

# PLANT VARIETY PROTECTION

GAZETTE AND NEWSLETTER

No. 100 - December 2006



**UPOV**

INTERNATIONAL UNION  
FOR THE PROTECTION  
OF NEW VARIETIES OF PLANTS

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## GAZETTE

### NEW MEMBERS OF UPOV

#### ICELAND\*

On April 3, 2006, the Government of the Republic of Iceland deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for the Republic of Iceland one month after the deposit of its instrument of accession, i.e. on May 3, 2006. The Republic of Iceland became the sixty-first member of the Union.

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

#### MOROCCO\*\*

On September 8, 2006, the Government of the Kingdom of Morocco deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for the Kingdom of Morocco one month after the deposit of its instrument of accession, i.e. on October 8, 2006. The Kingdom of Morocco became the sixty-second member of the Union.

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

FRENCH	LATIN NAME
CEREALES	
Blé dur	Triticum durum Desf.
Blé tendre	Triticum aestivum L.
Orge	Hordeum vulgar L.
Avoine	Avena sativa L.
Avoine nue	Avena nuda L.
Seigle	Secale cereale L.
Triticale	X Triticosecale
Maïs	Zea mays L.

\* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council of UPOV to advise it in respect of the conformity of its laws with the provisions of the UPOV Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited. The positive advice of the Council of UPOV concerning Iceland is contained in paragraph 19 of document C/37/22 based on document C/37/17 ([http://www.upov.int/en/documents/c/37/c\\_37\\_22.pdf](http://www.upov.int/en/documents/c/37/c_37_22.pdf)).

\*\* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, the positive advice of the Council of UPOV concerning Morocco is contained in paragraph 11 of document C(Extr.)/14/7 based on document C(Extr.)/14/4.

<b>LEGUMINEUSES</b>	
Fève	<i>Vicia fabia</i> L. var. <i>major</i> Harz
Lentille	<i>Lens culinaris</i> Medik
Pois chiche	<i>Cicer arietinum</i> L.
Petit pois	<i>Pisum sativum</i> L. partim
Haricot	<i>Phaseolus vulgaris</i> L.
<b>CULTURES FOURRAGERE</b>	
Féverole	<i>Vicia faba</i> L. var. <i>minor</i> Harz
Fevette	<i>Vicia fava</i> L. var. <i>equina</i>
Pois fourrager	<i>Pisum sativum</i> L. partim
Vesce commune	<i>Vicia sativa</i> L.
Vesce velue	<i>Vicia villosa</i> Roth.
Vesce de Narbone	<i>Vicia narborans</i> L.
Luzerne perenne	<i>Médicago sativa</i> L.
<b>CULTURE INDUSTRIELLES</b>	
Tournesol	<i>Helianthus annuus</i> L.
Colza	<i>Brassica napus</i> (L) ssp. <i>Oleifera</i> . Metzg Sinsk
Carthame	<i>Carthamus tinctorius</i> L.
Cotonnier	<i>Gossypium barbadense</i> L.
Cotonnier	<i>Gossypium hirsutum</i> L.
Soja	<i>Glycine max</i> (L) Mersill
Lin	<i>Linum usitatissimum</i> L.
<b>CULTURE POTAGERES</b>	
Tomate	<i>Lycopersicon lycopersicum</i> (L.) Karst. Ex Farwell
Melon	<i>Cucumis melo</i> L. (melo <i>Sativus</i> Sarg)
Pomme de terre	<i>Solanum tuberosum</i> L.
Frasier	<i>Fragaria x Ananassa</i> Duch

**VIET NAM\***

On November 24, 2006, the Government of the Socialist Republic of Viet Nam deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for the Socialist Republic of Viet Nam one month after the deposit of its instrument of accession, i.e. on December 24, 2006. The Socialist Republic of Viet Nam became the sixty-third member of the Union.

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

No.	COMMON NAME
1	Rice
2	Maize
3	Groundnut
4	Soybean
5	Tomato
6	Potato
7	Rose
8	Chrysanthemum
9	Watermelon
10	Cucumber
11	Cabbage
12	Kohlrabi
13	Grape
14	Tea
15	Cotton

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\* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, the positive advice of the Council of UPOV concerning Viet Nam is contained in paragraph 12 of document C(Extr.)/20/6 based on document C(Extr.)/20/3.

## *ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION*

### *UKRAINE*

On December 19, 2006, the Government of Ukraine deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants with the Secretary-General of UPOV.

The 1991 Act of the Convention entered into force for Ukraine one month after the deposit of its instrument of accession, i.e. on January 19, 2007.

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

**EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES****PANAMA**

The Office of the Union received on March 16, 2006, a notification concerning the extension of the list of genera and species eligible for protection and administered by the Ministry of Agricultural Development of Panama.

No.	ENGLISH	LATIN NAME
1	Coffee	<i>Coffea arabiga</i>
2	Yam	<i>Manihot esculenta</i> Crantz
3	Ñame	<i>Dioscorea</i> spp.
4	Banana	<i>Musa</i> spp.
5	Banana	<i>Musa cavendishii</i> Lamb.
6	Sugar Cane	<i>Saccharum officinarum</i> L.
7	Otoe	<i>Xanthosoma</i> sp.

**REPUBLIC OF KOREA**

The Office of the Union received on October 18, 2006, a notification concerning the extension of the list of genera and species eligible for protection and administered by the Ministry of Agriculture and Forestry of the Republic of Korea.

No.	COMMON NAME	LATIN NAME
1	Buck wheat	<i>Fagopyrum</i> spp.
2	Chinese chive	<i>Allium tuberosum</i> Rottl. ex Spreng.
3	Kale	<i>Brassica oleracea</i> L. var. <i>acephala</i> (DC.) Alef. <i>Brassica oleracea</i> L. var. <i>sabellica</i> L.
4	Swiss chard, leaf beet	<i>Beta vulgaris</i> L. var. <i>cicla</i> L. (Ulrich)
5	Whorled mallow	<i>Malva verticillata</i> L. (= <i>M. pulchella</i> Berh.)
6	Chicory	<i>Cichorium intybus</i> L.
7	Endive	<i>Cichorium endivia</i> L.
8	Plumed Thistle	<i>Cirsium</i> spp.
9	Delphinium	<i>Delphinium</i> spp.
10	Phlox	<i>Phlox</i> spp.
11	Rubber tree	<i>Ficus elastica</i> Roxb.
12	Dracaena	<i>Dracaena fragrans</i> Ker-Gawl.
13	Philodendron	<i>Philodendron</i> spp.
14	Tillandsia	<i>Tillandsia</i> spp.
15	Cymbidium	<i>Cymbidium</i> spp.
16	Anemone	<i>Anemone</i> spp.

No.	COMMON NAME	LATIN NAME
17	Clematis	Clematis spp.
18	Common lantana, shrub verbena	Lantana camara L.
19	Liatris	Liatris spp.
20	Desert rose	Adenium spp.
21	Trailing maidenhair	Adiantum spp.
22	Osmunda	Osmunda spp.
23	Dracaena	Dracaena spp.
24	Peperomia	Peperomia spp.
25	Spinless cactus	Opuntia ficus-indica
26	Udo	Aralia continentalis Kitag. (=Aralia cordata Thunb.)
27	Tangshen/Pilose Asia-bell	Codonopsis pilosula (Franch.) Nannf.
28	Nut Grass	Cyperus rotundus L.
29	Common Anemarrhena	Anemarrhena asphodeloides Bunge
30	Cape-Jasmine	Gardenia spp.
31	Entomopathogenic fungi	Cordyceps spp.
32	Hawthornleaf raspberry	Rubus crataegifolius Bunge
33	Alfalfa	Medicago sativa L.
34	Triticale	X Triticosecale Wittmack

### ***TRINIDAD AND TOBAGO***

The Office of the Union received on October 18, 2006, a notification concerning the extension of the list of genera and species eligible for protection and administered by the Ministry of Agriculture of Trinidad and Tobago (The Protection of New Plant Varieties (Amendment) Order, 2004).

No.	LATIN NAME
1	Anthurium
2	Heliconaceae
3	Sterculiaceae



**MODIFICATION OF FEES****LITHUANIA****ORDER OF THE MINISTER OF AGRICULTURE OF THE REPUBLIC OF LITHUANIA REGARDING REMUNERATION****23 of June 2004 No. 3 D-371**

Leading on the 4 part of 28 Article of the Law on Plant Variety Protection of the Republic of Lithuania (Official Journal 2001, No. 104-3701) and Commission Regulation (EC) No. 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94 on Community plant variety rights (with last amendments made by Commission Regulation (EC) No. 2505/98 of 3 December 1998).

I do hereby establish that remuneration may not be paid if areas on which following plant species have been grown is not larger:

1. in case of triticale, soft and durum wheat, barley, oat, rye, swede rape, turnip rape, linseed (with the exclusion of flax), yellow lupin, lucerne, field bean, common vetch, field pea - 30 ha;
2. in case of potatoes - 10 ha.

Minister of Agriculture

Jeronimas Kraujelis

**REGULATION No. 1473 OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA OF 19 DECEMBER 2002 REGARDING REPLACEMENT OF REGULATION OF THE REPUBLIC OF LITHUANIA No. 1458 15 DECEMBER 2000 CONCERNING FEES RATES****(Official Journal, 2002, No 93-3987)**

Application fee.....350 Lt.

**REGULATION No. 710 OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA OF 29 JUNE 2005 REGARDING REPLACEMENT OF REGULATION OF THE REPUBLIC OF LITHUANIA No. 1458 15 DECEMBER 2000 CONCERNING FEES RATES****(Official Journal, 2005, No 81-2958)**

Entering of the protected variety into the List of Protected Varieties in the Republic of Lithuania and issuance of the Certificate on Granting Legal Protection to the Plant Variety.....600 Lt;

Prolongation of the period of plant variety protection (not longer than 5 years) and issuance of the Certificate for this prolongation.....500 Lt;

Fee for registration of the licensing agreements .....  
.....20 Lt.

