article 219

Examination and supervision to detect goods containing signs of IPR infringement

When an IPR holder requests for examination and supervision to detect a lot of goods containing signs of IP infringement and when such lot of goods is detected, the customs office shall immediately notify the person who requests for such examination and supervision. Within three working days from the date of such notification, if the person that made the request fails to make a request for suspension of customs procedures with regard to the detected lot of goods and the customs office does not decide to handle the importer of the lots of goods with administrative remedies in accordance with Articles

214 and 215 of this Law, the customs office shall continue the completion of customs procedures for such lots of goods.

PART SIX

PROVISIONS OF IMPLEMENTATION

Article 220

Transitional provisions

1. Any copyright or related right protected under the legal documents applicable before the effective date of this Law shall continue to be protected under this Law if it remains in term of protection on that date.

2. Any applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin, layout-designs, new plant varieties which have been filed with competent authorities before the effective date of this Law shall be handled in accordance with legal instruments at the time of the filing of the application.

3. All rights and obligations conferred by Protection Titles granted under the provisions applicable before the effective date of this Law and procedures for maintenance, renewal, correction, license, assignment, resolution of disputes concerning these protection titles shall be subject to this Law, except for those grounds for invalidation of a Protection Title which shall only be subject to the provisions of legal documents applicable at the time of its grant.

4. Trade secrets and trade names which have been existing and protected under Decree 54/2000/ND-CP dated October 3, 2000 of the Government on the protection of industrial property rights with regard to trade secrets, geographical indications, trade names and the protection of rights against industrial property related unfair competition shall be continued to be protected under this Law.

5. From the effective date of this Law, geographical indications, including those protected under the Decree referred in paragraph 4 of this Article, shall only be protected if they are registered with the state administration authority of industrial property.

Article 221

Effectiveness

This Law shall enter into force as from 1 July 2006.

Article 222
Guidance of implementation

The Government and the Supreme People's Court shall make detailed provisions and provide guidelines for the implementation of this Law.

This Law has been ratified by the Legislature XI of the National Assembly of the Socialist Republic of Vietnam in its 8th session on November 29, 2005.

THE CHAIRMAN OF THE NATIONAL ASSEMBLY

VIET NAM

DECREE No. 104/2006/ND-CP*
ON DETAILED REGULATIONS TO IMPLEMENT SOME ARTICLES IN THE
INTELLECTUAL PROPERTY LAW, CHAPTER ON PLANT VARIETY RIGHTS

Decree No. 104 /2006/ND-CP on detailed regulations to implement some articles in the Intellectual Property Law, chapter on Plant Variety Rights

the Government

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the Law on Intellectual Property no. 50/2005/QH 11 which was passed by the 11th National Assembly in November, 2005;

At the proposal of the Minister of Agriculture and Rural Development

DECREES:

Chapter 1

General provisions

Article 1

Scope of application

This decree provides detailed regulations and guidelines for the execution of some articles on Plant Variety Rights in the Intellectual Property Law including responsibility for State administration, the order & procedures for establishing plant variety rights; rights and obligations of the plant variety certificate holder and breeder; transfer and assignment of rights of protected plant varieties.

Article 2

Applicable subjects

This Decree applies to:

1. Vietnamese organizations and individuals;
2. Foreign organizations and individuals having their registered residence address or business production unit in plant varieties in Vietnam;

3. Organizations and individuals who are nationals of Contracting Parties with Vietnam on the protection of plant varieties;

4. Foreign organizations and individuals who are not nationals of a Contracting Party with Vietnam but have their permanent residence address or a registered legal office in a country which is a Contracting Party with Vietnam on the protection of plant varieties.

Article 3

Interpretation of terminology

In this Decree, the following terminologies shall be understood as follows:

1. "Plant varieties" covered by this Decree include whole plants or seed, propagating and harvested materials of the plant variety of agricultural, forestry, aquaculture, medicinal, mushroom species which have been recently bred, or discovered and developed from a species under the List of protected genera or species;
2. "Certificate holder" of plant variety protection certificate is the organization/individual who has been granted a variety protection certificate;
3. "Propagating material" is any part of a plant from which a new entire plant can be reproduced such as nursery stock, seed, spore, stems, roots, seedling, grafted branch, layered plant, tuber, fruit, shoot, bud, flowers, tissue, cell and other parts of a plant;
4. "Harvested material" is an entire plant or any parts of plants obtained from growing/using propagating material of a plant variety;
5. "Preliminary examining" is the examination of validity and legality of the application as regulated in Article 10 of this Decree;

* Translation provided by the Vietnamese authorities. The Decree No. 104/2006/ND-CP was approved on September 22, 2006, and entered into force on November 15, 2006.

6. "Substantive examining" is the examination of novelty, distinctness, uniformity, stability and denomination of the variety in respect of which breeder rights are applied;

7. "The variety description" shall mean a description in which the characteristics of the new variety are expressed in accordance with the technical guidelines on distinctness, uniformity and stability certified by the plant variety protection office. The variety description shall be regarded as being widely published in any forms of publicity such as scientific reports, bulletins, newspapers, magazines and other publications;

8. "The plant variety protection office" shall be the Plant Variety Protection Office which is located at the Ministry of Agriculture and Rural Development;

9. "Legal representative" of foreign organizations/ individuals applying for plant variety protection in Vietnam shall be organizations/individuals including nationals of Vietnam and foreign organizations/ individuals having their registered business offices or having their registered residence address in Vietnam in accordance with the Intellectual Property Law of the Socialist Republic of Vietnam. This "legal representative" is authorized by the owner of the new variety through a letter of attorney to file an application for protection in respect of the same new plant variety.

10. "Plant variety breeder" is the person who was directly involved in the whole process or a part of the breeding work or who discovered and developed a new plant variety.

11. "Contracting Party" means any state or group of states which has signed a bilateral agreement on plant variety protection with Vietnam or signed an International Convention on plant variety protection to which Vietnam is a signatory.

Article 4

Responsibility of the Ministries and Ministerial-ranked agencies for State administration over plant variety rights

1. MARD, within its responsibility and competence shall exercise the State administration for plant variety rights over the country including:

a) submission of legal documents on plant variety protection to higher level or promulgating these documents itself. Organization and implementation of the legal documents on plant variety protection;

b) issuance, withdrawal, cancellation, nullification of the plant variety protection certificate;

c) provision of list of the plant varieties to be protected;

d) development of regulations on organization, functions and mandates for the Plant Variety Protection Office;

e) dissemination of legal documents on plant variety rights;

f) checking, inspecting and handling violations of plant variety rights;

g) international cooperation in plant variety protection.

2. The Ministry of Science & Technology, Ministry of Fishery, Ministry of Finance, authorities of ministerial-level or subordinated to the Government within their responsibility and competence shall be responsible for collaborating with MARD in the State administration of plant variety rights.

