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## GAZETTE

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### NEW MEMBERS OF UPOV

#### GEORGIA\*

On October 29, 2008, the Government of Georgia 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.

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

The Convention entered into force for Georgia one month after the deposit of its instrument of accession, i.e. on November 29, 2008. On that date, Georgia became the sixty-sixth member of the Union.

#### COSTA RICA\*\*

On December 12, 2008, the Government of Costa Rica 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.

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

The Convention will enter into force for Costa Rica one month after the deposit of its instrument of accession, i.e. on January 12, 2009. On that date, Costa Rica will become the sixty-seventh member of the Union.

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\* 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 Georgia is contained in paragraph 20 of document C(Extr.)/24/5 based on document C(Extr.)/24/3 ([http://www.upov.int/en/documents/c\\_extr/index\\_c\\_extr\\_24.htm](http://www.upov.int/en/documents/c_extr/index_c_extr_24.htm)).

\*\* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, the positive advice of the Council of UPOV concerning Costa Rica is contained in paragraph 18 of document C(Extr.)/25/10 based on document C(Extr.)/25/7 ([http://www.upov.int/en/documents/c\\_extr/index\\_c\\_extr\\_25.htm](http://www.upov.int/en/documents/c_extr/index_c_extr_25.htm)).

## RATIFICATION OF THE 1991 ACT OF THE UPOV CONVENTION

### SWITZERLAND

On August 1, 2008, the Government of Switzerland deposited its instrument of ratification of the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

Switzerland has been a member of UPOV since July 10, 1977.

The 1991 Act entered into force for Switzerland on September 1, 2008, one month after the deposit of its instrument of ratification.

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

## EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

### SOUTH AFRICA

On November 26, 2008, the Office of the Union and administered by the Directorate: Genetic Resources of the Department of Agriculture received a notification concerning the extension of the list of genera and species eligible for protection

1		2	3	4
Kind of Plant		Category	Period of Plant Breeder's Right (Year)	Period of sole Right (Year)
Botanical Name	Common Name			
<i>Abelmoschus</i> Medik. (All spp.)	Gumbo, Lady's fingers	B	25	8
<i>Acorus</i> L. (All spp.)	Sweet flag	A	20	5
<i>Ageratina</i> Spach. (All spp.)	Ageratina	A	20	5
<i>Artemisia</i> L. (All spp.)	Artemisia	A	A	5
<i>Bauhinia</i> L. (excluding <i>B. purpurea</i> and <i>B. variegata</i> )	Bauhinia; Orchid tree	B	25	8
<i>Carex brunnea</i> Thunb.	Greater brown sedge	A	20	5
<i>Coleostephus</i> Cass. (All spp.)	Coleostephus	A	20	5
<i>Crambe abyssinica</i> Hochst. Ex. R.E.Fr.	Abyssinian-kale; Crambe	A	20	5
<i>Crinum</i> L. (All spp.)	Cape Lily	A	20	5
<i>Delosperma</i> N.E. Br. (All spp.)	Delosperma	A	20	5
<i>Dierama</i> C. Koch (All spp.)	Wandflower	A	20	5
<i>Dietes</i> Salisb. Ex Klatt (All spp.)	Fortnight Lily; African Iris	A	20	5
<i>Eucomis</i> L'Hér. (All spp.)	Pineapple lily	A	20	5
<i>Ferraria</i> Burm. ex Mill. (All spp.)	Ferraria	A	20	5
<i>Gaillardia x grandiflora</i> hort. ex. Van Houtte	Blanket Flower	A	20	5
<i>Glandularia</i> J.F. Gmel (All spp.)	Glandularia	A	20	5
<i>Goniolimon</i> Boiss. (All spp.)	Goniolimon	A	20	5
<i>Heteranthemis</i> Schott. (All spp.)	Heteranthemis	A	20	5
<i>Heuchera</i> L. (All spp.)	Coral bells	A	20	5
<i>Hypoxis</i> L. (All spp.)	Yellow star; Star lilly; African potato	A	20	5
<i>Ilex dimorphophylla</i> Koidz	Holly	A	25	8
<i>Kniphofia</i> Moench (All spp.)	Poker plant	A	20	5
<i>Kunzea</i> Reichb. (All spp.)	Burgan, White tea tree	A	20	5
<i>Ledebouria</i> Roth. [including <i>Drimiopsis</i> Lindl. & Paxton and <i>Resnova</i> Van der Merwe] (All spp.)	Ledebouria	A	20	5
<i>Leucanthemum</i> Mill.	Leucanthemum	A	20	5
<i>Lycopersicon esculentum</i> Mill. (=L. <i>lycopersicum</i> )	Tomato	A	20	5
<i>Moraea</i> Mill. (All spp.)	Butterfly iris	A	20	5
<i>Psylliostachys</i> (Jaub. & Spach) Nevsk (All spp.)	Psylliostachys	A	20	5
<i>Rhodohypoxis</i> Nel (All spp.)	Rose grass	A	20	5
<i>Scadoxus</i> Raf. (All spp.)	Blood lily	A	20	5
<i>Schizocarphus</i> Van der Merwe (All spp.)	Schizocarphus	A	20	5
<i>Scilla</i> L. (All spp.)	Squill	A	20	5
<i>Selago</i> L. (All spp.)	Selago	A	20	5
<i>Sideroxylon inerme</i> L.	Milkwood	B	25	8
<i>Stachytarpheta</i> Vahl. (All spp.)	Stachytarpheta	A	20	5
<i>Tanacetum</i> L. (All spp.)	Tanacetum	A	20	5
<i>Urochloa brizantha</i> (Hochst. Ex A. Rich) R.D. Webster	Bread grass	A	20	5
<i>Veltheimia</i> Gled. (All spp.)	Veltheimia	A	20	5

**VIET NAM**

On July 4, 2008, 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
Rubber	<i>Hevea Aubl</i>
Pomelo	<i>Citrus grandis</i> L.
Apple	<i>Malus domestica</i> Borkh
Papaya	<i>Carica papaya</i> L.
Banana	<i>Musa acuminata</i> Colla; <i>Musa xparadisiaca</i> L.
Bitter gourd	<i>Momordica Charantia</i> L.
Marigold	<i>Tagetes</i> L.
Dragon fruit	<i>Hylocereus</i> (Haw.); <i>Hycleoreus Costaricensis</i> (F.A.C. Weber); <i>Hylocereus Polyrhizus</i> (F.A.C. Weber)
Onion, Shallot and hybrids between them	<i>Allium Cepta</i> ; <i>Allium Oschaninii</i> O. Fedtsch
Coffee	<i>Coffea Arabica</i> L; <i>C. Canephora Pierre</i> ex. Froehner and hybrids between

## MODIFICATION OF FEES

### COMMISSION REGULATION (EC) No. 572/2008 OF 19 June 2008 AMENDING REGULATION (EC) No. 1238/95 AS REGARDS THE LEVEL OF THE ANNUAL FEE AND THE FEES RELATING TO TECHNICAL EXAMINATION, PAYABLE TO THE COMMUNITY PLANT VARIETY OFFICE, AND THE MANNER OF PAYMENT\*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights <sup>(1)</sup>, and in particular Article 113 thereof,

After consulting the Administrative Council of the Community Plant Variety Office

Whereas:

(1) Commission Regulation (EC) No 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office <sup>(2)</sup>, sets out the fees payable to the Community Plant Variety Office ('the Office'), and the levels of those fees.

(2) The financial reserve of the Office had reached a level which exceeded the level necessary to safeguard the continuity of its operations. For this reason the annual fee and the fees relating to technical examination were reduced. The financial reserve of the Office has now decreased to an appropriate level and the revenue should therefore be raised again to a level which is sufficient for the budget of the Office to be balanced. To achieve this, the annual fee and the fees relating to technical examination should be increased

(3) As regards new species, the experience gathered

with the fee groups for the technical examination of ornamentals, has shown that there is a need to amend some of those fee groups.

(4) To facilitate the payment of fees and charges, payment by payment cards should be allowed subject to conditions and limitations to be determined by the President of the Office

(5) At the same time the terms 'ecus' and 'ECU' should be respectively replaced by the terms 'euros' and 'EUR' throughout Regulation (EC) No 1238/95.

(6) Regulation (EC) No 1238/95 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Community Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 1238/95 is amended as follows:

1. in Article 1(2), the word 'ecus' is replaced by 'euros';
2. in Article 3(2), points (a), (b) and (c) are replaced by the following:

'(a) delivery or remittance of certified cheques which are made payable in euros to the Office;

b) transfer in euros to a giro account held by the Office;

(c) payment into a charge account held in euros with the Office; or

(d) payment by payment card.'

<sup>(1)</sup> OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 15/2008 (OJ L 8, 11.1.2008, p. 2).

<sup>(2)</sup> OJ L 121, 1.6.1995, p. 31. Regulation as last amended by Regulation (EC) No 2039/2005 (OJ L 328, 15.12.2005, p. 33).

\* Text provided by the European Community as published in the Official Journal of the European Union L. 161/7 of 20.6.2008

5. Annex I to Regulation (EC) No 1238/95 is replaced by the text in the Annex to this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

*Article 2*

Done at Brussels, 19 June 2008.

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*For the Commission*  
Androulla VASSILIOU  
*Member of the Commission*

It shall apply from 1 January 2009.

*ANNEX*

Annex I is replaced by the following:

*'ANNEX I*

**Fees relating to technical examinations as referred to in Article 8**

The fee to be paid for the technical examination of a variety pursuant to Article 8 shall be determined in accordance with the table:

Cost Group		(in EUR)
		Fee
<b>Agricultural group</b>		1 200
1	Regular crops	1 200
2	Vegetatively propagated crops	1 700
3	Oil crops	1 340
4	Grasses	1 970
5	Beet crops	1 300
6	Fibre crops	1 160
7	Crops with special test arrangements	1 340
	Other agricultural crops	1 340
<b>Ornamental group</b>		
9	Species with living reference collections, greenhouse test, long cultivation	1 700
9A	Species with living reference collection, greenhouse test, long cultivation and special phytosanitary conditions	2 140
10	Species with living reference collection, greenhouse test, short cultivation	1 610
11	Species with living reference collection, outdoor test, long cultivation	1 430
12	Species with living reference collection, outdoor test, short cultivation	1 300
13	Species without living reference collection, greenhouse test, long cultivation	1 430
13A	Species without living reference collection, greenhouse test, long cultivation with a further propagation step	2 140
14	Species without living reference collection, greenhouse test, short cultivation	1 160
15	Species without living reference collection, outdoor test, long cultivation	1 250
16	Species without living reference collection, outdoor test, short cultivation	1 340
17A	Ornamentals, seed propagated varieties, outdoor test	1 450
18A	Ornamentals, seed propagated varieties, greenhouse test	2 000
17, 18 and 19	Deleted	

		(in EUR)
Cost Group		Fee
<b>Vegetable group</b>		
20	Seed-propagated species, outdoor test	1 430
21	Seed-propagated species, greenhouse test	1 790
22	Vegetatively propagated species, outdoor test	1 970
23	Vegetatively propagated species, greenhouse test	1 610
<b>Fruit group</b>		
24	Trees	1 790
24A	Tree species with a large permanent living reference collection	2 500
25	Shrubs	1 790
26	Vine habit	1 790
27	Runners	1 970



**KYRGYZSTAN****REGULATIONS ON FEES FOR SELECTION ACHIEVEMENTS PATENTING\***

Section 1. General provisions.

Section 2. Fees for selection achievements patenting.

Section 3. Patent fees for a patent for selection achievement maintenance in force.

Section 1

General provisions

1. The present Regulations establish the order, amount and terms of fees payment for realization of juridical actions provided by the Kyrgyz Republic Law "On Legal Protection of Selection Achievements". Amount of fees for selection achievements patenting shall be determined by the Kyrgyz Republic Government in accordance with antimonopoly bodies of the Kyrgyz Republic.

2. Amount of fees provided by the present Regulations shall be indicated in the USA dollars.

Amounts shall be made:

- for natural and juridical persons of the Kyrgyz Republic having permanent residence or location in the territory of the Kyrgyz Republic in som\*\* equivalent to established fees amounts in accordance with acting rate of the National Bank of the Kyrgyz Republic for the date of operation execution;

- for natural and juridical persons of the Kyrgyz Republic having permanent residence or location in the territory of the Kyrgyz Republic in hard currency taking into consideration the acting rate of this currency at the moment of payment relatively the USA dollar;

3. Small enterprises (by the main scheme of enterprises types' classification) independently of their locations shall pay fees in amount 50% of the fees established by these Regulations.

4. Natural persons and non commercial organizations independently of their residence or location shall pay fees in amount 25% from fees determined by these Regulations.

5. The status of applicants indicated in paragraphs 3 and 4 of the Section I of the present Regulations shall be determined in accordance with legislation of such country where they have residence or location.

Above mentioned reduced tariff shall be applied only in cases of belonging of all applicants (if any) to the category of persons indicated in paragraphs 3 and 4 of the Section I of the present Regulations.

Applicants having the right for a reduced tariff shall represent documents certifying this right.

6. At license or cession of patent agreement concluding validation of reduced tariffs provided by paragraphs 3 and 4 of the Section I of the present Regulations shall be annulled.

7. Such persons who are single authors of selection achievement asking for a patent or who are single patent owner, shall be entitled for the following reduced tariffs at fees payment:

a) participants of the Great Patriotic War or equal persons, as well as 1 group's invalids shall be totally free of fees;

b) pensioners, invalids of II and III group, scholars and students, post graduate students shall pay fees in amount 50% of established reduced fees, provided by the present Regulations.

At conclusion of license or cession of patent agreement validation of reduced tariffs, provided by paragraphs "b" of the present Regulations shall be annulled.

\* English translation provided by the Kyrgyzstan Authorities. Approved by the Resolution of the Government of the Kyrgyz Republic of May 14, 1999, N 259 with amendments and additions of August 5, 2002 N 727.

\*\* Som = national unit: \$1=35,9 som (as of July 2, 2008)

by a petition of applicant or patent owner. The copy of appropriate document shall be a ground for the reduced fee providing:

- certificate of the Great Patriotic War participant; certificate of the War participant of civilian staff; certificate issued for work or service in rear during the Great Patriotic War; references of medical commission; pensioner's certificate; document, issued by educational or scientific institution.

8. Petition for reduced tariffs providing at fees payment shall be submitted to Kyrgyzpatent along with a justificative document on reduced fee payment.

9. Applicant may be given a three-year extension of fees payment for patent granting and preliminary examination provided by the subparagraph 1 Section II of the present Regulations. This extension shall be given after an applicant's petition along with 25% payment of mature fee; the payment shall be made before expiring of the last year from determined three years.

If a title of protection shall not be issued or its validation shall be annulled before the appointed time of three years, the person asking an extension shall be remitted from after-payment.

10. Fees established by the present Regulations shall be paid in accordance with the procedure by transfer

of corresponding sums to the bank account of the State Patent Service of the Kyrgyz Republic (hereafter referring as Kyrgyzpatent).

The document confirming a fee payment shall be a copy of payment order with a stamp of bank or a bank's quittance confirming a fee payment by cash or by transfer from personal account.

The document, confirming a fee payment shall contain registration number of application of patent (in case of this document shall be presented after submitting in Kyrgyzpatent) as well as the name of operation, which is paid. If the registration number is not yet given to an application, the document shall contain also a name of selection achievement as well as the first author's or applicant's name. Any document without this information shall be invalid.

Conformity of paid fee amount to fixed rate shall be determined on the date of payment.

11. Paid fee shall not to be returned except for cases of overpayment above amount fixed by the present Regulations or omitting of any paid action.

In these cases an overpaid fee amount shall be returned in established order by applicant's petition; or it shall be counted to requesting party towards payment of other fees determined by these Regulations which may be admitted for date of petition filing.

Section II  
Fees for patenting of selection achievements

No.	Article of the Law	Purpose of Fees	Amount of fees in US dollars (\$1 = 35,9 som))
1	Article 7 Part 1 Article 11	For an application filing for patent granting on selection achievement and conduction of a preliminary examination (not more than one variety or breed). The document certifying fee payment shall be submitted to Kyrgyzpatent along with the application. In the event of failure of such document, certifying fee payment, the application shall be deemed as not submitted.	80
2	Article 8 Part 4	For a name changing of selection achievement by applicant' initiative. The document certifying fee payment shall be submitted along with the application for the name changing. . In the event of failure of such document, certifying fee payment, the application shall be deemed as not submitted.	32
3	Article 11 Part 2	For some alterations by applicant' initiative at examination stage. The document certifying fee payment shall be submitted along with the alteration.	32
4	Article 11 Part 5	For extension of the term of answer to request of the preliminary examination. The document certifying fee payment shall be submitted along with the solicitation on extension of fixed term. In the event of failure of the solicitation along with document, certifying fee payment, the solicitation shall be deemed as not submitted.	16
5	Article 11 Part 9	For filing of an objection to the Appeals Council against decision of preliminary examination. The document certifying fee payment shall be submitted along with the objection. In the event of failure of the objection along with document certifying fee payment of fixed amount, the objection shall be deemed as not submitted.	48
6	Article 12 Part 1	For insight with application materials after application publication. The document, certifying fee payment, shall be submitted along with the application for insight. In the event of failure of such document certifying fee payment of fixed amount, the application shall be deemed as not submitted.	40
7	Article 14 Part 2	For conducting of examination on compliance with patentability conditions. The document, certifying fee payment, shall be submitted during 2 months after notification receiving by applicant on application concession by Kyrgyzpatent to the State Commission. In the event of failure of document in the fixed term, certifying fee payment of fixed amount, the examination on compliance of patentability conditions shall not be conducted. At presence of application report on testing, conclusion of the examination made by Official Body of other State (which has with the Kyrgyz Republic multilateral or bilateral agreements), which tested and accepted that selection achievement is patentability, the amount of fixed fee is reduced for 80%.	425

No.	Article of the Law	Purpose of Fees	Amount of fees in US dollars (\$1 = 35,9 som)
8	Article 14 Part 4	For an objection filing with the Board of Appeals relating the novelty by interested party. The document, certifying fee payment shall be submitted along with the objection. In the event of failure of document, certifying fee payment of fixed amount, the objection shall be deemed as not submitted.	48
9	Article 15 Part 2	For an objection filing with the Board of Appeals against the decision taken in the result of the examination for refusal of patent granting. The document certifying fee payment shall be submitted along with the objection. In the event of failure of document certifying fee payment of fixed amount, the objection shall be deemed as not submitted. In the event of failure of petition along with document certifying fee payment of fixed amount, the petition shall be deemed as not submitted.	64
10	Article 15 Part 4	For restoration of missed terms:  - answer to the request for preliminary examination on concession of the additional modified and missing materials (for each month of the extension);  - answer to the request for preliminary examination on relevance of concession the additional materials (for each month of the extension);  - the Board of Appeals against the decision taken in the result of the preliminary examination;  - filing an objection with the Board of Appeals on examination conducting novelty by interested party;  - filing an objection with the Board of Appeals for applicant's refusal with objection of interested party;  - filing an objection with the Board of Appeals against the decision taken in the result of the examination for refusal of patent granting;  - filing an objection with the Board of Appeals on invalidation of patent;  The document certifying fee payment shall be submitted along with the petition on restoration of missed term, which shall be submitted by applicant no later than 12 months from missed expiration of time. In the event of failure of document certifying fee payment of fixed amount, the objection shall be deemed as not submitted. In the event of failure of petition along with document certifying fee payment of fixed amount, the fee shall be deemed as not submitted.	16    16   24  24  32  24  32

No.	Article of the Law	Purpose of Fees	Amount of fees in US dollars (\$1 = 35,9 som)
11	Article 16 Part 1	For registration of selection achievement in the State Register and patent granting. The document, certifying fee payment shall be submitted during two-month from date receiving the decision of patent granting by applicant. The document certifying fee payment may be submitted during three months from the date of expiration of the indicated two-month period. In this case the fee payment shall be increased by 50%. In the event of failure to submit the document certifying fee payment in the established amount during fixed period, registration and patent granting for selection achievement, as well as publication of data shall not take place.	120
12	Article 16 Part 9 Article 21 Part 7	For patent duplicate granting or author's certificate and data publication. The document, certifying fee payment shall be submitted along with the application. In the event of failure of the document certifying fee payment, the application shall be deemed as not submitted.	80
13	Article 29 Part 1	For filing of an application on invalidation of patent and consideration it in the Board of Appeals. The document, certifying fee payment shall be submitted along with the application. In the event of failure to submit the document certifying fee payment, the application shall be deemed as not submitted.	80
14	Article 32 Part 5	For the registration of:  - license agreement (for every patent);  - agreement for a patent cession (for every patent) and inserting of changes in to the State Register, as well as publication about it in Official Bulletin;  Document confirming a fee payment shall be submitted along with the application for granting of the license agreement. At absence of the document confirming a payment in fixed amount, the registration of these agreements shall not be made.	10  100
15	Article 33 Part 1	For application filing on granting of open license and publication in the Official Bulletin. Document confirming a fee payment shall be submitted along with the application for granting of an open license. At absence of the document confirming a fee payment in fixed amount, the application shall be considered as unfilled.	24
16	Article 33 Part 5	For application filing on determination of an open license and publication in the Official Bulletin. Document confirming a fee payment shall be submitted along with the application for determination of an open license. At absence of the document confirming a fee payment in fixed amount, the application shall be considered as unfilled.	24

No.	Article of the Law	Purpose of Fees	Amount of fees in US dollars (\$1 = 35,9 som))
17	Article 34 Part 9	For registration and publication in official bulletin any information regarding issuing of compulsory license. Document confirming a fee payment shall be submitted in 2-month term after obtaining by a licensee the court decision on a compulsory license issuing. At absence of the document confirming a fee payment in fixed amount, the compulsory license shall not be registered and published.	40
18	Article 39 Part 2	For issuing of the Kyrgyz patent for selection achievement by petition on exchange certificates and author's certificates of the USSA. Document confirming a fee payment shall be submitted along with the petition. At absence of the document confirming a fee payment in fixed amount, the petition shall be considered as unfilled.	80

## Section III

## 19. Patent fees for keeping in force of patents for selection achievements

In accordance with Article 18 of the Law, a patent owner shall be obliged to pay annual fee for a patent keeping in force. The first year of the annual fee payment shall be the first calendar year following the year of a patent issue.

Year of patent validity	Fee amount by groups of varieties and breeds In USA dollar				
	A	B	C	D	E
1 <sup>st</sup>	80	24	56	56	24
2 <sup>nd</sup>	120	40	80	80	40
3 <sup>rd</sup>	160	56	104	104	56
4 <sup>th</sup>	200	72	128	128	72
5 <sup>th</sup>	240	88	152	152	88
6 <sup>th</sup>	280	104	176	176	104
7 <sup>th</sup>	320	120	200	200	120
8 <sup>th</sup>	360	136	224	224	136
9 <sup>th</sup>	400	160	280	280	160
10 <sup>th</sup> and every next year	480	240	400	400	240

Note:

- A - crops, maize, sunflower, lucerne, sugar-beet, potato, cabbage, tobacco;
- B - ornamental and forest varieties;
- C - specimens non included into groups A and B;
- D - breeds of farming animals: cattle, horses, sheep, goats, pigs;
- E - breeds non included into group D.

The document, confirming a fee payment for the first year of effect of patent shall be presented along with a document that confirms fee payment for its issue.

The document, confirming a fee payment for each following year of patent effect shall be presented during last two months of current year of this patent effect.

The fee shall be also collected from the year of patent effect, beginning from the year following the date of petition submission to Kyrgyzpatent:

- for maintenance in force of a patent for selection achievement issued by a petition for exchange of

Certificates and Author's Certificate of the USSA for plant varieties and breed.

The document confirming a fee payment for any year of a patent effect may be presented during 6 months from the date of fixed terms expiring. In this case fee amount shall increase to 50%.

At the failure of document confirming fee payment in fixed amount, effect of patent shall be annulled after indicated 6-month term

By patent owner's request regarding entitlement to any person to use a selection achievement (open license), fee amount for a patent keeping in force shall be reduced to 50%, beginning from the year following a publication year of such request in established order.

The national unit  
\$1= 35,9 som (02.07.08)

It is offered by Kyrgyzpatent to lower the given norm to 10 US and 100 dollars

**VIET NAM**

On February 19, 2008, the Ministry of Finance issued Decision No. 11/2008/QĐ-BTC on the stipulation of fees and charges for services in the field of the Seed Sector, including plant variety protection as follows:

	ACTIVITIES	UNIT	MONEY (VND)
1	DUS for Annual crops	Variety/2 year	10,000,000
2	DUS for Seasonal crops	Variety/season	7,500,000
3	DUS for Perennial crops	Variety	22,000,000
4	DUS conducted by breeder	Variety	50% of 1,2,3 items
5	Filing application fee	Application	2,000,000
6	Re-examination of application upon applicant request	Application	1,000,000
7	Supply the information	Variety	500,000
	Fees for maintenance of the PVP Certificate		
	- From first to third year		3,000,000
	- From fourth to sixth year		5,000,000
	- From seventh to ninth year		7,000,000
	- From 10 <sup>th</sup> to 15 <sup>th</sup> year		10,000,000
	- From 16 <sup>th</sup> to finish		20,000,000
Charges for PVP			
1	Granting of the second copy of PVP Certificate	Certificate	350,000
2	Re-grant of the certificate (when original is lost or damaged)	Certificate	100,000
3	Priority requirement	Application	250,000



## LEGISLATION

### CZECH REPUBLIC

#### ACT AMENDING ACT ON THE PROTECTION OF PLANT VARIETY RIGHTS No. 184/2008 Coll.\*

The parliament has adopted the following Act of the Czech Republic:

##### PART ONE

##### Amendment of the Act on the Protection of Plant Variety Rights

##### Section 1

Act No. 408/2000 Coll., on the Protection of Plant Variety Rights and the Amendment to Act No. 92/1996 Coll., on Plant Varieties, Seed and Planting Material of Cultivated Plants, as subsequently amended (the Act on the Protection of Plant Variety Rights), in the wording of amendments implemented by Act No. 147/2002 Coll., Act No. 149/2002 Coll., Act No. 219/2003 Coll., Act No. 377/2005 Coll. And Act No. 554/2005 Coll., shall be amended as follows:

1. In Article 1 at the end of the text of paragraph 2, the words "and processes the respective regulation of the European Communities 1b)" shall be added.

Footnote No. 1b shall be:

"1b) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights."

2. In footnote No. 6, the number "22" shall be replaced with the number "32".

3. Article 11 shall be:

##### "Article 11

The Institute shall enter the application into the list of applications in the order in which it was delivered to it."

4. After Article 12, a new Article 12a shall be added, which including footnote No. 7 shall be:

##### "Article 12a

An application for grant of a Community plant variety right<sup>7)</sup> may be filed by means of the Institute. The Institute shall indicate the date of delivery on the application.

<sup>7)</sup> Art. 49 of Council Regulation (EC) No. 2100/9"

5. In Article 13(2) letter a) the words "under Article 11(2) or Article 16" shall be deleted.

6. In Article 13 after paragraph 2, the new paragraphs (3) and (4) shall be added, with the wording:

"(3) Objections may be applied only for the following reasons:

a) the conditions laid down in Articles 4 to 6 or in Article 8 are not fulfilled,  
b) there is an impediment to a proposed variety denomination according to Article 7(2).

(4) Objections must be lodged in writing and must contain the following

a) name or names, surname and address of the natural person, or commercial name, registered office or address of the organization unit in the Czech Republic and indication of the legal form of the legal person applying the objections,  
b) identification of the subject of the objection,  
c) justification of the application objection, including submission of evidence providing the justification of the applied objection.

The existing paragraph (3) shall become paragraph (5).

7. In Article 13(5) the words "until the decision under Article 11(2) or Article 16 has been issued" shall be replaced with the words "until the date of issue of the decision" and the part of the second sentence after the semi-colon shall be deleted.

8. In Article 14(1) the words "After all terms and requirements under Article 11(1) have been complied with" shall be deleted.

\* Translation provided by the Authorities of the Czech Republic. This Act entered into force on July 1, 2008.