## CASE LAW

This section has been created to publish information on case law relevant to plant breeders' rights. The Office of the Union welcomes the submission of summaries of recent decisions and/or, if possible, a direct link to the full text of the decision. Please send your contribution to: [upov.mail@upov.int](mailto:upov.mail@upov.int).

Disclaimer: The views expressed in the summaries under this section and/or in the contents of Court decisions are not necessarily those of UPOV. They are provided for information purposes only.

### AUSTRALIA

Summary by Doug Waterhouse  
Registrar, Plant Breeder's Rights Office, IP Australia

#### Second Appeal

Federal Court Decision - *Cultivaust Pty Ltd & The State of Tasmania v Grain Pool Pty Ltd & The State of Western Australia* [2004] FCA 638 (May 2004). Two appeals have been heard as *Cultivaust Pty Ltd v Grain Pool Pty Ltd & Others*, SAD 135 of 2004.

Cultivaust sought special leave from the High Court of Australia to appeal the Full Court's decision, as mentioned above. The application was heard and denied on June 16, 2006.

The transcript and decision is available at:  
<http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/HCATrans/2006/333.html?query=cultivaust>

This case was interesting because it dealt, perhaps for the first time, with issues related to Article 14(2) and 15(2) of the 1991 UPOV Convention in relation to reasonable opportunity to exercise rights on propagating material and the consequence in relation to the scope of the breeder's right in respect of harvested material and farm saved seed.

This brings to an end this long running case which extended to matters including:

#### First Appeal

- power of the Commonwealth of Australia to make laws in relation to Plant Breeder's Rights;

Cultivaust Pty Ltd's appeal to the Full Bench of the Federal Court against the judgment from the single judge of the Federal Court that their rights in relation to "Franklin" barley had not been infringed by the Grain Pool Pty Ltd was dismissed on October 28, 2005. This confirmed that the primary judge's view that "exhaustion of PBR by the sale of initial seed does not extend to cover the sale of second and subsequent generations of crops, assuming they are grown from retained farm saved seed".

- transitional arrangements for domestic law when moving between UPOV 1978 and UPOV 1991 compliant legislation;

- the nature of the Plant Breeder's Right;

- the bedrock of a patent (in Australia); and

- the operation of farm saved seed and its interaction with issues related to Articles 14(2) and 15(2) of UPOV 1991.

The transcript is available at:  
<http://www.australii.edu.au/cgi-bin/disp.pl/au/cases/cth/FCAFC/2005/223.html?query=cultivaust#disp3>

**EUROPEAN COMMUNITY**

Summary by Martin Ekvad  
Head of Legal Affairs of the Community Plant Variety  
Office

Saatgut-Treuhandverwaltungsgesellschaft ('STV') v.  
Deppe/Hennings/Lübbe  
C-7/05, C-8/05 and C-9/05, 8 June 2006

## Facts:

STV, a German organisation of holders of Community plant variety rights claimed royalties from a number of farmers (the "farmers") for the planting of farm saved seed which are covered by plant variety right protections. STV argued that a royalty of 80% of the price of certified seed should be paid for farm saved seed. It was not contested that the farmers used protected seeds, the question raised was whether the remuneration was "sensibly lower" within the meaning of the applicable law. Under Article 14(3) of Council Regulation 2100/94 farmers may use farm saved seed under the condition that an equitable remuneration is paid to the holder, which shall be *sensibly lower* than the amount charged for the licensed production of propagating material of the same variety in the same area. The issues raised in these cases were basically how to determine the remuneration and whether provisions that have not yet entered into force could be used as guidance when setting the level of the remuneration. The German appeal court, Bundesgerichtshof, decided to stay the national proceedings and referred the cases to the European Court of Justice for a preliminary ruling.

Findings of the Court: The court summarized that there are basically three methods on how to calculate the remuneration: *first*, by the conclusion of a contract between the holder and the farmer pursuant to Article 5(1) of Regulation 1768/95, *secondly*, by the conclusion of agreements between organizations of plant variety right holders and of farmers in accordance with Article 5(4) of that Regulation, and *lastly*, in the alternative by the determination of a level of remuneration on the basis of certain guiding principles laid down in Article 5(2) and 5(5) of Regulation 1768/95. Since, in the present case, there had been no contract or accession to an agreement, only the latter method applied.

The court reiterated that Article 5(3) of the mentioned Regulation states that there should be a reasonably balanced ratio between licensed propagating material and farm saved seed. Article 5(2) takes as a point of reference "the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area". Article 5(5) specifies that a rate of 50% (40% during a transitional period) of the certified seed should be paid in the absence of agreements.

Contrary to an argument presented in the German court, that 20% is considered to be a significant reduction, the court referred to the principles mentioned above and held that a standard rate fixed at 80% of the certified seed fee for calculating the remuneration to be paid to holders is too high. In order to determine the rate applicable, account had to be taken of the varieties at issue and the area concerned. The court acknowledged that Article 5(2) (specifying the 50% level) was not yet in force when the request for remuneration was made by STV and that the provision could not apply with retroactive effect. However, that provision could serve as a guide for the calculation of that remuneration with respect to planting carried out before the entry into force of the provision.

The court also explained that, in order for an agreement concluded between organizations of holders and of farmers, as referred to in Article 5(4) of Regulation 1768/95, to be used as a guideline as regards all its parameters, the said agreement must have been notified to the EU Commission and published in the *Official Gazette* of the Community Plant Variety Office. The court said that such an agreement may provide a rate of remuneration different from the level of 50% as specified in Article 5(5) of Regulation 1768/95, since Article 5(5) is only applicable in the absence of an agreement.

The last question raised by the German court was whether the level of 50% referred to in Article 5(5) constitutes an upper limitation for establishing the remuneration. The court held that in the absence of an applicable agreement between organizations of holders and of farmers, the remuneration must be

established as a fixed amount of 50% and that this level constitutes neither an upper limit nor a lower limit.

Link to full text of the Court Decision:

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

## **GERMANY**

Summary on the Federal Supreme Court's decision dated February 14, 2006,  
File No.: X ZR 93/04

The full text of the decision of the German Supreme Court can be found at:  
<http://www.bundesgerichtshof.de>

By Dr. Gert Würtenberger, partner in Wuesthoff & Wuesthoff, received by UPOV from the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA).

Factual Situation:

The Plaintiff, who is the holder of plant variety rights in two *Calluna vulgaris* breedings, brought a plant variety infringement action against a home enhancement and DIY retailer chain that is commercially active throughout Germany. One variety was protected by a Community, the other by a German plant variety right. The Defendant had offered for sale calluna plants which showed characteristics of the protected varieties according to the defendant's and test purchasers' observations. Owing to particular circumstances, it was evident that the plants offered by the Defendant did not originate from the Plaintiff's licenses.

The Plaintiff has had plants secured for evidence purposes at various selling points. Only seven plants of the first variety and one plant of the second one bought survived.

Issues to be clarified:

In the last instance, the Federal Supreme Court had first of all to find on the extent of the comparison trials in order to properly determine whether the plants alleged to infringe fell into the scope of the

protection of the protected varieties. As only seven plants of the one and a single one of the other variety, respectively, were available for evidence purposes, the Defendant argued that the expert had to compare 30 plants, respectively, during the examination as laid down in the UPOV Examination Guidelines.

The Federal Supreme Court did not support this view. It rather emphasised that these Guidelines are not applicable to check whether particular plants fall into the scope of protection of a plant variety right but only to determine the legal conditions for protection, in particular, with regard to uniformity and stability. In contrast, so the Court, it is the respective single plant that has to be dealt with in an infringement action. In this regard, the Court deemed it sufficient that at least one plant produced and put into circulation by the party that is claimed to be an infringer belongs to the protected variety. Only if there are clear deviations in the expression of one or more characteristics as compared to the expressions observed at the time the plant variety right protection was granted, it might be questionable whether examination of one single plant will be sufficient. In such an event, a genetic examination (DNA analysis) could come into consideration.

The Federal Supreme Court stresses in this context that if there are any doubts as to whether the only surviving plant falls into the scope of protection of the asserted protected variety, it is admissible that a greater number of plants is obtained from the only surviving plant by way of the propagation of cuttings in order to then examine such propagated plants as to its morphological and physiological characteristics and compare the same with the protected variety's characteristics. The Federal Supreme Court further stresses that the court does not need to specify a particular examination method vis-à-vis the expert.

Another issue related therewith was as to whether, alternatively or in addition to the examination of the phenotype, a genetic analysis of the allegedly infringing material would have needed to be conducted. The Federal Supreme Court confirms this option, however, leaves it, as mentioned above, to the court's discretion what examination method it deems appropriate.

Moreover, clarification was required to which extent commercial enterprises are under the obligation to check when they buy plant material whether or not the same complies with the law.

As far as the responsibility of the sued home enhancement and DIY retailer is concerned, the Federal Supreme Court states and, by doing so, confirms its preceding case law that an enterprise specialised i.a. in trading with certain goods such as plants is under the obligation to check the existence of intellectual property rights and to make sure in an appropriate manner that the product it offers does not infringe third parties' rights. This particularly holds true for dealers who purchase products from abroad since in such a case it is possible that the producer and potential further members of the distribution chain did not see any cause for checking the product with regard to domestic intellectual property rights. A dealer concerned with plants must not put into circulation such plants unless he may rightly assume that such a necessary check with regard to the possible infringement of third parties' rights has at least been conducted once. The Federal Supreme Court thus objects to the view taken by the sued home enhancement and DIY retailer chain that the retail industry may limit itself to purchasing from experienced suppliers and does not need to take any measures against potential infringement of intellectual property rights unless there are suspicious facts given.