Article 5

Responsibility of the Peoples Committees of provinces/ cities under the Central Government for protection of the plant variety rights, shall include:

1. Organization and implementation of policies and legislation on plant variety rights;

2. Organization and dissemination of legal documents on plant variety rights;

3. Checking, inspecting and handling violations of plant variety rights;

4. Instructing District/Town Peoples Committees in the execution of State administration measures on plant variety rights at their localities.

Chapter 2

Orders and procedures for establishment of
plant variety rights

Article 6

Applicants for plant variety rights

1) Eligible applicants for plant variety rights are stipulated in Article 164 (2) of the Intellectual Property Law.

2) For a plant variety which is bred or discovered and developed using the State's budget or the State managed project budget, the direct individual/breeding agency of the variety shall have the right to apply for plant variety protection.

Article 7

Application for plant variety rights

1. Application for plant variety rights referred to in Article 174 of the Intellectual Property Law shall be made in three copies and filed at the Plant Variety Protection Office.

1. Applications by organizations and individuals of a Contracting Party with which Vietnam is a signatory as stipulated at Article 157 (2) in the Intellectual Property Law but having no permanent residence and no registered business office in Vietnam shall file other necessary papers to justify nationality as supplementary papers to those required in the Article 174 (1), (2), (3).

2. For the applicants who are not nationals of a Contracting Party, a supporting paper is required to prove the permanent residence address or a registered legal office in a country with which Vietnam is a Contracting Party.

Article 8

Requirements for claiming priority rights

If the applicant is eligible for the priority right as stipulated in, Article 167 paragraph 1 of the Intellectual Property Law, they can claim the priority right by the following procedures:

1. Claim the priority rights in the application for plant variety rights.

2. Pay the stipulated fees for examining the request for priority rights.

3. Within 3 months from the filing date, the applicant shall furnish the following papers:

a. A notarized copy of the documents which constitute the first application or certified as a true copy by the authority with which that application was filed;

b. Evidence certifying that the variety which is the subject matter of both applications is the same, for example, the variety description, photographs, and other related documents (if available).

Article 9

Receipt of the application for
variety protection rights

1. The Plant Variety Protection Office shall receive applications by the following means:

a) Receive directly from the applicant or through a legal representative agency

b) Receive from the Post Office. In this case, the filing date will be the date when the Plant Variety Protection Office receives the application.

2. Upon receipt of the application, the Plant Variety Protection Office shall stamp the application to mark the date; give a unique reference number and record these details into the log book; a copy of the stamped application shall be returned to the applicant.

Article 10

Preliminary examination of the application

1. Examination time

Within 15 days from the filing date, the Plant Variety Protection Office must complete the preliminary examination of the application.

2. Preliminary examination of application includes checking lists of documents in the application and the validity of the application in accordance with provisions in Article 174 of the Intellectual Property Law and Articles 6 and 7 in this Decree.

Article 11
Invalid applications

1. Invalid formalities include:

- a) When one of the documents stipulated in Article 174 (1) of the Intellectual Property Law and Article 8 of this Decree (priority right claimed) is missing;
- b) The prescribed format is not used or some information is missing in the application;
- c) Vietnamese language is not used;
- d) Information in the application is amended/deleted, damaged or unclear for reading;
- e) Copies of the related documents are not notarized or certified by a competent authority;
- f) The variety which is the subject matter in the application is not within the list of crops to be protected at the time when the application is filed;
- g) The application is not filed by an eligible person as stipulated in Article 164 of the Intellectual Property Law and Article 6 of this Decree.

2. Handling invalid applications

- a) In cases where points (f) and (g) of paragraph 1 of this Article apply, the Plant Variety Protection Office shall refuse the application and will inform the applicant in writing.
- b) For applications which are found invalid in accordance with the provisions at point (a), (b), (c), (d) (e) of paragraph (1) in this Article, the Plant Variety Protection Office shall notify the applicant who has to make amendments or to provide the necessary information. If the applicant fails to respond within 30 days from the date when the notification is made, or if the application is still unacceptable after amendment, the application shall be refused.
- c) The period of 30 days is stipulated in Point b of this paragraph shall be defined by the postal stamp where the notice is received. If the postal stamp is not clear to read, the period mentioned above will be 45 days, from the date when the Plant Variety Protection Office inform the applicant.

Article 12
Substantive examination of an
application for variety rights

Examination of application content stipulated in Article 178 of the Intellectual Property Law shall be done in order as follows:

- 1. Examination of variety denomination shall be done in accordance with Article 13 of this Decree.
- 2. Examination of novelty of the variety shall be done in accordance with Article 14 of this Decree.
- 3. Technical examination of distinctness, uniformity and stability of the variety shall be done as stipulated in Articles 15 and 16 of this Decree.
- 4. Examination of outcomes from the technical examination shall be done in accordance with Article 19 of this Decree.

Article 13
Examination of denomination of the variety

- 1. Based on the stipulations in Article 163 of the Intellectual Property Law, the Plant Variety Protection Office shall examine the relevance of the proposed denomination with every denomination which designates, in Vietnam and in the territory of any Contracting party, an existing variety of the same plant species or of a closely-related species. If it is found that the denomination does not satisfy the requirements, the Plant Variety Protection Office shall notify and request the applicant to propose another denomination.
- 2. Within the period of 30 days from the notification date, a new denomination must be provided by applicant. The Plant Variety Protection Office shall refuse the application if no new denomination is provided within the prescribed period.
- 3. The applicant may change the variety denomination during the period from the filing date to the time before granting of variety protection. In this case, the applicant shall propose another new denomination for the filed variety and pay fees accordingly.

4. The Plant Variety Protection Office shall be responsible for informing the competent authorities of the Contracting Parties about the denomination.

5. The official denomination of the variety shall be recognized at the time when the plant variety protection certificate is granted.

Article 14 Examination of novelty

Based on the stipulations on novelty of the plant variety stated in Article 159 of the Intellectual Property Law, the Plant Variety Protection Office shall examine novelty as below:

a) Examination of information provided in the application form;

b) Review and handle any responses, complaints (if any) about novelty of the variety after the application is published.

Article 15 Technical examination

The Technical Examination stipulated in Article 178 (2) of the Intellectual Property Law shall be conducted as follows:

1. Based on the actual situation, the Plant Variety Protection Office shall decide how the technical examination should be done in one of the following ways:

a) by a technical body which is eligible as stipulated in Article 16 of this Decree ;

b) by competent organizations and individuals;
c) by using available results provided by the breeder or from other sources.

2. In the case of point (b) of paragraph 1 in this Article, the technical examination must be carried out according to the technical guidelines on distinctness, uniformity and stability.