9. In Article 16(1) the words "; otherwise the proceeding shall be terminated" shall be deleted.

10. In Article 21(5) and (6) the words "holder of a patent" are replaced with the words "proprietor of a patent".

11. In Article 23e (2) the words "first maintenance" shall be replaced with the word "maintenance", the word "annually" shall be added after the word "due" and the words "the name of which corresponds to the name of the calendar month" is added after the words "following the months".

12. In Article 23e paragraph (3) shall be deleted.

13. In Article 23i(1) the words "Unless this Act stipulates otherwise, with respect to the maintenance fee it is not possible" shall be replaced with the words "It is not possible with regards to the maintenance fee".

14. In Article 28(3) the words "shall be made" shall be replaced with the words "shall be issued".

15. In Article 28 paragraphs (1), (2) and (4) shall be deleted and the marking of paragraph (3) shall be repealed.

16. Annex No. 1 including the heading shall be:

"Annex No. 1 to Act No. 408/2000 Coll.

Plant Species List (Article 19a(1))

a) Cereals	
Avena sativa L.	Oat
Hordeum vulgare L.	Barley
Secale cereale L.	Rye
x Triticosecale Wittm.	
Ex. A. Camus	Triticale
Triticum aestivum L.	Common wheat
Triticum durum Desf.	Durum wheat
Triticum spelta L.	Spelt wheat
b) Fodder plants:	
Lupinus luteus L.	Yellow lupine
Medicago sativa L.	Luzerne
Pisum sativum L.	Field pea
Trifolium alexandrinum L.	Berseem/Egyptian clover
Trifolium resupinatum L.	Persian clover
Vicia faba L.	Field bean
Vicia sativa L.	Common vetch
Czech Republic	

c) Potatoes:  
Solanum tuberosum L. Potatoes

d) Oil and fibre plants:  
Brassica napus L. var. napus Swede rape  
Brassica rapa L. Turnip rape  
Linum usitatissimum L. Linseed  
(except flax)"

#### Transitional Provision

Proceedings not completed before the effective day of this Act shall be completed and the rights and obligations ensuring from them shall be assessed in accordance with the existing regulations. If a decision was cancelled and returned for reconsideration before the date of coming into effect of this Act, the procedure in accordance with existing regulations shall be applied.

#### PART TWO

##### Amendment of the Act on Courts and Judges

#### Section III

In Article 39(2) of Act No. 6/2002 Coll., Act on Courts, Judges, Lay Judges and State Administration of Courts and on the amendment of certain other Acts (Act on Court and Judges), as amended by Act No. 441/2003 Coll., Act No. 79/2006 Coll. and Act No. 221/2006 Coll., the words "and protection of plant variety rights" shall be added after the word "property 1a)."

Footnote No. 1b is worded:

"1b) Act No. 408/2000 Coll., on the protection of variety rights and the amendment of Act No. 92/1996 Coll., on plant varieties, seeds and planting material of cultivated plants, as amended (Act on the Protection of Plant Variety Rights), in the wording of Act No. 147/2002 Coll., Act No. 149/2002 Coll., Act No. 219/2003 Coll., Act No. 377/2005 Coll. and Act No. 554/2005 Coll."

#### PART THREE

#### EFFECTIVENESS

#### Section IV

This Act shall enter into effect on July 1, 2008.

Act. No. 184/2008 Coll.

## COSTA RICA

**LAW NO. 8631 ON THE PROTECTION OF NEW VARIETIES OF PLANTS,  
AS AMENDED BY LAW NO. 8686 (consolidated text)\***

CHAPTER I  
GENERAL PROVISIONS

ARTICLE 4  
Definitions

ARTICLE 1  
Subject

The aim of this Law shall be to establish the legal rules for the protection of the rights of breeders of plant varieties, safeguarding the right to use by small and medium-sized farmers.

The protection granted shall not include the authorization for commercial exploitation of the variety, for which purpose the requirements of the corresponding legislation shall be satisfied; commercialization may be prevented where appropriate in order to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious harm to the environment.

ARTICLE 2  
Sphere of application

The sphere of application of this Law shall extend to varieties of all plant genera and species.

*(Above paragraph as amended by Article 7 of the Law N°8686 of November 21, 2008)*

Protection shall not be granted for wild plants within the biodiversity of Costa Rica which have not been bred by persons, access to which shall be regulated in accordance with the relevant legislation in force.

ARTICLE 3\*  
National interest

The activity of creating varieties by natural persons and legal entities, public or private, shall be declared to be in the national interest on account of the benefits derived there from for national development and agricultural competitiveness.

*(As amended by Article 7 of the Law N°8686 of November 21, 2008)*

For the purposes of this Law, the following meanings shall apply:

Plant breeder's title: Title granted to the breeder of a plant variety, on the basis of which its rights shall be granted in accordance with this Law.

Discovered and developed [*puesto a punto*]: Process which includes the observation of a natural variation of a plant species, its identification, isolation, selection, reproduction or propagation, characterization and evaluation. The above definition shall not include simple finding.

Develop: Use of genetic improvement techniques to obtain a new plant variety.

Material: In relation to a variety, "material" shall mean:

- (a) Plant propagating material, in any form;
- (b) Harvested material, including entire plants and parts of plants.

Breeder: The natural person or legal entity that has developed or discovered and developed [*puesto a punto*] a new variety.

Ofinase: *Oficina Nacional de Semillas* (National Seeds Office)

Seed: Any plant reproduction or propagation structure intended for the seeding or plantation of a plant variety. This definition shall include sexual and asexual seeds, nursery plants and propagating material produced using biotechnologies.

Variety or cultivar: Grouping of plants within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

1 Translation provided by the Office of the Union. The Law N° 8631 (promulgated on March 6, 2008 and published on March 19, 2008), as amended by Law N° 8686 (promulgated on November 21, 2008 and published on November 26, 2008).

\* CORRIGENDUM of 08/01/09 to the translation of the title of Article 3: "Public interest" has been replaced by "National interest".

defined by the expression of the characteristics resulting from a genotype or combination of genotypes; to be distinguished from any other plant grouping by the expression of at least one of the said characteristics and to be considered as a unit with regard to its suitability for being propagated unchanged.

**Essentially derived variety:** Variety which is predominantly derived from an initial variety, or from a variety that is itself predominantly derived from an initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; it is clearly distinguishable from the initial variety and, except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. May be obtained through selection of a natural or induced mutant, or of a somaclonal variant, selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering, *inter alia*.

**Variety whose existence is a matter of common knowledge:** A variety shall be considered a matter of common knowledge, if in particular

- (a) it has been entered, or is in the process of being entered, in a register of commercial or protected varieties, if this leads to the grant of the right or the entry of the variety in the corresponding register.
- (b) is part of a reference collection or a germoplasm bank.
- (c) has been or is in the process of commercialization.
- (d) was the subject of a specific description published at the national or international level.
- (e) is protected by intellectual community sui generis rights, these rights having been registered or not, in accordance with Articles 82 and 84 of the Law on Biodiversity No. 7788, provided that the variety is described sufficiently and it is possible to verify its existence.

**Protected variety:** A variety entered in the Register of

Protected Varieties.

## CHAPTER II ORGANIZATION AND PROCEDURES

### ARTICLE 5 Competent authority

The National Seeds Office (Ofinase) shall be the authority competent to receive, process and settle applications for the grant of plant breeder's certificates and their entry in the Register of Protected Varieties set up for this purpose; it shall also be competent to enforce the provisions of this Law and the Regulations thereunder.

### ARTICLE 6 Applicant of the right

(a) A plant breeder's certificate may be applied for by the breeder of a variety, be it a natural person or legal entity, either national or foreign. Where this is the successor in title or transferor of the right, such status shall be proven.

(b) Unless proven otherwise, the applicant shall be considered the one who has the right to obtain protection.

(c) Where several persons have created or discovered and developed [*puesto a punto*] a variety jointly, the right to obtain the plant breeder's title shall belong jointly to all those persons, unless agreed otherwise.

(d) The right to obtain the plant breeder's certificate shall belong jointly to the breeder and to any other natural person or legal entity, where they have agreed to share the said right.

(e) Any labor contract drawn up between natural persons or legal entities, public or private, devoted to research on and development of new varieties of plants, shall specify clearly the status of breeder.

### ARTICLE 7 Procedures and publication

The procedures and general rules for the submission and publication of information on applications, grants of breeder's rights, and proposed and approved denominations, processing, technical examination and settlement of applications for the grant of the breeder's right, shall be established in accordance with the law.

Law No. 8631 (consolidated text)

The procedures and rules devised in accordance with the law shall include, as a minimum, the requirements that must be satisfied by applications for the plant breeder's title, the obligation to publish notification of the applications filed and the opportunity for third parties to submit objections to the applications filed, prior to their grant and the competent authority for the settlement of the procedure. Information shall also be published concerning breeder's rights granted and proposed and approved denominations.

#### ARTICLE 8

##### Technical examination

Ofinase shall examine varieties included in applications for protection with regard to their distinctness, uniformity and stability under one of the following procedures:

(a) By means of growing trials or other tests performed by Ofinase itself with the cooperation of other national research institutions and/or organizations.

(b) By means of examination reports drawn up by other competent authorities or by specialist bodies in the framework of international cooperation. Such bodies shall act independently and shall safeguard the legitimate interests of the breeder. Ofinase shall take the necessary measures to this end.

*(Subparagraph as amended by Article 7 of the Law N°8686 of November 21, 2008)*

(c) On the basis of information on trials (DUS) submitted by the applicant in accordance with the requirements laid down by Ofinase to that end; Ofinase shall be authorized to inspect the trials and verify the results.

(d) By means of on-site inspections, authorization of DUS examinations carried out by official bodies, documentary review or a combination of the above methods.

Ofinase shall have the power to conclude cooperation agreements with national bodies and competent authorities in other countries in order to fulfill the demands of the technical examination of the varieties contained in protection applications.

#### ARTICLE 9

##### Provisional protection

The applicant shall be entitled to claim compensation for damages against any person that, during the period between the publication date of the application and the date of grant of the plant breeder's certificate, has performed acts which, after the grant of the right, require the breeder's authorization. This compensation shall be subject to the grant of the plant breeder's certificate. Publication shall constitute notification of third parties.

#### ARTICLE 10

##### Right of priority

(a) The right of priority shall be granted to an applicant for a plant breeder's certificate where an application has previously been filed for the same variety in countries with which Costa Rica has agreements or treaties in this area. The priority shall consist in the fact that the filing date of the application may be recognized as the date of first application in another country, provided that 12 months have not passed since the date on which the first application was filed. If a number of applications have been made prior to the one submitted to Ofinase, priority shall be granted on the basis of the first filing only.

(b) In order to benefit from the right of priority, the breeder shall, in the application filed in the country, claim the priority of the first application. The applicant shall enjoy a period of three months, from the filing date of the application in the country, to furnish a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or any other evidence that the variety which is the subject matter of both applications is the same.

(c) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, up to six months after such rejection or withdrawal, in which to furnish Ofinase with any necessary information, document or material required for the purpose of the examination under Article 8 of this Law.

ARTICLE 11  
Grant of the breeder's right

Once the application for the grant of the breeder's right has satisfied all the requirements, Ofinase shall enter it in the Register of Protected Varieties and shall grant the plant breeder's certificate.

CHAPTER III  
CONDITIONS OF PROTECTION

ARTICLE 12  
Conditions

The breeder's right shall be granted to the breeders of varieties of plants which are new, distinct, uniform and stable and have obtained denominations established in accordance with the provisions of this Law and the Regulations thereunder.

The applicant shall satisfy the formalities provided for in this Law and shall pay the corresponding service costs to Ofinase.

The grant of the breeder's right may not be dependent on conditions additional to or different from those mentioned.

ARTICLE 13  
Novelty

A variety shall be deemed to be new if the material of the variety has not been sold or otherwise lawfully disposed of to third parties by the breeder or its successor in title, or with its consent, for purposes of commercial exploitation of the variety:

(a) in the national territory, more than one year prior to the application filing date;

(b) abroad, more than four years – more than six years for trees and vines – prior to the application being filed.

ARTICLE 14  
Distinctness

A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence, at the application filing date, is a matter of

common knowledge, in accordance with the definition established in Article 4 of this Law.

ARTICLE 15  
Uniformity

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

ARTICLE 16  
Stability

A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, where the breeder has defined a particular cycle of propagation, at the end of each such cycle.

ARTICLE 17  
Variety denomination

(a) The variety included in a protection application shall be designated by a single denomination which allows it to be identified without risk of confusion. Ofinase shall ensure that, subject to paragraph (d) of this Article, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the breeder's right has expired.

(b) The denomination may not consist solely of figures unless this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or identity of the breeder. In particular, it must be different from every other denomination which designates, in the territory of any member of the International Union for the Protection of New Varieties of Plants (UPOV), an existing variety of the same species or of a closely related species, in accordance with the requirements and characteristics established by the regulations.

(c) The denomination of the variety shall be submitted by the breeder to Ofinase. If it is found that the denomination does not satisfy the requirements of paragraph (b) of this Article, Ofinase shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period.

The denomination shall be registered by Ofinase at the same time as the breeder's right is granted.

(d) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (g) of this Article, is obliged to use it, Ofinase shall require the breeder to submit another denomination for the variety filed as subject matter of applications for the grant of a breeder's right.

(e) A variety may be filed as subject matter of applications for the grant of a breeder's right to different members of UPOV only under the same denomination. Ofinase shall register the denomination so submitted, unless it considers the denomination unsuitable in Costa Rica. In the latter case, it shall require the breeder to submit another denomination.

(f) Ofinase shall ensure that the authorities of the other members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. An authority from any UPOV member may address its observations, if any, on the registration of a denomination to Ofinase.

(g) Any person who, in Costa Rica, offers for sale or markets propagating material of a variety protected within Costa Rica shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (d) of this Article, prior rights prevent such use.

(h) When a variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination shall nevertheless be easily recognizable.

#### CHAPTER IV

#### RIGHTS AND OBLIGATIONS OF THE BREEDER

##### ARTICLE 18

##### Rights of the breeder

(a) Subject to the provisions of Articles 21, 22 and 23 of this Law, the right owner's authorization shall be

required for the propagation, production, conditioning for those purposes, offer for sale, sale or any other form of commercialization, export or import and possession, for the purposes of any of the above acts, of the seed of the protected variety.

(b) Acts mentioned in paragraph (a) of this Article in respect of the harvested material, including whole plants and parts of plants obtained through the unauthorized use of the seed of the protected variety, shall require authorization of the holder of the breeder's right, unless the holder has had reasonable opportunity to exercise his right in relation to the seed concerned.

(c) The provisions of paragraphs (a) and (b) shall also apply to:

- (1) varieties which are not clearly distinguishable from the protected variety, in accordance with Article 14 of this Law.
- (2) varieties essentially derived from the protected variety, where this is not in turn an essentially derived variety.
- (3) varieties whose production requires the repeated use of the protected variety.

##### ARTICLE 19

##### Duration of the breeder's right

The breeder's right shall be valid for 20 years, except for varieties of perennial species, in which case it shall be 25 years. In all cases, the duration shall be computed from the date of grant of the breeder's right.

##### ARTICLE 20

##### Transfer of the right

The breeder's right shall be transferable *inter vivos* and *mortis causa*; the new owner shall have the same duties and rights as its predecessor during the remaining term of protection.

##### ARTICLE 21

##### Exhaustion of the breeder's right

(a) The exercise of the breeder's right shall be exhausted where the material of the protected variety has been commercialized by the title holder or with

its consent, except where it is intended for further seed production, or an export, which allows propagation, to a country that does not protect the varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(b) For the purposes of paragraph (a) of this Article, "material" means, in relation to a variety:

- (1) propagating material of any kind;
- (2) harvested material, including whole plants and parts of plants;
- (3) any product made directly from the harvested material.

#### ARTICLE 22

##### Exceptions to the breeder's right

The breeder's right shall not be extended where third parties use the protected variety, involving acts:

- (a) done privately for non-commercial, non-profit-making purposes.
- (b) done for experimental, scientific research or educational purposes.
- (c) done in order to create new varieties, as well as acts referred to in paragraphs (a) and (b) of Article 18 of this Law done with such varieties, except where the provisions of paragraph (c) of Article 18 apply.

#### ARTICLE 23

##### Exception to the breeder's right for farmers

Those who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, store and sow on their own holdings harvested material which they have obtained by planting, on their own holdings, a protected variety or a variety covered by paragraph (c) of Article 18 of this Law shall not infringe the breeder's right. Fruit-bearing, ornamental and forest species shall be excluded from this provision where they are planted for commercial ends.

#### ARTICLE 24

##### Maintenance of the right

In order to maintain protection in force, a breeder's right owner shall, during the term of protection, conserve the genetic material corresponding to the protected variety or, where appropriate, its hereditary components, and pay an annual fee to Ofinase.

Ofinase may request a plant breeder's right owner to submit, within the terms established by the Regulations under this Law: information, documents, samples or material considered necessary for verifying its appropriate maintenance.

#### ARTICLE 25

##### Lapse of the right

The breeder's right shall lapse owing to the following:

- (a) expiry of the term.
- (b) relinquishing of the title by the owner by means of a written statement addressed to Ofinase.

#### ARTICLE 26

##### Nullity of the right

- (a) Any person demonstrating a legitimate interest may file an application with Ofinase for a declaration of nullity.
- (b) Ofinase shall declare the breeder's right null and void if the following is established:
  - (1) the variety was not new or distinct on the application filing date or, where applicable, on the date established in the priority right;
  - (2) the variety was not uniform or stable, when the breeder's right was granted, according to the information and documents supplied by the applicant;
  - (3) the breeder's right was granted to a person that had no right thereto.
- (c) The breeder's right declared null and void shall be deemed not to have been granted.



ARTICLE 27  
Cancellation of the right

(a) Ofinase shall cancel the breeder's right in the following cases:

- (1) if it is established that the right owner has not satisfied the obligation to maintain the variety during the term of protection or that the variety is no longer uniform or stable.
- (2) if the title owner does not respond to the request to supply information, documents or the propagating material considered necessary for verifying the maintenance of the variety.
- (3) if, after Ofinase requests a change in the denomination of the variety, the title owner does not propose another appropriate denomination within the period granted.
- (4) where the breeder has not paid the annual public fee defined by the Regulations under this Law, subject to written notification.

(b) Cancellation may be declared only after the title owner is given notice to meet its obligation within a maximum six-month period from that notice.

(c) The cancellation shall be recorded in the Register of Protected Varieties and shall be communicated by means of publication on a one-off basis in the official journal *la Gaceta* (the Gazette) and a national newspaper.

ARTICLE 28  
Contractual licenses

The owner of a plant breeder's right may grant to third parties, on an exclusive or non-exclusive basis, a license covering all or part of the breeder's rights. In order for these operating licenses to take effect in relation to third parties, they shall be entered in the Register of Protected Varieties.

ARTICLE 29  
Compulsory licenses

Where qualified reasons of public interest so require, the Executive Authority may at any time limit by decree the breeder's right through a compulsory license, including without its owner's agreement, so

that the right is exploited by a State entity or by Government-authorized third parties. The owner of the right covered by the compulsory license shall be notified.

The conditions for the grant of compulsory licenses, together with the breeder's right to receive equitable remuneration, shall be defined by the Regulations under this Law.

CHAPTER V  
PHYSICAL AND ECONOMIC RESOURCES

ARTICLE 30  
Resources

(a) The financing of the system of registration of protected varieties shall be covered by the funds generated from the payment for services provided and the financial contributions received from the State in the form of ordinary and extraordinary national budgets. These funds shall be deposited in an account of Ofinase opened with any bank in the National Banking System and its administration shall be under the supervision of the National Comptroller General.

(b) For the implementation of this Law, the State shall provide Ofinase with infrastructure and basic equipment, as well as the requisite facilities. Similarly, it shall be authorized to hire staff and specialized services which shall be financed through the resources generated by the application of this Law.

(c) For the purposes of this Law, State institutions shall be authorized to donate or transfer from their assets to Ofinase any type of movable or immovable property on completion of the procedures established in national legislation to these ends.

(d) Ofinase shall be authorized to receive any type of donations, either in the form of cash or movable or immovable property from the State or Costa Rican public institutions as well as from governments with which cooperation agreements have been concluded.

ARTICLE 31  
Costs of the service

Ofinase shall be authorized to set the appropriate public fees for the provision of the following services:

- (a) processing and settlement of plant protection title applications.
- (b) priority claims.
- (c) conduct of the technical examination for varieties included in applications.
- (d) the grant of plant protection titles.
- (e) annual maintenance of breeder's rights in force.
- (f) registration of exploitation licenses;
- (g) provision of administrative services.

The value of services shall be fixed according to the costs determined locally, applying the principle of "cost service", with the corresponding adjustments made in accordance with the parameters set in other countries with which Costa Rica has concluded relevant reciprocal agreements.

#### CHAPTER VI ENFORCEMENT OF THE BREEDER'S RIGHT

##### ARTICLE 32 Sphere of application

The infringement of any right protected by this Law shall give rise to actions, complaints or administrative charges being brought before Ofinase and the judicial action specified in this Law being taken, without prejudice to other legal provisions.

A breeder's rights title shall always be authorized expressly and in writing.

##### ARTICLE 33 Interpretation

In a judicial or administrative investigation of potential infringements of the rights laid down and protected by this Law, the competent judge or Ofinase, respectively, shall in each particular case use good judgment, the principles of scientific observation and verification, and the principles of reasonableness, rationality and good faith.

In any administrative proceedings brought before Ofinase and in any court case, the competent

authority shall, in applying the final sanction, take into account the proportionality between the illegal action and the harm caused to the protected legal property.

#### CHAPTER VII PROVISIONAL MEASURES

##### Section I General provisions

##### ARTICLE 34. Adoption of precautionary measures

Before instigating proceedings in respect of an infringement of a breeder's right, as well as during the proceedings and in the execution phase, the competent judicial authority or Ofinase, as appropriate, shall adopt suitable and adequate precautionary measures to avoid serious harm which is difficult to compensate being done to the title owner, and also to guarantee temporarily the effectiveness of the final act or judgment.

A precautionary measure shall be applied only if the party requesting it is proven to be the title owner or title owner's representative. The judicial authority or Ofinase shall require the party requesting the measure to provide an adequate guarantee before the measure is applied, in order to protect the alleged offender and prevent abuse.

##### ARTICLE 35 Proportionality of the measure

Any decision in response to an application for precautionary measures shall consider the interests of third parties, the proportionality of the effects of the measure and the harm or prejudice that the measure may cause.

##### ARTICLE 36 Measures

The following precautionary measures may be ordered, *inter alia*:

- (a) Immediate cessation of the acts constituting the infringement.
- (b) Seizure of the counterfeit or illegal varieties.

(c) Suspension of customs clearance for the varieties referred to in paragraph (b) above.

(d) Pledge by the alleged offender of a security or other adequate guarantee.

#### ARTICLE 37 Procedure

Within 48 hours from the submission of the request for precautionary measures, the judicial authority or Ofinase shall invite the parties to a hearing in order for them to state their case with respect to the request within three working days. After this time, Ofinase or the competent court shall, in those three days and whether or not it receives a reply, make the appropriate decision regarding precautionary measures. The decision reached by Ofinase or the judicial authority shall be implemented without delay. The effects of the application of the measures shall not be suspended by the lodging of an appeal.

In cases where a meeting between the parties could render the effects of the measures invalid, the judicial authority or Ofinase shall take the appropriate decision regarding the request for precautionary measures within 48 hours of its submission.

#### ARTICLE 38 Precautionary measures not involving the alleged offender

Where a precautionary measure is enforced without the other party's first having been heard, Ofinase or the competent judicial authority shall notify the affected party within three working days of implementation. The affected party may appeal the measure applied.

#### ARTICLE 39 Time period for the submission of a complaint or request

If the precautionary measure is requested before the institution of court proceedings and is granted, the party instigating the proceedings shall bring the court action within one month from notification that the measure has been granted. If the action is not brought in time or it is determined that no plant breeder's right has been infringed, the precautionary measure shall be deemed to be revoked and the requesting party liable for harm and prejudice caused; these shall

be settled in accordance with the procedure for the enforcement of judgments.

#### ARTICLE 40 Harm and prejudice

If the court action is not brought in time, or if the precautionary measure is revoked or loses its force for any other reason, a party claiming entitlement to compensation for harm and prejudice caused in the enforcement of the measure shall apply for that compensation within one month from the party that is familiar with the substance of the case. If this request is not made within the aforementioned period or the party is not granted the breeder's right, that party shall be ordered to return the security that was pledged against harm and prejudice.

If the circumstances given in the paragraph above apply in a case where the precautionary measure was set in place by an administrative decision, the affected party shall have to go to court to apply for compensation for harm and prejudice caused through the application of the measure.

#### Section II Border measures

#### ARTICLE 41 Application of border measures

When a precautionary measure has to be applied at the point of customs clearance of counterfeit or illegal plant varieties, the administrative decision by Ofinase or the court decision ordering the measure shall be communicated to the customs authorities and the requesting party without delay.

#### ARTICLE 42 Requests for border measures

If a breeder's right owner has well founded information regarding the arrival or dispatch of goods that infringe that right, that title owner may apply to Ofinase or to the judicial authority, which will order the customs authorities to suspend clearance.

The following, at least, shall be required of any owner of a protected plant breeder's right, or representative thereof, requesting the suspension of customs clearance for varieties:

(a) To prove itself a plant breeder's right owner or right owner's representative.

(b) To provide a reasonable sum as guarantee before any ruling is given, in order to protect the alleged offender and avoid abuse.

(c) To supply information on and a description of the plant variety that is as detailed as possible so as to enable the customs authorities to identify it easily.

Once customs clearance for the merchandise has been suspended, Ofinase or the judicial authorities shall immediately notify the importer or exporter regarding the plant varieties in question and shall immediately notify the applicant that the measure has been taken.

#### ARTICLE 43

Cases in which border measures  
may not be applied

It shall not be compulsory to apply the border measures set out in this Chapter in the following circumstances:

(a) Where plant varieties are imported and brought onto the national market by the right owner or with the right owner's consent, or where they are imported by parties authorized by the State or in accordance with national laws, as long as they were brought into or taken out of the country legitimately by the right owner or a representative thereof.

#### ARTICLE 44

Inspection

Once the customs authorities have suspended customs clearance for the plant varieties, Ofinase or the judicial authority shall allow the right owner or right owner's representative to inspect the plant varieties, solely in order to confirm its claims. On allowing the inspection and if it is appropriate, the customs authority shall have access to the resources needed to protect any right of undisclosed information (commercial or industrial secrets).

If Ofinase or the judicial authority confirms an infringement, and if the right owner or right owner's representative requests it, the customs authorities shall report the name and address of the consignor, importer or exporter and consignee of the goods,

along with the quantity and description of the suspected goods.

#### ARTICLE 45

Destruction and confiscation of plant varieties

In passing a decision authorizing the destruction of plant varieties, the judicial authority shall consider the interests of third parties and whether the measure ordered is proportionate to the seriousness of the infringement. The final decision of the judicial authority may require the customs authorities to destroy or eliminate the counterfeit or illegal varieties.

The customs authorities shall not permit the counterfeit or illegal varieties to be re-exported in the same State, nor shall they submit them to any particular customs procedure, until the competent judicial authority has ruled on where they are to be sent and whether they are to be destroyed.

#### ARTICLE 46

Wrongful confiscation

Where plant varieties have been wrongfully confiscated, the judicial authorities shall, in principle, require the claimant to pay for the harm and prejudice caused to the importer, consignor and owner of the varieties; the payment of this sum shall constitute enforcement of the judgment.

#### ARTICLE 47

Implementation of border measures

Border measures shall be implemented at control points, border quarantine stations, ports, airports and warehouses belonging to the Office of the Attorney General, through which plant breeds enter and leave national territory.

#### ARTICLE 48

Inspections

Authorized officials may take action in accordance with Costa Rican laws to guarantee full respect for plant varieties; to this end, natural persons and legal entities involved in transporting plant varieties, once identified by such an official, shall cooperate with and facilitate the inspections conducted by inspectors thus accredited.