Finally, the Court also confirms an obligation of the sued company that the same has to give information on the committed infringing acts as regards the effective Community plant variety right so as to enable the Plaintiff to calculate the damages awarded. This was a matter in dispute since such claim for information is not expressly mentioned in the Council Regulation on Community Plant Variety Rights. Art. 97 para. 3 Council Regulation provides that the effects of the Community plant variety right shall solely be determined by the Council Regulation.

Since the claim for information is not expressly governed, the Defendant had taken the position that, as a consequence, such a claim could not be enforced where Community plant variety rights are infringed. In contrast, the Federal Supreme Court stresses that giving information is not an additional effect of the plant variety right which is not provided for in the Community plant variety law, but that this is the means that renders an effective enforcement of the claim for damages as laid down in the Council Regulation feasible. According to the Court, it follows from the Council Regulation that the national law on enforcement of claims derived from a Community plant variety right has by all means to provide for the same options as it provides for with regard to the enforcement of national plant variety rights.

The Federal Supreme Court also had to find as to whether the plants offered for sale to the end consumers by the home enhancement and DIY store were to be considered harvested material. This was decisive as regards the protected Community plant variety for the reason that, pursuant to Art. 13 para. 3 Council Regulation, the plant variety holder's rights could only be exercised in relation to harvested material if such material has been produced by way of non-licensed propagation without the right holder's consent and the plant variety right holder did not have reasonable opportunity to exercise his right against the party who produced the plants from which the harvested had been gained, that is to say, the non-licensed propagator. For obvious reasons, the Defendant argued that plants intended for sale to the end consumer obtained through non-licenses propagation was harvested material in the sense of the law. In this regard, the Federal Supreme Court clarifies that ornamental plants intended for end consumers are not harvested material within the meaning of the Council Regulation.

As regards the interpretation of Section 10 para. 2 German Plant Variety Protection Law, comparable to Art. 13 para. 3 of the Council Regulation, which only relates to harvested material, the German law lays down that the plant variety right holder may only exercise his rights in relation to plants, flowers or other products which are produced from non-licensed propagation material if he had not had reasonable opportunity to exercise his plant variety right against the unrightful production of the propagation material. In the matter at issue the plants had been produced in France. The Plaintiff, however, did not possess

any rights in his variety in France. As a result, the Federal Supreme Court confirmed that the plant variety right owner could continue proceeding in Germany against the plants of the variety at issue which have been imported from France and were produced without any licence.

Such comments appear important, particularly against the background of the debate regarding the issue when a breeder could exercise his protective right. The Federal Supreme Court clarifies that a protective right can only be exercised in the territorial ambit of such right. Accordingly, the import of cut roses from Brazil still infringes the breeder's Community plant variety right if he had had reasonable opportunity to have his variety protected in Brazil as well. Some voices may be heard which

argue that once a country has put into force a protective right system for plant varieties, the breeders are under the obligation to make use of the same since otherwise they are not entitled to rely on Article 14(2) UPOV 1991. Obviously, this view is not shared by the German Court.

Conclusion: By way of this decision the Federal Supreme Court has clarified issues of high relevance for the effective enforcement of plant variety rights. The aspects to be clarified were decided upon in favour of the plant variety right holder. Thus, this decision significantly contributes to strengthen the right owner's position.

## **NEW ZEALAND**

### ***Infringement of a Plant Variety Right, Court Decisions***

Summary by Jane Calvert and Kate Duckworth of Baldwins Intellectual Property, New Zealand.

Plant variety rights cases are rare, and the first case to consider infringement in the High Court of New Zealand was decided in September 2004, followed by an appeal to the Court of Appeal by the first and second defendants in 2005.

[See UPOV Gazette Issue No. 99 of September 2005]

In New Zealand plant variety rights ("PVRs") are governed by the Plant Variety Rights Act 1987 ("the Act"). PVRs give the owner of the PVR the exclusive right to "produce for sale, and to sell, reproductive material" of the variety protected (see section 17 of the Act). Infringement of the exclusive rights is actionable in the High Court. An appeal lies to the Court of Appeal.

The facts of the case:

In *Cropmark Seeds Ltd v Winchester Intl (NZ) Ltd & Ors\**, Cropmark, a New Zealand company, sued another New Zealand company and its two directors personally for infringement of its PVR in a barley called "Optic" used in brewing beer. Cropmark alleged the defendants "arranged" for the sale of Optic barley seed. Optic barley was developed in the United

Kingdom. Cropmark was the exclusive licensee in New Zealand. There were sub-licensees in New Zealand who paid a royalty to Cropmark.

The facts of the case revealed a complex web whereby the defendants arranged for sales of uncertified Optic seeds from a third party. They did not sell seed themselves. The parties involved in the sale of uncertified seed documented the sales and supply of seed as "feed" and not for "sowing" to avoid the need to pay levies and royalties to Cropmark. The seed was sold in plain bags, without tags. Purchasers of the seed were asked not to tell anyone about the purchase and that they would be billed for "straight barley" so as to leave a non-descript paper trail. The second defendant was found to have gone to some lengths to hide the true nature of the sales. The judge, John Hansen J., also found discrepancies in the evidence. In relation to the second defendant, he found him "disingenuous, prone to dissemble, sometimes contradictory, and frequently answering a completely different question to what was put".

The High Court decision:

The Judge came to the view that the second defendant knew that legally only Cropmark had the right to sell Optic barley, and had decided that if he did not sell directly, but merely arranged sales, he

would avoid infringing Cropmark's rights. The defendants claimed that because there were no "sales" and as such no infringement based on the words of section 17 "produce for sale, and to sell, reproductive materials".

John Hansen J.'s decision includes an interesting discussion of the extent of the rights granted by the Act. The Act was said to give proprietary rights. Infringement is a violation of those rights, and in the judge's view, could not be limited to sale. The judge appeared to work backwards, stretching the words "produce for sale, and to sell, reproductive material" to include arranging sales. He said that otherwise sales of seed could be organised, in breach of proprietary rights, but escape liability.

How can it be an infringement if the rights do not extend that far?

It was the judge's view that Parliament did not intend to exclude arranging sales from infringement. While this may be true, the words of the Act do not extend that far. The judge found that the first and second defendants infringed Cropmark's proprietary rights. The third defendant, as director of the first defendant, was found not to have infringed because he lacked the necessary knowledge of the activities.

The question turned to damages. There was no evidence that the defendants profited from their activities. If this was the case then one wonders why the defendants bothered to arrange sales. In any case, the judge saw no point in seeking an account of profits or damages. Cropmark asked for exemplary damages. Exemplary damages are available where the defendant's behaviour is reprehensible and are intended to punish a defendant. The judge had no difficulty in finding there was a blatant and deliberate disregard of Cropmark's rights. An award of \$5,000 against each of the first and second defendants was awarded.

The Court of Appeals decision:

The defendants challenged the High Court judgment as to liability, the award of exemplary damages and an order for payment of costs#.

The question was said to be whether the defendants' conduct has diminished Cropmark's enjoyment of its exclusive right. Each of the sales was of reproductive material namely Optic seed. Since Cropmark

possessed the exclusive right to engage in such conduct, undoubtedly the defendants infringed the exclusive right by depriving it of potential royalties. The defendants may now apply to the Supreme Court for leave to appeal to that Court.

Did the courts get it right?

Possibly not, because arranging sales is not one of the exclusive rights granted to the proprietor under section 17. But the defendants' actions did deprive Cropmark of royalties and were deliberately designed to do so.

A judge can only operate within the confines of the law under consideration (although judges have at times been accused of stretching the law into the area of judicial lawmaking). Interest and lobby groups can then pressure Parliament for a change. The New Zealand Government is currently considering a change to the Act. The Plant Variety Rights Amendment Bill ("the Bill") has been released to the public for discussion but does not specifically cover "arranging sales". It does set out an expanded group of rights including the right to prevent other people, without the PVR owner's authorisation, "from producing or reproducing, conditioning for propagation, offering for sale, selling or marketing, or importing or exporting the reproductive material of a protected variety" likely to be subject to some exceptions. The Bill also includes the right to prevent other people stocking that material for any of those purposes and authorising other people to do any of those things.

If passed by Parliament in its current form the Bill may be more likely to capture the defendants' activities in the present case. While the words of the Bill do not expressly include "arranging sales" such an activity may be caught by the words "offering for sale" and/or "marketing" or as "authorising" other people to sell or offer for sale or market a protected variety. It seems that Parliament's intention in drafting the Bill is to broaden the exclusive rights granted to PVR owners. However, the Bill is not yet law and has no effect on the case of *Cropmark Seeds v. Winchester*.

\**Cropmark Seeds Ltd v Winchester Intl (Ltd & Ors (HC, 28/9/04, John Hansen J., Timaru CIV 2003-476-8.*

#*Winchester Intl (NZ) & Anr v. Cropmark Seeds Ltd (CA, 5/12/2005, Anderson P. Glazebrook J, Baragwanath J., Wellington, CA226/04).*

## NEW UPOV GUIDANCE ON VARIETY DENOMINATIONS

At its fortieth ordinary session, held in Geneva on October 19, 2006, the Council of UPOV adopted the "Explanatory notes on variety denominations under the UPOV Convention", as contained in document C/40/12, and noted that prior guidance provided by the "UPOV Recommendations on Variety Denominations" (document UPOV/INF/12 Rev.), was superseded by those Explanatory Notes. The Council expressed its appreciation to the *Ad hoc* Working Group on Variety Denominations for its contribution. The adopted Explanatory Notes (document UPOV/INF/12/1) are available on the UPOV website (see [http://www.upov.int/en/publications/pdf/inf\\_12\\_1.pdf](http://www.upov.int/en/publications/pdf/inf_12_1.pdf)).