3. Results from the technical examination shall be entered in the technical forms provided by Plant Variety Protection Office. Organizations and individuals which provide technical results as indicated

in point (c), paragraph 1 of this Article shall take responsibility for the information provided.

4. In case points (a) or (b) of paragraph 1 of this Article apply, and if the technical examination result is not satisfactory, the applicant shall have the right to request the Plant Variety Protection Office to re-examine and shall pay fees accordingly. A request for re-examination shall be made in writing with a clear explanation and justification.

5. The fees for re-examination stipulated in paragraph 4 of this Article will be returned to the applicant if the test result proves that the request from the application for re-examination is justified.

Article 16 Technical examination body

The technical examination body stated in Article 15 (1) (a) of this Decree shall satisfy the following requirements:

Location and size must satisfy the variety examination guidelines and requirements for growing and development of each crop.

Availability of technical equipment for examination of each crop as regulated by the competent authority. Having available, or able to hire, competent technical staff who can fulfill the variety examination requirements.

Article 17 Filing of variety samples

1. If Article 15 (1) (a) of this Decree applies, at the request of the Plant Variety Protection Office, the applicant shall provide variety samples to the technical examination body at least 20 days before the sowing season starts.

2. If Article 15(1) (b) (c) of this Decree applies, the applicant shall not have to provide the technical examination body with a variety sample. Instead, the applicant shall provide a variety sample to a storage agency as regulated in paragraph 3 of this Article. The Plant Variety Protection Office shall determine the time when the sample has to be provided.

3. The filed sample indicated in Paragraph 2 shall be stored as below:

a) Seed samples shall be kept at the storage agency appointed by the competent State authority.

b) For samples of vegetative crops, applicants shall arrange storage of samples themselves and shall indicate in the application the locations where the samples are kept.

4. In cases where it is necessary, and if requested by the technical examination body, the Plant Variety Protection Office shall request the applicant to provide, if possible, samples of varieties which are similar to the submitted variety.

5. When receiving samples, either the technical examination body or the storage agency shall carry out a preliminary check of quality of the provided samples. A receipt of accepting samples shall be issued if it is found that provided samples are acceptable. If provided samples are not satisfactory, another sample will be requested.

6. Within 20 days from the date of receiving samples, the sample receiver shall check the quality and inform the applicant of the quality of the provided sample. In case of broken/damaged samples, the applicant shall provide another sample within 30 days from the notification date.

7. The storage agency shall be responsible for keeping samples in safe conditions and keeping confidentiality of the information if requested by applicants.

Article 18

Report on the technical examination

Within 30 days from the date when the variety examination ends, the technical examination body indicated in Article 15 (1) (a) (b) of this Decree shall send the report on the technical examination to the Plant Variety Protection Office.

Article 19

Review examination result

1. Within 90 days from the date when results are received from the technical examination body, the Plant Variety Protection Office shall carry out and complete the evaluation of these results.

2. In case of uncertainties, MARD shall establish an ad hoc professional council to review/appraise the technical examination results. The reviewing/appraising work shall not exceed 60 days from the date when the council is established.

Article 20

Grant of variety rights

1. If the technical examination results confirm that the submitted variety fulfils conditions indicated in Article 159, 160, 161, 162 and 163 of the Intellectual Property Law, the Plant Variety Protection Office shall request the Minister of MARD to sign the decision to grant a plant variety protection certificate and shall publish it in the agricultural magazine of MARD.

2. Within 30 days after publishing the grant of plant variety protection certificate, if there are no written comments/complaints, the Plant Variety Protection Office shall grant a plant variety protection certificate and record it in the national registration book.

3. If any written comments or complaints are received within 30 days from the publishing date of the decision on granting a plant variety protection certificate, they shall be dealt with as stipulated in Article 184 of the Intellectual Property Law and Article 24 of this Decree.

4. The plant variety protection certificate shall be issued in one original copy; in case additional copies are required, the applicant shall indicate the number of copies in the application. The format of the plant variety protection certificate and the national registration book for recording the protected varieties are stipulated in Article 168 of the Intellectual Property Law.

5. Applicants have to pay fees for issuing the plant variety protection certificate as stipulated. In case the Certificate is damaged, lost or the holder changes, the certificate holder can request another copy and shall pay fees accordingly.

Article 21

Cancellation of a variety protection certificate

1. For cancellation of a plant variety protection certificate according to Article 170 (1) (a) of the Intellectual Property Law, the procedures shall be as follows:

a) When a request for cancellation of a certificate is received from a third party, the Plant Variety Protection Office shall verify the request and notify the certificate holder within 30 days. The request for cancellation must be made in writing together with supporting evidence that the protected variety is no longer as uniform and stable as was determined at the time when the certificate was granted. If the certificate holder agrees to a re-examination of the variety, the party requesting the cancellation shall pay the stipulated fee for the technical re-examination. If the re-examination shows good justification for cancellation of the certificate, the fee will be returned to the party which made the request.

b) If after 30 days of the notification being made to the certificate holder about the request for cancellation, the holder has not replied or has not proposed the necessary corrections, MARD shall issue a decision on cancellation. The cancellation shall be effective from the date when the decision on cancellation is published in the Agriculture magazine;

c) If the certificate holder objects to the request for cancellation being made by the third party, the certificate holder must follow the procedures for re-examination as stipulated in Article 15 (4) of this Decree. If the re-examination, which is implemented by the agency indicated in Article 15 (1) (a), proves that the protected variety is no longer as uniform or stable as it was at the time when the certificate was granted, the Plant Variety Protection Office shall start procedures for cancellation of the certificate as stipulated in point b of this paragraph.

2. In case of uncertainties, MARD shall establish an *ad hoc* professional council to make a decision concerning the cancellation.

Article 22

Reinstatement of a plant variety protection certificate

1. For the reason of cancellation in Article 170 (1) (a) of the Intellectual Property Law, and based on the result of the technical re-examination, MARD shall decide to accept or reject the request for reinstatement of the plant variety protection certificate.

2. In case the cancellation is based on Article 170 (1) (b,c,d) of the Intellectual Property Law, and based on

the actual corrections made by the holder referred to in Article 170 (5) of the Intellectual Law, MARD shall decide to accept or reject the request for reinstatement of the plant variety protection certificate.

Article 23

Nullity of the effectiveness of a plant variety protection certificate

1. In accordance with Article 171 (1) of the Intellectual Property Law, MARD shall issue a decision to nullify the effectiveness of plant variety protection certificate.

2. In case of receiving a letter from an organization/ individual requesting to nullify a certificate, and after reviewing the letter and consulting with the relevant agencies, MARD shall make a decision concerning the nullity or non-nullity of the granted certificate. The Certificate Holder shall be informed accordingly.