## Section III

Administrative procedures relating to plant varieties

## ARTICLE 49

Standards concerning administrative procedures

The provisions of this Law and the Regulations thereunder shall constitute the administrative procedures which relate to plant varieties.

## ARTICLE 50

Appeals against Ofinase decisions

Applications to have decisions made by Ofinase overturned may be made before the body that passed the decision in question and, at appeal, to the Minister of Agriculture and Livestock.

## Section IV

Civil proceedings

## ARTICLE 51

Precautionary measures in civil proceedings

Without prejudice to the provisions of book I, title IV of the Code of Civil Procedure, in a case concerning the protection of the rights of plant breeder's title owners, the judge may adopt the precautionary measures set out in this Law.

## ARTICLE 52

Civil proceedings

The claims of plant breeder's title owners shall be considered and decided by means of the abridged proceedings laid down in book II, title II of the Code of Civil Procedure.

Cases concerning unfair competition shall be subject to summary judgment under Article 17 of Law No. 7472 on the Promotion of Competition and Effective Defense of Consumers, December 20, 1994.

## ARTICLE 53

Evidence under the control of the opposing party

During abridged proceedings or, in unfair competition cases, during summary proceedings, where one party has specified evidence relevant to substantiation of its claims which lies under the control of the opposing party, the judge shall be authorized to require the opposing party to produce this evidence. If this is done, the evidence shall be produced on condition that the protection of undisclosed information be guaranteed.

## ARTICLE 54

Criteria for determining levels of harm and prejudice

The harm and prejudice caused by civil violations of this Law shall be determined by the judge, preferably on the basis of an expert ruling. In the absence of an expert ruling their value shall be no less than the corresponding value of a basic wage as established in Article 2 of Law No. 7337 of May 5, 1993.

In any case, and without prejudice to that established minimum, the benefits that the owner would have obtained if the violation had not occurred, the benefits obtained by the infringer and the price, remuneration or reward that the infringer would have had to pay to the owner for lawful use of the rights infringed shall be taken into consideration in the final ruling on the case.

## ARTICLE 55

Seizure and destruction of plant varieties as a civil penalty

At the request of one party or the State, the judicial authority may, either as an interlocutory injunction or as a sentence, order the seizure of the counterfeit or illegal varieties that are the subject of the claim; their destruction may be ordered only as part of a sentence.

In force from the time of its publication.

**THE LEGISLATIVE ASSEMBLY** – approved on February 28, 2008.

*Sent to the Executive Authority*

Francisco Antonio Pacheco Fernández  
**PRESIDENT**

Xinia Nicolás Alvarado  
Guyon Massey Mora

**FIRST SECRETARY**  
**SECOND SECRETARY**

Done at the Office of the President of the Republic, San José, March 6, 2008

*To be executed and published*

ÓSCAR ARIAS SÁNCHEZ.–Javier Flores Galarza, Minister of Agriculture and Livestock.–1 copy.– (Application No. 41480-MAG).–C-422620.–(L8631-25280).

## EUROPEAN COMMUNITY

**COUNCIL REGULATION (EC) No. 15/2008 of 20 December 2007  
AMENDING REGULATION (EC) No. 2100/94 AS REGARDS THE ENTITLEMENT TO FILE  
AN APPLICATION FOR A COMMUNITY PLANT VARIETY RIGHT\***

THE COUNCIL OF THE EUROPEAN UNION,  
HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights <sup>(1)</sup> creates a Community regime for plant varieties, which allows for the grant of Community plant variety rights (CPVR), valid throughout the Community.

(2) In the interests of the facilitation of trade it is appropriate to make the CPVR easily accessible. Therefore, the conditions for entitlement to file an application for the CPVR should be simplified and one application system for all applicants should be introduced.

(3) Regulation (EC) No 2100/94 should therefore be amended accordingly,

*Article 1* Regulation (EC) No 2100/94 is hereby amended as follows:

1. Article 12 shall be replaced by the following:

*'Article 12*

**Entitlement to file an application for a Community plant variety right**

An application for a Community plant variety right may be filed by any natural or legal person, or any body ranking as a legal person under the law applicable to that body.

An application may be filed jointly by two or more such persons.';

2. in Article 41(2), the words '12(1)(b),' shall be deleted;

3. Article 52(4) shall be replaced by the following:

'4. Paragraphs 2 and 3 shall also apply in respect of earlier applications that were filed in another State.'

*Article 2*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 2007.

*For the Council*

*The President*

F. NUNES CORREIA

<sup>(1)</sup> OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 873/2004 (OJ L 162, 30.4.2004, p. 38)

\* Text provided by the European Community as published in the Official Journal of the European Union L. 8/2 on January 11, 2008.

**COMMISSION REGULATION (EC) No. 355/2008 of 21 April 2008  
AMENDING REGULATION (EC) No. 1239/95 AS REGARDS THE USE OF ELECTRONIC  
MEANS OF COMMUNICATION IN PROCEEDINGS BEFORE THE  
COMMUNITY PLANT VARIETY OFFICE\***

**THE COMMISSION OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights <sup>(1)</sup>, and in particular Article 114 thereof,

After consulting the Administrative Council of the Community Plant Variety Office,

Whereas:

(1) The rules provided for in Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (2) should be simplified, in particular by allowing the use of electronic means of communication.

(2) It is appropriate to simplify, on the one hand, the filing of applications, objections or appeals and, on the other, the service of documents by the Community Plant Variety Office (the Office) by permitting the use of electronic means. Moreover, the Office should be given the possibility to issue certificates for Community plant variety rights in electronic form. Publication of information regarding Community plant variety rights should also be possible by electronic means. Finally, electronic storage of files relating to proceedings should be allowed to improve efficiency.

(3) The President of the Office should be empowered to determine all necessary details with respect to the use of electronic means of communication or storage.

(4) Regulation (EC) No 1239/95 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Community Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

*Article 1* Regulation (EC) No 1239/95 is amended as follows:

1. in Article 2, paragraph 3 is replaced by the following:

'3. Addresses shall contain all the relevant administrative information, including the name of the State in which the party to proceedings is resident or where his seat or establishment is located. Only one address should preferably be indicated for each party to proceedings; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the party to proceedings designates one of the other addresses as an address for service.

The President of the Office shall determine the details concerning the address including any relevant details of other data communication links.');

2. Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. An application for a Community plant variety right shall be filed at the Office, at the national agencies designated or the sub-offices established pursuant to Article 30(4) of the Basic Regulation.

Where the application is filed at the Office it may be filed in paper format or by electronic means. Where it is filed at the national agencies or sub-offices it shall be filed in paper format in duplicate.');

(b) paragraph 3 is replaced by the following:

\* English text provided by the European Community as published in the Official Journal L 110/3 of April 22, 2008.

(1) OJ L 227, 1.9.1994, p. 1. Regulations as last amended by Regulation (EC) No 15/2008 (OJ L 8, 11.1.2008, p.2)

(2) OJ L 121, 1.6.1995, p. 37. Regulation as last amended by Regulation (EC) No 1002/2005 (OJ L 170, 1.7.2005, p. 7)



3. The Office shall make available the following forms free of charge:

(a) an application form and a technical questionnaire, for the purposes of filing an application for a Community plant variety right;

(b) a form for forwarding the information referred to in paragraph 2, indicating the consequences of any failure of the forwarding.

4. The applicant shall fill in and sign the forms provided for in paragraph 3. Where the application is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;

3. Article 28 is replaced by the following:

*'Article 28*

#### **Proposal for a variety denomination**

The proposal for a variety denomination shall be signed and shall be filed at the Office, or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated or the sub-office established pursuant to Article 30(4) of the Basic Regulation, in duplicate.

The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination. 39. Where the proposal for a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;

4. in Article 36, the last sentence of paragraph 1 is deleted and the following paragraph 4 is added:

*'4. Where the proposal for an amendment of a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;*

5. in Article 52, paragraph 1 is replaced by the following:

*'1. Within three months after closure of the oral proceedings, the decision on the appeal shall be forwarded in writing, by any means provided for in*

*Article 64(3), to the parties to the appeal proceedings.;*

6. in paragraph 2 of Article 53, the second sentence is replaced by the following:

*'Subsequently, the decision in writing shall be served on the parties to proceedings in accordance with Article 64.;*

7. in Article 54(3), the word 'duplicate' is replaced by 'copy';

8. Articles 57 and 58 are replaced by the following:

*'Article 57*

#### **Documents filed by parties to proceedings**

1. Any documents filed by a party to proceedings shall be submitted by post, personal delivery or electronic means.

The details concerning electronic submissions shall be determined by the President of the Office.

2. The date of receipt of any document filed by parties to proceedings shall be deemed to be the date on which a document is in fact received on the premises or in the case of a document filed by electronic means, when the document is received electronically by the Office.

3. With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.

Where a document is submitted to the Office by electronic means, it shall contain an electronic signature.

4. If a document has not duly been signed, or where a document received is incomplete or illegible, or where the Office has doubts as to the accuracy of the document, the Office shall inform the sender accordingly and shall invite him to submit the original of the document signed in accordance with paragraph 3, or to retransmit a copy of the original, within a time limit of one month.

Where the request is complied with within the period specified, the date of receipt of the signed document

or of the retransmission shall be deemed to be the date of the receipt of the first document. Where the request is not complied with within the period specified, the document shall be deemed not to have been received.

5. Such document must be communicated to other parties to proceedings as well as to the Examination Office concerned, or documents relating to two or more applications for a Community plant variety right or an exploitation right, shall be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

The first subparagraph shall not apply to documents submitted by electronic means.

#### Article 58

#### Documentary evidence

1. Evidence of final judgments and decisions, other than those of the Office, or other documentary evidence to be submitted by parties to proceedings, may be furnished by submitting an uncertified copy.

2. Where the Office has doubts as to the authenticity of the evidence referred to in paragraph 1, it may require submission of the original or a certified copy.;

9. Article 64 is replaced by the following:

#### 'Article 64

#### General provisions on service

1. In proceedings before the Office, any service of documents to be made by the Office on a party to proceedings shall take the form of the original document, of an uncertified copy thereof or a computer print-out. Documents emanating from other parties to proceedings may be served in the form of uncertified copies.

2. If a procedural representative has been appointed by one or more parties to proceedings, service shall be made on him in accordance with the provisions of paragraph 1.

3. Service shall be made:

(a) by post in accordance with Article 65;

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(b) by delivery by hand in accordance with Article 66;

(c) by public notice in accordance with Article 67; or

(d) by electronic means or any other technical means in accordance with the second subparagraph of this paragraph.

The President of the Office shall determine the details concerning service by electronic means.

4. Documents or copies thereof containing actions for which service is provided in Article 79 of the Basic Regulation shall be served by registered letter with advice of delivery served by postal means; it can also be served by electronic means to be determined by the President of the Office.;

10. in Article 65, paragraph 1 is deleted;

11. in Article 67, 'Article 65(1)' is replaced by 'Article 64(4)';

12. in Article 71, paragraph 2 is replaced by the following:

'2. If a time limit expires on a day on which there is a general interruption or a subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall be extended until the first day following the end of the period of dislocation or interruption in the delivery of mail for parties to proceedings having their domicile or seat or establishment in the Member State concerned or having appointed procedural representatives with a seat in that State. Should the Member State concerned be the State in which the Office is located, this provision shall apply to all parties to proceedings. The duration of the period of interruption or dislocation shall be as stated and communicated by the President of the Office.

As regards documents submitted by electronic means, the first subparagraph shall apply *mutatis mutandis* in cases where there is an interruption of the connection of the Office to the electronic means of communication.;

13. in Article 78(3), the following subparagraph is added:

'The President of the Office shall determine the form

Commission Regulation No. 355/2008

of Registers. The Registers may be maintained in the form of an electronic database.';

14. in Article 79, paragraph 1 is replaced by the following:

'1. Any transfer of Community plant variety rights shall be entered in the Register of Community Plant Variety Rights on production of documentary evidence of the transfer, or of official documents confirming the transfer, or of such extracts from those documents as suffice to establish the transfer. The Office shall retain a copy of those pieces of documentary evidence in its files.

The President of the Office shall determine the form in and the conditions under which those pieces of documentary evidence are to be retained in the files of the Office.';

15. Article 83 is replaced by the following:

*'Article 83*

#### **Keeping of the files**

1. Documents, either in the form of originals or copies relating to proceedings shall be kept in files, a file number being attached to such proceedings, except for those documents relating to the exclusion of, or objection to, members of the Board of Appeal, or to the staff of the Office or the Examination Office concerned, which shall be kept separately.

2. The Office shall keep one copy of the file referred to in paragraph 1 (file copy) which shall be considered the true and complete copy of the file. The Examination Office may keep a copy of the documents relating to such proceedings (examination copy), but shall ensure delivery of those originals which the Office does not hold.

3. The original documents filed by parties to the proceedings which form the basis of any electronic files may be disposed of after a period following their reception by the Office.

4. The President of the Office shall determine the details as to the form in which the files to be kept, the period during which files are to be kept and the period referred to in paragraph 3.';

16. in Article 87 the following paragraph 3 is added:

'3. The President of the Office shall determine the manner in which the Official Gazette is published.';

17. Article 91 is amended as follows:

paragraph 1 is replaced by the following:

'1. Inspection of files under Article 91(1) of the Basic Regulation shall be of copies of the files issued by the Office exclusively for that purpose.'

#### *Article 2*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 April 2008.

*For the Commission*

Androulla VASSILIOU

*Member of the Commission*

**GEORGIA****LAW OF GEORGIA FOR THE PROTECTION OF NEW VARIETIES OF PLANTS  
of December 29, 2006**Chapter I  
General Provisions

## Article 1

This Law regulates relations linked with the legal protection of new varieties of plants and applies to all the botanical genera and species of plants.

## Article 2

1. The terms used in the Law shall have the following meaning:

(a) Breeder:

(a.a) the person who discovered and developed, or bred a plant variety;

(a.b) the person who is the employer of the person referred to in subparagraph (a.a) or who has commissioned the latter's work;

(a.c) the successor in title of the person referred to in subparagraph (a.a) or (a.b);

(b) Application means the package of documents, necessary for the registration of a new plant variety and the granting of a certificate, drawn up under the requirements established by this Law;

(c) Certificate means the protective document certifying the registration of the new plant variety and the breeder's right under this Law;

(d) Propagation material means the seed, plant or its part intended for the propagation of a plant variety;

(e) Harvest means any output received as a result of the propagation of a plant variety;

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

defined by the expression of the characteristics resulting from a given genotype or the combination of genotypes; it is distinguished from any other plant grouping by the expression of at least one of the said characteristics and may be considered as a unit with regard to its suitability for being reproduced unchanged;

(g) The International Convention for the Protection of New Varieties of Plants means "the International Convention for the Protection of New Varieties of Plants" adopted on December 2, 1961;

(h) Initial variety means a plant variety selected by the breeder for breeding a new variety;

(i) Union means the Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants.

## Article 3

1. The National Intellectual Property Center "Sakpatenti" (hereinafter "Sakpatenti") shall ensure granting of the breeder's right and informing of the public by means of publication of an official bulletin on applications for the new plant varieties and granting of the breeder's right.

2. Testing of the new plant variety for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal entity of the public law - united national body of accreditation - accreditation center, under the requirements and testing methods approved by the Ministry of Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid test, the Council of Experts existing at the Ministry of Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the plant variety. The Ministry of Agriculture of Georgia shall be responsible for implementation of these procedures.

\* Translation provided by the Georgian authorities. Adopted by the Parliament of Georgia on December 29, 2006.

3. Sakpatenti may also base its decision concerning the grant of the breeder's right on the results of the tests carried out by competent authorities of other members of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability.

#### Article 4

The duration of a breeder's exclusive rights in the new plant variety shall be 25 years from the day of registration of the new plant variety by Sakpatenti and 30 years for vine, caulescent, fruit, decorative, tea, subtropical cultures and forest varieties, including rootstocks.

### Chapter II Breeder and Holder of Certificate

#### Article 5

1. The breeder shall acquire breeder's exclusive (economic) rights as a result of the registration of the new plant variety at Sakpatenti and granting of a certificate.

2. If the breeder requests so, Sakpatenti shall be obliged not to publish his name.

3. Where the new plant variety was discovered and developed, or bred as a result of joint intellectual creation of several natural persons, each shall be deemed as a co-breeder.

4. Relations between the co-breeders shall be defined on the basis of a contract.

#### Article 6

1. A breeder shall be entitled to register the new plant variety and obtain a certificate.

2. The right to register and obtain a certificate for the new plant variety discovered and developed, or bred as a result of intellectual creation of several natural persons shall be enjoyed by all the breeders jointly, as well as each of them, in the case the other breeders refuse to register and obtain a certificate.

#### Article 7

1. Where discovering and developing, or breeding of the new plant variety is connected with the Georgia

fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employer, if the contract concluded between the employee and employer does not provide for otherwise. If the certificate granted as a result of the registration of the new plant variety belongs to the employer, the employee shall be entitled to receive from the employer the remuneration adequate to the use of the new plant variety, on the basis of their mutual agreement.

2. Where discovering and developing, or breeding of the new plant variety is not connected with the fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employee. In this case from the day of filing the application, the employer shall enjoy the prior right to obtain a license to use the new plant variety and/or, resulting from registration of the new plant variety and granting of the certificate, to purchase the breeder's exclusive rights.

#### Article 8

If the employer refuses to register the new plant variety and obtain the certificate, the employee shall be entitled to register and obtain the certificate.

#### Article 9

Where for one and the same new plant variety two or more applications are filed with Sakpatenti at various times, the plant variety shall be registered and a certificate granted in the name of the first applicant.

### Chapter III Protectability of the New Plant Variety

#### Article 10

1. The new plant variety shall be registered and granted a certificate, if it meets the protectability criteria.

2. Protectability criteria of the new plant variety shall be novelty, distinctness, uniformity, and stability.

#### Article 11

1. The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating material of the variety has not been sold

or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

(a) in the territory of Georgia earlier than one year before filing the application with Sakpatenti;

(b) in the territory of other country, earlier than four years before filing the application with Sakpatenti, and in the case of vines and trees, earlier than six years.

2. Notwithstanding the requirements of paragraph 1 of this Article, granting of the breeder's right shall be possible to the variety of plant, which for the day of enacting of this Law is no longer new, provided that the application was filed with Sakpatenti within one year from the day of entry into force of this Law and one of the following conditions is complied with:

(a) the plant variety was entered in the national catalogue of plants admitted for trade;

(b) the plant variety was protected by the breeder's right in any state member of the Union, or an application was filed in any state member of the Union and filing of this application led to granting of a breeder's right;

(c) there exists an evidence acceptable for Sakpatenti in regard to the date, when the variety was deemed to be no longer new in accordance with paragraph 1 of this Article.

3. The breeder may enjoy advantages defined in paragraph 2 of this Article, if actions referred to in subparagraphs of said paragraph were performed earlier than one year, two years and six years terms fixed in paragraph 1 of this Article, but no longer than during two years.

4. Duration of the breeder's right, granted in accordance with paragraphs 2 and 3 of this Article, shall be calculated from the day of entry in the catalogue referred to in subparagraph (a), paragraph 2 of this Article, from the day of granting of the breeder's right referred to in subparagraph (b), paragraph 2 of this Article or from the day, when the plant variety was deemed to be no longer new, referred to in subparagraph (c), paragraph 2 of this

Article. In relevant cases the earliest of these dates shall be used.

5. Where the breeder's right is granted in accordance with the requirements of this Article, the breeder shall be obliged to grant a license on reasonable conditions to enable a third person to continue exploitation of the plant variety, which he had begun in bona fide before filing the application by the breeder with Sakpatenti.

#### Article 12

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application with Sakpatenti. In particular, filing of an application for the granting of a breeder's right or for the entering of the variety in the official register of varieties or the catalogue, in any country, shall make the variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the variety in the official register of varieties or the catalogue, as the case may be.

#### Article 13

The plant variety shall be deemed to be uniform, if subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

#### Article 14

The plant 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.

### Chapter IV

#### Examination, Publication, Registration and Granting of Certificate for the New Plant Variety

#### Article 15

1. The breeder shall file the application with the request of the registration of the new plant variety and obtainment of a certificate with Sakpatenti personally or by means of a representative.

## Article 16

1. The application shall comprise:
  - (a) a request, with the indication of the name and address of the breeder;
  - (b) the proposed denomination of the new plant variety;
  - (c) the description of the new plant variety, the main morphological, biological and botanical characteristics;
  - (d) the photographic image of the new plant variety;
  - (e) a written obligation of the breeder to supply to the accredited person, under Article 3(2) of this Law, samples of propagating material of the new plant variety within the prescribed term and quantity, free of charge.
  - (f) indication of the date, when the propagation material of the plant variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his consent.
2. One application shall be filed for one new plant variety.
3. Where the application is filed by means of a representative, within a month from the day of filing the application, the application materials shall be attached a document confirming the representation.
4. The application shall be filed in the state language, and the other application materials – in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their translation into the Georgian language.
5. Where the application is filed by the assignee, within a month from the day of filing the application materials, the application shall be attached a document confirming the assignment.
6. Where the data and materials defined by paragraphs 3 to 5 of this Article are not submitted in relevant terms, the proceeding of the applications shall be terminated.

Georgia

## Article 17

If before its filing with Sakpatenti the application was filed with the competent authority of other member of the Union, the country, where this application was filed, the denomination of the new plant variety, the application number and the date of filing shall be indicated.

## Article 18

If the new plant variety described in the application is filed in any other member state of the Union, the applicant shall be obliged to attach to the application materials a certified copy of the first application and its translation into the Georgian language.

## Article 19

1. The applicant shall propose the denomination of the new plant variety.
2. The denomination shall be the generic denomination of this plant variety and make the variety easily identifiable. It must be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, must not be contrary to the commonly recognized norms of morality, must not insult religious feelings, must not consist only of figures except, where this is an established practice and must not cause confusion concerning the characteristics, origin, value, identity of the variety, or the breeder.
3. If the denomination does not satisfy the requirements of paragraph 2 of this Article, or if prior right of third party prevent the use of the variety, the applicant shall be obliged to present the new denomination within a month from the receipt of notification, in accordance with paragraph 4 of this Article.
4. Any person who, within the territory of Georgia, offers for sale or markets a plant variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (3), prior rights prevent such use.
5. When a plant variety is offered for sale or marketed, it shall be permitted to associate a

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trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

#### Article 20

The application shall be deemed filed with Sakpatenti from the day of the submission of the following materials:

- (a) the request;
- (b) the proposed denomination of the new plant variety;
- (c) the description of the new plant variety.

#### Article 21

1. Where for one and the same plant variety two or more applications are filed, the priority shall be established for the application filed earlier with Sakpatenti.

2. The applicant wishing to enjoy the priority established under the International Convention for the Protection of New Varieties of Plants shall be obliged to file an application with Sakpatenti within 12 months from filing of the earlier application in the contracting party of this Convention.

3. In the application filed with Sakpatenti the date of filing the application in other country must be indicated. The applicant shall be obliged to present within six months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country, where the application was first filed, and its translation into the Georgian language.

4. The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, to furnish Sakpatenti any necessary information, document or material required for the purpose of the examination.

#### Article 22

1. Sakpatenti shall perform the formal examination of the new plant variety application, that includes completeness of the application materials, checking the execution of the application and the confirmation of the application filing date.

#### Article 23

1. Sakpatenti shall confirm the application filing date in 2 days term from the day of filing.

2. The formal examination of the application shall be performed within one month from the day of filing the application.

3. If the application does not meet the requirements of Articles 16 and 21 of this Law, during the formal requirements examination Sakpatenti may request from the applicant to repair the deficiency and submit the relevant materials. The applicant shall be obliged to repair the deficiency or submit relevant materials within one month from the day of receiving the notification.

4. If the applicant complies with the requirement of paragraph 3 of this Article, then the date of fulfilling the above request shall be deemed to be the date of filing of the application. If the applicant fails to comply with the request, the application shall not be considered filed, and the application materials shall be returned to the applicant.

5. If the application does not comply with the conditions of the formal requirements examination, proceeding of the application for the new plant variety shall be terminated.

#### Article 24

1. If it is confirmed that the application complies with the conditions of formal requirements examination, Sakpatenti shall publish the data of the new plant variety application in the Official Bulletin and shall take a decision to hand over the plant variety for testing.



2. The following shall be published in the Official Bulletin:

- (a) the data of the breeder;
- (b) the date of filing the application;
- (c) the proposed denomination of the new plant variety;
- (d) the brief reference of the new plant variety.

3. Description of the new plant variety shall be laid open to public for familiarization.

#### Article 25

Any person shall be authorized to present to Sakpatenti a written objection within 3 months from the publication of the new plant variety data in the Official Bulletin:

- (a) if the new plant variety does not comply with the requirements of protectability;
- (b) if the description of the new plant variety does not convey a complete impression for the evaluation of the new plant variety;
- (c) if the data given in the application are falsified;
- 206. (d) if the priority requested, in accordance with paragraph 2 of Article 21 of this Law, for the new plant variety described in the application is baseless according to the application presented for this plant variety in another country.

#### Article 26

1. Within one week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the person referred to in paragraph 2 of Article 3 of this Law. A copy of the objection materials shall be handed over to the applicant of the new plant variety as well.

2. Sakpatenti with respect to the objection shall take a decision on the basis of conclusion made by the person defined under paragraph 2 of Article 3 of this Law.

3. Procedures and terms of the objection shall be determined under the rule established by the Ministry of Agriculture of Georgia.

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#### Article 27

1. Following to the completion of the formal requirements examination and the publication of the application materials in the Official Bulletin, the new plant variety shall be handed over within 2 weeks term for testing to the person defined under paragraph 2 Article 3 of this Law.

2. The new plant variety shall be tested for distinctness, uniformity and stability by means of examination.

3. The applicant shall be authorized to request extension of procedure terms of the new plant variety application proceeding or where he fails to comply with the terms, restoration of these terms in accordance with the established rule.

4. The applicant, at any stage of proceeding of the new plant variety application, may withdraw the application or request termination of the application proceeding.

#### Article 28

1. Results of the new plant variety tests shall be done by the person referred to in Article 3(2), that shall be handed over to Sakpatenti within one month term.

2. In the case of the positive conclusion of the new plant variety testing, the person, who performed tests, together with the applicant shall draw up the description of the plant variety that he together with the conclusion shall send to Sakpatenti.

3. Data of the test results shall be a trade secret of the applicant and their transfer to the other person without agreement with Sakpatenti and the applicant, shall be deemed to be a violation and shall result in liability defined under the existing legislation in Georgia.

#### Article 29

1. Where the positive conclusion of the new plant variety testing is made, Sakpatenti shall take a decision to register the new plant variety. Sakpatenti shall record the denomination of the new plant variety, description and other data in the Register of New Plant Varieties and issue the certificate, which represents a document certifying the property of the breeder's exclusive right holder.

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2. The following shall be recorded in the Register of New Plant Varieties:

- (a) the genus and species of the new plant variety;
- (b) the denomination of the new plant variety;
- (c) the description and photographic image of the new plant variety;
- (d) the name and address of the breeder;
- (e) the number and date of registration.

3. The format of a certificate issued for the new plant variety shall be developed by Sakpatenti.

4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the new plant variety, the denomination of the new plant variety, the description and photographic image of the new plant variety, the name and address of the breeder, the registration number and date.

5. Any person shall be entitled to familiarize with the Register of New Plant Varieties under established order.

#### Article 30

1. If the application of the new plant variety filed with Sakpatenti concerns the variety protected in other state member of the Union, that variety shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a variety a certified copy of the official documents confirming the breeder's right issued by the authorized body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application, or within 2 months term from filing the application. For such an application only the formal requirements examination shall be performed.

2. If the application of the new plant variety filed with Sakpatenti concerns the variety for which tests for distinctness, uniformity and stability have been already performed by the person referred to in Article 3(2) of this Law and the positive conclusion has been issued, only the novelty, denomination requirements and the formal requirements examination shall be performed.

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3. If the applications referred to in paragraphs 1 and 2 of this Article comply with the conditions of the formal requirements examination, Sakpatenti shall take a decision to register the new plant variety, shall record the data in the Register of New Plant Varieties, issue a certificate and publish the registration data in the Official Bulletin.