## UPOV DISTANCE LEARNING COURSE

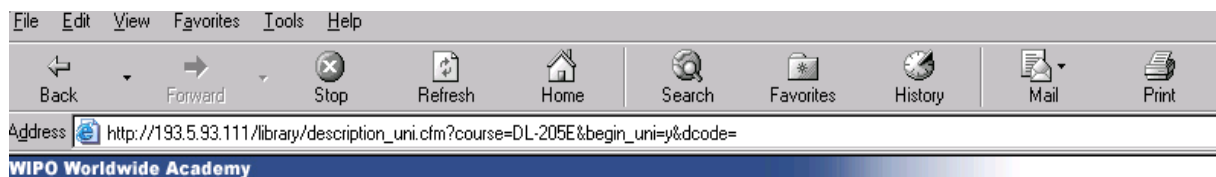
The UPOV Distance Learning Course DL-205, which was launched in September 2005, has now been completed by some 279 participants. The Course is available in English, French, German and Spanish.

Two sessions of the DL-205 Course are scheduled for 2007:

April 16 to May 20, 2007

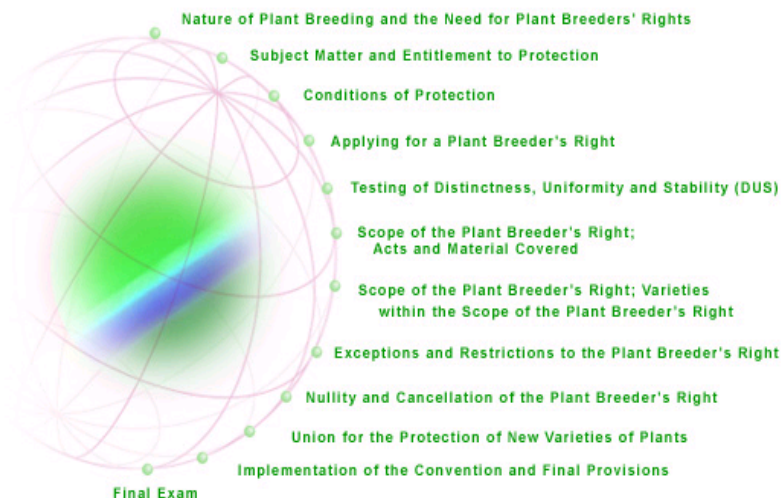
September 10 to October 14, 2007

More information on the course content and on-line registration is available on the UPOV website: <http://www.upov.int/en/about/training.html>



- ▶ [My Course](#)
- ▶ [Syllabus](#)
- ▶ [Resources](#)
- ▶ [Communicate](#)
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- ▶ [Short Cuts](#)
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- ▶ [Tutor](#)
- ◀ [Exit](#)

# DL-205





### ***UPOV REGIONAL ACTIVITIES - HIGHLIGHTS***

The Office of the Union, with the financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan, organized two regional events in Asia in 2006, as follows:

#### Seventh Asian Regional Technical Meeting for Plant Variety Protection (ARTM 7)

ARTM-7 was held from November 6 to 11, 2006, in Kuala Lumpur, Malaysia, in cooperation with the Department of Agriculture (DOA) of Malaysia. ARTM was attended by some 80 experts from 14 Asian countries (Cambodia, China, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, the Philippines, the Republic of Korea, Singapore, Sri Lanka, Thailand and Viet Nam) as well as two international organizations (the International Rice Research Institute (IRRI) and the International Tropical Fruits Network (TFNet)). Plant variety protection offices of Germany, Japan, the Republic of Korea and the United Kingdom provided lecturers.

ARTM has been held since 1999, with a view to facilitating the introduction of effective national plant variety protection systems in line with the 1991 Act of the UPOV Convention in the region and promoting regional cooperation in plant variety protection.

#### Second West and Central Asian Regional Workshop on Plant Variety Protection under the UPOV Convention (WCARW-2)

WCARW-2 was held from September 15 to 18, 2006, in Hoja-Obigarm, Tajikistan, in cooperation with the Ministry of Agriculture of the Republic of Tajikistan and the Swedish International Development Cooperation Agency (Sida). WCARW-2 was attended by experts from Afganistan, Azerbaijan, Islamic Republic of Iran, Jordan, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, Turkey, Uzbekistan, as well as experts from the Food and Agricultural Organization of the United Nations (FAO), the International Center for Agricultural Research in the Dry Areas (ICARDA) and the International Seed Federation (ISF). Plant variety protection offices of Germany, Japan and the Russian Federation provided lecturers.

WCARC is a forum to discuss various aspects of plant variety protection in the region, in particular the benefits of plant variety protection in line with the 1991 Act of the UPOV Convention and to promote regional cooperation.

## ***UPOV REGIONAL ACTIVITIES - HIGHLIGHTS***

### Fifth training course on plant variety protection for Latin-American countries

From November 20 to 24, 2006 in Santa Cruz de la Sierra, Bolivia, UPOV organized , in cooperation with the Spanish Office for Plant Varieties (OEVV), the National Institute for Agricultural and Food Technology Research from Spain (INIA), the Spanish Agency for International Cooperation (AECi) and the World Intellectual Property Organization (WIPO), the fifth training course on plant variety protection for Latin-American countries.

The objective of the course was to provide training in the examination of distinctness, uniformity and stability (DUS) to experts from the region. The activity took place in the training center of AECI, in Santa Cruz de la Sierra and included a practical training exercise on rice and soybean filled plots specially prepared by experts from the Regional Seed Office from Santa Cruz de la Sierra, where participants were requested to observe and record descriptions of different varieties of these crops. The course was attended by 27 participants from 18 Latin-American countries.



Participants recording data from soybean plots in the field test exercise

**UPOV VACANCY ANNOUNCEMENT No. UPOV 50****Secretary II (Administrative matters)****Principal duties**

Under the supervision of the Vice Secretary-General, or the person designated by him, the incumbent will provide administrative assistance to the Organization, performing, in particular, the following tasks:

- (a) assisting in the coordination and preparation of technical documents (in four languages);
- (b) assisting in the preparatory work for, and in the follow-up of the work of the Technical Committee, Technical Working Parties and associated groups;
- (c) assisting in the maintenance and updating of the UPOV website;
- (d) assisting in the development, maintenance and operation of UPOV information databases;
- (e) assisting in the design and updating of electronic templates for the preparation of Test Guidelines;
- (f) assisting in the preparation of information and presentation materials;
- (g) audio-typing and copy-typing in English, French and German; checking work for typing accuracy, conformity with procedural instructions and idiomatic correctness; assisting in proofreading, in particular in German; use of electronic text processing equipment, including advanced functions, where required, in connection with these duties; drafting of routine correspondence in English, French and German; maintaining files and dealing with routine inquiries; other secretarial tasks, as required.

**Qualifications required**

- (a) Complete secondary education with relevant diploma or equivalent qualifications.
- (b) Excellent knowledge of German, English and French. Good knowledge of Spanish would be an advantage.
- (c) Professional ability (standards of the UN Common System in Geneva) in audio-typing and copy-typing in English, German and French. Ability to use electronic text and word processing equipment. Ability to use spreadsheet, PowerPoint, database and Internet applications.
- (d) Secretarial experience commensurate with the aforementioned duties.

Age limit: less than age 55 at the date on which the appointment takes effect.

Medical examination: initial appointment is subject to a satisfactory medical examination.

For more information on this position, please consult the following website:

<http://www.wipo.int/hr/en/vacancy/index.jsp>

Closing date for applications: March 2, 2007

## NEWSLETTER

### LEGISLATION

#### CZECH REPUBLIC

**CONSOLIDATED VERSION OF ACT No. 408/2000 Coll.  
ON THE PROTECTION OF PLANT VARIETY RIGHTS  
(No. 32/2006)\***

THE PRIME MINISTER

promulgates

the consolidated version of 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.

ACT

on the Protection of Plant Variety Rights

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

PART ONE

CHAPTER I  
GENERAL PROVISIONS

Article 1

(1) This Act regulates

- a) the rights and obligations with respect to plant varieties protected under this Act,
- b) the powers and role of state administration authorities in the field of plant variety rights to varieties,
- c) the proceedings for the grant of plant variety rights,
- d) the control of variety maintenance, and

e) the imposition of sanctions for infringement of obligations stipulated by this Act which the directly applicable rule of the European Communities<sup>1)</sup> entrusts to the competence of European Union individual member States (hereinafter referred to as "Member State").

(2) Further to the directly applicable rule of the European Communities<sup>1a)</sup> this Act regulates the imposition of sanctions for the infringement of plant variety rights of the European Communities (hereinafter referred to as "the Community plant variety right").

Article 2  
Definitions

For the purposes of this Act

- a) "variety" means a plant variety defined by the International Convention for the Protection of New Varieties of Plants<sup>2)</sup>,
- b) "plant variety rights" mean rights and obligations to plant varieties resulting from an effective decision of the Central Institute for Supervising and Testing in Agriculture (hereinafter referred to as "the Institute"),
- c) "holder of breeder's rights" means the breeder who has been granted plant variety rights to the variety, or his successor in title,
- d) "breeder" means the natural or legal person, who bred, or discovered and improved (hereinafter referred to as "created") a variety or the person for whom someone else created a variety as part of fulfilment of tasks in relation to an employment contract or another similar relationship, unless a written agreement stipulates otherwise; legal

\* Translation provided by the Czech authorities.

successor of the breeder shall also be considered as breeder,

- e) "protected variety" means the variety protected by plant variety rights granted pursuant this Act,
- f) "member of the Union" means a State or an intergovernmental organization party to the International Union for the Protection of New Varieties of Plants<sup>2)</sup>,
- g) "list" means the list of applications for the grant of plant variety rights to a variety, in which the specifications pursuant to Article 9 (a) to (c) shall be entered,
- h) "small grower" means grower operating in agricultural production on arable land at a maximum area of 22 hectares.