Article 24

Basis for opposition or appeal against a decision concerning the grant of a plant variety protection certificate

When organizations or individuals oppose or appeal against a decision to grant or refuse to grant a variety protection certificate, the appeal shall be based on any of the following grounds, namely that:

1. Refusal to grant a variety certificate is not well justified.
2. The variety protection certificate has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled;
3. The variety is not new or distinct;
4. The variety is not uniform or stable;
5. The variety denomination is unsuitable.

Article 25

National registration book

The Plant Variety Protection Office shall be responsible for establishing and keeping the national registration book on protected plant varieties. All information related to plant variety protection certificates and

changes made during the period of protection shall be recorded and kept in the national registration book.

Chapter 3

Rights and obligations of the plant variety protection certificate holder and variety breeder

Article 26

Rights of the plant variety certificate holder

1. Rights of the certificate holder stipulated in Article 186 of the Intellectual Property Law shall also apply to the harvested material of the protected variety obtained through the unauthorized use of propagating materials of the protected variety, unless the Holder has had reasonable opportunity to exercise the right in relation to the said propagating material.
2. The rights of the certificate holder stipulated in paragraph 1 of this Article shall also apply to the plant varieties stipulated in Article 187 of the Intellectual Property Law.

Article 27

Request for provisional protection

The certificate holder shall be entitled to provisional protection in accordance with Article 189 (1) of the Intellectual Property Law. If the filed variety is used by someone for commercial purpose during the provisional protection period, the certificate holder shall exercise the variety rights as stipulated in Article 189 (2) (3) of the Intellectual Property Law. In order to exercise this right from the time when the certificate is granted, the Certificate holder shall request provisional protection and shall carry out the following procedures:

1. Reach an agreement with the person who exploited the filed variety for commercial purpose about compensation rate
2. In case of failing to reach an agreement, the Certificate holder can write a letter to the competent authorities to resolve the issue as stipulated in Article 200 of the Intellectual Property Law. Requests for provisional protection must be prepared in writing together with well-justified evidence.

Article 28

Limitation of the rights of the plant variety certificate holder

As provided in Article 190 of the Intellectual Property Law, the right of the certificate holder shall not extend to

1. acts done privately and for non - commercial purposes;
2. acts done for scientific research; and
3. acts done for the purpose of breeding other varieties, and, except where the provisions of Article 187 of the Intellectual Property Law apply, acts referred to in Article 186 of the Intellectual Property Law and in Article 26 of this Decree.
4. Individual households may use the harvested products of a protected variety obtained in their own field for propagation and cultivation in their own field in the next season.

Article 29

Obligations of the plant variety certificate holder

As stipulated in Article 191(1) of the Intellectual Property Law, the Certificate Holder has the following obligations:

1. To pay fees to the breeder by one of the following ways:
 - a) By an agreement between the Certificate Holder and the Breeder
 - b) If an agreement cannot be reached, the fee to be paid to Breeder must be 30% of the total royalty collected.
 - c) For plant varieties which are bred, or discovered and developed by the state budget, the Certificate holder shall pay the breeder according to their internal rules. In case no internal rules are available, the Certificate Holder shall pay the breeder 30% of the collected royalty.
2. To pay fees to the Plant Variety Protection Office for maintaining the effectiveness of the plant variety protection certificate in the first three months of the

first effective year after the certificate is granted and in the first month of the subsequent effective years.

3. To store the protected variety and provide information, documents and propagating material of the protected variety at the request of the Plant Variety Protection Office; to maintain the stability of the protected variety to ensure the same characteristics as described at the time when the variety right was granted.

Article 30

Obligations of the plant variety breeder

In accordance with Article 191 (2) of the Intellectual Property Law, during the effective time of the certificate, the breeder shall be obliged to maintain the protected variety to ensure the same characteristics as described at the time when the variety right was granted.

Chapter 4

License and assignment of rights over a Protected Variety

Article 31

Orders and procedures for variety rights assignment and licensing among parties

1. After the contract on assignment of the right of the protected variety has been completed and agreed following the rules, the assignee shall file the signed contract at the Plant Variety Protection Office and pay fees accordingly.

2. The Plant Variety Protection Office shall receive the said contract, certify and publicize the said assignee of the variety right as the new certificate holder.

Article 32

License and assignment of rights to use a plant variety owned by the State

1. Licensing of rights over a state-bred variety must be done in accordance with the Laws on state asset management.

2. Use and management of fees obtained from licensing and assigning contracts on plant varieties

shall follow the Decree 43/2006/N^o-CP dated 25 April 2006 of the Government stipulating the ownership, accountability for implementing tasks, structural organization, employment and finance in the public institutes.

Article 33

Compulsory license of rights of a protected plant variety

Cases for compulsory licensing of variety rights are stipulated in Article 195 (1) (a) of the Intellectual Property Law for reasons of urgent public interest including emergencies such as calamities epidemics, war or environmental pollution on a large scale.

Article 34

Basis for determining the compensation norm for compulsory license of variety rights

Determination of the compensation norm for a compulsory license of variety right shall be based on:

1. Mutual agreement between the licensee and the licensor

2. In case of failing to reach a mutual agreement, the compensation norm shall be calculated on the basis of:

a) value of the latest existing licensing contract with other licensor for the same variety, then calculating the equivalent basis in terms of the time and volume of seed taken as a result of the compulsory transfer.

b) the profit obtained by the Certificate Holder through commercial exploitation, then calculating equivalent basis in terms of the time and volume of seed taken as a result from compulsory transfer.

3. The decision makers indicated in Article 35 of this Decree shall take the lead and collaborate with other concerned ministries and departments to determine compensation norm for the cases indicated in paragraph 2 of this Article.

Article 35

Decision makers on compulsory licensing of variety rights

1. MARD shall promulgate decisions on compulsory license of variety rights for agricultural crops and forestry species.

Decree No. 104/2006/ND-CP

2. Ministry of Fishery shall have the right to promulgate decisions on the compulsory license of variety rights for aquatic plants.

3. Ministry of Health shall have the right to make decisions on the compulsory license of variety rights for medicinal plants .

4. The agencies indicated in paragraph 1, 2 and 3 of this Article shall arrange and nominate their respective departments to be in charge of handling procedures for compulsory licensing of plant variety rights.

Article 36

Procedures for compulsory license of variety rights

1. The agencies indicated in Article 35 (1, 2, 3) of this Decree shall publicize the need for the variety, name of the variety, purpose, quantity; scope and duration of the compulsory licence.

2. Organizations/individuals which are interested in being a licensee, shall submit a dossier requesting a license of variety rights to the state administrative agencies stipulated in Article 35 of this Decree. The dossier shall include:

a) A letter requesting the license. The scope and time to take over the license of variety rights shall be clearly indicated in the letter.

b) Business certificate on producing and commercializing plant varieties.

c) Proof of financial capacity to provide compensation to the licensor as stipulated.