#### Article 31

1. Under Article 24 of this Law from the day of publication of the new plant variety data to the day of registration, the applicant provisionally shall be granted the same rights of the breeder, he would have in the case of registration. If a third party, from the day of publication of the new plant variety data to the day of registration, has carried out acts which require the breeder's authorization, the breeder shall be entitled to demand equitable remuneration only after registration of the new plant variety.

#### Chapter V

##### Rights and Liabilities of the Holder of Breeder's Exclusive Right

#### Article 32

1. The exclusive right of the breeder shall be the right to perform, authorize and/or prohibit the following with respect to the new plant variety:

- (a) production or reproduction;
- (b) conditioning for the purpose of propagation;
- (c) offering for sale, alienation or other transfer of rights;
- (d) exporting;
- (e) importing;
- (f) stocking for any of the purposes mentioned in subparagraphs (a), (b),(c), (d), (e), paragraph 1 of the Article.

2. The breeder may authorize the acts referred to paragraph 1 of this Article with certain conditions and restrictions.

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3. Taking into account the requirements of Article 34 of this Law, the acts defined by paragraph 1 of this Article in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his exclusive rights in relation to the said propagating material.

4. The exclusive right of the new plant variety breeder shall also apply to:

(a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

(b) varieties which are not clearly distinguishable in accordance with Article 12 of this Law from the protected variety, and

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

#### Article 33

1. A variety shall be deemed to be essentially derived from another variety when:

(a) 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,

(b) it is distinguishable from the initial variety by external properties, except for the differences which result from the act of propagation, and 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.

2. Essentially derived varieties may be obtained 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 34

1. Exclusive right of the breeder shall not apply to:

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

(b) acts done for experimental purposes and

(c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 32(4) apply, acts referred to in Article 32(1) to (3).

2. The Ministry of Agriculture of Georgia, subject to the safeguarding of the legitimate interests of the breeder and within reasonable limits, shall be entitled to restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the propagating material which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 32(4)(a)(b) or paragraph 1 of this Article.

#### Article 35

1. The breeder's exclusive right shall not apply to acts concerning any material of the protected variety or any material derived from the said material, which has been included into the civil circulation by the breeder or with his consent in the territory of Georgia, unless such acts

(a) involve further propagation of the protected variety or

(b) involve an export of plant material of the protected variety, which enables the propagation of the variety, into a country which does not protect the varieties belonging to this genus and species, except where the exported material is for final consumption purposes.

2. For the purposes of paragraph 1 of this Article, the term "material" means, in relation to a variety,

(a) propagating material of any kind;

(b) harvested material, including entire plants and parts of plants;

(c) any product made from the harvested material.

## Article 36

The breeder shall be obliged to ensure, during the whole period of validity of the exclusive rights, obtainment of the propagating materials of the plant variety enabling to produce the plant variety having the features referred to in the description of the new plant variety.

## Chapter VI

Cancellation and Nullity of New Plant Variety  
Registration and Certificate

## Article 37

Upon request of the interested person, the new plant variety registration and certificate shall be recognized as null from the registration day, only when it is established that at the time of taking the decision concerning the registration and issuing of the certificate of the new variety of plant:

- (a) the plant variety did not comply with the requirements of Articles 11 and 12 of this Law;
- (b) the grant of the breeder's right was based upon information and documents furnished by the breeder, and when granting the breeder's right the requirements of Articles 13 and 14 of this Law were not complied with;
- (c) the breeder's right was granted to a person who was not entitled to it, unless it is transferred to the person who was so entitled.

## Article 38

1. Upon request of the interested person, the new plant variety registration and certificate may be cancelled from the day of taking the relevant decision, when it is established that:

- (a) the new plant variety does no longer fulfil the requirements of Articles 13 and 14 of this Law;
- (b) the breeder failed to present the information, documents or material deemed necessary for verifying the maintenance of the variety in accordance Article 36 of this Law upon the request of the Ministry of Agriculture of Georgia within the fixed term;

(c) the breeder failed to satisfy the requirements established for maintenance of rights;

(d) the breeder did not propose, where the denomination of the variety was cancelled after the grant of the right, another suitable denomination.

2. The registration and certificate of the new plant variety may be recognized as null or cancelled on the basis of a written request submitted to Sakpatenti by the breeder.

3. The data of the recognition of the new plant variety registration and certificate as null or cancelled shall be entered by Sakpatenti in the Register of the New Plant Varieties and the reference of the above mentioned shall be published in the Official Bulletin.

## Article 39

On the basis of a written request submitted to Sakpatenti, the breeder during the validity term of the new plant variety registration shall be authorized to enter changes or additions in the registered data of the new plant variety only in respect to the address of the breeder or his representative.

Chapter VII  
License

## Article 40

1. The breeder (licensor) shall be authorized to grant a license to use the registered new plant variety to other person (licensee).

2. Granting of the license for the use of the new plant variety shall be admissible for the new plant variety permitted for distribution in the territory of Georgia.

3. The license may be simple or exclusive.

4. On the basis of the simple license agreement, the licensor shall transfer to the licensee the right to use the new plant variety. At the same time, the licensor shall preserve all the exclusive rights and the right to conclude other simple license agreements.

5. On the basis of the exclusive license agreement, the licensor shall transfer the right to use the new plant variety only to the licensee. At the same time,

the licensor during the validity term of the exclusive license agreement shall forfeit the exclusive rights transferred on the basis of this agreement as well as the right to conclude other license agreements.

6. The license agreement shall be made in the written form and shall provide for: the accurate data of the new plant variety, types of use, the validity term of the agreement and the territory, amount of the remuneration or the rule of determining the amount and term, as well as other conditions considered essential by the parties.

7. The right to use the new plant variety in any way not provided for directly by the license agreement shall belong to the licensor.

8. The licensee shall not be allowed to transfer the right resulting from the license agreement or to grant a sublicense if it is not provided for directly in the license agreement.

#### Article 41

1. The compulsory license may be granted upon the request of any interested person only for reasons of public interest.

2. The compulsory license shall be issued on the basis of a recommendation given by the National Council of Seeds functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of Agriculture of Georgia.

3. The compulsory license may be issued only when the interested person earlier was trying to obtain the license from the breeder with reasonable conditions and terms, but his attempt was not successful.

4. The decision on granting the compulsory license shall define the scope of use of the new plant variety, duration, rights and obligations of the breeder and the licensee and the amount of remuneration. The decision on granting the compulsory license shall be legalized with the order of the Minister of Agriculture of Georgia.

5. The duration of the compulsory license agreement may be extended if by examination performed by the Ministry of Agriculture of Georgia it is ascertained that conditions of the license agreement are complied with and there is a necessity of extension.

6. If during the validity term of the compulsory license the examination proves that there are no longer grounds for granting the compulsory license, the effect of the compulsory license shall be terminated on the basis of a decision taken by the Ministry of Agriculture of Georgia.

7. At granting of the compulsory license, the breeder shall be entitled to receive the equitable remuneration.

#### Chapter VIII

##### Violation of Breeder's Rights and Liability

#### Article 42

The failure to observe the requirements of this Law shall be deemed to be a violation of the breeder's rights and shall result in liability under the existing legislation in Georgia.

#### Chapter IX

##### Transitional and Final Provisions

#### Article 43

1. Applications filed for registration of the new plant varieties with the Center of Protection of Plant Varieties Breeders' Rights of Georgia "Sakjishtsenti" under the Laws of Georgia "on Permission for Distribution of Agricultural Crops, Quality Seeds and Planting Materials" and "on Protection of Selective Achievements", proceeding of which has not been terminated, shall be transferred to the National Intellectual Property Center of Georgia Sakpatenti for continuing the proceeding.

#### Article 44

The Law of Georgia "on Protection of Selection Achievements" of October 18, 1996 ("Parlamentis utsqebani", N27-28/4, November 21, 1996, p.42) shall be declared invalid.

#### Article 45

1. Within three months term from the entry into force of this Law, the Ministry of Agriculture of Georgia together with the National Intellectual Property Center "Sakpatenti" shall prepare and approve the rule of consideration of the opposition

of the interested persons in connection with publication of the new plant variety data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses.

2. The Ministry of Agriculture of Georgia, within six months after entry into force of this Law, shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new plant variety and methods of testing, taking into account the international practice.

3. The Ministry of Agriculture of Georgia within 2 months from the entry into force of this Law shall ensure establishment of the Council of Experts on the basis of Article 3(2) of this Law and shall approve its regulations.

#### Article 46

The Law shall enter into force on publication.

## POLAND

**ACT OF 26 JUNE 2003  
ON THE LEGAL PROTECTION OF PLANT VARIETIES,  
AS AMENDED BY THE ACT OF 9 JUNE 2006 AND THE ACT OF 9 MAY 2007\***

(O. J. of 6 August 2003 No 137, item 1300)

CHAPTER 1  
GENERAL PROVISIONS

Article 1

The issues of the legal protection of plant varieties shall be regulated in this Act, and in particular:

1) the mode and way of granting and cancellation of the right to legal protection of the variety bred, or discovered and developed by the breeder, and also making commercial use thereof;

2) scope of the protection of that right.

Article 2

1. For the purpose of this Act:

1) <sup>(1)</sup> variety – shall be taken to mean a grouping of plants within a single botanical taxon of the lowest known rank, which, whether it fully complies or not with the conditions of granting exclusive right:

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

b) is distinguished from any other plant grouping by the expression of at least one of those characteristics,

c) remains unchanged after propagation;

2) <sup>(2)</sup> hybrid variety – shall be taken to mean a variety produced each time by crossing of specified plant groupings, in accordance with the method and sequence given by the breeder of this variety;

3) hybrid variety component – shall be taken to mean a variety or a plant line used in the process of production of a hybrid variety;

4) protected variety – shall be taken to mean a variety, the breeder has the right of legal protection thereto and making commercial use thereof;

5) plant breeding – shall be taken to mean the activity aimed at developing and maintenance of varieties;

6) variety maintenance– shall be taken to mean the activity aimed at production of propagating material of this variety, which shall assure preservation of its characteristics, uniformity and stability;

7) breeder – shall be taken to mean a person who:

a) bred, or discovered and developed a variety, or

b) <sup>(3)</sup> is or was employer of the person referred to in (a) or has concluded an agreement under which other party to the agreement has bred or discovered and developed a variety, or

c) is successor in title of persons referred to in intends a and b;

8) propagating material – shall be taken to mean plants or their parts intended for sowing, planting, grafting, budding or other method of propagation of plants, including the application of biotechnology;

9) harvested material – shall be taken to mean the plants or their parts produced as a result of the cultivation of a specified variety not intended to be used as propagating material;

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\* English translation of consolidated text provided by the Polish Authorities. Act of 9 June 2006 amending the Act on the legal protection of plant varieties and the Seed Act (O.J. of 14 July 2006 No 126, item 877 – article 1) and Act of 9 May 2007 amending the Act on copyright and related rights and certain other Acts (O.J. of 5 June 2007 No 99, item 662 – article 5).

10)<sup>(4)</sup> variety examination – shall be taken to mean the testing of distinctness, uniformity and stability and assessment of a variety in order to grant its breeder the exclusive right to this variety;

11) associated states – shall be taken to mean the states that are the members of the International Union for the Protection of New Varieties of Plants (UPOV);

12) member states – shall be taken to mean the states being the members of the European Union;

13)<sup>(5)</sup> (repealed);

14)<sup>(6)</sup> conditioning - shall be taken to mean cleaning, drying, calibration, dressing or pelleting of harvested material;

15)<sup>(7)</sup> processor - shall be taken to mean an entrepreneur providing services in the scope of conditioning of harvested material to be used as propagating material;

16)<sup>(8)</sup> exclusive breeder's right - shall be taken to mean the right of the breeder to protect the bred or discovered and developed variety as well as commercialization of such variety.

2. The provision of paragraph 1 subparagraph 7 intend 'a' shall not be applicable to the persons who bred, or discovered and developed the variety on the basis of an employment contract or other contract, unless otherwise provided for in that contract.

3.<sup>(9)</sup> Persons who have jointly bred or discovered and developed a variety as well as their successors in title and successors in title of the person referred to in Paragraph 1 (7) (b) shall jointly execute the rights of breeder.

#### Article 3

For the procedures in cases of the issues regulated by this Law, the provisions of the Code of Administrative Procedure are applicable, unless otherwise provided for by this Law.

## CHAPTER 2

### EXCLUSIVE BREEDER'S RIGHT TO THE VARIETY

#### Article 4

1.<sup>(10)</sup> The breeder may apply for the grant of breeder's right to the variety, if the variety is distinct, uniform, stable and new, and its denomination complies with the requirements referred to in Article 9 paragraph 1.

2. For the grant of the exclusive right may also apply a person who has acquired from the breeder, on the basis of a written contract, the right to the variety bred or discovered and developed by that breeder.

3. The exclusive right shall be granted by the director of the Research Centre for Cultivar Testing.

4. The exclusive right shall apply to the varieties of all plant genera and species.

5. The exclusive right shall be hereditary and may be sold or otherwise disposed of to others by written contract.

6.<sup>(11)</sup> The exclusive right shall not be granted if the variety was applied for the protection or is protected by the Community Plant Variety Office (CPVO).

#### Article 4a<sup>(12)</sup>

Person who has bred or discovered and developed a variety under the work contract or under any another contract concluded with the breeder shall have the right to remuneration for any commercialization of the variety, unless the contract concluded with the breeder provides otherwise.

#### Article 5

1. A variety shall be deemed to be distinct if, at the date of an application for the grant of an exclusive right, it is clearly distinguishable by at least one characteristic, from any other variety whose existence is a matter of common knowledge.



2. The Research Centre for Cultivar Testing, hereinafter referred to as the "Centre", shall make available to the breeder, upon his request, written information on the characteristics of the variety, which shall be considered on the assessment of its distinctness.

3. A variety shall be deemed to be commonly known, if:

1) an application has been lodged for the grant of an exclusive right or for the entry into a register of varieties in the Republic of Poland, in other member, associated or third state;

2) has been protected or entered into a register of varieties in the Republic of Poland, in other member, associated or third state;

3) its propagating material or harvested material have been placed on the market;

4) its description has been published in a publication issued in a member, associated or third state;

5) its propagating material is available in commonly accessible variety collections.

#### Article 6

A variety shall be deemed to be uniform if, taking account of the method of the reproduction specific for that variety, it is sufficiently uniform in its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description.

#### Article 7

A variety shall be deemed to be stable if its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description, remain unchanged after its propagation.

#### Article 8

1. A variety shall be deemed new if, at the date of application for the grant of an exclusive right its breeder has not sold or otherwise disposed of to

others, for commercial purposes, of its propagating material or harvested material or has not given written consent to it:

1) within the territory of the Republic of Poland – earlier than one year before the abovementioned date;

2) in other states:

a) earlier than six years – in the case of trees or of vines,

b) earlier than four years – in the case of other varieties - before the date of application for the grant of an exclusive right.

2. A variety shall be also deemed to be new if the breeder at the date of application for the grant of an exclusive right:

1) has sold or otherwise disposed of to others:

a) variety propagating material to official bodies subordinated to or supervised by the minister competent for agriculture, which in the framework of their statutory activities, perform the variety examinations, or

b) parts of plants produced as a result of breeding, propagation, or experimental work, other than propagating material,

c) propagating material at an international exhibition organised in accordance with the Convention on International Exhibitions of 22 November 1928 (Journal of Laws of 1961 No 14, item 76 and of 1968 No 42, item 293);

2) has disposed of the propagating material to entities for the continuation of breeding or for performing examinations, or for experiments, provided that the propagating material produced from them shall remain the property of this breeder.

3. The components of a hybrid variety shall be deemed to be new if, at the date of application for the grant of an exclusive right, the hybrid propagating material produced thereof have not been sold by the breeder or otherwise disposed of to others for commercial purposes:

1) within the territory of the Republic of Poland – earlier than one year;

2) in other states – earlier than four years - before the date of application for the grant of an exclusive right.

#### Article 9

1. The variety denomination must not:

1) be identical as or similar to the denominations of the varieties in the member, associated or third states, which are or were given to the varieties belonging to the same or another species of this genus, as well as the names protected with an exclusive right or entered in an appropriate variety registers, unless the variety is no longer protected or is not present on the market, and its denomination has not been commonly known;

2) evoke public objection;

3) mislead as to the identity of its breeder, its characteristics or the value for use;

4) be identical as or similar to other designations which are commonly used for the marketing of goods;

5) violate the rights of third parties to trade-marks;

6) contain the words “variety ” or “hybrid variety”;

7) compose exclusively of digits nor start with a digit.

2. In cases where the denomination is inadequate, the Centre shall give the breeder a 14-day period for the submission of a written proposal of another denomination.

3. <sup>(13)</sup> If the variety is protected by the breeder’s right under the specific denomination in another associated state, it shall be protected only under the same denomination in the Republic of Poland.

4. The duty of using the variety denomination shall apply to any person who performs the assessments, offers for sale, sales, disposes of to others, advertises or gives information on its propagating material or harvested material.

5. The variety denomination shall be protected starting from the date of the grant of an exclusive right, and in the case of removal of its entry in the register of protection of exclusive right – so long as the propagating material remains on the market.

#### Article 10

1. An exclusive right shall be granted at a request of the breeder or its representative.

2. The breeder’s representative may be private or legal person, or an organisational unit without legal personality that has its domicile or registered seat in the territory of the Republic of Poland, other member, or associated states.

3. <sup>(14)</sup> If the breeder has its domicile or registered seat in a state not being the member state or the associated state, the application for the grant of an exclusive right shall be filed by his/her representative.

#### Article 11

1. The application for the grant of an exclusive right shall be lodged at the Centre.

2. The application for the grant of an exclusive right shall include:

1) the name, address and domicile of the breeder or the seat address;

2) Polish and Latin name of the plant genus or species;

3) designation of the variety on the stage of breeding;

4) the proposed denomination of the variety;

5) indication of the country of breeding, or the discovery and development of the variety;

6) declaration of the breeder that the variety is new in accordance with the requirements referred to in Art. 8;

7) declaration of the breeder that the variety has been or has not been genetically modified;

8) information on lodging an application for the protection of an exclusive right in other states.

3. The application referred to in paragraph 2 shall be accompanied by:

1) in cases where the application is filed by the breeder's representative, the authorisation for the representation of the breeder in all issues relating to the grant of an exclusive right;

2) description of the variety or the hybrid variety components (technical questionnaire);

3) <sup>(15)</sup> (repealed);

4) copy of the receipt for payment of fees for submitting the application for the grant of an exclusive right to the variety;

5) <sup>(16)</sup> declaration of the breeder whether he/she intends to exercise the right of priority referred to in Article 12 (1) in the Republic of Poland.

4. The minister competent for agriculture shall lay down, by Regulation, a specimen application form for the grant of an exclusive right, specimen technical questionnaire, having regard to the unification of the proceedings related to the grant of an exclusive right.

5. <sup>(17)</sup> The data referred to in paragraph 3 intends 2 and 3, must not be made available without a written consent of the breeder.

6. Where the applications for the grant of an exclusive right for the same variety have the same date of application, the priority has the application which was received by the Centre earlier, which is confirmed by the consecutive receipt number given to each of the applications.

#### Article 12

1. A breeder who lodged an application for the grant of an exclusive right in an associated state may apply, within twelve months of the date of that submission, for the grant in the Republic of Poland of an exclusive right as well as for the admission of his right of priority to the variety, hereinafter referred to as "the right of priority".

2. A breeder who submitted in the Republic of Poland an application for the grant of an exclusive right along with the right of priority shall deliver, without prejudice to paragraph 4, within three months of the date of lodging that application, a copy of the application lodged in the associated state along with the copy of the documents attached to that application.

3. In cases where a breeder has not delivered on time the copy of the application along with the copy of the attached documents lodged in an associated state, the application referred to in paragraph 2 shall not be examined in the framework of the right of priority.

4. In cases where an application for the grant of an exclusive right filed in an associated state has been withdrawn by the breeder, or has not been positively considered by a competent authority, the breeder shall be obliged to notify in writing of this fact to the Centre within three months of the date of the withdrawal of the application or receipt of the decision on the refusal of an exclusive right.

#### Article 13

1. <sup>(18)</sup> The Centre shall publish every two months in its publication, referred to later as the "Polish Gazette", information on the applications for the grant of an exclusive right and meeting the requirements specified in Article 11, giving the following data:

1) the name, address and domicile of the breeder or the seat address;

2) Polish and Latin names of the plant genus or species;

3) the variety denomination as proposed in the application;

4) the date of submission of the application;

5) the consecutive number of the application;

6) data on:

a) applications for the grant of an exclusive right withdrawn,

b) decisions issued in the cases of:

- granting the exclusive right,
  - refusal to grant the exclusive right,
  - cancellation of the exclusive right,
  - nullity of the exclusive right,
- c) changes of breeders and their representatives,

d) settlement of appeals against decisions of the Director of the Centre.

2. The Centre shall make available to breeders, with prejudice to Art. 11 paragraph 5, the documents attached to the application for the grant of an exclusive right and the documents relating to the examination for distinctness, uniformity and stability referred to in Art. 15 paragraph 1.

#### Article 14

1. <sup>(19)</sup> A breeder who lodged an application for the grant of an exclusive right shall enjoy a provisional exclusive right since the date of publication of information on that application in the Polish Gazette.

2. The provisions relating to an exclusive right shall be applicable accordingly to the provisional exclusive right.

3. The provisional exclusive right shall expire on the date of entry into force of the decision on the grant or on the refusal of the grant of an exclusive right.

#### Article 15

1. Before an exclusive right has been granted, the Centre shall perform the examinations for distinctness, uniformity and stability, hereinafter referred to as the "DUS testing", unless it deems the results of the examinations carried out by the authority performing official examinations in another associated state to be sufficient.

2. The DUS tests shall be carried out in accordance with the examination methodology established for a given species for a period necessary for completing of testing of the variety distinctness, uniformity and stability.

3. Before the beginning of the DUS tests, the Centre shall inform in writing the breeder of the date of starting and the expected time of completion of the examinations.

4. The breeder shall be obliged to deliver to the Centre, free of charge, variety propagating material for the purpose of the DUS testing.

5. The minister competent for agriculture shall lay down in Regulation the quantity of the variety propagating material necessary for carrying out of the DUS tests and the time limits for the delivery of those propagating material to the Centre, taking into account the biological characteristics of the plant species in question.

6. <sup>(20)</sup> (repealed).

#### Article 16

1. During the DUS testing, the breeder shall be obliged to:

1) make possible for the Centre to:

a) control the maintenance of the variety,

b) access to the documents relating to the variety maintenance;

2) provide, upon request of the Centre, written clarifications and information necessary for the performance of the DUS tests.

2. The breeder shall be given the possibility to get acquainted with the course and the results of the DUS tests for his variety, and, after the issue of the decision on the grant of an exclusive right, the breeder shall receive a final report of the DUS tests.

#### Article 17

1. If the Centre does not perform the DUS tests in given species, it may:

1) commission to carry out such tests or their parts to another testing authority, or

2) accept the results of those tests carried out abroad - at the breeder's expense, provided that he gives the written consent.

2. The Centre, before commissioning the performance of the DUS tests or before the acceptance of the DUS test results, shall forward to the breeder written information on costs relating to those tests.

3. <sup>(21)</sup> (repealed).

#### Article 18

1. Any person may lodge with the director of the Centre a written objection to the grant of an exclusive right, if he/she is in possession of documents or information confirming that:

1) the variety does not comply with the conditions referred to in Art. 4 paragraph 1, or

2) the breeder is not authorised for submitting an application for the grant of an exclusive right.

2. The Centre, within 14 days of the date of settlement of the objection to an exclusive right, send written information to the objector on the admittance or the refusal of the objection.

3. Written information referred to in paragraph 2 shall contain the justification indicating the reasons for the admittance or the refusal of the objections to an exclusive right.

4. Notwithstanding the admittance of the objections for the reason referred to in paragraph 1 intend 2, and filing an application for the grant of an exclusive right by an authorised breeder, the results of the DUS tests concerning a given variety shall be acknowledged.

#### Article 19

1. The Centre shall charge fees for submission an application for the grant of the exclusive right, for the DUS tests as well as for the grant and the maintenance of the exclusive right.

2. The fees for the DUS tests shall not be charged, if the breeder bore the costs referred to in Art. 17 paragraph 1.

3. The minister competent for agriculture, in consultation with the minister competent for public finance, shall lay down in a Regulation the rates of fees referred to in paragraph 1, the way and the time

limits of payment thereof, taking into account the costs relating to carrying out of the examinations and to the grant of an exclusive right.

#### Article 20

1. After completion of the DUS tests, the director of the Centre shall make a decision concerning the grant of an exclusive right.

2. If two or more persons bred, or discovered and developed the variety jointly, the exclusive right shall be granted jointly to them.

3. <sup>(22)</sup> The director of the Centre shall refuse, by way of a decision, to grant an exclusive right, if:

1) the variety fails to meet the conditions referred to in Article 4 (1), or

2) the breeder applying for the exclusive right:

a) has failed to submit propagating material to the Centre in order to carry out the DUS tests within the period specified in the provisions issued pursuant to Article 15 (5) or

b) fails to pay the fees due for the DUS tests.

4. An appeal to the minister competent for agriculture shall lie from decisions relating the grant of the exclusive right.

#### Article 21

The exclusive right shall include:

- 1) production or reproduction (multiplication);
  - 2) conditioning for the purpose of propagation;
  - 3) offering for sale;
  - 4) selling or other marketing;
  - 5) exporting;
  - 6) importing;
  - 7) stocking
- of the protected variety propagating material.

## Article 22

1. The exclusive right shall also cover:

1) <sup>(23)</sup> harvested material or products produced directly from that material, if the breeder had no possibility of exercising of the exclusive right to the protected variety propagating material;

2) propagating material of ornamental and horticulture plants, if they are reused for commercial purposes as:

a) reproduction material for the propagation of ornamental plants, or

b) cut flower, or

c) propagating material of trees, bushes and perennials;

3) varieties:

a) derived, discovered or produced from a protected initial variety which is not a derived variety,

b) which are not clearly distinct from the protected variety,

c) in those cases where the production of propagating material requires repeated use of a protected variety.

2. A variety shall be regarded as derived from the initial variety, if it is distinct from the initial variety and if:

1) is predominantly derived from initial variety or other derived variety from the same initial variety while retaining the essential characteristics resulting from the genotype or a combination of genotypes of the initial variety;

2) its characteristics are consistent with essential characteristics of the initial variety resulting from its genotype or a combination of genotypes, except for differences resulting from the use of the following breeding techniques:

a) selection of natural or induced mutants,

b) selection of new forms from initial varieties,

c) using backcrossings,

d) genetic engineering.

3. The provisions of paragraph 1 and Art. 21 shall not apply to propagating material and harvested material intended for:

1) private, non-commercial purposes;

2) experimental purposes;

3) breeding of new varieties, excluding the varieties referred to in paragraph 1 intend 3, if these varieties are to be used for commercial purposes.

Article 23 <sup>(24)</sup>

1. A holder of agricultural land may, against payment for the breeder, use the harvested material as propagating material of the variety protected by the exclusive right, notwithstanding Paragraph 3.

2. The right to use the harvested material as material referred to in paragraph 1:

1) shall apply to variety propagating material of the following plants:

a) wheat,

b) rye,

c) barley,

d) triticale,

e) oats,

f) maize,

g) winter oilseed rape,

h) potato;

2) shall not apply to hybrid varieties and varieties bred from free crossing of specified lines of allogamous species (synthetic varieties).

3. A holder of agricultural land of up to 10 ha may use the harvested material of variety protected by

the exclusive right, being a plant variety referred to in Paragraph 2 (1) as propagating material, without the necessity to pay the remuneration to the breeder.

4. The amount of remuneration referred to in Paragraph 1, method and date of payment shall be decided in the agreement concluded between:

- 1) a breeder and a holder of agricultural land, or
- 2) a breeder and an organisation representing holders of agricultural land, or
- 3) an organisation of breeders and a holder of agricultural land, or
- 4) an organisation of breeders and an organisation representing holders of agricultural land

- and should be lower than the rate of royalty paid for a given category of certified propagating material, set by the breeder of that variety.