## CHAPTER II

### CONDITIONS FOR THE GRANT OF PLANT VARIETY RIGHTS

#### Article 3

(1) The plant variety rights may be granted to varieties of all plant genera and species, including hybrids between genera and species (hereinafter referred to as "varieties").

(2) The plant variety rights may be granted to the variety which satisfies conditions of

- a) novelty,
- b) distinctness,
- c) uniformity, and
- d) stability.

(3) The variety denomination must comply with the conditions laid down by this Act (Article 7).

(4) Plant variety rights shall be granted and obligations relating to their grant shall be stipulated by the Institute, if the criteria specified by this Act are satisfied.

(5) Plant variety rights cannot be granted to a variety,

to which a Community plant variety right has been granted<sup>1a)</sup>.

#### Article 4 Novelty

(1) The variety shall be deemed to satisfy the condition of novelty if, at the day of filing of the application for the grant of plant variety rights the propagating material<sup>3)</sup> or material from the variety harvest (hereinafter referred to as the "harvested material") 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 the Czech Republic earlier than one year before the application has been filed, or
- b) outside the territory of the Czech Republic earlier than four years before the application has been filed or, in the case of trees or of vine, earlier than six years before the application has been filed.

(2) The following shall not be deemed to be a disposal of the variety to others within the meaning of paragraph 1:

- a) if the breeder supplies propagating or the harvested material of the variety
  1. in order to fulfil statutory duties<sup>4)</sup>, or
  2. to others based on a contractual relation solely for the purpose of production, propagation, conditioning or storage, provided the breeder preserves the exclusive right of disposal of the variety material; if, however, the propagating material of the variety is repeatedly used for the production of a hybrid variety, the material of which is sold or otherwise disposed, such use of the propagating material of the variety shall be deemed to be a disposal of the variety to others for purposes of exploitation of the variety, or
- b) if the breeder sells or otherwise provides, without reference to the variety, to a third person propagating or harvested material which has been produced from plants grown for experimental purposes or for the creation of other varieties and which is not used for further propagation, or

- c) if the breeder had displayed the variety at an international exhibition in compliance with an international treaty<sup>5)</sup>.

#### Article 5 Distinctness

(1) The variety shall be deemed to satisfy the condition of distinctness if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge as of the date of the filing of the application for the grant of plant variety rights by reference to the expression of at least one characteristic resulting from its genotype or combination of genotypes.

(2) The following varieties shall be deemed to be of matter of common knowledge

- a) protected in the Czech Republic or abroad,
- b) entered in the official plant variety register<sup>6)</sup> in the Czech Republic or a similar register abroad,
- c) in respect of which an application for the grant of plant variety rights or for entry in the plant variety register has been filed in the Czech Republic provided the application will lead to the grant or entry,
- d) in respect of which an application for the grant of plant variety rights or for entry in the plant variety register has been filed abroad, provided the application will lead to the grant or entry, or
- e) offered for sale or sold in the Czech Republic or abroad.

#### Article 6 Uniformity and Stability

The variety shall be deemed to satisfy the conditions of uniformity and stability if it meets the requirements of uniformity and stability stipulated in a special legal regulation<sup>4)</sup>.

#### Article 7 Variety Denomination

(1) The same variety denomination shall be used for an identical variety in the Czech Republic and any other Member State or member of the Union.

Czech Republic

(2) A designation may not be used as a variety denomination if

- a) it consists solely of figures, except where this is an established practice for designating varieties,
- b) it is identical or may be confused with the denomination of another variety of the same or of a closely related species used in the Czech Republic, in another Member State or a member of the Union,
- c) it is liable to mislead evoking false impressions concerning the value, characteristics or origin of the variety or the identity of the breeder,
- d) it is identical to or may be confused with a trademark, appellation of origin or geographical indication for the same or similar products or otherwise infringing the rights or safeguarded interests of other persons,
- e) it is unsuitable for linguistic reasons.

### CHAPTER III PROCEEDINGS IN MATTERS OF PLANT VARIETY RIGHTS

#### Article 8

(1) A breeder who is a citizen of the Czech Republic or is a legal person having its registered office in the Czech Republic or who is a national or a legal person having its registered office in a Member State or a member of the Union (hereinafter referred to as "the applicant") shall be entitled to file an application for the grant of plant variety rights to a variety (hereinafter referred to as "the application"). An application may be filed jointly by several applicants.

(2) An application may also be filed by a natural person who is a citizen of a State or is established on the territory of a State, which provides persons of Member States or members of the Union similar protection for varieties of the same botanical taxon, as well as legal persons, having a registered office on the territory of such a State.

#### Article 9

The application shall contain the following

No. 32/2006

- a) the applicant's name, surname and permanent residence address, provided this is a citizen of the Czech Republic, the residence address in another Member State or a State which is member of the Union, provided this is a citizen of another Member State or member of the Union, or in case of a legal person, its business name, registered office or branch office within the territory of the Czech Republic, and legal form.
- b) Latin and Czech name of the species, or another botanical taxon, if appropriate,
- c) a proposed denomination or provisional designation of the variety,
- d) information on all previous applications for protection for the variety in question,
- e) information on previous exploitation of the variety,
- f) a description of the variety.

#### Article 10

Plant variety rights to a variety may be granted to a breeder who filed an application for the grant of such a right with the Institute. Shall more than one breeder have jointly participated in the variety creation, the granted plant variety rights to such protected variety shall be shared equally, unless stipulated otherwise in a written agreement between them.

#### Article 11

(1) The Institute shall enter the application in the list of applications in order of delivery date and shall examine whether the variety may be subject to plant variety rights, whether there are no obstacles hindering further proceedings for the grant of plant variety rights and whether an administrative fee has been paid.

(2) Shall the application not comply with the details and requirements stipulated by this Act or shall obstacles exist hindering further proceedings, the Institute shall request the applicant to rectify shortcomings. If the applicant fails, within the specified time limit, to rectify shortcomings, the Institute shall stay the proceedings, provided the applicant has been notified of such consequence in the above mentioned request.

#### Article 12

(1) If more applications for the grant of the plant variety rights to the same variety have been filed with the Institute, such a right may only be granted to one applicant, i.e. the one, whose application was submitted first; the right of priority resulting from an earlier filing of the application in any State which is the member of the Union shall be recognised, provided further conditions specified by this Act have been met.

(2) Shall the applicant file an application in another member of the Union prior to filing an application in the Czech Republic, he/she shall enjoy the priority right<sup>2)</sup> in respect of filing for the same plant variety in the Czech Republic over a period of 12 months of filing his previous application in another member of the Union, provided such right has been exercised in the application filed with the Institute. The right of priority shall not be taken into account unless within three months of filing the application with the Institute, the applicant submits an authenticated copy of his previous application filed in another member of the Union.

#### Article 13

(1) The Institute shall publish the following information in the Bulletin of the Central Institute for Supervising and Testing in Agriculture (hereinafter referred to as "the Bulletin"):

- a) notice of applications filed in succession by filing date including information regarding the applicants [Article 9 (a)],
- b) change to the proposed variety denomination or the proposed variety denomination, if the application included only a provisional designation [Article 9 (c)].

(2) Anyone may object with the Institute against:

- a) a filed application, not later than by the decision under Article 11 (2) or Article 16 has been issued,
- b) the proposed variety denomination, not later than within three months of its publication in the Bulletin.

(3) Objections under paragraph 2 shall be resolved by the Institute by the latest until the decision under Article 11 (2) or Article 16 has been issued. The Institute makes the decisions on objections; no appeal lies against such decision.

#### Article 14

(1) After all terms and requirements under Article 11 (1) have been complied with, the Institute shall examine whether the variety meets the conditions of novelty, distinctness, uniformity and stability and whether the proposed variety denomination complies with the conditions stipulated under Article 7. Compliance with the requirements of distinctness, uniformity and stability is ascertained using field and laboratory tests. When examining varieties to ascertain compliance with the conditions, the Institute may use the results of examinations of distinctness, uniformity and stability performed by professional institutions abroad.

(2) The applicant shall be obligated

- a) to supply the Institute with the plant material necessary for the examination of the variety according to paragraph 1, within a reasonable period prescribed by the Institute,
- b) to reimburse the Institute for costs incurred in connection with the performance of special acts related to the proceedings for the grant of plant variety rights.

#### Article 15

##### Change of Applicant

In the course of the proceeding for the grant of plant variety rights the application can be transferred to another person only with consent of the applicant.

#### Article 16

##### Breeder's Certificate

(1) The Institute shall grant the applicant the plant variety rights to the variety and shall approve the proposed variety denomination by the issuance of a breeder's certificate, provided all conditions stipulated by this Act have been met; otherwise the proceeding shall be terminated.

(2) The breeder's certificate shall include the denomination of the species to which the variety belongs, variety denomination, name, surname, permanent residence address or business name, registered office and legal form of the holder of breeder's rights. The certificate shall also include the variety description prepared on the basis of the results of tests of distinctness, uniformity and stability.

#### Article 17

##### Using the Variety Denomination

(1) Everyone offering or providing for the use the material of the protected variety or variety under Article 19 (4) is obligated to use the approved variety denomination. Shall this variety denomination be used in a written form together with a trademark, trade name or other similar indication, it must be clearly distinguishable from such indication.

(2) Denomination of a protected variety or a variety protected in another Member State or member of the Union or denomination, which may be confused with such denomination, must not be used for another variety of the same or related species.

(3) The provisions of paragraphs 1 and 2 shall also apply to the period of the time the termination of the plant variety rights.

#### Article 18

##### Variety Maintenance Control

(1) The holder of breeder's rights shall be obligated to ensure the maintenance of the protected variety over the entire period of the plant variety rights duration to make sure that the characteristics specifying the variety remain unchanged.