3. Responsibility of the state administrative agencies for the compulsory license of variety rights:

a) To receive the dossiers indicated in paragraph 2 of this Article;

b) Within 15 days from receiving the valid dossier, evaluate the dossier and submit it to a higher competent authority for promulgating a decision on compulsory licensing of the variety if the licensee is capable to take it over.

c) In case the said licensee is not capable to take over the compulsory license, the administrative agency shall notify in writing and indicate the reasons. Inform the licensor and licensee of the decision accordingly.

Chapter 5

Execution provision

Article 37

Transitional provision

2. Applications which were filed at the Plant Variety Protection Office before the effective date of this Decree, shall be handled according to the legal documents on plant variety protection effective at the filing date of application.

3. Applications which are filed after the date when this Decree becomes effective, shall be handled according to the stipulations in this Decree.

Article 38

Effectiveness of the Decree

This Decree shall enter into force 15 days after it is published in the Official Gazette. From the effective date, this Decree shall replace the Decree no. 13/2001/ND-CP of the Government dated April 20, 2001.

Article 39

Execution provisions

1. MARD shall be responsible for providing instructions for the execution of this Decree.

2. Ministry of Finance shall take the lead, in collaboration with MARD, to provide guidance on collection, management and use of fees collected for the protection of new plant varieties.

3. Ministers, Heads of ministerial level agencies, Heads of Government agencies, Chairman of Provincial/City Peoples Committees, which are under Central Government shall have the responsibility to execute this Decree.

For the Government
Prime Minister
Nguyen Tan Dung

NEWSLETTER

UPOV DISTANCE LEARNING COURSE

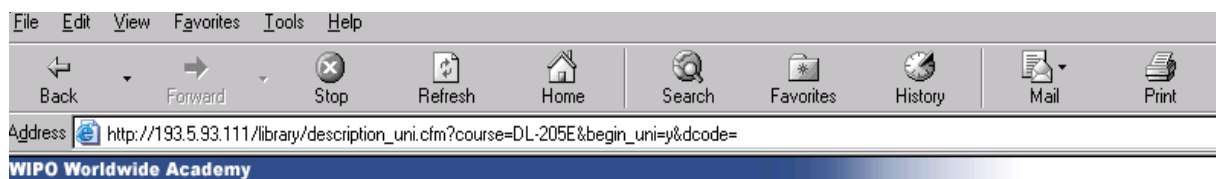
The UPOV Distance Learning Course DL-205, which was launched in September 2005, has now been completed by 729 participants. The Course is available in English, French, German and Spanish.

Two sessions of the DL-205 Course are scheduled for 2008:

April 14 to May 18, 2008

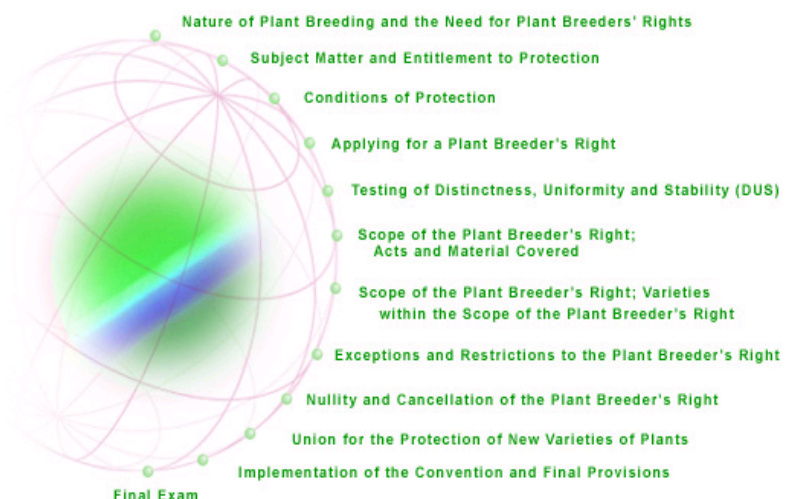
September 1 to October 5, 2008

More information on the course content and on-line registration is available on the UPOV website: <http://www.upov.int/en/about/training.html>



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- ▶ [Resources](#)
- ▶ [Communicate](#)
- ▶ [Profile](#)
- ▶ [Grade Book](#)
- ▶ [Short Cuts](#)
- ▶ [Help](#)
- ▶ [Tutor](#)
- ◀ [Exit](#)

DL-205



EUROPEAN COMMUNITY - CPVO DATABASE ON PVR CASE LAW

In February 2007, the Community Plant Variety Office (CPVO) launched the CPVO Database on Plant Variety Rights' (PVR) case law. This database is a service provided by the CPVO in order to facilitate access to case law from States of the European Union and deciding bodies on Plant Variety Rights' issues. It consists of a compilation of cases combined with a search tool. The database can be consulted at the following link:

<http://www.cpvoextranet.cpvo.europa.eu/WD100AWP/WD100Awp.exe/CONNECT/PVRCaseLaw>.

The database provides summaries of case law exclusively in English. It also provides the text judgments in their original language. Please note that the documents supplied are not the official version of the decisions taken by jurisdictions within the European Union. If you wish to have access to the official text, please consult the organism which officially took the decision concerned directly. You may use the data for personal use. For any other use, please contact the CPVO: **pvrcaaselaw@cpvo.europa.eu**.

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 Direction de la protection des végétaux, des contrôles
 techniques et de la répression des fraudes
 Ministère de l'agriculture, du développement rural et
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 Website: <http://www.plantenrassen.nl>

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 Plant Variety Rights Office
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 e-mail: info@pvr.govt.nz
 Website: <http://www.pvr.govt.nz>

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 Ministerio de Economía y Desarrollo (MEDE)
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 website: <http://www.dgpc.min-agricultura.pt>

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SLOVENIA

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Slovenia
Ministry of Agriculture, Forestry and Food (MAFF)
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 Fax. (34) 91 347 67 03
 Website: <http://www.mapya.es>

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Swedish Board of Agriculture
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 S-551 82 Jönköping
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 Fax. (46-36) 71 05 17
 e-mail: jordbruksverket@sjv.se
 Website: <http://www.sjv.se>

Swedish Board of Agriculture
 (Jordbruksverket)
 Seed Division (Utsädesenheten)
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 website: www.defra.gov.uk/planth/pvs/default.htm

UNITED STATES OF AMERICA

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Law No. 8880, dated April 15, 2002, on Plant Breeder's Rights
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Andean Community

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Argentina

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Australia

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Austria

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Belarus

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Belgium

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Bolivia

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Brazil

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Bulgaria

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Canada

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Chile

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China

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Decree on the (amount of) costs relating to the Plant Variety Protection
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Czech Republic

Consolidated Text of Protection of Plant Variety Rights Act No. 408/2000 (No. 32/2006) 100 Dec. 2006
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Law on the Legal Protection of the Varieties of Plants and Breeds of Animals¹
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Denmark