5. If the agreement referred to in Paragraph 4, has not been reached, the remuneration for the breeder:

- 1) amounts to 50% of the royalty for a given category of propagating material, set in a given year by the breeder of the variety;
- 2) should be paid within 30 days from the day of use of the harvested material referred to in Paragraph 2 (1) as propagating material of the variety protected by the exclusive right.

6. If the holder of agricultural land fails to pay the remuneration referred to in Paragraph 1, the breeder may request payment of statutory interests for each day of the delay.

#### Article 23a <sup>(25)</sup>

1. A holder of agricultural land, excluding a holder of agricultural land specified in Article 23 (3), or an organisation representing the holders of agricultural land, shall provide the breeders or breeders' organisations, on their request, with written information about the use of harvested material referred to in Article 23 (2) (1) as propagating material.

2. The application referred to in Paragraph 1 shall include, in particular:

1) the breeder's name and address of domicile or name and address of the breeder's seat;

2) indication of:

a) variety/varieties, with respect to which the breeder or breeders' organisation applies for information,

b) amount of royalty paid for the respective plant varieties, referred to in (a).

3. Method and scope of providing information referred to in Paragraph 1 shall be laid down in the agreement referred to in Article 23 (4).

4. If the agreement referred to in Article 23 (4) is not concluded, information referred to in Paragraph 1 shall include:

1) the name and address of domicile or name and address of the seat of the holder of agricultural land;

2) data allowing identification of agricultural parcels within the meaning of the provisions on the national register of producers, agricultural holdings and register of aid applications, included in the agricultural holding of the holder of agricultural land;

3) declaration of a holder of agricultural land on the use of or failure to use the harvested material referred to in Article 23 (2) (1) as propagating material with reference made to the denominations of varieties with respect to which the breeder has the exclusive right;

4) indication of the quantity of harvested material referred to in Article 23 (2) (1) used as propagating material:

5) name and address of domicile or name and address of the seat of the processor who provided a service to the holder of agricultural land, consisting in the conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material;

6) name and address of domicile or name and address of the seat of the entity from which the holder of agricultural land purchased the certified propagating material of variety or varieties referred to in Paragraph 2 (2) (a), including the quantity of this material.

5. The provisions of Paragraph 1, Paragraph 2 (1) and (2) (a) as well as Paragraph 4 in the scope of obligation to provide the breeder or breeders' organisation with written information is applicable to the State Plant Health and Seed Inspection, if it has such information.

#### Article 23b <sup>(26)</sup>

1. The processor or processors' organisation shall provide the breeder or breeders' organisation, on their request, with written information about the service provided to the holder of agricultural land, consisting in conditioning the harvested material referred to in Article 23 (2) (1) to be used as propagating material.

2. The provisions of Article 23a (2) shall apply accordingly to the request referred to in Paragraph 1.

3. The method and scope of providing information referred to in Paragraph 1 shall be decided in the agreement concluded by the processor or processors' organisation and the breeder or breeders' organisation.

4. If the agreement specified in Paragraph 3 is not concluded, information referred to in Paragraph 1 shall include:

1) name and address of domicile or the name and address of the seat of the processor;

2) declaration of a processor about performance of the service of conditioning the harvested material referred to in Article 23 (2) (1) to be used as propagating material with respect to the variety or varieties to which the breeder has the exclusive right, including the date of service performance;

3) quantity of harvested material referred to in Article 23 (2) (1) with respect to which the processor performed the service of conditioning the harvested material, as well as the quantity of propagating material obtained;

4) name and address of domicile or name and address of the seat of the holder of agricultural land, to whom the processor provided a service consisting in the conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material.

#### Article 23c <sup>(27)</sup>

1. Breeders or breeders' organisations shall be entitled to check compliance of information referred to in Article 23a (1) and Article 23b (1) with the actual state.

2. The method and scope of the check referred to in Paragraph 1 shall be laid down in the agreement concluded between the breeder or breeders' organisation and:

1) holder of agricultural land;

2) organisation representing holders of agricultural land;

3) processor;

4) processors' organisation.

3. If the agreement referred to in Paragraph 2 is not concluded, inspection shall be carried out by the breeder or breeders' organisation or the person authorised pursuant to the breeder's or breeders' organisation authorisation.

4. In order to carry out the check:

1) holder of agricultural land:

a) shall ensure access, on the request of the inspecting entity, to the documents confirming compliance of information provided to the breeder pursuant to Article 23a (1) and the actual state,

b) shall ensure access to agricultural land, farm buildings, working facilities and other utility facilities as well as the means of transport;

2) processor:

a) shall provide access, to the following documents on the request of the inspecting entity:

- documents concerning services consisting in conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material,



- documents with information on the quantity of harvested material referred to in Article 23 (2) (1) with respect to which the processor carried out conditioning of the harvested material as well as on the quantity of propagating material obtained,

b) shall ensure access to the processing or storing facilities and devices for the inspecting entity.

5. The inspecting entity shall draw up inspection report.

6. The report shall be signed by the inspecting entity and the holder of agricultural land or the processor.

7. Should the holder of agricultural land or the processor refuse or be unable to sign the report, it shall be signed by the inspecting entity with a reference made in the report on refusal or the reasons preventing from signing of the report.

#### Article 24

After the grant of the exclusive right the breeder shall be obliged to:

1) maintain the variety;

2) deliver to the Centre, free of charge, variety propagating material, as well as propagating material of the components used for production of the hybrid variety, in quantities essential for the performance of the DUS tests;

3) provide, upon request of the Centre, information and explanations concerning the variety;

4) enable the Centre to access to the documents related to the variety.

#### Article 25

Any person who makes use of the propagating material of the protected variety is obliged to, upon request of the breeder holding the exclusive right to this variety, provide him with written information concerning the quantity of propagating material of the protected variety and make a payment for the breeder equivalent to the royalty for exploitation of the exclusive right to this variety.

#### Article 26

1. If the breeder has been changed, the new breeder shall be obliged to notify of this fact in writing to the Centre within 30 days of the date, on which this change has taken place.

2. The breeder referred to in paragraph 1 shall attach a copy of the documents confirming his right to the variety.

#### Article 27

1. The exclusive right shall be effective starting from the date of making a decision on grant and shall last for:

1) 30 years – in the case of vine, trees and potato varieties;

2) 25 years – in the case of other varieties.

2. <sup>(28)</sup> In cases where a breeder of the variety protected by the exclusive right in the Republic of Poland shall be granted the Community plant variety right, the exclusive right granted in the Republic of Poland shall be suspended for the period, throughout which the breeder shall enjoy the Community plant variety right.

#### Article 28

1. The exclusive right, without prejudice to paragraph 2, shall expire if:

1) propagating material;

2) harvested material;

3) products produced directly from the harvested material;

4) varieties referred to in Art. 22 paragraph 1, intend 3

- shall be sold or otherwise disposed of to others by the breeder or with his written consent.

2. The exclusive right shall not expire if the purchaser of the variety propagating material:

1) shall use it for renewed propagation;

2) shall export it to a country, which do not provide any protection of the exclusive right to the variety of the plant species in question, unless the harvested material shall be used for consumption purposes in that country.

#### Article 29

1. The director of the Centre shall cancel, in an administrative decision, the exclusive right of the breeder:

- 1) upon his own request;
- 2) if the variety does not comply with the conditions of uniformity or stability;
- 3) if the breeder:
  - a) does not maintain the variety,
  - b) is delayed over 6 months with the payment of fees referred to in Art. 19 paragraph 1,
  - c) renders impossible carrying out of a control of the maintenance of the variety and examination of the documents relating to the variety maintenance,
  - d) does not provide the information and explanations essential for carrying out of the DUS tests,
  - e) has not delivered, free of charge, the variety propagating material in quantities indispensable for carrying out of the DUS tests,
  - f) does not submit a new denomination to the variety in case where the denomination of the variety entered into the register of granted titles of exclusive rights referred to in Art. 36 paragraph 1, does not comply with the conditions listed in Art. 9 paragraph 1.

2. An appeal to the minister competent for agriculture shall lie from decision on the cancellation of the exclusive right of the breeder.

#### Article 30

1. The breeder holding an exclusive right may, on the basis of an exploitation right agreement, grant

another person the authorisation licence for exploitation of the exclusive right.

2. The exploitation right agreement requires written form under clause of nullity.

3. Exploitation of the exclusive right may be restricted in the exploitation right agreement (limited licence); if in the exploitation right contract the scope of using the exclusive right has not been limited, the holder of an exploitation right has a right to exploit the exclusive right in the same scope as the licensor (unlimited licence).

4. In cases where the exclusive exploitation of the exclusive right has not been reserved in the exploitation right agreement, the grant of an exploitation right to one entity does not preclude the possibility of granting the exploitation right to other entities, and also simultaneous exploitation of the exclusive right by the breeder (non-exclusive licence).

5. The party enjoying the exploitation right may grant another exploitation right (sub-licence) only with a written consent of the breeder; the grant of another one sub-licence shall be prohibited.

#### Article 31

1. If the breeder holding the exclusive right to a given variety does not place its propagating material or harvested material on the market, and this is demanded by important national economy interest, the minister competent for agriculture may grant, in a decision, a compulsory licence to another entity, unless the breeder has not placed the propagating material or harvested material on the market due to force majeure.

2. The compulsory licence right may also be granted if the applicant demonstrates that:

1) he applied for the exploitation right from the breeder, who has not introduced the variety propagating material on the market, or

2) the royalty demanded by the breeder is disproportional to the value of the propagating material, or

3) the proposed by the breeder quantity of propagating material is insufficient for the propagation of a given variety in order to place it on the market.

3. The compulsory licence shall be granted upon request of the interested party.

4. The compulsory licence shall be a non-exclusive one.

#### Article 32

1. Application for the grant of compulsory licence shall be filed to the minister competent for agriculture via the director of the Centre.

2. The director of the Centre shall forward the application referred to in paragraph 1 along with an opinion on the necessity of placing on the market of a specified quantity of propagating material or harvested material.

3. The application for the grant of compulsory licence shall include:

1) name, address and domicile of the applicant, or the site address;

2) name, address and domicile of the breeder referred to in Art. 31 paragraph 1, or the site address;

3) specification of the species in the Polish language and in Latin and the denomination of the variety, the applicant applies for;

4) specification of the proposed quantity of variety propagating material necessary for the multiplication;

5) specification of the proposed duration of the compulsory licence;

6) specification of the proposed remuneration to the breeder;

7) indication of an important national economy interest.

4. The application for the grant of a compulsory licence shall be accompanied by the declaration on fixed assets and equipment used for the propagation of the variety, along with description thereof.

#### Article 33

A compulsory licence right shall include:

1) the name, address and domicile of a person who has been granted the compulsory licence and his site address;

2) the name, address and domicile of the breeder or his site address;

3) specification of the species in Polish language and in Latin and the denomination of the variety;

4) specification of the duration of an the licence;

5) specification of the amount of the remuneration to the breeder;

6) specification of the quantity of propagating material needed for the multiplication of the variety in order to place it on the market.

#### Article 34

1. The minister competent for agriculture shall notify in writing to the director of the Centre on issuing of the decision on the grant of a compulsory licence.

2. The Centre shall publish in its Gazette information on compulsory licences granted.

3. The breeder referred to in Art. 31 paragraph 1 shall be obliged, within 30 days of the date of receipt of written information on issuing of the decision on the grant of a compulsory licence, provide to the holder of a compulsory licence the variety propagating material in quantities indispensable for the propagation of this variety in order to place it on the market.

#### Article 35

1. The minister competent for agriculture:

1) shall cancel a compulsory licence if the holder of the compulsory licence has not placed on the market the variety propagating material covered by the compulsory licence in the nearest growing period following the grant of the compulsory licence;

2) may cancel the compulsory licence on the request of the breeder referred to in Art. 31 paragraph 1, if the breeder placed on the market variety propagating material or harvested material of a variety covered by the granted compulsory licence.

2. The request referred to in paragraph 1 intend 2 shall be accompanied by a copy of documents evidencing that the breeder placed the propagating material on the market.

3. The minister competent for agriculture may cancel the compulsory licence in the case referred to paragraph 1 intend 2, if since the day of issuing of the decision, elapsed:

- 1) 2 years – in the case of annual varieties, or
- 2) 3 years – in the case of biennial varieties, or
- 3) 5 years – in the case of perennial varieties.

#### Article 36

1. The Centre shall keep a register of granted titles of exclusive rights, hereinafter referred to as the "register", and a list of varieties, for which applications for the grant of an exclusive right have been filed, hereinafter referred to as the "list".

2. The register shall contain specification of the protected varieties and their breeders as well as the licensees, who were granted a compulsory licence.

3. The list is a specification of the varieties for which applications for the grant of the exclusive right have been filed as well as the breeders who were granted the provisional exclusive rights.

4. A variety entered into the list or the register shall receive a number, which consists of the consecutive number taken from the list or from the register and a capital letter standing for a given group of plants.

5. The variety number on the list shall be preceded additionally by capital letter T, which means that the variety has been granted the provisional exclusive right.

6. The following letter designations shall be used for individual plant groups:

- 1) R – agricultural plants;
- 2) W – vegetables;
- 3) S – fruit plants;
- 4) L – forest plants;
- 5) O – ornamental plants;
- 6) P – other plants.

7. The register shall contain:

- 1) the name, address and domicile of the breeder, or the site address;
- 2) the species name in Polish and in Latin and the variety denomination;
- 3) the date of the grant and expiry of an exclusive right;
- 4) the designation of the breeder's country;
- 5) information indicating whether or not the variety has been genetically modified.

8. The list shall contain:

- 1) the name and address and domicile of the breeder, or the site address;
- 2) the species name in Polish and in Latin and the variety denomination;
- 3) the date of the grant and expiry of a provisional exclusive right;
- 4) the designation of the breeder's country;
- 5) information indicating whether or not the variety has been genetically modified.

#### CHAPTER 2a<sup>(29)</sup>

#### PURSUIT OF CLAIMS UNDER CIVIL LAW PROCEDURE

#### Article 36a

1 The breeder, whose exclusive right has been

infringed, may demand from the person who infringed such right:

- 1) to cease infringing the right;
- 2) to eliminate the results of the infringement;
- 3) to compensate for the damages:

a) in line with general principles, or

b) by paying a certain amount of money corresponding to the license fee that would be due for granting the license by the breeder on the date of the claim; in the case of culpable infringement the amount would be a multiple of the remuneration, yet not higher than the multiple of three;

4) to return the benefits received.

2. Regardless of the claims referred to in Paragraph 1 the breeder may demand a one-time or a repeated announcement in the press, suitable in its form and content, or making the court ruling issued in this case publicly known in part or in full, in the manner and extent established by the court.

3. On the request of infringer and with the consent of the breeder, the court may order the infringer to pay an appropriate amount to the breeder, when the infringement was accidental, if discontinuance of infringement or elimination of its effects would be disproportionately severe for the infringer.

4. When ruling on the right infringement, upon the request of the breeder, the court may rule on the illegally produced seed or the harvest material as well as means and materials used to produce them, in particular the court may rule to withdraw them from the market and furnish the breeder on account of the due compensation, or to destroy them. While ruling, the court shall take into account the gravity of the infringement and the interest of third parties.

5. It is conjectured that the means and materials referred to in Paragraph 4 belong to the person that infringed the exclusive right.

#### Article 36b

1. The court competent for cases of infringement of the exclusive right of the place where the perpetrator

is carrying his/her activities, or in which his/her property is located, shall also try the request of the person having a legal interest in it within 3 days following submission of the request to the court before the action is brought on:

1) for securing evidence and securing related claims;

2) for obliging the infringer to deliver information and documentation identified by the court and significant for the claims, referred to in Article 36a (1);

3) for obliging a person other than the infringer to deliver information significant for the claims, referred to in Article 36a (1) on the origin, distribution networks, quantities and the price of goods or services infringing the exclusive right, if:

a) it has been found that the person is in hold of goods infringing the exclusive right, or

b) it has been found that the person uses the services infringing the exclusive right, or

c) it has been found that the person provides services used in activities infringing the exclusive right, or

d) such person has been pointed out by the person referred to under letters (a), (b) or

c) as a person participating in production, manufacturing or distribution of goods or providing services infringing the exclusive right, and the above-mentioned activities are intended to obtain profit or other economic benefit directly or indirectly, yet they do not include activities of consumers acting in good faith.

2. While accepting evidence or trying the requests referred to in Paragraph 1, the court shall ensure confidentiality of the entrepreneur and other statutory secrets.

3. The obligation referred to in Paragraph. 1 (1) and (2) may be evaded by any one who has the right to deny testimony or to refuse answering questions posed to him/her in line with the provisions of the Code of Civil Procedure.

4. In justified cases the court decision to secure evidence referred to in Paragraph 1 (1) may be conditional on payment of a bail.

5. Objections against the court rulings in the cases referred to in Paragraph 1 shall be examined by the court within 7 days.

6. Article 733, Article 742 and Articles 744-746 of the Code of Civil Procedure shall apply to the evidence securing.

### CHAPTER 3

#### PENAL PROVISIONS

##### Article 37 <sup>(30)</sup>

1. Any person who:

1) violates a variety exclusive right;

2) designates propagating material or harvested material of other or unknown variety with the denomination of a variety protected with the exclusive right

- shall be liable to a fine, detention order or deprivation of liberty up to one year.

##### Article 37a <sup>(31)</sup>

Whoever:

1) prevents the check of variety maintenance,

2) prevents access to documents concerning the variety maintenance,

3) fails to provide propagating material of the varieties to the Centre for DUS tests or to the entity

granted compulsory licence or provides it in an insufficient quantity or after the deadline set,

4) fails to provide, on the request of the breeder whose variety is covered by the exclusive right or the breeders' organisation, information referred to in Article 23 (6) and Article 23b (1), or provides false information,

5) prevents the check referred to in Article 23c (1), to carried out by the breeder or breeders' organisation

- shall be punishable with fine.

##### Article 37b <sup>(32)</sup>

In the cases referred to in Article 37a judicial decisions shall be issued in accordance with the provisions of the Petty Offences Proceedings Code.

### CHAPTER 4

#### TRANSITIONAL AND FINAL PROVISIONS

##### Article 38

The compulsory licences issued on the basis of the provisions so far in force shall be valid until the end of the period for which they were issued.

##### Article 39

The register and the list, kept on the basis of the provisions so far in force, with the day of entry into force of this Law shall become accordingly the register and the list as understood in this Law.

##### Article 40

This Law shall enter into force on the day, on which the Republic of Poland shall receive the membership in the European Union.

**Footnotes:**

- <sup>(1)</sup> Article 2 (1) (1) as amended by Article 1 Subparagraph 1 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(2)</sup> Article 2 (1) (2) as amended by Article 1 Subparagraph 1 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(3)</sup> Article 2 (1) (7) B as amended by Article 1 Subparagraph 1 (a) second indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(4)</sup> Article 2 (1) (10) as amended by Article 1 Subparagraph 1 (a) third indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(5)</sup> Article 2 (1) (13) as repealed by Article 1 Subparagraph 1 (a) fourth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(6)</sup> Article 2 (1) (14) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(7)</sup> Article 2 (1) (15) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(8)</sup> Article 2 (1) (16) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(9)</sup> Article 2 (3) as added by Article 1 Subparagraph 1 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(10)</sup> Article 4 (1) as amended by Article 1 Subparagraph 2 (a) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(11)</sup> Article 4 (6) as amended by Article 1 Subparagraph 2 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(12)</sup> Article 4a as added by Article 1 Subparagraph 3 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(13)</sup> Article 9 (3) as amended by Article 1 Subparagraph 4 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(14)</sup> Article 10 (3) as amended by Article 1 Subparagraph 5 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(15)</sup> Article 11 (3) (3) as repealed by Article 1 Subparagraph 6 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(16)</sup> Article 11 (3) (5) as added by Article 1 Subparagraph 6 (a) second indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(17)</sup> Article 11 (5) as amended by Article 1 Subparagraph 6 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(18)</sup> Article 13 (1) as amended by Article 1 Subparagraph 7 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(19)</sup> Article 14 (1) as amended by Article 1 Subparagraph 8 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(20)</sup> Article 15 (6) as repealed by Article 1 Subparagraph 9 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(21)</sup> Article 17 (3) as repealed by Article 1 Subparagraph 10 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(22)</sup> Article 20 (3) as amended by Article 1 Subparagraph 11 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(23)</sup> Article 22 (1) (1) as amended by Article 1 Subparagraph 12 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(24)</sup> Article 23 as amended by Article 1 Subparagraph 13 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(25)</sup> Article 23a as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(26)</sup> Article 23b as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.

- <sup>(27)</sup> Article 23c as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(28)</sup> Article 27 (2) as amended by Article 1 Subparagraph 15 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(29)</sup> Chapter 2a as added by Article 5 of the Act of 9 May 2007 amending the Act on copyrights and related rights and certain other acts (O.J.07.99.662) on 20 June 2007.
- <sup>(30)</sup> Article 37 as amended by Article 1 Subparagraph 16 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(31)</sup> Article 37a as added by Article 1 Subparagraph 17 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(32)</sup> Article 37b as added by Article 1 Subparagraph 17 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.



## ROMANIA

**LAW ON THE PROTECTION OF THE NEW PLANT VARIETIES No. 255/1998  
as amended in 2006 (consolidated text)\***

CHAPTER I  
General Provisions

Article 1  
Object of protection

(1) Breeder's rights in the new plant varieties of all genera and species of plants, including, among others, the hybrids between genera and species, are protected, recognized and defended on the territory of Romania, through the grant of a variety patent by the State Office for Inventions and Trademarks, hereinafter referred to as the Office, in the conditions specified in this Law.

(2) The rights conferred by paragraph (1) may not violate the legal provisions adopted on the grounds of the public morality, public order, protection of health and life of humans, animals and plants, the protection of the environment, the protection of industrial or commercial property, or the safeguarding of competition, of trade and of agricultural production.

Article 2  
Definitions

For the purposes of this Law the terms and expressions below are defined as follows:

a) variety a plant grouping within a single botanical taxon of the lowest known rank, which grouping is:

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

2) distinguished from any other plant grouping by the expression of at least one of the characteristics under para 1);

3) considered as a unit with respect to its suitability for being propagated as such;

b) protected variety a cultivated variety for which a variety patent has been granted by the Office;

c) propagating material seeds, entire plants or various parts of plants which are capable of reproducing the entire plants;

d) breeder means:

1) the person who has bred or discovered and developed a new variety;

2) the person who is the employer of the person referred to in para (1) or who has commissioned the work of creating new varieties in accordance with the Law or based on an agreement specifying that the breeder's right belongs to the former;

3) the successor in title of the person under para (1) or (2), as the case may be;

e) applicant the person who has filed an application for the grant of a variety patent with the Office;

f) variety patent holder the person who holds the variety patent or the successor in title thereof;

g) growing tests experiments organized in the vegetation for determining distinctness, uniformity and stability;

h) Convention the international Convention for the protection of the new plant varieties, of 2 December 1961, reviewed in Geneva on 10 November 1972, on 23 October 1978 and on 19 March 1991, to which Romania adhered by the Law no. 186/2000, published in the Official Gazette of Romania, Part I, no. 547 of 6 November 2000;

\* English translation of consolidated text provided by the Romanian authorities. Law on the Protection of the New Plant Varieties No 255/1998 as amended in 2006 and published in the Official Gazette of Romania, Part 1, No. 65/26.01.2006.

i) Community Office the Community Office for the protection of plant varieties;

j) Official Bulletin the Official Industrial Property Bulletin New plant variety section;

k) national authority the authority responsible to perform the growing tests.

### Article 3 National Treatment

Any foreign natural persons or legal entities having his place of residence or registered office outside the territory of Romania shall also benefit by the provisions of this Law in terms of the international convention under Art. 2 letter h) and of other conventions to which Romania is a party.

### Article 4 Representation

1. The natural persons or legal entities applying for the protection of a new plant variety may be represented in the proceedings before the Office by an authorized representative, in the conditions and within the time limits stipulated by the Implementing Regulations of this law.

2. The representation is compulsory for the natural persons and legal entities not having the place of residence or the registered office within the territory of Romania.

## CHAPTER II Patentability of New Plant Varieties

### Article 5 Conditions of Granting Protection

(1) The Office shall grant protection for a new plant variety and issue a variety patent if the variety is:

- a) new;
- b) distinct;
- c) uniform;
- d) stable.

(2) The variety shall be designated by a denomination in conforming to the provisions of Article 15.

### Article 6 Novelty

(1) The variety is new if, on the date of filing the application for the grant of the variety patent, or on the priority date, propagating material or harvested material of the variety has not been sold or otherwise disposed of to the third parties, either by or with the consent of the breeder, for the purpose of commercial exploitation of the new variety:

(a) on the territory of Romania, earlier than one year before the filing date of the application for a variety patent;

(b) on the territory of other States, earlier than four years before the filing date of the application for a variety patent, and earlier than six years for trees or vines.

(2) Novelty shall likewise not be lost where the variety:

(a) forms the object of an agreement on the transfer of rights, unless the commercial exploitation of the new variety took place prior to the filing of the application;

(b) forms the object of an agreement between the breeder and another person, by virtue of which the breeder authorizes the multiplication of the propagating material under his control;

(c) forms the object of an agreement between the breeder and a third party concerning the conduct of a study or of a field test or laboratory trials, or of smallscale processing trials for the evaluation of the new variety;

(d) has been disposed of to a third party as propagating or harvested material of the variety as a consequence of using it for the purposes specified in Article 34 and that is not used for subsequent propagation, these acts not being deemed commercial exploitation of the new variety within the meaning of Article 34;

(e) has been disposed of as a result of the breeder having displayed the new variety at an officially recognized exhibition;

(f) has been disposed of to an official body, for statutory purposes or under a contract, with a view to producing, reproducing, multiplying, processing or storing, provided that the person applying for the protection retains the exclusive right of exploitation of the variety, with the proviso that no other previous disposal of for commercial purposes has taken place;

if the variety has been thus disposed of for the production of a hybrid which has been marketed, the provisions of paragraph (1) shall be applied;

(g) has been disposed of by a company or firm to another company or firm to which it is subordinated, or if both companies or firms are wholly owned by a third such company or firm, provided that no other such disposal of had taken place.

Article 7  
Distinctness

(1) The variety is distinct if it is clearly distinguishable by the expression of one or more relevant characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the filing date of the plant variety application with the Office, or, where applicable, on the date of the claimed priority.

(2) The distinctness of a variety is defined by characteristics that are capable of precise recognition, description and identification.

(3) The varieties deemed to be a matter of common knowledge are the ones:

(a) protected in Romania and entered in the National Register of variety patents, or in other contracting States to the Convention;

(b) entered in the Official Catalogue of Varieties Marketed in Romania or in similar registers and catalogues from other contracting States to the Convention;

(c) for which there exists an application filed for the variety protection or for entering the same in a register for varieties in Romania, provided that the application leads to the grant of the protection or to the registration of the variety;

(d) for which there exists an application filed abroad for the grant of the protection or for the registration of the variety, provided that the application leads to the grant of the protection or to registration;

(e) offered for sale or sold on the territory of Romania or of other States.

Article 8  
Uniformity

A variety is uniform if, subject to the variation that might be expected of it, during its propagation cycle, its plants are sufficiently uniform in the expression of the relevant characteristics, including the ones used in the examination for variety distinctness, as well as any other characteristics used for variety description.

Article 9  
Stability

The variety is stable if the characteristics relevant for establishing distinctness or any other characteristics for the variety description remain unchanged after repeated propagation, or in special cases, at the end of each propagation cycle.

CHAPTER III  
RIGHT TO PROTECTION

Article 10  
Right to a Variety Patent

(1) The right to a variety patent shall belong to the breeder and may be transferred by assignment.

(2) If more breeders have bred or discovered and developed a new variety jointly, the right to the variety patent shall belong to them jointly.

(3) The provisions of para (2) shall also apply when two or more persons discovered the variety and other person or other persons developed it.