(2) The Institute performs verification testing to control the maintenance of the protected variety. The execution of this control is regulated by a special Act<sup>9)</sup>, unless this Act stipulates otherwise.

(3) The employees of the Institute entrusted with the execution of control are entitled to enter grounds, companies and their branch offices, premises, establishments and facilities in which the holder of breeder's rights or a person entrusted by him handles the protected variety, and request from such persons necessary evidence, information and co-operation for



a smooth and fast performance of control including allowing them to take necessary quantity of control samples of material of the protected variety. Samples are to be provided free of charge.

(4) Upon request of the Institute, the holder of breeder's rights is also obligated to deliver free of charge and within a reasonable period of time specified by the Institute, material of the protected variety required for the performance of control tests.

#### CHAPTER IV SCOPE OF PLANT VARIETY RIGHTS

##### Article 19

(1) The holder of breeder's rights has got the exclusive right to use the protected variety in the territory of the Czech Republic consisting in the right to exploit the propagating material in following manners:

- a) production or propagation,
- b) conditioning for the purpose of propagation,
- c) offering for sale,
- d) selling or other marketing<sup>9)</sup>,
- e) placing on the market of Member States and exporting to third countries,
- f) placing on the market from Member States and importing from third countries,
- g) stocking for the purposes specified under letters a) to f).

(2) The holder of breeder's rights may provide his consent with the use of the protected variety (hereinafter referred to as "the licence") to a third person; the licence is provided in writing and must include an agreement on the licence charge.

(3) The provisions of paragraphs 1 and 2 also relate to the harvested material of the protected variety, including whole plants and their parts, if obtained from the propagating material of the protected variety without a licence provided by the holder of breeder's rights who could not exercise these rights in respect of the above propagating material.

(4) The provisions of paragraph 1 to 3 shall also relate to

- a) varieties essentially derived from the protected variety,
- b) varieties which are not distinct from the protected variety,
- c) varieties whose production requires the repeated use of the protected variety.

(5) If the protected variety itself is an essentially derived variety, the exclusive right to such variety held by the holder of breeder's rights does not include varieties derived from such variety.

(6) Varieties shall be considered as essentially derived from another variety (hereinafter referred to as "the initial variety") if:

- a) they are predominantly derived from the initial variety or from a variety which itself is essentially derived from the initial variety,
- b) they are distinct from the initial variety, and
- c) except for the differences which result from the act of derivation, they conform essentially to the initial variety in the expression of characteristics resulting from the genotype or the combination of genotypes of the initial variety.

(7) Essentially derived varieties may be obtained, in particular, by the selection of a natural or induced mutation or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering methods.

(8) If an essentially derived variety is a protected variety, then the right of the holder of breeder's rights to the initial variety is limited with respect to this essentially derived variety to the extent of providing the licence for the variety use to the holder of breeder's rights to this variety. The holder of breeder's rights to an essentially derived variety may use this variety only provided he has a licence issued by the holder of breeder's rights to the initial plant variety.

(9) The following exploitation of the propagating material shall not constitute a breach of the plant variety rights (paragraph 1)

- a) performed for research,
- b) performed with the aim to create additional varieties including exploiting such varieties except for varieties under paragraph 4,
- c) performed for the own use of a natural person.

#### Article 19a

(1) A person conducting business in agricultural production<sup>10)</sup> (hereinafter referred to as a "grower") is authorized, for the species of plants set forth in Annex No. 1 to this Act, to use without the consent of the holder of breeder's rights for agricultural production in its own enterprise<sup>10a)</sup> on arable land owned, leased or subleased by them, material which it acquired on this land by the cultivation of propagating material<sup>3)</sup> of protected varieties, if such propagating material originates from certified propagating material<sup>10b)</sup>, either directly or from repeated propagation, with the exception of hybrid or synthetic varieties (hereinafter referred to as "farm saved seed"). Potato farm saved seed means propagating material of a protected variety, acquired directly by planting certified propagating material of a protected variety.

(2) When exploiting farm saved seed under paragraph 1, a grower

- a) is not limited as to the quantity of his plant production produced on the land used by him/her for the needs of his enterprise,
- b) may process the farm saved seed for subsequent sowing and planting either himself/herself or via another person, who performs the processing of such material as an entrepreneur<sup>10)</sup> (hereinafter referred to as the "seed processor"); the seed processor must perform the processing to make sure that the product delivered for processing is identical with the resulting product,
- c) is obligated to pay to the holder of breeder's rights for the use of the farm saved seed by sowing or planting reasonable remuneration<sup>10c)</sup>, which as a rule equals to 50% of the usual licence charge for the certified propagating material of the respective variety; the grower shall pay the reasonable remuneration not later than by six months from the date of inception of the obligation. The obligation to pay reasonable

remuneration for the use of farm saved seed shall not apply to small growers.

(3) The holder of breeder's rights is entitled to require requisite information from the grower and seed processor which relates to the farm saved seed of a protected variety used or processed by them, to which the holder of breeder's rights was granted plant variety rights, and to do so in writing.

(4) The grower and seed processor are obligated to inform the holder of breeder's rights at his request of their name, or names, surname, place of business activities and identification number, if assigned, for a natural person, or the business name or name, registered office, identification number, if assigned, and legal form, in the case of a legal person, and to do so in writing.

(5) The seed processor is further obligated to inform the holder of breeder's rights at his request of the quantity of farm saved seed which was delivered for processing and the subsequent quantity of the processed farm saved seed, and information about the date, place of processing, and person for whom the processing was performed, and to do so in writing.

(6) The grower is obligated to convey to the holder of breeder's rights in writing at his request

- a) data on the scope of use of farm saved seed, including information about the scope of use of certified propagating material of the variety in question,
- b) data on the seed processor who performed the processing for him according to paragraph 2(b), in the event that he did not process the farm saved seed himself.

(7) The holder of breeder's rights is obligated to provide the grower at his request with written information on the amount

- a) of remuneration which he will require according to paragraph 2(c),
- b) the usual licence charge for certified propagating material in the respective calendar year for the given variety.

(8) The holder of breeder's rights is entitled to request

the Institute, the State Phytosanitary Administration or the Ministry of Agriculture (hereinafter referred to as "the Ministry") to provide information which relates to the production, processing or use of farm saved seed of the variety, for which he is a holder of breeder's rights; the provision of information may be denied if

- a) the information could not be gained as part of the ordinary activity of the respective administrative authority,
- b) the information could be gained only with the expenditure of additional costs, or
- c) special legal regulations<sup>11a)</sup> would be violated by its provision.

(9) The propagating material of a protected variety must not be moved from the grower's premises for the purposes of its processing without the prior consent of the holder of breeder's rights; consent is not needed for moving the propagating material for the purposes of processing farm saved seed to a seed processor who is listed according to Article 19b (2).

(10) The grower and seed processor are obligated to provide the holder of breeder's rights at his written request with the document which confirms the information provided by them under paragraphs 4 to 6.

(11) The holder of breeder's rights is entitled to require the information under paragraphs 3 to 6 and 8 and fulfilment of the obligations under paragraph 10, in the regular calendar year and for, not more than, the three previous calendar years.

(12) The holder of breeder's rights who receives information under paragraphs 3 to 6 and 8 is not authorized, without the prior written consent of the person who provided it, to pass it to another person or use it for another purpose than the exercise of the right protected by this Act.

#### Article 19b Notification

(1) A seed processor who intends to perform processing of propagating material of protected varieties under Article 19a (2) (b), must notify the Institute in writing of this activity before its initiation.

(2) The Institute maintains a list of seed processors under paragraph 1 on the basis of the written notification, which shall contain

- a) for natural persons their name, or names, surname, identification number, if assigned, place of permanent residence, or address of residence abroad, and place of business activities,
- b) for legal persons, the business name or name, identification number, if assigned, and registered office.

(3) The Institute shall publish the list of seed processors each year in the Bulletin.

#### Article 20

(1) Plant variety rights do not extend to acts concerning any material of the protected variety or of a variety under Article 19 (4) which was sold or otherwise marketed in the territory of the Czech Republic by the holder of breeder's rights or with his consent or the exploitation of any material derived therefrom, unless this represents

- a) further propagation of such varieties, or
- b) export of material of such varieties which enables their further propagation into a country that does not protect plant varieties of the same plant genus or species to which this variety belongs; this does not apply provided such material is intended for final consumption.

(2) Material of plant variety under paragraph 1 shall be understood as

- a) any propagating material of the protected variety,
- b) harvested material of the protected variety.

(3) If the plant variety protected under this Act would be granted the Community plant variety right, for the duration of the valid Community plant variety right the plant variety rights granted under this Act cannot be invoked.

#### Article 21 Compulsory Licence

(1) Upon request, the Ministry of Agriculture may

grant a compulsory licence for the exploitation of a protected variety in a manner specified under Article 19 (1) to one or more persons, if the holder of breeder's rights refuses to issue a licence for such exploitation in the required scope and if such exploitation is in public interest. The Ministry shall inform the Institute about the grant of a compulsory licence.

(2) When granting a compulsory licence, the Ministry shall stipulate the conditions, time limitation and scope of the exploitation including the payment of an appropriate licence charge to the holder of breeder's rights in respect of such licence.

(3) On the expiry of one year after the grant of the compulsory licence, each participant of the proceeding for the grant of the compulsory licence may request the Ministry in writing to cancel or amend the decision on the grant of the compulsory licence. Only a change of circumstances on the basis of which the decision was made may constitute a reason for such request.

(4) The Ministry may grant a compulsory licence in respect of an essentially derived variety based on a proposal of the holder of breeder's rights to this variety if the holder of breeder's rights of the initial variety refuses to provide a licence for the exploitation of the essentially derived variety and if such exploitation is in the public interest.