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Estonia

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European Community

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Commission Regulation (EC) No. 1239/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the CPVO (Issue 89 - Sept. 2000)

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Finland

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France

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Decree Concerning the Committee for the Protection of New Plant Varieties (No. 71-454 of June 7, 1971)³ (Issue 33 - Apr. 1983)

Order Concerning the Denomination of Plant Varieties in respect of which either an Entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a New Plant Variety Protection Certificate has been Issued (of September 1, 1982) (Issue 34 - June 1983)

Decree No. 95-1047 of December 28, 1995 amending the Intellectual Property Code (Regulatory Part) with respect to the scope of application of New Plant Variety Certificates and the Term and Scope of Breeders' Rights (Issue 81 - Apr. 1997)

Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom) (Issue 80 - Dec. 1996)

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Germany

The Plant Variety Protection Law (Consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by: Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990); Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992); Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992); Article 72 of the Law of April 27, 1993 (entered into force on

January 1, 1994); Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005); Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995); Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997))
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Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985
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Hungary

Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds)
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Joint Decree Relating to the Execution of the Law on the Protection of Inventions by Patents (No. 4/1969 XII. 28) OMFB-IM of the President of the National Committee for Technical Development and the Minister of Justice, as Amended by Decree No. 4/1983 (V.12) IM of the Minister of Justice
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Iceland

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Ireland

Plant Varieties (Proprietary Rights) Act, 1980
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Israel

Law on the Rights of the Breeders of Plant Varieties (Consolidated Text of the Plant Breeders' Rights Law, 5733-1973, as Amended by the Plant Breeders' Rights (Amendment) Law, 5744-1984 and as Amended by the Plant Breeder's Rights (Amendment No. 2) 5756-1996)
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Italy

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Japan

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Taxa Covered by Plant Variety Protection Legislation
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Kenya

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Kyrgyzstan

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Lithuania

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Latvia

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Mexico

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Morocco

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Netherlands

Seeds and Planting Material Act (Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999)
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Taxa Covered by Plant Variety Protection Legislation (All taxa of the plant kingdom)
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New Zealand

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Nicaragua

Law for the Protection of New Varieties of Plants No. 318
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Norway

Act of March 12, 1993, Relating to the Plant Breeder's Rights
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Regulations concerning the Plant Breeder's Right as amended on February 6, 1995 and July 16, 1997
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Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)
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Panama

Law No. 23 of July 15, 1997 on Industrial Property,
Title V
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Executive Decree No. 13 Regulating Title V of Law
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Taxa Covered by Plant Variety Protection Legislation
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Taxa Covered by Plant Variety Protection Legislation
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Paraguay

Law 385/94 on Seeds and Cultivar Protection
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Taxa Covered by Plant Variety Protection Legislation
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Poland

Law on the Legal Protection of Plant Varieties
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Extract from Decree of the Minister for Agriculture,
Forestry and Food Economy Concerning the Register
of Varieties, the Role of Exclusive Rights on Varieties
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1988, as Amended on September 25, 1990
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Tariff of Fees
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Taxa Covered by Plant Variety Protection Legislation
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Portugal

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1990
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Taxa Covered by Plant Variety Protection Legislation
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Tariff of Fees
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Republic of Korea

Seed Industry Law of January 26, 2001, under Law
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Taxa Covered by Plant Variety Protection Legislation
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Taxa Covered by Plant Variety Protection Legislation
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Republic of Latvia

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Republic of Moldova

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Law on the Protection of Plant Varieties
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Taxa Covered by Plant Variety Protection Legislation
(Issue 85 - Oct. 1999)

Romania

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Russian Federation

Law on the Protection of Selection Achievements (of August 6, 1993)
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Taxa Covered by Plant Variety Protection Legislation
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Taxa Covered by Plant Variety Protection Legislation
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Slovakia

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Singapore

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Slovenia

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(Issue 85 - Oct. 1999)

South Africa

Plant Breeder's Rights Act No. 15 of 1976 as amended by Plant Breeders' Amendment Act No. 5 of 1980, Plant Breeders' Amendment Act No. 14 of 1981, Plant Breeders' Amendment Act No. 38 of 1983, Transfer of Powers and Duties of the State President, Act. No. 97 of 1983 and Plant Breeders' Amendment Act, No. 15 of 1996
(Issue 82 - Aug. 1997)

Regulations Relating to Plant Breeder's Rights No. R 1186 of 12 September, 1997
(Issue 87 - Mar. 2000)

Genetically Modified Organisms Act No. 15 of 1997
(Issue 93 - June 2002)

Taxa Covered by Plant Variety Protection Legislation
(Issue 85 - Oct. 1999)

Tariff of Fees
(Issue 85 - Oct. 1999)

Spain

Law 3/2000 Governing the Protection of Plant Varieties
(Issue 91- June 2001)

Taxa Covered by Plant Variety Protection Legislation 72 Nov. 1993 (All plant genera and species)
(Issue 90 - Dec. 2000)

Law on the Protection of Plant Varieties No. 12/1975 of March 12, 1975
(67 - Feb. 1992)

General Rules on the Protection of Plant Varieties (Approved by Royal Decree No. 1674/1977 of June 10, 1977)
(Issue 67 - Feb. 1992)

Sweden

Act (No. 2004:16) amending the Act on the Protection of Plant Breeders' Rights (1997:306)
(Issue 91 - June 2001)

Act of the Protection of Plant Breeders' Rights
(Issue 91- June 2001)

Taxa Covered by Plant Variety Protection Legislation (all botanical genera and species)
(Issue 81- Apr. 1997)

Tariff of Fees
(Issue 85- Oct. 1999)

Switzerland

Federal Law on the Protection of New Plant Varieties (Consolidated Text of the Federal Law of March 20, 1975, as Amended by the Federal Law of October 10, 1980)
(Issue 56- July 1988)

Ordinance on the Protection of Plant Varieties
(Issue 61- Feb. 1991)

Taxa Covered by Plant Variety Protection Legislation
(Issue 61- Feb. 1991)

Tariff of Fees
(Issue 75- Dec. 1994)

Tariff of Fees (Corrigendum)
(Issue 76- Feb. 1995)

Trinidad and Tobago

The Protection of New Plant Varieties Regulations, 2000
(Issue 92- Dec. 2001)

The Protection of New Plant Varieties Act, 1997
(Issue 85- Oct. 1999)

Taxa Covered by Plant Variety Protection Legislation
(Issue 84- Apr. 1998)

Taxa Covered by Plant Variety Protection Legislation
(Issue 100- Dec. 2006)

Tunisia

Law No. 99-42 on Seed, Seedlings and New Plant Varieties (May 10, 1999)
(96- Dec. 2003)