(4) The right to the variety patent shall also belong jointly to the breeder and to any other person if the breeder and the other person have declared in writing that they agree to such joint entitlement.

(5) The breeder, who created a new variety during an employment relationship is entitled, unless otherwise provided for in his individual employment contract,

to the variety patent and to an equitable remuneration.

(6) Where entitlement to a variety patent is vested jointly in two or more persons pursuant to para.(2) (4), one or more of them may empower the others, by written declaration to such effect, to claim the right to variety patent.

#### CHAPTER IV

##### Procedure for the Examination of Applications for Variety Patents

###### Article 11

###### Filing of the Application for Variety Patent

The application for the grant of a variety patent may be filed by any natural person or legal entity, or by the professional representative thereof:

- (a) at the Office directly;
- (b) by mail;
- (c) by electronic mail.

###### Article 12

###### Content of the Application for the Variety Patent

(1) The application for the grant of a variety patent shall be filed in Romanian on a standardized printed form, and it shall contain:

(a) the applicant's identification data, containing surname, first name, domicile or place of residence for the natural person, or the company denomination, registered office, legal constitution forms for a legal entity;

(b) species denomination in Latin and common denomination in Romanian;

(c) provisional denomination proposal of the new variety;

(d) the technical questionnaire describing the main characteristics of the variety in the standardized form;

(e) information relating to previous application or applications for a possible priority claiming;

(f) information about the previous exploitation of the variety.

(2) The application for the grant of a variety patent shall be accompanied by the following documents:

(a) proof of payment of the fee for the filing of the application;

(b) priority documents;

(c) a power of attorney where the applicant is represented by a representative authorized by the Office, pursuant to Art. 47 (2) letter f).

(3) The variety application shall relate to one variety only.

###### Article 13

###### Filing Date of the Variety Patent Application

(1) The filing date of the variety patent application shall be the date of filing the application with the Office, provided that this application contains at least the requirements specified in Article 12 (1) have been met, and that the application filing fee has been paid.

(2) The variety patent application filing date shall also be the date established in para (1) where the applicants, foreign natural persons or legal entities submitted the documentation in a foreign language, provided that the Romanian translation of the application is filed with the Office within three months of the date of submitting the variety patent application.

###### Article 14

###### Right of Priority

(1) The application for a variety patent confers a right of priority, starting on the filing date, as compared to any variety patent application submitted subsequently for the same variety or for a variety that is not clearly distinguishable from it as provided in Article 7.

(2) Any person who has previously filed a first application in a contracting State to the Convention or with the Community Office, shall enjoy a right of priority of 12 months of the filing date of the first application if, within that period, he applies to the Office for the grant of a variety patent, provided that the first application has been attributed a filing date.

(3) In order to prove the priority from another State, the applicant shall submit to the Office, within three months from the filing of the application, a certified copy of the documents of the first application, as well as the propagating material or other evidence proving that the varieties referred to in both applications are identical.

(4) Priority claimed under paragraph (3), above shall be recognized in so far as the priority fee prescribed by law has been paid.

(5) Failure to observe the time limit provided for in paragraph (2) above or failure to pay the priority fee shall result in nonrecognition of the claimed priority.

(6) Acts performed within the period provided for in paragraph (2), such as the filing of another application, publication or use of the variety to which the first application relates, do not constitute grounds for refusal of the subsequent application and do not give rise to any third party rights.

(7) The applicant is entitled to a twoyear grace period after the expiry of the priority period or if the first application was refused or withdrawn in order to transmit the documents, information or propagating material required for the examination of the subsequent application.

#### Article 15

##### Variety Denomination

(1) The variety shall be designated by a generic denomination to permit its identification.

(2) The same denomination for the same variety will be employed on the territory of Romania and in any State that is a contracting party to the Convention or based on bilateral agreements.

(3) The provisions of paragraph (2) shall not apply if the denomination conflicts with paragraph (7).

(4) The variety denomination shall differ from any other denomination that designates another existing variety belonging to the same or a closely related species, except where the other variety does no longer exist and the denomination thereof does not have a special significance.

(5) The variety denomination shall not consist only of figures, except where this is an established practice for the designation of certain plant varieties.

(6) The variety denomination shall not mislead or cause confusion concerning the characteristics, value or identity of the variety or of the breeder.

(7) If an application for the grant of variety patent is filed in Romania and simultaneously in other countries, the variety shall be registered under the same denomination in all the other countries except where the Office considers the denomination unsuitable.

(8) If, by virtue of a prior right, a denomination has already been used for another variety or may cause confusion in the use of the denomination of another variety, the Office shall request the applicant to submit another denomination for his variety.

(9) In order to establish a correct denomination, the applicant may ask the Office, prior to filing the application, subject to payment of the legal fee, to conduct a search concerning the proposed variety denomination.

(10) Any person who offers for sale or markets propagating material of a protected variety is obliged to use the denomination of that variety even after the expiry of the term of variety protection.

(11) A proposed designation may not be used as a denomination of the protected variety if it is identical or similar to a mark, appellation of origin or geographical indication for protected products identical or similar to the ones the variety refers to, or if infringes other protected industrial property rights.

(12) The variety denomination shall be entered in the National Register of Variety Patents at the same time as the variety patent is issued.

(13) Where at least one of the conditions specified in paragraphs (1) to (11) is not fulfilled, the Office shall cancel the registered denomination and shall grant a 30day time period to the applicant with a view to proposing another denomination.

(14) The variety holder may not use a designation

that is identical with the denomination of the protected variety, in order not to hamper the free use of the variety denomination, even after the termination or the variety patent validity.

(15) A third party may use a right granted in respect of a designation that is identical with the denomination of the protected variety only if this right was previously acquired.

#### Article 16

##### Examination in respect of the Form of the Variety Application

(1) Within two months from the filing date of an application for the protection of a new variety, the Office shall examine the documentation filed by the applicant in respect of satisfying the formal requirements for the application, set forth in Art. 10 (1) to (4) and Art. 12.

(2) If the variety patent application meets the requirements referred to in paragraph (1), the Office shall enter the application into the National Register of the Variety Patent Applications. The entering in the National Register of Variety Patent Applications shall be notified to the applicant.

(3) The new variety patent applications for the protection of the new varieties filed with the Office shall be published, within three months from the date of filing, in the Official Industrial Property Bulletin.

(4) Where the application for the grant of a variety patent does not meet one of the provisions of Article 10, and 12, the Office shall decide, within an Examination Board, to reject the application.

#### Article 17

##### Substantive Examination of the Application

(1) The Office shall, within nine months from the date of filing the application, carry out a substantive examination of the variety patent application documentation with respect to its novelty and variety denomination, as provided for in Article 6, 14 and 15.

(2) The Office shall notify the applicant or his successor in title of the result of the substantive examination of the application; where the result is negative, a period not exceeding three months shall be accorded for reply.

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(3) The applicant may, for legitimate reasons, ask the Office for a two month extension of the period for reply.

(4) If after the substantive examination the Office decides, within the Examination Board, that the application meets the requirements laid down in Articles 6 10, 12 and 15, the variety shall undergo a technical examination by a competent national authority or by another internationally recognized authority to which the Office shall send the documentation within one month from the decision.

(5) Where the application has not met the requirements of Article 6 10, 12 and 15 and the applicant neither responds to the notification within the prescribed period, nor applies for an extension, the Office shall reject the application.

#### Article 18

##### Technical Examination of the New Variety

(1) The variety shall undergo a technical examination carried out by the national authority competent in the field in order:

(a) to verify that the variety belongs to the botanical taxon stated by the applicant;

(b) to establish that the variety is distinct, uniform and stable within the meaning of Article 7 9.

(c) to establish the official description of the variety.

(2) The technical examination shall be performed by a competent national authority.

(3) Where growing tests for a new variety have not been performed by the competent national authority or by an internationally recognized authority, the Office may take into account the technical report drawn up by another competent authority, with the applicant's consent, and provided that the prescribed fee is paid and in complying with the procedure laid down in the Convention.

(4) The competent national authority or a company designated on behalf thereof shall perform the necessary tests to determine whether the provisions of Articles 7 9 have been satisfied. The applicant shall make the propagating material belonging to the variety available free of charge, in the amount and

Law 255/1998 as amended in 2006

on the date requested by the authority conducting the growing tests and shall notify this to the Office.

(5) The competent authority shall send the Office and the applicant a preliminary report within one year from the initiation of variety testing and shall draw up, the technical report comprising the test findings, and the table of characteristics of the new variety within a twoyear period.

(6) The variety testing shall not affect the novelty condition and cannot be used against the grant of the breeder's rights.

(7) Where the growing tests have been conducted by the breeder, they may be subjected to an analysis by the national authority that may confirm their validity.

(8) The competent authority shall confirm the validity of the growing tests through a notification to the Office, accompanied by the table of variety characteristics within six months at the most from transmitting the documentation.

(9) Where the tested variety also satisfies the conditions relating to the agronomic value and of use, with a view to marketing the variety, the applicant may ask the entering of the variety into the Official Catalogue of Cultivated Varieties and Hybrids in Romania, pursuant to the provisions of the Law no. 266/2002 on the production, processing, control and quality certification, marketing of seeds and planting material as well as the registration of the plant varieties.

(10) The Office shall reject the application for a variety patent if the validity of the tests is disputed by the national authority.

(11) The invalidation of the tests performed by the breeder shall be made on justified grounds by the national authority.

(12) The decisions of the Office may be appealed against by the applicant before the Board of Appeal of the Office, within three months from the communication.

## Article 19

### Testing of the Variety

(1) For the testing of the new variety the national authority may conduct its own growing tests or accept the findings of the tests performed by the applicant to make the observations.

(2) The growing tests shall be conducted according to the methodology approved by the Ministry of Agriculture, Forests and Rural Development and by Office on the basis of the European and international guidelines for the testing of the new plant varieties.

(3) After having received the documentation and conducted the examination as to the form, the Office shall transmit the documentation to the national authority that shall establish the site for the trials and the amount of material necessary for organizing them and notify the applicant accordingly, inviting him to submit the propagating material requested.

(4) The Office and the national authority may request the applicant to submit all information, documents and materials necessary for the satisfactory conduct of the technical examination.

(5) If, within the period allowed, the information, documents or materials requested are not submitted by the applicant, the Office shall reject the variety patent application.

(6) The applicant has the right, anytime during the testing of the new variety, to ask to inspect the crops.

## Article 20

### Examination of the Facts by the Office of Its Own Initiative

In the proceedings, the Office shall make investigations in respect of the fulfilment of the provisions provided for in Art. 18 and 19.

## Article 21

### Decisions of the Office

(1) The Office shall decide, on the basis of the technical report of the national authority or of an internationally recognized authority, whether the new variety meets the requirements laid down in Article 6 8 and 15 and shall grant the variety patent, or reject the variety patent application, as appropriate.

(2) A decision to reject shall be taken by the Office only after the applicant has been notified of the grounds for rejection and allowed a period of at least three months within which to submit comments.

(3) Decisions shall be published in the first Official Industrial Property Bulletin issued after making the decision.

(4) During the validity term of the variety patent the official description of the protected variety may be amended by the Office or the applicant, subject to mutual consultation, in response to developments in agrobiological knowledge and variety description methods without the scope of protection and the characteristics of the new variety being thereby affected. Amendments made to the official description shall be published in the Official Industrial Property Bulletin.

(5) Decisions of the Office may be challenged by applicants' appeals on just grounds, they being lodged with the Board of Appeal of the Office in accordance with Article 42 (1).

#### Article 22 Oral Proceedings

(1) Oral proceedings shall be held either on the initiative of the Office itself or at the request of any of the parties involved in the appeal proceedings.

(2) Oral proceedings before the Board of Appeal including delivery of the decisions, shall be public in so far as the Board of Appeal does not decide otherwise in circumstances where disadvantages could arise from admitting the public, particularly for any of the parties to the appeal proceedings.

#### Article 23 Provisional Protection

(1) During the period between the publication of the variety patent application under Article 16 (3) and the grant of the variety patent, the applicant shall provisionally enjoy all rights conferred on the variety patent holder, under Article 31 (1).

(2) The infringement by third parties of rights provided for in paragraph (1) above shall make the infringers liable for damages under civil law, payment of the damages being enforceable once the variety patent has been granted.

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(3) The persons who commit the acts provided for in Article 31 (1) without the holder's authorization during the period of provisional protection shall be liable under Article 44 (1) and (2).

(4) When the variety patent application has been rejected, the applicant shall not enjoy the rights provided for in paragraph (1) above.

#### Article 24 Extension of the Time Limit

(1) The time limits for the examination of the application for a variety patent, as well as for repeating the growing tests may be extended by up to one year subject to payment of the legal fees.

(2) Before the expiry of the time limits under Art. 17, the applicant may request, but not more than 2 times, for the extension of the time limits by 3 months, subject to payment of the legal fee.

#### Article 25 Withdrawal of the Application

The application for a variety patent may be withdrawn, on a request submitted to the Office by the applicant, any time until the decision on the grant of the variety patent is taken.

#### Article 26 Revocation of the Variety Patent

(1) Within three months from publication in the Official Bulletin of the grant of variety patent any person concerned may apply to the Office for the revocation of the variety patent, where at least one of the conditions set forth in Articles 6, 10 or 15 has not been met. The request shall be made in writing and substantiated.

(2) The persons who apply to the Office for revocation of the variety patent shall have access to the documents, including the results of the technical examination and the official variety description.

(3) The request for revocation shall be examined by the Board of Appeal within three months from the filing thereof with the Office.

(4) The Board of Appeal may ask the national authority or other authorized institution to repeat the growing

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tests on the variety or to use the services of a crop expert who shall take part in the reexamination of the new variety.

(5) The decision of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced.

(6) The decision of the Board of Appeal may be appealed against as provided in Article 42.

(7) The final and irrevocable decisions shall be published in the first Official Industrial Property Bulletin issued after the decision has been made.

#### Article 27

##### Priority of a New Application in the Case of a Request for Revocation

Where a request for revocation on the grounds that the conditions laid down in Article 10 are not met leads to the withdrawal or refusal of the application for a variety patent, and if the objector files an application for a variety patent within one month following the withdrawal or refusal of the application for the same variety, he may require that the date of the withdrawn or refused application be deemed to be the filing date of his application.

#### Article 28

##### Issue of the Variety Patent and Registration of the Variety Denomination

(1) The variety patent shall be issued by the Director General of the Office in pursuance of the decision to grant the variety patent.

(2) The variety patent and the variety denomination shall be entered in the National Register of Variety Patents, which is open to the public and may be consulted by third parties on payment of the inspection fee prescribed by the law.

(3) Where the application is filed by more applicants, the variety patent shall be issued to the first applicant mentioned in the application and the others shall be issued duplicates thereof.

(4) Where the breeder is not the holder of the patent, he shall be entitled to receive a duplicate of the granted variety patent on request.

#### Article 29

##### Fees for the Grant of Variety Patent and Registration of Variety Denomination

(1) For the examination procedures before the Office, the applicant shall pay fees according to the Government Ordinance no. 41/1998 on the fees in the industrial property protection field and the conditions for using the same, as republished.

(2) The fees shall be paid for the following procedures:

a) filing the variety patent application according to Art. 12 (2);

b) examination of the variety denomination, according to Art. 15;

c) examination of the conditions of form, according to Art. 16;

d) examination of the substantive conditions, according to Art. 17;

e) technical examination on groups of species;

f) issue of the variety patent according to Art. 28;

g) appealing against the decisions according to Art. 21 (5) and revocation of the patent according to Art. 26;

h) maintenance in force of the variety patent on groups of species, for each year of protection, according to Art. 28.

(3) Fees for the procedures provided for in paragraph (2) shall be paid in the account of OSIM.

#### CHAPTER V

##### PROTECTION OF THE VARIETY

#### Article 30

##### Duration of Variety Protection

(1) The term of protection of the variety shall run from the date of granting the variety patent until the end of the 25th calendar year following the year of grant.

(2) For species of trees, vines and potatoes the term of the variety patent shall run from the date of granting the variety patent application until the end of the 30th calendar year following the year of grant.

## CHAPTER VI RIGHTS OF THE HOLDER

### Article 31 Rights of the Variety Patent Holder

(1) The variety patent holder shall enjoy the exclusive right of exploitation of the new variety and the right to prevent any person, without his authorization, from performing the following acts in relation to the propagating material and harvested material of the protected variety:

- (a) production or reproduction;
- (b) processing for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) importing;
- (f) exporting;
- (g) stocking for one of the purposes mentioned in subparagraphs (a) to (f).

(2) In respect to harvested material, the provisions of paragraph (1) are applied under the following cumulative conditions:

- (a) the harvested material was obtained by an unauthorized use of propagating material of the protected variety;
- (b) the holder missed an opportunity to exercise his rights related to the new variety constituents.

(3) The provisions of paragraph (1) shall also apply to varieties:

- (a) that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (b) that are not clearly distinguishable from the

protected variety within the meaning of Article 7; © ) the production of which requires repeated use of the protected variety.

(4) For the purpose of paragraph 3 letter a) a variety shall be deemed "essentially derived" from an initial variety when:

(a) it is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety;

(b) it is distinguishable, in terms of Article 7, from the initial variety from which it is derived; c) it conforms to the initial variety in the expression of the essential characteristics resulting from a genotype or combination of genotypes thereof, except for the differences resulting from the derivation.

(5) The variety patent holder is entitled to royalties or an equitable remuneration for the exploitation of the protected variety in case of granting licenses based on contracts and the licensee is obliged to pay the sums of money agreed upon.

(6) Litigations are to be settled by the law courts according to the civil law.

### ARTICLE 32 Exceptions to the Rights of the Variety Patent Holder

(1) The rights conferred to a variety patent holder shall not extend to:

- (a) use of the variety privately and for noncommercial purposes;
- (b) use of the variety for experimental purposes, including the process of breeding new varieties from the initial material;
- (c) use of the variety for the purpose of breeding, discovering and developing other varieties;
- (d) acts referred to in Article 31 (1), in respect of such other varieties referred to in (c) above, except where the provisions of Article 31 (3) apply, or where the other variety or the material of this variety comes under the protection of an equivalent industrial property right;

(e) acts whose prohibition would violate the provisions laid down in Article 1 (2).

(2) The persons who use the protected variety for one of the purposes provided for in paragraph (1) are obliged to inform the holder accordingly.

(3) The variety exploitation by third parties within the time period between the lapse of holder's rights and patent revalidation does not constitute an infringement of rights laid down in Art. 31. ARTICLE 33 Farmer's Privilege

(1) For stimulating the agricultural production for the plant species provided for in the annexe that is an integral part of the present law, the farmers may exploit, propagate the variety on their own land, cultivate it to obtain crops for their own benefit without having a license from the holder, except for the protected varieties that are hybrids or synthetic varieties.

(2) The farmers may use the seed obtained for sowing or through the seed processors.

(3) Where the seed is used through seed processors, it shall remain identical to the seed of the protected variety and to the harvested product

(4) Farmers are obliged to pay an equitable remuneration to the holder for the use of the seed of the protected variety, that is less than the price paid for a license for propagating the material of the lowest quality eligible for official certification of the protected variety.

(5) The holder is entitled to request, in writing, the necessary information related to the seed of the protected variety produced by the farmer.

(6) Farmers and seed processors are obliged to supply, upon request, written information about their identification data to the holder.

(7) Seed processors are obliged, upon request, to supply the holder written information about the amount of seed of the protected variety delivered for processing as well as about the amount of seed obtained after processing, the date and place of processing and the identity of person for whom processing was performed.

(8) Farmers have the obligation, upon request, to supply information, in writing, to the holder about the amount of seed employed and, as the case may be, the identity of seed processors.

(9) The holder has the obligation, upon request, to supply the breeders information in writing relating to the price cashed for the license of producing the lowest quality eligible for official certification, of seed of the variety protected in the same region.

(10) The holder, with a view to monitoring and complying with the provisions of paragraphs (1) (5) may ask the farmers and seed processors to submit proofs in upholding the information provided for in paragraph (6) (8).

#### Article 34

##### Exhaustion of the Variety Patent Holder's Rights

(1) The variety patent holder's right shall not extend to acts in relation to any propagating or harvested material of the protected variety or of a variety covered by the provisions of Article 31 (2), and to those in relation to any parts of the plant of the protected variety or to any material derived from that variety that has been sold or marketed by the holder or with his consent, unless such acts involve:

(a) propagation of the protected variety, except where such propagation was intended when the material was disposed of to third parties for propagation;

(b) exporting the material of the protected variety to a third country that does not protect varieties of the genus or species to which the new variety belongs, except where the exported material is used for consumption.

#### CHAPTER VII

##### Lapse of the Variety Patent

#### Article 35

##### Invalidation of the Variety Patent

(1) The Office shall declare the variety patent null and void if one of the following situations are ascertained:

a) the variety was not new within the meaning of Art. 6, or distinct, within the meaning of Art. 7, on the date of filing or on the date of claiming the priority, as appropriate;

b) the variety patent granting was essentially based on information and documents supplied by breeder, the variety was not uniform within the meaning of Art. 8, or stable, within the meaning of Art. 9, on the date of granting the rights;

c) the person that was granted the variety patent was not the entitled person, except where a transfer of rights to the entitled person took place.

(2) The Office decisions shall be communicated to the parties within 15 days from pronouncement and can be appealed against under the provisions of Art. 42.

(3) The variety patent invalidation decision remained final and irrevocable shall be published in the Official Industrial Property Bulletin and the cancellation shall be entered in the National Register for Variety Patents.

#### Article 36

##### Forfeiture of Variety Patent Holder's Rights

(1) The Office shall declare the variety patent holder's rights forfeit where one of the following situations occurs:

(a) the variety patent holder does not fulfil his obligation to maintain the protected variety, as provided in Article 38 (1);

(b) the variety patent holder does not act on a request of the Office or the national authority that he should supply information or material for the purpose of verifying the protected variety during the term of the variety patent validity;

(c) the variety patent holder does not, within the time allowed, propose a suitable denomination for the plant variety where the Office has asked for a change in the denomination because it no longer fulfils the conditions set forth in Article 15;

(d) the variety patent holder fails to pay the fees for keeping the variety patent in force.

(2) The Office shall not declare the holder's rights forfeit before having notified him of his failure to comply with one of the obligations under paragraph (1). Forfeiture of holder's rights shall be published in the Official Industrial Property Bulletin and shall be

effective as of the date of entry in the National Register of Variety Patents.

(3) The variety patent holder may, within 6 months from the date of publication of the forfeiture, request the Office to revalidate the variety patent on just grounds.

(4) The decision of the Board of Appeal on the request for revalidation of the variety patent shall be communicated to the parties within 15 days of its pronouncement and may be challenged under Article 42. Revalidation of the variety patent shall be published in the Official Industrial Property Bulletin.

#### Article 37

##### Renunciation to the Variety Patent

(1) The variety patent holder may renounce the variety patent at any time during the variety protection period on the basis of a written declaration submitted to the Office.

(2) Renunciation to the variety patent shall be effective as of the date of transmitting the request to the Office.

(3) Renunciation shall be recorded in the National Register of Variety Patents and shall be effective for third parties from the date of publication in the Official Industrial Property Bulletin.

(4) Where the variety patent has been the subject of a licence contract, renunciation is possible only with the consent of the licensee.

### CHAPTER VIII

#### Exploitation of the Protected Variety

#### Article 38

##### Maintenance of the Protected Variety

(1) The variety patent holder is obliged to maintain the protected variety throughout the term of the variety patent so that the variety retains all the characteristics presented in the official description on the date of grant of the variety patent.

(2) In order to verify the distinctness, uniformity and stability of the new variety, the national authority may ask the variety patent holder to supply seed, propagating material, documents, or any other information required for performing the verification.

(3) The Office may, throughout during the validity term of the variety patent, request the holder to provide information and documents attesting the existence of the variety and the maintenance of its characteristics.

(4) Where the variety patent holder does not comply with the request, the Office shall declare his rights under the variety patent forfeiture in accordance with Article 36 (1)(a).

#### Article 39 Transfer of Variety Rights

(1) The right to be granted a variety patent, the right in the variety patent as well as the rights deriving from the variety patent may be transferred to other natural persons or legal entities.

(2) The transfer of rights may be performed by assignment, by an exclusive or nonexclusive license contract or by legal or testamentary provision.

(3) Where another person than the one mentioned on the variety patent is entitled to be granted the variety patent, the Office shall issue the variety patent to the entitled person and shall publish the change in the Official Industrial Property Bulletin.

(4) Where the variety patent jointly belongs to more persons, the part belonging to one of them may be transferred to third parties, if they have been notified in writing and they fail respond within one month.

(5) The transfer of rights shall become effective on the date of concluding the contract.

(6) The transfer of rights shall not affect rights acquired by the third parties before the date of transfer.

(7) The transfer of rights shall be entered in the National Register for Variety Patent Applications or in the National Register of Variety Patents, as appropriate, shall be published in the Official Industrial Property Bulletin and become opposable to third parties starting on this date.

(8) Transfer not yet entered in the Register may still be invoked against third parties which acquired rights after the date of transfer, provided that they knew about the transfer on the date of acquiring these rights.

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#### Article 40 License Contract

(1) Where an exclusive license is granted, the licensee shall enjoy the exclusive right of exploitation of the new variety, within the limits specified in the license contract.

(2) Where a nonexclusive license is granted, the holder shall retain the right to grant licenses to third parties and the licensee does not have the right to transfer the right of exploitation of the variety to third parties.

(3) The variety patent holder may request the Office to publish his offer to grant the license in the Official Industrial Property Bulletin.

(4) The Office shall enter the license contract in the National Register of Variety Patents and publish it in the Official Industrial Property Bulletin.

(5) Upon request by the person concerned, the Office may register other transfers of rights in the protected variety, subject to payment of the legal fee.

#### Article 41 Compulsory License

(1) The Ministry of Agriculture, Forests and Rural Development may grant a nonexclusive compulsory license at the request of any interested party, but only on grounds of public interest.

(2) Where the compulsory license is granted the types of acts covered and the reasonable conditions pertaining thereto shall be specified.

(3) The reasonable conditions shall take into account the interests of the variety patent holder that could be affected by the grant of the compulsory license.

(4) The compulsory license shall be granted for a limited period of time, subject to payment of an appropriate royalty to the holder, who, in his turn, shall accomplish certain obligations required for the exploitation of the compulsory license.

(5) The grant of the compulsory license does not prevent the holder from exploiting the variety or from granting other non exclusive licenses to third parties.

(6) On the expiry of each calendar year after the grant of the compulsory license any time within the

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forementioned granted period of exploitation, the parties to proceedings may request the modification of the conditions of exploitation of the compulsory license.

(7) In case of an essentially derived variety, if the holder of the initial variety refuses to grant an exploitation license for the derived variety, a nonexclusive compulsory license may be granted based on a final judgement.

(8) Where the holder of a patent for a biotechnological invention applies for a compulsory license for a nonexclusive use of a protected plant variety, the Ministry of Agriculture, Forests and Rural Development may grant a nonexclusive compulsory license, subject to payment of an appropriate royalty to the protected variety holder, in the following conditions: a) the holder of the invention has unsuccessfully applied to the holder of the variety patent to obtain a contractual license; or b) the invention constitutes significant technical progress of considerable economic interest.

(9) Where the variety patent holder applies for the grant of a license for the exploitation of a patent protected biotechnological invention, the Law Court of Bucharest, pursuant to the provisions of the Patent Law no. 64/1991, as republished with subsequent modifications, may grant a nonexclusive compulsory license, subject to payment of an appropriate royalty to the holder.

(10) Upon justified request by the interested person, the Ministry of Agriculture, Forests and Rural Development, or the Law Court of Bucharest, as appropriate, may withdraw the compulsory license, when the circumstances leading to the grant thereof ceased, provided that the legitimate interests of the person who acquired it are suitably protected. The license shall not be withdrawn if the circumstances determining the grant thereof are liable to occur again.

(11) The decisions on the grant of a compulsory license as well as the ones on the royalty stipulated depending on the degree of use thereof may be appealed against in the Court of Appeal of Bucharest, within 15 days from communication.