(5) If a holder of a patent of a biotechnological invention<sup>11b)</sup> cannot exploit this patent without infringing a prior right to a protected variety, he may apply for a compulsory licence for non-exclusive use of this variety. The Ministry shall grant the compulsory licence, if the holder of the patent has unsuccessfully applied to the holder of breeder's rights to this right for his consent to the use of the protected variety and if the invention protected by the patent constitutes significant technical progress of considerable economic interest in comparison with the protected variety. Reasons for which a given invention represents a significant technical progress of considerable economic interest in comparison with a protected variety may be in particular improvement of cultivation procedures, the environment, procedures simplifying the use of genetic diversity, improvement of quality, yield, resistance, or improvement of adaptation to specific climatic conditions or environmental conditions. The Ministry

shall determine the amount of the corresponding licence charge. In this case the holder of breeder's rights has the right to a cross licence to use the biotechnological invention<sup>11b)</sup>.

(6) If the holder of breeder's rights was granted a compulsory licence to use of the biotechnological invention, the holder of the patent shall be entitled to a cross licence-to exploit the protected variety.

## CHAPTER V

### Article 22 Administrative Delicts

(1) A grower or seed processor commits an administrative delict by

- a) not communicating with the holder of breeder's rights at his/her request the information set forth in Article 19a (4), or
- b) not providing a holder of breeder's rights with the evidence set forth in Article 19a (10).

(2) A seed processor commits an administrative delict by not communicating to the holder of breeder's rights at his/her request the information set forth in Article 19a (5).

(3) A seed processor, who processes propagating material of protected varieties according to Article 19a (2) (b) commits an administrative delict by not notifying the Institute of such an activity.

(4) A grower commits an administrative delict by not communicating to the holder of breeder's rights on his request the information set forth in Article 19a (6).

(5) A holder of breeder's rights commits an administrative delict by not providing a grower in writing with the information set forth in Article 19a (7).

(6) Fine of up to CZK 500,000 shall be assessed for an administrative delict under paragraphs 1 to 5.

### Article 22a Common Provisions

(1) A legal person shall not be responsible for an

administrative delict if it proves that he expended all efforts which could be required of him to prevent the violation of the legal obligation.

(2) When determining the amount of the fine for a legal person, the gravity of the administrative delict shall be taken into account, in particular the manner of its commitment and its consequences and circumstances under which it was committed.

(3) The liability of a legal person for an administrative delict expires if the administrative body does not initiate a proceeding thereon within one year from the day when it established the violation, and not later than, however, within three years from the day when it was committed.

(4) The Administrative delicts under this Act shall be assessed in the first instance by the Institute.

(5) The provisions of this Act on the liability and recourse of a legal person shall be applicable to liability of the pursuance of the business activities of natural person<sup>12)</sup> or in direct relation thereto.

(6) Fines are levied by the Institute and recovered by the customs office with relevant territorial competence. The revenue from the fines constitutes the Czech Republic's State budget revenue.

## CHAPTER VI COMMON, TRANSITIONAL AND FINAL PROVISIONS

### Article 23 Duration of the Plant Variety Rights

(1) The plant variety rights may be maintained until the end of the twenty-fifth year after the year in which the grant of such rights came into effect; for protected varieties of trees, hops, vines and potatoes, the plant variety rights may be maintained until the end of the thirtieth year following the year in which the grant of such rights came into effect.

(2) For the period from filing the application until the grant of plant variety rights to the variety becomes legally effective, the holder of breeder's rights is entitled to a reasonable compensation from each person who during such period exploited the variety in a manner which would require granting a licence

by the holder of breeder's rights after such rights have been granted.

### Fees for the Duration of Plant Variety Rights Article 23a

The holder of breeder's rights is obligated to pay fees for the duration of plant variety rights to protected variety (hereinafter referred to as the "maintenance fees") during the entire period of the duration of the plant variety rights to the protected variety. The maintenance fees shall be levied by the Institute.

### Article 23b Rates

Maintenance fee rates are set in the Rates tariff of maintenance fees, which is set forth in Annex No. 2 to this Act.

### Article 23c Fee Payer

The holder of breeder's rights is the payer of maintenance fees.

### Article 23d Exemption from Fees

The Czech Republic is exempted from the duty to pay maintenance fees.

### Article 23e Maintenance Fee Due Date

(1) Maintenance fees shall be paid for each individual year of duration of plant variety rights to a protected variety, commencing on the day of the granting of such plant variety rights to a protected variety (Article 16).'

(2) The first maintenance fee shall be paid without assessment and is due at the end of the calendar month following the month in which the plant variety rights were granted to the protected variety.

(3) The maintenance fee for the following year is due without assessment by the latest on the day when the previous year has gone by.

Article 23f  
Payment of the Maintenance Fee

(1) For each maintenance fee payment, the fee payer is obligated to indicate to which protected variety the maintenance fee payment relates. If it is not possible unequivocally to ascertain the purpose of the payment, the Institute shall request the fee payer to communicate this purpose in writing within the specified period of time. If the fee payer does not comply with this request, it applies that the payment did occur and the Institute shall return the payment.

(2) If a maintenance fee is not paid in the designated amount, the Institute shall request the fee payer to pay the full amount; to that effect it shall lay down a time limit of 15 days from the delivery date of the invitation. If this time limit expires without payment, the maintenance fee shall be deemed unpaid. The Institute shall return any incomplete payment obtained from the fee payer within 30 days from the date of expiry of the specified time limit without receipt of the full payment. This does not affect the provisions of paragraph 4.

(3) The maintenance fee can be duly paid at the earliest one year prior to its due date. The Institute shall recognize any maintenance fee paid early as duly paid only on the basis of the fee payer's written request, if it is paid in the amount designated by this Act.

(4) If the maintenance fee was not paid within the time limit or if it applies that it was not paid according to paragraph 2, the fee payer can subsequently settle it within a time limit of six months from its due date. In this case the fee payer is obligated to pay a maintenance fee of double amount of the respective rate.

Article 23g

(1) The Institute shall return a paid maintenance fee if the obligation to pay it has not arisen; this does not apply if, on the basis of the fee payer's request according to Article 23f (3), the Institute recognized the maintenance fee, which was not yet due, as duly paid.

(2) In the absence of the fee payer's request, the Institute shall return overpayment of maintenance fee to the fee payer, if this amount exceeds CZK 50.

(3) The Institute shall not return a paid maintenance fee if the protective rights were cancelled after it was paid; this includes maintenance fee paid early according to Article 23f (3).

Article 23h  
Method of Maintenance Fee Payment

- (1) The maintenance fee can be paid
- a) by non-cash transfer from an account maintained at a bank, foreign bank branch, savings and credit cooperative or postal licence holder of breeder's rights to the Institute's relevant account,
  - b) in a cash payment at the Institute's cashier's office; the Institute shall issue a receipt of payment confirmation,
  - c) by cheque.
- (2) The Institute shall publish in the Bulletin the number of the relevant account for the payment of maintenance fees.

Article 23i  
Proceeding

- (1) Unless this Act stipulates otherwise, with respect to the maintenance fee it is not possible
- a) to forgive missing its payment time period,
  - b) to permit delayed payment,
  - c) to permit its payment in instalments.
- (2) Unless this Act stipulates otherwise, the provisions of special legal regulations for the administration of taxes and payments<sup>13)</sup> apply to maintenance fee proceedings.

Article 23j  
Budgetary Allocation of Maintenance Fees

Maintenance fees constitute the Czech Republic's State budget revenue.

Article 24  
Transfer of the Plant Variety Rights

- (1) The holder of breeder's rights is entitled to transfer

the plant variety rights to the protected variety to a third person based on a written contract. If plant variety rights to the same protected variety belong to more persons, the share in such rights may be transferred to any of the co-holders of breeder's rights without consent of the rest of them; a co-holder of breeder's rights may transfer his share to a third person only provided none of the other co-holders of breeder's rights accepts his written offer for transfer within one month upon its delivery.

(2) Unless this Act stipulates otherwise, the relations between the co-holders of breeder's rights shall be governed by the Civil Code.

(3) A contract on the transfer of the plant variety rights to the protected variety or on the transfer of a share of the plant variety rights to the protected variety becomes effective on the day of its entry to the Register of Protected Varieties kept by the Institute. The Institute shall make the entry after the administrative fee under special legal regulation<sup>14)</sup> has been paid.

#### Article 25

##### Termination and Cancellation of the Plant Variety Rights

(1) The plant variety rights shall terminate upon the expiry of the period stipulated by this Act or if the holder of breeder's rights fails to pay the maintenance fee even after a written notification by the Institute within a period specified by the Institute, or if the holder of breeder's rights surrenders his plant variety rights in writing to the Institute.

(2) Before the expiration of the plant variety rights the Institute shall cancel such rights if the protected variety no longer meets the condition of uniformity and stability or if the holder of breeder's rights fails to comply with his obligation under Article 18 (1) or (4).

(3) If it is revealed that at the time of the issue of the breeder's certificate effectively granting the plant variety rights, not all the conditions for their granting have been met, the Institute shall cancel such breeder's certificate; in such case the plant variety rights granted shall be regarded as null and void.

#### Article 26

(1) The grants issued, termination, cancellation of plant variety rights, transfer of or any change to plant variety rights to the protected plant variety, compulsory licence, change of name, surname, business name, permanent residence address or registered office of the holder of breeder's rights, shall be entered in the Register of Protected Varieties kept by the Institute; information on the above mentioned facts shall be published by the Institute in the Bulletin.

(2) At the request of the contract party, the grant of a licence under Article 19 (2) can also be entered into the Register of Protected Varieties.

#### Article 26a

(1) The following persons are entitled to enforced rights protected under this Act:

- a) holder of breeder's rights,
- b) assignee to a licence for a protected variety, or
- c) professional organization authorized to represent holders of breeder's rights.