Decree No. 2000-102 of January 18, 2000
(Issue 96- Dec. 2003)

Order of the Minister of Agriculture of June 24, 2000
(Issue 96- Dec. 2003)

Turkey

Law No. 5042 of January 8, 2004, on the Protection of Breeder's Rights for New Plant Varieties
(Issue 101 - Dec. 2007)

Ukraine

Law of Ukraine on the Protection of Plant Variety Rights (as amended on November 2, 2006)
(Consolidated text)
(Issue 100 - December 2006)

Amendment to the Law on the Protection of Plant Variety Rights (July 1, 2002)
(Issue 95- April 2003)

Law on the Protection of Plant Variety Rights (of April 21, 1993)
(Issue 76- Feb. 1995)

Taxa Covered by Plant Variety Protection Legislation
(Issue 86- Dec. 1999)

United Kingdom

Plant Varieties Act 1997
(Issue 85- Oct. 1999)

The Plant Breeder's Rights (Information Notices)

(Extension to European Community Plant Variety Rights Regulations 1998)

Statutory Instrument No. 1023 of 1998 The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998
(Issue 87- Mar. 2000)

Statutory Instrument No. 1024 of 1998 The Plant Breeders' Rights (Information Notices) Regulations 1998
(Issue 87 - Mar. 2000)

Statutory Instrument No. 1025 of 1998 The Plant Breeders' Rights (Farm Saved Seed)(Specification of Species and Groups) Order 1998 87 Mar. 2000

Statutory Instrument No. 1026 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specified-Information) Regulations 1998 87 Mar. 2000

Statutory Instrument No. 1027 of 1998 The Plant Breeders' Rights Regulations 1998
(Issue 87- Mar. 2000)

The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002
(Issue 93 - June 2002)

United States of America

Plant Variety Protection Act (Consolidated Text of Public Law 91-577 of December 24, 1970, as Amended by Public Law 96-574 of December 22, 1980, Public Law 97-164 of April 2, 1982, Public Law 100-203 of December 22, 1987, Public Law 102-560 of October 28, 1992, Public Law 103-349 of October 6, 1994 and Public 104-127 of April 4, 1996) (Issue 80 - Dec. 1996)

Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996
(Issue 80 - Dec. 1996)

Plant Patent Amendments Act of 1998
(Issue 91 - June 2001)

Uruguay

Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract)
(Issue 76 - Feb. 1995)

Decree No. 84/983, Introducing Law No. 15.173, Regulating the Production, Certification and Marketing of Seed, as Amended by Decree No. 418/987 of August 12, 1987, and Decree No. 519/991 of September 17, 1991 (Extract)
(Issue 76- Feb. 1995)

Law No. 16.811
(Issue 82 - Aug. 1997)

Taxa Covered by Plant Variety Protection Legislation
(Issue 76 - Feb. 1995)

Viet Nam

Intellectual Property Law (Law No. 50/2005/QH11)
(Issue 101 - Dec. 2007)

Decree No. 104/2006/ND-CP
(Issue 101 - Dec. 2007)

Taxa Covered by Plant Variety Protection Legislation
(Issue 101 - Dec. 2007)

Members of the Union

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act ¹ of the Convention to which State/Organization is party and date on which State/Organization became party to that Act
Albania.....	October 15, 2005	0.2	1991 Act..... October 15, 2005
Argentina.....	December 25, 1994	0.5	1978 Act..... December 25, 1994
Australia.....	March 1, 1989	1.0	1991 Act..... January 20, 2000
Austria.....	July 14, 1994	1.5	1991 Act..... July 1, 2004
Azerbaijan.....	December 9, 2004	0.2	1991 Act..... December 9, 2004
Belarus.....	January 5, 2003	0.2	1991 Act..... January 5, 2003
Belgium ²	December 5, 1976	1.5	1961/1972 Act..... December 5, 1976
Bolivia.....	May 21, 1999	0.2	1978 Act..... May 21, 1999
Brazil.....	May 23, 1999	0.25	1978 Act..... May 23, 1999
Bulgaria.....	April 24, 1998	0.2	1991 Act..... April 24, 1998
Canada.....	March 4, 1991	1.0	1978 Act..... March 4, 1991
Chile.....	January 5, 1996	0.2	1978 Act..... January 5, 1996
China.....	April 23, 1999	0.5	1978 Act ³ April 23, 1999
Colombia.....	September 13, 1996	0.2	1978 Act..... September 13, 1996
Croatia.....	September 1, 2001	0.2	1991 Act..... September 1, 2001
Czech Republic.....	January 1, 1993	0.5	1991 Act..... November 24, 2002
Denmark ⁴	October 6, 1968	1.5	1991 Act..... April 24, 1998
Dominican Republic.....	June 16, 2007	0.2	1991 Act..... June 16, 2007
Ecuador.....	August 8, 1997	0.2	1978 Act..... August 8, 1997
Estonia.....	September 24, 2000	0.2	1991 Act..... September 24, 2000
European Community.....	July 29, 2005	5.0	1991 Act..... July 29, 2005
Finland.....	April 16, 1993	1.0	1991 Act..... July 20, 2001
France ⁵	October 3, 1971	5.0	1978 Act..... March 17, 1983
Germany.....	August 10, 1968	5.0	1991 Act..... July 25, 1998
Hungary.....	April 16, 1983	0.5	1991 Act..... January 1, 2003
Iceland.....	May 3, 2006	0.2	1991 Act..... May 3, 2006
Ireland.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Israel.....	December 12, 1979	0.5	1991 Act..... April 24, 1998
Italy.....	July 1, 1977	2.0	1978 Act..... May 28, 1986
Japan.....	September 3, 1982	5.0	1991 Act..... December 24, 1998
Jordan.....	October 24, 2004	0.2	1991 Act..... October 24, 2004
Kenya.....	May 13, 1999	0.2	1978 Act..... May 13, 1999
Kyrgyzstan.....	June 26, 2000	0.2	1991 Act..... June 26, 2000
Latvia.....	August 30, 2002	0.2	1991 Act..... August 30, 2002
Lithuania.....	December 10, 2003	0.2	1991 Act..... December 10, 2003
Mexico.....	August 9, 1997	0.75	1978 Act..... August 9, 1997
Moldova.....	October 28, 1998	0.2	1991 Act..... October 28, 1998
Morocco.....	October 8, 2006	0.2	1991 Act..... October 8, 2006
Netherlands.....	August 10, 1968	3.0	1991 Act ⁶ April 24, 1998
New Zealand.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Nicaragua.....	September 6, 2001	0.2	1978 Act..... September 6, 2001
Norway.....	September 13, 1993	1.0	1978 Act..... September 13, 1993
Panama.....	May 23, 1999	0.2	1978 Act..... May 23, 1999
Paraguay.....	February 8, 1997	0.2	1978 Act..... February 8, 1997
Poland.....	November 11, 1989	0.5	1991 Act..... August 15, 2003
Portugal.....	October 14, 1995	0.5	1978 Act..... October 14, 1995
Republic of Korea.....	January 7, 2002	0.75	1991 Act..... January 7, 2002
Romania.....	March 16, 2001	0.2	1991 Act..... March 16, 2001
Russian Federation.....	April 24, 1998	0.5	1991 Act..... April 24, 1998
Singapore.....	July 30, 2004	0.2	1991 Act..... July 30, 2004
Slovakia.....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Slovenia.....	July 29, 1999	0.2	1991 Act..... July 29, 1999
South Africa.....	November 6, 1977	1.0	1978 Act..... November 8, 1981