(12) The final and irrevocable judgements on the grant or withdrawal, as appropriate, of the compulsory license shall be communicated by the interested

person to the Office, that shall enter them in the National Register of Variety Patents and publish the mention of these decisions in the Official Industrial Property Bulletin, within one month from their communication.

## CHAPTER IX

### Protection of Rights in New Plant Varieties

#### Article 42

##### Appeals against Decisions of the Office

(1) Decisions of the Office may be appealed against by interested parties. The request shall be filed with the Office within two months from the communication of the decision and the reasons for the appeal shall be submitted within a fourmonth period of time.

(2) The appeal or the request for revocation or cancellation of the variety patent, as appropriate, shall be examined by the Board of Appeal within 3 months from lodging, provided that the proofs allow the case to be settled within this time period. The composition of the Board shall be different from the composition of the Examination Board, and it shall be composed of representatives of the Ministry of Agriculture, Forests and Rural Development and of the Office.

(3) The decisions of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced, and may be appealed against in the Law Court of Bucharest within 30 days of being communicated.

(4) The decision of the Law Court of Bucharest may be appealed against before the Court of Appeal of Bucharest within 15 days of being communicated.

(5) The Office is obliged to submit to the court, at its request, the necessary documents and information for judging the case referred to it.

#### Article 43

##### Competence of the Courts

Litigations seeking to deprive of his status the breeder, variety patent holder or holder of other rights derived from the variety patent, including patrimony rights of the breeder, or under an assignment or license contract, or litigation relating to failure to comply with provisions of Article 38 (1) and 39, shall be within the competence of the courts of law.

CHAPTER X  
Offences and Penalties  
Section 1

Article 44  
Infringement and Disclosure

(1) Any of the acts mentioned in Article 31 (1) performed without the variety patent holder's authorization shall be deemed to constitute an infringement.

(2) Performing the following acts deliberately also constitutes an infringement:

(a) using a denomination, other than the registered denomination of the new variety, for propagating material produced and sold;

(b) using the registered denomination of a new variety for propagating material produced and sold, that does not belong to that variety;

(c) giving a denomination to propagating material produced and sold that is so close to the denomination of the protected variety, that it may cause confusion;

(d) selling propagating material with false indication that it belongs to a variety for which a variety patent has been granted, thereby misleading purchasers;

(e) falsehood in the registration of a variety in the National Register of Protected Varieties;

(f) drawing up false reports, and falsification of documentation required by this Law;

(g) submitting documents containing false information.

(3) The acts specified in paragraphs (1) and (2) shall be punishable with imprisonment for a term of three months to two years or with a fine from 10,000 to 30,000 lei. The attempted act shall likewise be punished.

(4) Disclosure of data or information constituting a trade secret concerning a new variety for which a variety patent has been applied for shall be punished with imprisonment from 6 months to two years or

fine from 10,000 to 30,000 lei. The attempted act shall likewise be punished.

(5) Where the offences provided for in paragraphs (1), (2) and (4) are committed by a public official, in the course of his duties, the public official shall be punished with imprisonment for a term of six months to five years. Criminal proceedings shall be initiated on a complaint by the injured party.

(6) The variety patent holder is entitled to claim damages under the provisions of civil law for prejudice caused to him, and may ask the courts to dispose the seizing or destroying, as appropriate, of the infringing goods.

Section 2

Article 45  
Actions for Infringement

(1) A legal action for infringement may only be initiated after publication of the grant of the variety patent.

(2) Where a license has been granted and there is not otherwise provided in the contract, the licensee may only sue for infringement with the consent of the variety patent holder.

(3) The holder of an exclusive license may initiate a legal action for infringement, if the variety patent holder has been informed of the alleged infringement and has not taken any action within a time limit requested by the licensee.

(4) Where a legal action for infringement has been brought by the variety patent holder, the licensee may institute a civil action for recovery of the damage.

CHAPTER XI  
Provisional Measures, Evidence, Fees

Article 46  
Provisional Measures, Evidence

(1) The variety patent holder may request the court:  
a) to order provisional measures where there is a risk of infringement of the rights deriving from the variety patent and where such infringement is liable to cause

irreparable prejudice, and also where there is a risk of evidence being destroyed; b) to order, immediately on application, measures to put an end to the infringement of rights derived from the variety patent, committed by a third party in connection with the introduction into commercial channels of imported merchandise that would infringe those rights; c) to order the seizure or destruction of propagating material referred to in Article 44 (2).

(2) The court shall order the infringer of the rights under the variety patent to inform the holder of the identity of third parties who have taken part in production and distribution of the propagating material specified in Article 44 (2).

(3) The provisions of the Code of Civil Procedure shall be applicable to the ordering of the measures referred to in paragraph (1).

(4) When provisional measures are ordered, the court may oblige the plaintiff to provide security, in an amount that it shall specify.

(5) The court may ask the plaintiff to supply any evidence available to prove that he is the holder of the rights infringed or the infringement of which is unavoidable.

(6) Where the evidence supporting the claims of the plaintiff is in the defendant's possession, the court may order the defendant to produce the evidence, provided that confidentiality of information is guaranteed, as provided by law.

(7) The court shall order the plaintiff to pay the defendant all damages arising from improper exercise of the procedural rights concerning the new variety.

#### Article 47 Competence

(1) Competence for the enforcement of this Law belong to the Office and the Ministry of Agriculture, Forests and Rural Development.

(2) The Office, as a specialized body subordinated to the Government and sole authority within the territory of Romania for the grant of industrial property protection, shall grant patents for the new plant varieties under this Law and in accordance with the international conventions to which Romania is a party,

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and shall have the following duties: a) filing, publishing and examining applications for the grant of patents for the new varieties; b) organizing and keeping the National Register of Variety Patent Applications and the National Register of Variety Patents c) regularly issuing the Official Industrial Property Bulletin which contains information on variety patent applications, denominations of new varieties and proposals for denominations, and also on new varieties for which variety patents have been granted; d) ensuring the exchange of publications with similar foreign national administrations and specialized international organizations; e) establishing, in consultation with the Ministry of Agriculture, Forests and Rural Development, the characteristics contained in the technical questionnaire, in accordance with community guidelines for the protection of the new varieties; f) certifying authorized agents for the procedures before the Office relating to the protection of the new varieties.

(3) The Ministry of Agriculture, Forests and Rural Development, in exercising its prerogatives: a) shall decide on the methodology for testing the new varieties from a technical point of view, through the national authority designated to perform the technical examination; b) shall cooperate with the Office, with breeders' associations, with the association of variety patent holders, with the association of producers of seed and propagating material, with specialized research institutes and testing stations in order to protect and promote the new varieties and shall establish the developing strategy in the field of breeding new varieties; c) shall designate the crop experts as representatives of the Board of Appeal; d) shall grant compulsory licenses according to the provisions of Art. 41 (2).

(4) The Office and the Ministry of Agriculture, Forests and Rural Development, through their representatives, shall entertain cooperation relations with contracting States to the Convention, the Office of the International Union for New Plant Varieties and with the Community Office in the field of protecting the new plant varieties.

#### Article 48 Protection of the New Varieties Abroad

Romanian natural persons and legal entities shall have the right to choose the State or intergovernmental organization in which they file their first application

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for the grant of a variety patent or a similar title of protection.

#### Article 49

##### National Register of Variety Patent Applications

In the National Register of Variety Plant Applications (RNCBS) the following indications shall be published:

- (a) number of the variety patent application;
- (b) species, botanical taxon and the variety denomination;
- (c) filing date;
- (d) name and address of the applicant;
- (e) name and address of the breeder;
- (f) name and address of the professional representative;
- (g) modifications in the legal status of the variety patent application.

#### Article 50

##### National Register of Variety Patents

In the National Register of Variety Patents (RNBS) at least the following indications shall be entered:

- (a) date and number of the variety patent application filed with OSIM;
- (b) priority date;
- (c) filing date;
- (d) name and the address of the applicant;
- (e) State on whose territory the applicant has the place of residence;
- (f) name and the address of the professional representative;
- (g) name and address of the breeder;
- (h) botanical taxon;

- (i) denomination of the variety;
- (j) holder's name/denomination and address / headquarters;
- (k) changing of the address and of the holder's name;
- (l) any modifications or transfer or rights;
- (m) payment of the fees for issuing and maintaining the variety patent;
- (n) variety patent holder;
- (o) declaration of renunciation to the variety patent;
- (p) decision of annulment or invalidation of the variety patent, as the case may be.

#### Article 51

##### Variety Protection with Community Office

(1) If a Romanian applicant wants to file an application for protection with the Community Office, this may be filed: a) directly with the Community Office, through a professional representative having the registered office or place of residence in the European Community; or b) with the State Office for Inventions and Trademarks, that will be the receiving office for the protection application.

(2) The application for the protection of the new plant variety containing the documents provided for in the Community Regulations 2.100/1994, filed with OSIM, will be transmitted to the Community Office within two weeks of filing, subject to payment of the application filing fee.

(3) The date of filing the application with the Community Office shall be the date of receiving a complete application and subject to payment of the legal fees.

(4) Any variety protected by the community law shall no longer constitute the subjectmatter of a national variety patent.

(5) Where the holder of a national right for a variety acquires a community right subsequently, the national title shall be suspended.

## CHAPTER XII

## Final and Transitional Provisions

## Article 52

## Final and Transitional Provisions

(1) Applications for variety patents filed with the State Office for Inventions and Trademarks under Patent Law no. 64/1991 and Government Decision no. 152/1992 approving the Implementing Regulations of the Patent Law no. 64/1991\*), for which no decision has been taken to grant or refuse grant, shall be settled in accordance with the provisions of this Law.

(2) This Law shall enter into force 90 days following the date of its publication in the Official Gazette of Romania, Part I.

(3) Within 90 days following the publication of this Law in the Official Gazette of Romania, Part I, the Government shall, on a proposal by the State Office for Inventions and Trademarks, approve the Implementing Regulations of this Law.

(4) On the entry into force of this Law, the provisions on the protection of plant varieties and plant hybrids laid down in Articles 7 (3) and 11 of the Patent Law no. 64/1991, the provisions on plant varieties and hybrids in Chapter III of Government Decision no. 152/1992 and any other contrary provisions shall be repealed.

NOTE: We reproduce hereinafter Art. II and Art. III of the Law no. 119/2006, that are not incorporated in the republished text of Law no. 255/1998 and that apply further on as provisions specific to Law no. 119/2006: "Art. II (1) The variety patent applications filed with the Office according to the Law on the protection of New Plant Varieties, no. 255/1998, with subsequent modifications, for which no decision was made to grant or to refuse, up to the coming into force of the present law, shall be settled according to the provisions of the present law.

(2) The protection period of the variety patent issued before the coming into force of the present law, for the species of potato and hop, is of 30 years of the date of granting.

Art.III(1) The present law comes into force within 90 days of the publication thereof in the Official Gazette of Romania, Part I.

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(2) Within 3 months from the date of coming into force of the present law, the Government Decision no. 200/2000 for approving the Implementing Regulations of the Law on the Protection of New Plant Varieties, no. 255/1998, published in the Official Gazette of Romania, Part I, no. 134 of 30 March 2000, shall be modified accordingly.

Species of Agricultural Plants to which the application of the provisions relating on breeder's privilege is requested:

## a) Fodder plants

Cicer arietinum L.	Chickpea milkvetch
Lupinus luteus L.	Yellow lupin
Medicago luteus L.	Lucerne
Pisum sativum L.	Garden pea
Trifolium alexandrinum L.	Egyptian clover
Trifolium resupinatum L.	Persian clover
Vicia faba L.	Field bean
Vicia sativa L.	Common vetch
Lolium multiflorum Lam	Italian ryegrass

## b) Cereals

Avena sativa L.	Oats
Hordeum vulgare L.	Barley
Oryza sativa L.	Rice
Phalaris canariensis L	Canary Grass
Secale cereale L.	Rye
X Triticum secale Wittm.	Triticale
Triticum aestivum L. Emend, Fiori et Paol	Common wheat
Triticum durum Desf.	Durum wheat
Triticum spelta L.	Spelt wheat

## c) Potato

Solanum tuberosum L.	Potatoes
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## d) Fibre and oil plants

Brassica napus L.	Swede rape
Brassica rapa L.	Turnip rape
Linum usitatissimum L.	linseed (with the exclusion of flax.)

Law 255/1998 as amended in 2006

## SWITZERLAND

**FEDERAL LAW ON THE PROTECTION OF PLANT VARIETIES No. 232.16  
of March 20, 1975 (status as of September 1, 2008)\***

*The Federal Assembly of the Swiss Confederation,*  
In view of Art. 64 and 64 A of the Constitution<sup>1,2</sup>

In view of the message of the Federal Council dated  
May 15, 1974,<sup>3</sup>

*decides as follows:*

Chapter 1  
General provisions

...<sup>4</sup>

Art. 1<sup>5</sup>  
Subject matter

The present law regulates the protection of new plant varieties, pursuant to the International Convention for the Protection of New Varieties of Plants of December 2, 1961.<sup>6</sup>

Art. 2<sup>7</sup>  
Definitions

1. "Variety" means a plant grouping within a single botanical taxon of the lowest known rank, which can be:

- a. defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- b. distinguished from any other plant grouping by the expression of at least one of the said characteristics;
- c. considered as a unit with regard to its suitability for being propagated unchanged.

2. A variety shall be deemed to be essentially derived from another variety (initial variety) if it satisfies the following conditions:

- a. it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
- b. it is clearly distinguishable from the initial variety;
- c. except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics which result from the genotype or combination of genotypes of the initial variety.

3. "Propagating material" shall be deemed to be seeds, seedlings, grafts, stocks and any other parts of the plant, including the material obtained by in vitro production, which are meant to be propagated, sown, planted or replanted.

Art. 3  
Authorized agent in Switzerland

Any person who has neither his residence nor his head office in Switzerland may only be a party to proceedings initiated in accordance with this Law and assert the rights arising therefrom if he has an authorized agent established in Switzerland. The latter has the authority to represent the person before the Bureau for the Protection of Varieties (bureau according to art. 23) as well as in disputes relating to the protection of varieties. The provisions governing the exercise of the profession of lawyer shall be reserved.

Art. 4  
Reservation in favour of international treaties

Those filing an application for the title of protection (applicants) and the holders of such a title (holders) may invoke the provisions of the text, the most recent version ratified by Switzerland, of multilateral conventions when they are more favourable than those of the present law.

\* Unofficial translation provided by the Office of the Union. The official version of the Law in French, German and Italian can be consulted at the following website [http://www.admin.ch/ch/d/sr/c232\\_16.html](http://www.admin.ch/ch/d/sr/c232_16.html)

Chapter 1a  
Protection of varieties<sup>8</sup>

Section 1<sup>9</sup>  
Effects of the protection of varieties

Art. 5  
Principle

1. As a result of the protection of varieties, the following acts shall require the authorization of the holder of the title of protection (holder):

- a. production or reproduction of the propagating material of the variety protected or conditioning for the purpose of propagation;
- b. offering;
- c. selling or other marketing;
- d. exporting or importing;
- e. stocking for any of the purposes mentioned in a. to d.

2. Para. 1 shall also apply to:

- a. varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b. varieties which are not clearly distinguishable from the protected variety;
- c. varieties whose production requires the repeated use of the protected variety;
- d. the harvested material from a protected variety or a variety referred to in a. to c. if, to obtain this material, propagating material was used without the authorization of the breeder, who has not had reasonable opportunity to exercise his right over such use in an appropriate fashion.

Art. 6  
Exceptions

The breeder's authorization shall not be required for the acts referred to in art. 5, which are done:

- a. privately and for non-commercial purposes;

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- b. for experimental purposes;
- c. For the purpose of breeding other varieties entailing the use of the protected variety, as well as the acts referred to in art. 5, para 1, which pertain to these varieties, unless it concerns the varieties mentioned in art. 5, para 2, a. to c.

Art. 7  
Farmer's privilege

1. Farmers who have acquired propagating material from a protected agricultural variety put in circulation by the holder or with his consent may, on their holdings, propagate the harvested material they have obtained by growing such material.

2. The Federal Council shall determine the plant species to which the farmer's privilege shall apply; in so doing, it shall give special consideration to their importance as raw materials for foodstuffs or fodder.

Art. 8  
Nullity of agreements

Any agreement which restricts or annuls the exceptions to the right to protection for the varieties referred to in art. 6 and 7 shall be deemed to be null and void.

Art. 8a  
Exhaustion of protection for the varieties

1. Protection of the varieties referred to in art. 5 shall be deemed to be exhausted if material has been sold or otherwise marketed by the holder or with his consent.

2. Protection of the varieties shall not be deemed to be exhausted if:

- a. a further propagation of the variety in question takes place without the material having been destined for such purpose at the time of assignment;
- b. material of the variety in question is exported to a country which does not protect varieties of the species concerned and the exported material is not for final consumption purposes.

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Section 2<sup>10</sup>  
Varieties suitable for protection

Art. 8b

1. Protection shall be granted to all varieties which are new, distinct, uniform and stable.
2. The variety shall be deemed to be new if no propagating material or harvested material has been sold or otherwise disposed of, in Switzerland earlier than a year, and abroad earlier than four years prior to the date of filing of the application for protection (application) by the breeder himself or with his consent, for purposes of exploitation of the variety. The period shall be earlier than six years in the case of trees or vines sold or otherwise disposed of abroad.
3. The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence was a matter of common knowledge at the time the application was filed.
4. 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 sufficiently uniform in its relevant characteristics.
5. 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.

Section 3  
Right to protection

Art. 9  
Principle

1. The right to protection of a variety shall be granted to the breeder or his successor in title. Art. 332 of the Code of Obligations<sup>11</sup> shall apply by analogy.<sup>12</sup>
2. If several persons have bred a variety together, they shall be jointly entitled to this right.
3. If the variety has been bred independently by several persons, the right shall be granted to the person who can invoke a prior filing or a filing which enjoys priority.

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Art. 10  
Position of the applicant

The person who files the application shall, barring evidence to the contrary, be deemed to be authorized to apply for protection.

Art. 11<sup>13</sup>  
Priority

1. Any person who files an application in the 12 months following the date on which he or his predecessor duly filed it for the first time abroad shall benefit from the priority attached to the first application. In this case, events occurring after the first filing shall not constitute a ground for rejecting the subsequent application.
2. Priority must be invoked when the application concerning the variety has been filed. The bureau may require documents justifying the first filing.

Section 4<sup>14</sup>  
Denomination of the variety and mark

Art. 12  
Variety denomination

1. The variety shall be designated by a denomination.
2. This denomination must not:
  - a. be liable to mislead or be confused with another denomination which has been filed or registered for a variety of the same plant species or of a closely related species in a State or an inter-State organization forming part of the International Union for the Protection of New Varieties of Plants;
  - b. be contrary to law and order or morality or infringe Swiss federal law or an international treaty;
  - c. consist solely of figures except where this is an established practice for designating varieties.
3. If the same variety has already been filed or registered in a State or an inter-State body referred to in para 2a., the denomination used must be retained, unless it is unsuitable on linguistic or other grounds.

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## Art. 13

## Use of the variety denomination

1. Any person who offers for sale or sells on a professional basis propagating material of a protected variety shall be obliged to use the denomination of that variety, even after the expiration of protection.
2. The rights of third parties shall be reserved.

## Art. 13a

## Modification of the variety denomination

Once the title of protection of the variety has been granted, the bureau may only change the variety denomination:

- a. further to an enforceable judgment;
- b. if a third party renders an opposing right credible and the holder accepts the change.

## Art. 13b

## Mark

In addition to the variety denomination, a protected variety may be put into circulation under a mark or another clearly distinguishable commercial designation. The variety denomination shall be clearly recognizable.

## Section 5

## Modifications affecting the existence of protection

Art. 14<sup>15</sup>

## Expiration of the period of protection

Protection shall expire at the end of the twenty-fifth calendar year following the granting of the title and at the end of the thirtieth calendar year for varieties of vines and trees.

## Art. 15

## Premature expiration

1. The title of protection shall expire when the holder waives his right by means of a written declaration addressed to the bureau.<sup>16</sup>

2. Such waiver may be revoked until such time as the bureau has published it.

## Art. 16

## Declaration of nullity

1. The judge shall, acting upon a complaint, pronounce the nullity of the title of protection if it has been established:
  - a. that the variety was not new or distinct when the title of protection was issued;
  - b. that the variety was not uniform or stable when the title of protection was issued and that such title was primarily based on the information and documents furnished by the applicant;
  - c. that the title of protection has been granted to a person who is not entitled to it and that person has failed to transfer it to the rightful claimant.<sup>17</sup>
2. Any person who can justify an interest may bring suit for nullity.

3...<sup>18</sup>

## Art. 17

## Cancellation

1. The bureau shall cancel the title of protection:
  - a. if the holder, after having been requested to do so, does not provide the propagating material, documents and indications deemed necessary for verification within the time limit set;
  - b. if the holder, after having been requested to do so, fails to pay the annual fee due;
  - c. if it has been established that the variety is no longer uniform or stable.<sup>19</sup>
2. Cancellation of the title of protection shall take effect once it has been entered in the registry of titles of protection of varieties (registry).

Section 6  
Modifications concerning the right to be issued the  
title of protection and  
the right to protection

Art. 18  
Transfer

1. The right to be issued the title of protection and the right to protection may be transferred in full or in part to third parties and shall pass to the heirs.
2. The rights of third parties shall only be binding on a person who, acting in good faith, acquires the rights to production if they have been entered in the registry.

Art. 19  
Assignment

1. When the application has been filed by a person who is not entitled to protection, the rightful claimant may petition for the assignment of the application or, if the title has already been granted, bring suit for assignment.
2. The suit must be brought within two years from the date of publication of the title of protection. Action brought against a defendant acting in bad faith shall not be subject to any time limit.
3. If the suit is successful, the rights granted by the defendant to third parties shall become null and void.

Art. 20  
Expropriation

1. If national supply constraints so require, the Federal Council may order the total or partial expropriation of the title of protection.
2. The expropriated person shall be entitled to full and complete compensation, which shall be set in the event of a dispute by the Federal Tribunal. Chap. II of the Federal Law of June 20, 1930 on Expropriation<sup>20</sup> shall apply by analogy.

Section 7  
License

Art. 21  
Contractual granting of the license<sup>21</sup>

1. The holder may authorize a third person to use the protected variety (granting of the license). If the variety belongs jointly to several persons, the issuing of such a license shall be subject to their agreement.
2. Licenses shall only be binding on a person who, acting in good faith, acquires the rights to protection if they have been entered in the registry.

Art. 22<sup>22</sup>  
License granted in the public interest

When the public interest so requires, a person whose application for a license has been rejected by the holder without sufficient grounds may petition the judge to issue a non-exclusive, non-assignable license.

Art. 22a<sup>23</sup>  
License for a dependent patent

1. When a patent right concerning biological material cannot be exercised without infringing a prior right to protection of a variety, the patent holder shall be entitled to a non-exclusive operating license, of a scope enabling him to exercise his patent right, if his invention represents significant progress of clear economic interest in relation to the protected variety.
2. The holder of a right to protection may in exchange petition the patent holder for an operating license for the latter's patent right.

Art. 22b<sup>24</sup>  
Judicial application

1. The licenses provided for in art. 22 and 22a shall be granted if the efforts undertaken by the applicant to obtain a contractual license on reasonable commercial terms have not succeeded within an acceptable period of time. Such efforts shall not be necessary in national emergencies or other circumstances characterized by extreme urgency.

2. The scope and duration of the licenses shall be limited to the purposes for which they were granted.

3. Licenses may only be assigned to the part of the company which uses them. The same holds true for sub-licenses.

4. Licenses shall be granted primarily for supplying the domestic market.

5. Upon request, the judge shall withdraw the license from the rightful claimant if the circumstances which justified its granting no longer exist and if it is likely that they will not recur. Adequate protection of the legitimate interests of the rightful claimant shall be reserved.

6. The holder of a right to protection may lay claim to adequate remuneration, which shall be determined by taking the case at hand and the economic value of the license into consideration.

7. The judge shall decide on the granting or withdrawal of the license and on its scope and duration and the remuneration to be paid.

8. When the suit seems well-founded, the judge may, after having heard the defendant and subject to an enforceable decision, grant the license at the request of the petitioner if he provides the defendant with the necessary guarantees.

## Chapter 2

### Organization and procedure

#### Section 1

#### Organization and competence

##### Art. 23<sup>25</sup>

#### Bureau for the protection of varieties

Unless the present Law provides otherwise, the Bureau for the Protection of Varieties (Bureau) shall be empowered to issue titles of protection and to examine related questions.

##### Art. 24<sup>26</sup>

#### Authority responsible for examination

1. The Bureau shall commission a federal station for agronomic research or another qualified authority to

examine whether the variety is distinct, uniform and stable.

2. It may recognize the results of examinations performed by an authority outside Switzerland, provided that its examination methods satisfy the requirements of the present Law and the provisions arising therefrom.

##### Art. 25<sup>27</sup>

#### Section 2

#### Filing of the application, examination of the variety and granting of the protection of varieties<sup>28</sup>

##### Art. 26

#### Form of the application and date of filing

1. A person wishing to secure protection for a variety shall submit to the Bureau, in the prescribed form, an application accompanied by the requisite indications and documents, and pay the filing fee.

2. The date of filing shall be deemed to be the date on which all of the elements of the file were supplied and the filing fee was paid.

##### Art. 27

#### Procedure for rectification

1. An application which has not been properly made shall be rectified, if the Bureau so requires. If need be, it may require other rectifications at any moment.

2. If the shortcomings have not been remedied within the period set, the application shall be rejected.

##### Art. 28

#### Publication of the application

1. Applications that have been duly filed shall be published by the Bureau. Such publication shall include at least the following:

- a. date of filing;
- b. the name or company name and the address of the applicant and, as applicable, his authorized agent;
- c. the name or company name and address of the breeder, if he is not the applicant;



- d. the proposal concerning the variety denomination;
- e. the genus or species to which the filed variety belongs;
- f. as the case may be, the country and date of a prior filing from which priority has been derived.

2. When an application has been withdrawn or rejected after its publication or the wording of the application published is subsequently amended, a new publication shall be made.

#### Art. 29 Objections

1. Anyone may, in the three months following publication, submit objections to the application to the Bureau. These objections shall be in writing and must state the reasons. The documents and plants which serve as evidence shall be attached or indicated.

2. The sole purpose of objections is to assert that the filed variety does not qualify for protection under art. 8b, or that its denomination does not satisfy the requirements set out in art. 12.29

3. The applicant shall have the right to express himself with regard to the objections put forward. He shall in particular clarify whether he intends to maintain, modify or withdraw his application.

#### Art. 30<sup>30</sup> Examination of varieties

1. The applicant shall, within the period set, return the essential propagating material to the authority responsible for conducting the examination, provide it with all the necessary information and authorize it to verify such information. If he claims the priority of the application by virtue of art. 11, he shall furnish the propagating material within two years from the date of the expiration of the period set for priority.

2. The authority responsible for conducting the examination shall set the results down in a report. If the variety satisfies the conditions set, it shall describe its characteristics in an official report.

3. If the variety is subject to a growing test, the applicant must follow the test under way and express his views on the results of the examination.

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#### Art. 31 Granting of protection

1. Once the examination has been completed, the Bureau shall grant protection when all of the conditions have been satisfied. If this is not the case, it shall refuse to grant protection.

2. Protection shall be granted, without a guarantee from the Swiss Government (Confederation), by means of an entry in the registry. The applicant shall receive as title of protection an extract from the registry (title of protection of the variety).

3. Barring evidence to the contrary, the title issued shall be deemed to be legitimate, and the person who has obtained it shall be deemed to be the rightful claimant.

#### Art. 31a<sup>31</sup> Titles of protection for a variety established outside Switzerland

The Swiss Federal Council shall regulate recognition of titles of protection for varieties issued by other States under comparable conditions.

#### Section 3 Registry of titles of protection, publication and taxes

#### Art. 32 Content of the registry

1. The Bureau shall maintain the registry in which the title of protection has been entered with the requisite indications, namely:

- a. the denomination of the variety;
- b. the description of the variety;
- c. the name or company name and address of the holder and his authorized agent, if any;
- d. the name or company name and address of the breeder, if he is not the holder;
- e. the dates on which the application was filed and published;
- f. as applicable, the country and date of the prior filing from which priority is derived.