¹The International Union for the Protection of New Varieties of Plants (UPOV), established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organization having legal personality. Pursuant to an agreement concluded between the World Intellectual Property Organization (WIPO) and UPOV, the Director General of WIPO is the Secretary-General of UPOV and WIPO provides administrative services to UPOV.

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act ¹ of the Convention to which State/Organization is party and date on which State/Organization became party to that Act	
Sweden	December 17, 1971	1.5	1991 Act.....	April 24, 1998
Switzerland.....	July 10, 1977	1.5	1978 Act.....	November 8, 1981
Trinidad and Tobago.....	January 30, 1998	0.2	1978 Act.....	January 30, 1998
Tunisia.....	August 31, 2003	0.2	1991 Act.....	August 31, 2003
Turkey	November 18, 2007	0.5	1991 Act.....	November 18, 2007
Ukraine.....	November 3, 1995	0.2	1991 Act.....	January 19, 2007
United Kingdom.....	August 10, 1968	2.0	1991 Act.....	January 3, 1999
United States of America.....	November 8, 1981	5.0	1991 Act ⁸	February 22, 1999
Uruguay	November 13, 1994	0.2	1978 Act.....	November 13, 1994
Uzbekistan.....	November 14, 2004	0.2	1991 Act.....	November 14, 2004
Viet Nam	December 24, 2006	0.2	1991 Act.....	December 24, 2006

(Total: 65)

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1. "1961/1972 Act" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972; "1978 Act" means the Act of October 23, 1978, of the Convention; "1991 Act" means the Act of March 19, 1991, of the Convention.
2. With a notification under Article 34(2) of the 1978 Act.
3. With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.
4. With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.
5. With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.
6. Ratification for the Kingdom in Europe.
8. With a reservation pursuant to Article 35(2) of the 1991 Act.

Calendar of Events 2008***JANUARY**

22 (a.m.) Meeting of the Organizing Committee for II World Seed Conference 2009, Paris, France

FEBRUARY

1 to 29 On-line registration UPOV Distance Learning Course (DL-205): Session I
 11 to 22 Workshops and consultation meetings in Cambodia, Lao People's Democratic Republic, Viet Nam and Singapore
 25 to 29 Train the Trainer course, Alexandria, United States of America

MARCH

13 to 14 National Seminar in Almaty, Kazakhstan

APRIL

7 to 9 Technical Committee, Geneva
 10 Administrative and Legal Committee, Geneva
 10 (3 p.m.) Consultative Committee, Geneva
 11 (a.m.) Consultative Committee, Geneva
 11 (p.m.) Extraordinary session of the Council, Geneva
 14 April to 18 May UPOV Distance Learning Course (DL-205): Session I
 21 to 25 National Seminar in Trinidad and Tobago on the 1991 Act and DUS Examination

MAY

early May Regional activity in Tunisia
 30 to 31 TGP/14 Workshop, Lisbon, Portugal

JUNE

1 Preparatory Workshop TWF, Lisbon, Portugal
 2 to 6 Technical Working Party for Fruit Crops (TWF), Lisbon, Portugal
 7 Preparatory Workshop TWO, Wageningen, Netherlands
 8 to 13 Technical Working Party for Ornamental Plants and Forest Trees (TWO), Wageningen, Netherlands
 21 Preparatory Workshop TWV, Cracow, Poland
 22 to 27 Technical Working Party for Vegetables (TWV), Cracow, Poland

JULY

1 to 31 On-line registration UPOV Distance Learning Course (DL-205): Session II
 7 to 11 Southern African Development Cooperation (SADC) meeting, South Africa
 13 Preparatory Workshop TWA, Nelspruit, South Africa
 14 to 18 Technical Working Party for Agricultural Crops (TWA), Nelspruit, South Africa

AUGUST

27 to 30 Workshop on data handling, Republic of Korea
 31 Preparatory Workshop TWC, Jeju, Republic of Korea

SEPTEMBER

1 to 5 Technical Working Party on Automation and Computer Programs (TWC), Jeju, Republic of Korea
 1 to Oct 5 UPOV Distance Learning Course (DL-205): Session II

*Dates and location of certain events may be subject to modification.

SEPTEMBER

- 15 (p.m.) Preparatory Workshop for BMT, Madrid, Spain
 15 (a.m.) Ad hoc Crop Subgroup on Molecular Techniques for Rose, Madrid, Spain
 16* to 18 Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT), Madrid, Spain

OCTOBER

- 6 to 10 West and Central Asian Regional Meeting, Antalya, Turkey
 20 to 21 National Seminar on Enforcement of PBR, Quito, Ecuador
 27 to 28 Administrative and Legal Committee, Geneva
 29 Consultative Committee, Geneva
 30 Council, Geneva
 31 Administrative and Legal Committee Advisory Group, Geneva

NOVEMBER

- 17 to 21 VII Training Course on PVP for Latin American countries, Santa Cruz de la Sierra, Bolivia

Calendar of Events 2009 (Provisional)

JANUARY

- 8 Enlarged Editorial Committee, Geneva

FEBRUARY

- 1 to 28 On-line registration UPOV Distance Learning Course (DL-205): Session I

MARCH

- 30 to April 1 Technical Committee, Geneva

APRIL

- 2 Administrative and Legal Committee, Geneva
 3 Consultative Committee, Geneva
 3 (p.m.) Extraordinary session of the Council, Geneva
 13 April to 10 May UPOV Distance Learning Course (DL-205): Session I

JULY

- 1 to 31 On-line registration UPOV Distance Learning Course (DL-205): Session II

SEPTEMBER

- 1 to Oct 4 UPOV Distance Learning Course (DL-205): Session II

OCTOBER

- 19 to 20 Administrative and Legal Committee, Geneva
 21 Consultative Committee, Geneva
 22 Council, Geneva
 23 Administrative and Legal Committee Advisory Group, Geneva

* September 16: Breeders' Day, Madrid, Spain (the items concerning "The use of molecular techniques in the consideration of essential derivation" and "The use of molecular techniques in variety identification" will be discussed on this day.)