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2. Any modifications which affect the existence of the title of protection or the right to protection shall also be entered in the registry. The courts shall forward to the Bureau complete copies, free of charge, of the enforceable decisions which have made such modifications necessary.

3. The Bureau may, if it has informed the holder in advance, complete the description of a variety when the description of another variety so requires.

#### Art. 33 Publication

1. The Bureau shall publish the entries recorded in the registry.

2. No one may claim that he is not aware of an entry recorded in the registry.

#### Art. 34 Public nature of the registry

1. Anyone may, upon payment of a fee, consult the registry or seek information on its contents and request extracts.

2. Except for the report of the authority responsible for conducting the examination, the different elements of the registry are confidential. They may not be consulted by third parties without the holder's authorization. The courts shall not require such authorization.

#### Art. 35 Records retention

The Bureau shall retain the elements on file which relate to the titles of protection, in original form or as a copy, until the expiration of a five-year time limit starting from the end of protection; however, the registry shall be retained indefinitely.

#### Art. 36 Fees

1. The competent authorities shall charge the following fees for issuing the title of protection:

- a. an application filing fee;
- b. fees for the examination of the variety;
- c. annual fees for the duration of protection.

2. Fees shall be payable in advance and shall be set in such a way as to cover expenses.

3. The Federal Council shall decide on prescriptions concerning the amount and the due date for fees, as well as the time limits for payment. It may decide to charge for other services rendered which relate to protection of the varieties.

#### Chapter 3 Civil law protection

...<sup>32</sup>

#### Art. 37 Action to prevent or restrain the disturbance<sup>33</sup>

1. Anyone whose right deriving from protection or whose right to the variety denomination has been threatened or infringed may bring suit to put a halt to the act or to eliminate the resulting unlawful state of affairs.

2 ...<sup>34</sup>

#### Art. 38 Right to bring suit before the granting of protection

1. As soon as the application has been published, the applicant may, before protection has been granted, bring suit to put a halt to the act or to eliminate the unlawful state of affairs, provided he supplies the opposing party with sufficient guarantees.

2. Although action for damages may only be brought once protection has been granted, it can cover the damage caused by the defendant's fault from the time the application was published.

#### Art. 39 Action for official verification

Anyone who can prove an interest may bring suit to establish the existence or absence of a legal

relationship which must be judged in accordance with the present Law.

#### Art. 40

##### Safeguarding of production or business secrecy

1. The production or business secrets of the parties concerned shall be safeguarded.

2. The opposing party shall only be given cognizance of evidence likely to reveal such secrets to the extent that it is compatible with their safeguarding.

#### Art. 41<sup>35</sup>

#### Art. 42

##### Single cantonal tribunal

1. Each canton shall designate for the whole of its territory a court responsible for serving as a single cantonal tribunal for hearing proceedings covered by the present Law.

2.<sup>36</sup>

...<sup>37</sup>

#### Art. 43<sup>38</sup>

##### Provisional measures

1. Anyone who can credibly state that he has suffered or is likely to suffer an infringement of his right in a variety or a variety denomination and that such infringement could well cause him to sustain a loss that would be difficult to set right shall be entitled to request provisional measures.

2. He may in particular demand that the judge order measures to retain evidence, to ascertain the origin of the material bearing the variety denomination of a variety protected in Switzerland, to safeguard the state of affairs or to ensure on a provisional basis the exercise of an action to prevent or restrain the disturbance.

3. The following shall be competent to order provisional measures:

a. if suit has been brought, the judge of the place where the suit is pending;

b. if no suit has been brought, the competent judge by virtue of the Law of March 24, 2000 on Jurisdictions.<sup>39</sup>

4. Moreover, art. 28c to 28f of the Swiss Civil Code<sup>40</sup> shall apply by analogy.

#### Art. 44 to 46<sup>41</sup>

#### Art. 47<sup>42</sup>

#### Chapter 4

##### Criminal law protection

#### Art. 48

##### Violation of the provisions relating to the protection of varieties

1.<sup>43</sup> Anyone who, without being entitled to do so, carries out the acts referred to in art. 5, para 1, by utilizing the propagating material or the harvested material of a protected variety or a variety covered by art. 5, para 2 a.-c., or who utilizes such material on an ongoing basis with a view to producing the propagating material of a new variety, shall, if he has acted intentionally, be punished, subsequent to a complaint by the aggrieved party, by a maximum sentence of one year's imprisonment or a fine.

2. Punishment shall take the form of a fine if he has acted by negligence.

3. The right of complaint shall lapse upon expiration of a period of six months as from the date on which the aggrieved party ascertained the identity of the author.

#### Art. 49

##### Misleading advertising and other infractions

1. Anyone who, in advertising, in his business papers or, during the marketing of products, gives indications capable of inducing a wrongful belief that a product is protected,

Anyone who fails to use the variety denomination when he is in the business of selling the propagating material of a protected variety,

Anyone who, for another variety of the same botanical species or a similar species, utilizes in his

professional activity the variety denomination of a protected variety or a denomination leading to confusion with it,

Anyone who infringes in any other way the present Law or the related enabling prescriptions, shall be punishable by a fine, if he has acted intentionally.

2. Attempts and complicity shall be punishable.

Art. 50  
Seizure of material

Even if it has not been possible to prosecute or convict any specific person, the judge may order the seizure of the products produced unlawfully.

Art. 51  
Prosecution

Prosecution shall be the responsibility of the cantons.

Chapter 5  
Final provisions

Art. 52  
Amendment of prevailing legislation

*1. The Federal Law of April 11, 1889 on Prosecution for Debts and on Bankruptcy<sup>44</sup> has been amended as follows:*

Art. 132, para 2

...

*2. The Federal Law on the Organization of the Judiciary of December 16, 1943<sup>45</sup> has been amended as follows:*

Art. 100 n.

...

Art. 53<sup>46</sup>

Transitional provisions of the amendment of October 5, 2007

1. As an exception to art. 8b, para 2, the following shall also be deemed to be new, during a transitional period of one year starting with the entry into force of the amendment of October 5, 2007: varieties for which the propagating material or harvested material has been sold or otherwise marketed in Switzerland for less than one year prior to the entry into force of the present amendment, with the breeder's consent, for purposes of exploiting the variety.

2. Art. 5, para 2 a. shall not apply to those essentially derived varieties that were known prior to the entry into force of the amendment of October 5, 2007.

Art. 54  
Implementation

The Federal Council shall decide upon the necessary enabling provisions.

Art. 55<sup>47</sup>

Art. 56  
Referendum and entry into force

1. The present Law shall be subject to optional referendum.

2. The Federal Council shall set the date of its entry into force.

Date of entry into force: June 1, 1977<sup>48</sup>

## (Footnotes)

## RO 1977 862

- 1 [RS 1 3]. At present, art. 122 and 123 of the Constitution of April 18, 1999 (RS Recueil systématique – (Systematic Compilation) 101) correspond to the provisions referred to.
- 2 New wording according to chapter 12 of the annex to the Law of March 24, 2000 on Jurisdictions, in force since January 1, 2001 (RS 272).
- 3 FF (Feuille fédérale - Federal Gazette) 1974 I 1409
- 4 Repealed by art. 2, ch. 1 of the AF (Arrêté fédéral - Federal Decree) of October 5, 2007, valid as of Sept. 1, 2008 (RO (Recueil officiel - Official Compilation) 2008 3897 3908; FF 2004 3929).
- 5 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 6 RS 0.232.161/.163
- 7 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 8 Introduced by art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since September 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 9 Formerly section 2 of chap. 1. New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 10 Introduced by art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 11 RS 220
- 12 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 13 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 14 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 15 New wording according to art. 2, ch.1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 16 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since September 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 17 New wording according to art. 2, ch. 1 of the AF of Oct.5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 18 Repealed by art. 2, ch. 1 of the AF of Oct. 5, 2007, as of Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 19 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 20 RS 711
- 21 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 22 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 23 Introduced by art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 24 Introduced by art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008; 3897 3908 FF 2004 3929).
- 25 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 26 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 27 Repealed by ch. 24 of the annex to the Law of June 17, 2005 on the Federal Administrative Tribunal, as of January 1, 2007 (RS 173.32).
- 28 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 29 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 30 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 31 Introduced by art. 2, ch. 1 of the AF of Oct. 5, 2007, in force since Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 32 Repealed by art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 33 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, which entered into force on Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3920).
- 34 Repealed by art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 35 Repealed by ch. 12 of the annex to the Law of March 24, 2000 on Jurisdictions (RS 272).
- 36 Repealed by ch. II 12 of the LF (Loi fédérale – Federal Law) of March 20, 2008 relating to the Formal Updating of Federal Law, valid as from August 1, 2008 (RO 2008 3437 3452; FF 2007 5789).
- 37 Repealed by art. 2, ch. 1 of the AF of Oct.5, 2007, valid as from Sept.1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 38 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 39 RS 272
- 40 RS 210
- 41 Repealed by art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).
- 42 Repealed by ch. 12 of the annex to the Law of March 24, 2000 on Jurisdictions (RS 272).

(Footnotes cont/d)

43 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).

44 RS 281.1. The following amendment has been inserted into the said Law.

45 [RS 3 521 ; RO 1948 473 art. 86, 1955 893 art. 118, 1959 931, 1969 757 art. 80 b. 787, 1977 237 ch. II 3 1323 ch. III, 1978 688 art. 88 ch. 3 1450, 1979 42, 1980 31 ch. IV 1718 art. 52 ch. 2 1819 art. 12 para 1, 1982 1676 annex ch. 13, 1983 1886 art. 36 ch. 1, 1986 926 art. 59 ch. 1, 1987 226 ch. II 1 1665 ch. II, 1988 1776 annex ch. II 1, 1989 504 art. 33 a, 1990 938 ch. III para 5, 1992 288, 1993 274 art. 75 ch. 1 1945 annex ch. 1, 1995 1227 annex ch. 3 4093 annex ch. 4, 1996 508 art. 36 750 art. 17 1445 annex ch. 2 1498 annex ch. 2, 1997 1155 annex ch. 6 2465 appendix ch. 5, 1998 2847 annex ch. 3 3033 annex ch. 2, 1999 1118 annex ch. 1 3071 ch. I 2, 2000 273 annex ch. 6 416 ch. I 2 505 ch. I 1 2355 annex ch. 1 2719, 2001 114 ch. I 4 894 art. 40 ch. 3 1029 art. I1 para 2, 2002 863 art. 35 1904 art. 36 ch. 1 2767 ch. II 3988 annex ch. 1, 2003 2133 annex ch. 7 3543 annex ch. II 4 a. 4557 annex ch. II 1, 2004 1985 annex ch. II 1 4719 annex ch. II 1, 2005 5685 annex ch. 7, 2006 2003 ch. III. RO 2006 1205 art. 131 para 1].

46 New wording according to art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).

47 Repealed by art. 2, ch. 1 of the AF of Oct. 5, 2007, valid as from Sept. 1, 2008 (RO 2008 3897 3908; FF 2004 3929).

48 Para 2 of the ACF (Arrêté du Conseil Fédéral – Decree of the Federal Council) of May 11, 1977 (RO 1977 879).

## SWITZERLAND

### ORDINANCE ON THE PROTECTION OF NEW VARIETIES OF PLANTS No. 232.161 of June 25, 2008 (status as of September 1, 2008)\*

The Swiss Federal Council,

Considering art. 7, paragraph 2, 36, paragraph 3, and 54 of the Federal Law of March 20, 1975 on the Protection of New Varieties of Plants,<sup>1</sup> decides as follows:

#### Section 1 Subject matter

##### Art. 1

The present Ordinance regulates:

a. the procedure for the protection of new varieties of plants; b. the list of species to which the farmer's privilege applies; c. fees relating to the protection of varieties.

#### Section 2 Procedure

##### Art. 2

Filing date for applications sent by mail

1. For applications sent from Switzerland, the filing date shall be the day on which the application was mailed, as proven by the date of the postmark of the post office from which the application was sent. If such mark is lacking or is illegible, the stamp of the receiving post office shall be valid; if such stamp is also lacking or is illegible, the date on which the application was received by the Bureau for the Protection of Varieties shall be deemed to be the date of filing. The sender shall be entitled to provide proof of a date prior to the date on which the application was given to the post office.

2. For applications sent from abroad, the filing date shall be the date of the first Swiss postmark. If such mark is lacking or is illegible, the date on which the

application was received by the Bureau for the protection of varieties shall be deemed to be the date of filing. The sender shall be entitled to provide proof of a date prior to the date on which the application was given to the Swiss post office.

#### Art.3 Language

1. Applications addressed to the Bureau for the Protection of Varieties shall be drafted in German, French or Italian (official languages) or in English.

2. If documents are drafted in another language, their translation into the language of the procedure may be required.

3. Supporting documents which are not drafted in an official language or in English shall only be taken into consideration if they have been translated into an official language or into English.

4. If the translation of a document must be supplied, the Bureau for the Protection of Varieties may require that the accuracy of the translation be certified within the time limit set. If such certification is not provided, the document shall be deemed not to have been received.

#### Art. 4 Electronic communication

1. The Bureau for the Protection of Varieties may authorize electronic communication.

2. It shall decide on the technical arrangements and publish them accordingly.

#### Art. 5 Application filed jointly by several persons

1. When several persons file an application jointly, they shall:

RO 2008 3595

\* Unofficial translation provided by the Office of the Union. The official version of the Ordinance in French, German and Italian can be consulted at the following website [http://www.admin.ch/ch/d/sr/c232\\_161.html](http://www.admin.ch/ch/d/sr/c232_161.html)

1. RS 232.16

a. appoint a person from among their midst as their spokesperson with the Bureau for the Protection of Varieties;

b. appoint a joint representative.

2. If neither a spokesperson nor a representative has been appointed, the first person mentioned on the application shall be deemed to be the spokesperson. If one of the other persons is opposed to this, the Bureau for the Protection of Varieties shall invite all of the persons concerned to act in conformity with paragraph 1.

#### Art. 6

##### Relations with the appointed representative

1. If a representative has been appointed by one of the parties, as a general rule the bureau only accepts communications or proposals from that person. However, the principal may withdraw the application for protection of a variety or a denomination or waive protection of varieties, effective immediately.

2. The representative shall remain authorized to receive the files and fees which the Bureau for the Protection of Varieties is bound to pass on, when the principal withdraws an application for protection or waives protection of varieties.

#### Art. 7

##### Application

1. An application shall be filed with the Bureau for the Protection of Varieties using an official form. It shall comprise the following:

- a. the documents referred to in art. 8;
- b. the description of the variety covered by art. 9.

2. The filing fee shall be paid when the application is filed.

3. A separate application shall be filed for each variety.

#### Art. 8

##### Documents required to file an application

The following information shall be provided with the application:

Switzerland

a. the name or company name of the applicant, his residence or head office, and his exact address;

b. if the applicant and the holder are not one and the same person, the name or company name of the holder, his residence or head office, and his exact address;

c. the nationality of the holder, when such holder is a natural person;

d. the variety denomination or the designation indicated at the time of filing;

e. the name and address of a possible representative and the power of attorney;

f. the name and address of the initial breeder and the confirmation that to the applicant's knowledge, no other person helped breed the variety;

g. indications concerning the acquisition of the variety, when the holder is not the initial breeder or is not the sole initial breeder;

h. if propagating material or the harvested material for the variety is sold or otherwise handed over with the agreement of the holder or one of his predecessors, the place and date of such handing-over;

i. if an application has already been filed for the variety or if it is already protected in one or more members of the International Union for the Protection of New Varieties of Plants (members of the Union), the indication:

1. of this (these) member(s) of the Union;

2. of the variety denomination;

3. of the serial number under which the application or title of protection has been registered;

4. of the date of the application for or issuing of the title of protection;

j. if a right of priority has been claimed, the date of the first filing and an indication of the UPOV member in which the application was filed;

Ordinance No. 232.161 (status as of September 1, 2008)



k. the applicant's signature.

Art. 9  
Description of the variety

1. The description of the variety should contain the main morphological and physiological characteristics of the variety and the botanical name of the species to which it belongs. For varieties where plants are produced by cross-breeding of hereditary components, the main morphological and physiological characteristics of the breeding partners shall also be indicated. Moreover, there is a need to indicate the other varieties that the variety for which the application has been filed resembles and how it is different from them.

2. The description of the variety shall be based on a technical questionnaire.

3. The authorities in charge of the examination shall be entitled to ask for illustrations.

Section 3

List of species to which the  
farmer's privilege applies

Art. 10

The species to which the farmer's privilege shall apply are referred to in Annex 1.

Section 4  
Fees

Art. 11

Applicability of the General Ordinance on Fees

The General Ordinance of September 8, 2004 on Fees<sup>2</sup> shall apply, barring special provisions set out in the Federal Law of March 20, 1975 on the Protection of Plant Varieties or the present Ordinance.

Art. 12  
Date of payment

"Date of payment" shall be deemed to mean:

a. for transfers made in Switzerland, the debit date on the account of the person giving the order or, failing this, the date on the postmark for the credit notice;

b. for transfers made abroad, the date of receipt of the transfer notice by the first Swiss processing centre or, failing this, the date of the postmark for the credit notice.

Art. 13  
Filing fee

The filing fee is set in Annex 2.

Art. 14  
Fee for the examination of the variety

1. The authority responsible for carrying out the examination shall calculate the fee for the examination of the variety based on the amount of time spent.

2. If a foreign authority is responsible for carrying out the examination or if the examination results are taken up, the corresponding expenses shall be considered to be costs.

3. If the examination lasts several years, fees shall be billed annually.

Art. 15  
Annual fee

1. The annual fee shall be set at 240 Swiss francs per year and per variety.

2. If protection of the variety is not granted on the first day of a calendar year, the annual fee shall be calculated on a pro rata basis.

Art. 16  
Other fees

Fees shall be charged for decisions taken and services provided in relation to the protection of varieties.

2. RS 172.041.1

Art. 17  
Fee calculation

1. Fees shall be calculated using the rates referred to in Annex 2.

2. If no rate is set in the Annex, fees shall be calculated on the basis of the time spent. Depending on the knowledge required by the person conducting the examination, the hourly rate shall range from 90 to 200 Swiss francs.

3. When a decision or service, for which a rate has been set in Annex 2, leads to high extraordinary expenditure, fees shall be calculated according to paragraph 2.

Section 5  
Final provisions

Art. 18  
Repeal of legislation in force

The Ordinance of May 11, 1977 on the Protection of Varieties<sup>3</sup> is hereby repealed.

Art. 19  
Amendment of legislation in force

The Ordinance of October 19, 1977 on Patents<sup>4</sup> is amended as follows:

*Preamble*

*Previous title art. 110*

*Art. 110*

*Previous title art. 111*

Art. 20  
Entry into force

The present Ordinance shall enter into force on September 1, 2008.

3. [RO 1977 880, 1983 271, 1990 1030, 1993 879 Annex 3 ch.5, 1977 869 2779 ch. II 19, 2002 1122 Annex ch.3, 2006 2633 4705 ch.II 23]

4. RS 232.141. The amendments mentioned above are inserted in the said Ordinance.

ANNEX 1  
(art. 10)

## List of species

## (a) Fodder crops

*Brassica rapa* L. (partim)  
*Cicer arietum* L.  
*Lupinus albus* L.  
*Lupinus angustifolius* L.  
*Lupinus luteus* L.  
*Medicago sativa* L.  
*Pisum sativum* L. (partim)  
*Òrifolium alexandrinum* L.  
*Òrifoliuò resupinatum* L.  
*Vicia faba*  
*Vicia sativa* L.

## (b) Cereals

*Avena sativa*  
*Hordeum vulgare* L.  
*Oryza sativa* L.  
*Phalaris canariensis* L.  
*Secale cereale* L.  
*X Triticosecale* Wittm.  
*Triticum aestivum* L. emend Fiori et Paol.  
*Triticum durum* Desf  
*Triticum spelta* L.

## (c) Potatoes

*Solanum tuberosum*

## (d) Oil Crops and Fiber Crops

*Brassica napus* L. (partim)  
*Linum usitatissimum*

ANNEX 2  
(Art. 13 and 17, para 1)

## Fees for decisions and services

	Francs
Filing relating to a variety with a provisional or future indication of the denomination	400
Filing with definitive indication of the variety denomination	300
Publication of a change in the register of deposits or the register of protection titles	100
Requests for extension of the deadline for the submission of the documents and equipment	100
Costs in case of failure to comply with the time limits set for the submission of documents and equipment	200
Reminder in case of unpaid invoices	100

## NEWSLETTER

### UPOV DISTANCE LEARNING COURSE (DL-205)

The UPOV Distance Learning course has been followed by some 400 students in 2008, in English, French, German and Spanish.

Two sessions of the DL-205 Course are scheduled for 2009:

#### Session I

May 4 to June 7, 2009

(On-line registration: February 1 to 28, 2009)

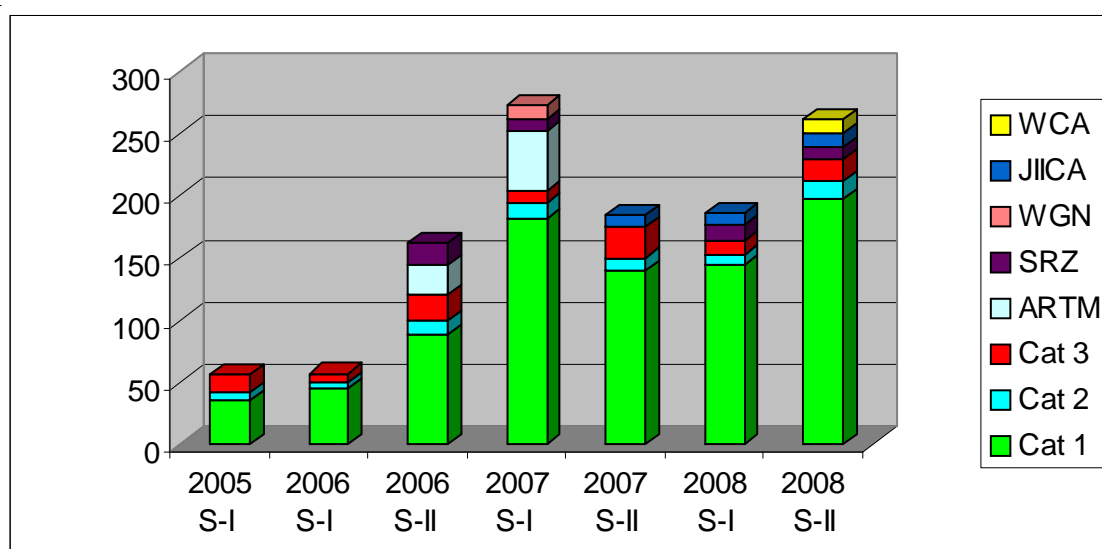
#### Session II

November 2 to December 6, 2009

(On-line registration: July 1 to 31, 2009)

In total, over 1100 students have participated in the UPOV Distance learning course (DL 205).

The course is now being used as a preparation for participants in various regional training organized by or in cooperation with UPOV (see graph below).



Category 1: Officials of members of the Union (non fee-paying)

Category 2: Officials of observer States/intergovernmental organizations (non fee-paying for the first participant)

Category 3: Others (fee CHF 1,000)

Cooperation activities in which the DL-205 course is integrated.

WCA: West and Central Asian Regional Meeting

WGN: Wageningen course on plant variety protection (Netherlands)

JICA: Training Course on the "Protection of Plant Breeders' Rights" organized by the Japan International Cooperation Agency (JICA)

SRZ: VII Curso de Formación para Países Iberoamericanos sobre la Protección de las Obtenciones Vegetales

ARTM: Asian Regional Technical Meeting

## **MEMBERS OF THE UNION**

<http://www.upov.int/export/sites/upov/en/about/members/pdf/pub423.pdf>

## **ADDRESSES OF PVP OFFICES**

[http://www.upov.int/en/about/members/pvp\\_offices.htm](http://www.upov.int/en/about/members/pvp_offices.htm)

## **INDEX OF LEGISLATION PUBLISHED IN PLANT VARIETY PROTECTION**

<http://www.upov.int/en/publications/npvlaws/index.html>

**CALENDAR OF EVENTS 2009****JANUARY**

- 8 Enlarged Editorial Committee, Geneva  
 26 to 29 Seminar on PVP under the UPOV Convention, Port of Spain, Trinidad & Tobago

**FEBRUARY**

- 1 to 28 UPOV Distance Learning Course (DL-205) on-line registration  
 (Session I: May 4 to June 7, 2009)

**MARCH**

- 2 to 6 AFSTA Congress 2009, Capetown, South Africa  
 (2 (a.m.) UPOV Workshop on Plant Variety Protection)  
 16 and 17 PVP Workshop for the Gulf countries, Muscat, Oman  
 30 (p.m.) to April 1 Technical Committee, Geneva

**APRIL**

- 1 (evening) *Ad hoc Subgroup of Technical and Legal Experts on Biochemical and  
 Molecular Techniques (BMT Review Group)*  
 2 Administrative and Legal Committee, Geneva  
 3 (morning) Consultative Committee, Geneva  
 3 (afternoon) Council (extraordinary session), Geneva  
 19 TWV Preparatory Workshop  
 20 to 24 TWV Session, Beijing, China  
 23 World IP Day Workshop on raising awareness: 10 years of UPOV PVP system in China

**MAY**

- 4 to June 7 UPOV Distance Learning Course (DL-205) (Session I)  
 18 to 22 USPTO/UPOV Training Course "Plant Variety Protection under UPOV Convention",  
 USPTO headquarters, Alexandria, VA, United States of America  
 25 to 27 ISF World Seed Congress 2009, Antalya, Turkey

**JUNE**

- 8 to 10 PVP Training for CIS countries, Chisinau, Republic of Moldova  
 15 TWC Preparatory Workshop  
 16 to 19 TWC Session, Alexandria, VA, United States of America

**JULY**

- 1 to 31 UPOV Distance Learning Course (DL-205) on-line registration  
 (Session II: November 2 to December 6)

**AUGUST**

- 30 TWA Preparatory Workshop  
 31 to September 4 TWA Session, Seoul, Republic of Korea

**SEPTEMBER**

- 8 to 10 Second World Seed Conference, FAO Headquarters, Rome,  
 13 TWO Preparatory Workshop  
 14 to 18 TWO Session, Angers, France  
 20 TWF Preparatory Workshop  
 21 to 25 TWF Session, Angers, France

## OCTOBER

12 and 13	European Seed Association Annual Meeting, Brussels
19 to 20	Administrative and Legal Committee, Geneva
21	Consultative Committee, Geneva
22	Council, Geneva
23	Administrative and Legal Committee Advisory Group, Geneva

## NOVEMBER

2 to December 6 (to be defined)	UPOV Distance Learning Course (DL-205) APSA Annual Congress, Bangkok, Thailand
16 to 20	VIII Training Course on PVP for Latin American countries, Santa Cruz de la Sierra, Bolivia

**CALENDAR OF EVENTS 2010**

## MARCH

22 (morning and evening)	Editorial Committee, Geneva
22 (afternoon) to 24	Technical Committee, Geneva
23 (evening)	Editorial Committee, Geneva
25	Administrative and Legal Committee, Geneva
26 (morning)	Consultative Committee, Geneva
26 (afternoon)	Council (extraordinary session), Geneva

## MAY

10	BMT Preparatory Workshop
11 to 13	BMT Session, Ottawa, Canada
31 to June 2	ISF World Seed Congress 2010, Calgary, Canada

## OCTOBER

18 and 19	Administrative and Legal Committee, Geneva
20	Consultative Committee, Geneva
21	Council, Geneva
22	Administrative and Legal Committee Advisory Group, Geneva

## Abbreviations:

Technical Working Party for Vegetables (TWV)

Technical Working Party on Automation and Computer Programs (TWC)

Technical Working Party for Agricultural Crops (TWA)

Technical Working Party for Ornamental Plants and Forest Trees (TWO)

Technical Working Party for Fruit Crops (TWF)

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)