A licence assignee may enforce rights only with the holder of breeder's rights consent. Consent shall not be required if the holder of breeder's rights initiated the proceeding with respect to the violation of or threat to the law within one month from the delivery of notification of the assignee on the violation of or threat to the right.

(2) The person referred to in paragraphs 1 (a) to (c) (hereinafter referred to as the "authorized person") may request information on the origin and distribution network of propagating material or harvested material of the plant variety or services, by which the right has been violated, with respect to the person who violated the rights protected by this Act or with respect to the person who for the purposes of direct or indirect benefit of farming or business

- a) has kept propagating material or harvested material of a variety violating a right,
- b) has used services violating a right,

- c) has provided services used during activities violating rights, or
- d) was designated by a person set out in letters a), b) or c) as a person participating in the manufacture, processing, storage or distribution of propagating material or harvested material of a plant variety or provision of services.

(3) Information provided according to paragraph 2 contains

- a) for natural person the name, surname or business name<sup>14a)</sup>, place of permanent residence<sup>14b)</sup> or residence<sup>14b)</sup> and place of the supplier's business activities if they differ from the person's permanent residence; for legal person the business name<sup>14a)</sup> and registered office, or place of the branch office on the territory of the Czech Republic of the manufacturer, processor, storer, distributor, supplier or other previous holder of the propagating material or harvested material of the variety,
- b) information about the manufactured, processed, delivered, stored, received or ordered quantity and on the price received for the given propagating material or harvested material of the variety or service.

(4) The provisions of paragraphs 2 and 3 shall be without prejudice to the provisions of separate legal regulations providing for in particular the provision, use and protection of information<sup>11a)</sup>.

#### Article 27

##### Resolution of Disputes

(1) Disputes resulting from legal relations established on the basis of this Act shall be discussed and decided by courts.

(2) In case of an infringement of a right protected under this Act, the entitled person whose right has been threatened or infringed may claim from the infringer to refrain from such behaviour and redress the defective state. If the infringement caused a damage, the damaged party is entitled to compensation. In case of non-property damages the damaged is entitled to reasonable satisfaction which may consist in pecuniary compensation.

(3) Upon request by the entitled person, the relevant court may decide that the plant propagating material or harvested material to which the infringement of the exclusive right of the holder of breeder's rights relates shall be destroyed unless the infringement of the right may be corrected in another manner and destruction of plant material would be inadequate to such infringement. If the measures for redress aim at the propagating material or the harvested material of a variety, which is not possessed by the person violating the holder's right, the court shall look to the interest of third parties, in particular of consumers and persons acting in good faith.

(4) An entitled person may claim at the court the rights set forth in paragraphs 2 and 3 and similarly with respect to the intermediary, whose resources or services are used by third parties for the violation of rights.

(5) The court may in its judgment acknowledge to the entitled person, whose proposal was accepted, the right to publish the judgment at the expense of the violator, who did not prevail in the dispute, and depending on the conditions, determine the extent, form and method of publication.

#### Article 28

(1) Unless this Act stipulates otherwise, the decision-making under this Act shall be governed by the Administrative Procedure Code<sup>15)</sup>.

(2) The Institute is entitled to suspend the proceedings for a definite period requested by the applicant for serious reasons.

(3) The decision on the grant of the plant variety rights shall be made by the Institute within three months

- a) after the completion of tests required for the decision or after the receipt of the test results performed by other professional institutions, and
- b) after the expiration of the deadline for filing of objections under Article 13 (2) (b).

(4) Appeals against the Institute's decision shall be decided by the Ministry.



Transitional Provisions  
Article 29

(1) Proceedings in the matters of plant variety protection not completed before the effective day of this Act shall be completed in accordance with this Act.

(2) Unless this Act stipulates otherwise, legal relations that arose before its effective date shall be governed by this Act; however, the inception of such legal relations and claims arising from them before the effective day of this Act shall be resolved in accordance with the existing regulations.

(3) On the effective day of this Act rights and obligations under this Act shall become effective for the owner of breeder's certificate granted under the existing regulations; the duration of such breeder's certificate, however, shall be counted as per Act No. 132/1989 Coll., on the legal protection of new varieties of plants and breeds of animals, in the wording of Act No. 93/1996 Coll. The exclusive right of the holder of breeder's rights to a variety, which under this Act is considered as an initial variety, shall not relate to varieties for which the breeder's certificate has been granted under the existing regulations and which can be considered as essentially derived varieties under this Act.

Article 30

Plant variety rights may also be granted to varieties the propagating material or harvested material of which was not sold or provided for use to third persons by the breeder or with his consent for more than four years and in case of trees for more than six years before the effective date of this Act, if the varieties are varieties of genera or plant species or their hybrids not covered by the existing regulations. In such case the application for the grant of plant variety rights must be filed by the latest within one year of the effective day of this Act and at the time of the application filing the variety must be registered in the State Variety Book (National List) under a special legal regulation<sup>6)</sup> or must enjoy a variety protection in a member of the Union. The duration of plant variety rights specified in Article 23 (1) shall be shortened in such case by the time calculated from the day of the entry of the variety in the State Variety Book until the effective date of the grant of the plant variety rights to variety or by the time calculated from

the day of grant the plant variety rights to variety in the member of the Union until the effective date of the grant the plant variety rights to variety under this Act.

Article 31

If before the effective date of this Act a third person, to which the existing regulations on the protection of rights to varieties do not apply, exploits the variety of plant genera and species or the hybrids thereof, the holder of breeder's rights under this Act is obligated to allow such third person free of charge further exploitation of this variety until the end of the year, or, in case of trees, until the end of the second year following after the year in which this Act became effective; after the expiration of the above period, the holder of breeder's rights is obligated to allow such third person to further exploit the variety for an usual licence charge.

PART FOUR  
ENTRY INTO EFFECT

Article 34

This Act shall enter into effect on 1 February 2001.

\* \* \*

Act No. 147/2002 Coll., on the Central Institute for Supervising and Testing in Agriculture and on the amendment to certain related Acts (Act on the Central Institute for Supervising and Testing in Agriculture) entered into force on 1 June 2002.

Act No. 149/2002 Coll., which implements the amendment to 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 (Act on the protection of plant variety rights), and Act No. 368/1992 on administrative fees, as amended, entered into effect on 1 June 2002.

Act No. 219/2003 Coll., on the marketing of seed and planting material of cultivated plants and on the amendment to certain acts (Act on the marketing of seed and planting material) entered into effect on the 30<sup>th</sup> day after the date of its promulgation (31 August 2003).

Act No. 377/2005 Coll., on additional supervision of banks, savings institutions and credit cooperatives, institutions of electronic money, insurance companies and stockbrokers in financial conglomerates and on the amendment of certain other acts (Act on financial conglomerates), entered into effect on the day of its promulgation (29 September 2005).

Act No. 554/2005 Coll., which implements the amendment to 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 (Act on the protection of plant variety rights), as last amended, entered into effect on the day of its promulgation (30 December 2005).

Prime Minister  
Ing. Paroubek by his own hand

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#### Footnotes

- 1) Article 3 of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights, as amended.
- 1a) Council Regulation (EC) No. 2100/94.
- 2) Notification of the Ministry of Foreign Affairs No. 109/2004 Collection of International Agreements, on accession of the Czech Republic to the International Convention for the Protection of New Varieties of Plants, of December 2, 1961, as Revised at Geneva on November 10, 1971, on October 23, 1978, and on March 19, 1991.
- 3) Article 2 (b) of Act No. 219/2003 Coll., on the marketing of seed and planting material of cultivated plants and on the amendment to certain acts (the Act on marketing of seed and planting material).
- 4) Article 26 of Act No. 219/2003 Coll.
- 5) The Convention on International Exhibitions signed at Paris on 22 November 1928, published in the Collection of Laws and Decrees of the Czechoslovak State, No. 46/1932.
- 6) Article 22 of Act No. 219/2003 Coll.
- 8) Act No. 552/1991 Coll., on State inspection, as amended.
- 9) For instance Article 151b and 628 of the Civil Code, as amended.
- 10) Article 2 (2) (d) of the Commercial Code.
- 10a) Article 5 of the Commercial Code.
- 10b) Article 4 of Act No. 219/2003 Coll.
- 10c) Article 14 of Council Regulation (EC) No. 2100/94 on Community plant variety rights.
- 11a) Act No. 101/2000 Coll., on the protection of personal data and amendment to certain related acts, in the wording of Act No. 227/2000 Coll., Act No. 177/2001 Coll., Act No. 350/2001 Coll., Act No. 107/2002 Coll., Act No. 309/2002 Coll., Act No. 310/2002 Coll., Act No. 517/2002 Coll. and Act No. 439/2004 Coll.
- 11b) Act No. 206/2000 Coll., on the protection of biotechnological inventions and on the amendment to Act No. 132/1989 Coll., on the protection of rights to new plant and animal varieties, in the wording of Act No. 93/1996 Coll.  
Article 12 of Directive 98/44/EC of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions.
- 12) Article 2 (2) of the Commercial Code.
- 13) Act No. 337/1992 Coll., on the administration of taxes and fees, as amended.
- 14) Act No. 368/1992 Coll., on administrative fees, as amended.
- 14a) Act No. 513/1991 Coll., the Commercial Code, as amended.
- 14b) Act No. 326/1999 Coll., on the residence of aliens in the Czech Republic and on the amendment to certain acts, as amended.
- 15) Act No. 71/1967 Coll., on administrative procedures (Administrative Procedure Code), as amended.

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

## Plant Species List (Article 19 (1))

## a) Cereals:

<i>Avena sativa</i> L.	Oats
<i>Hordeum vulgare</i> L.	Barley
<i>Secale cereale</i> L.	Rye
<i>Triticosecale</i> Wittm.	Triticale
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Common wheat
<i>Triticum durum</i> Desf.	Durum wheat
<i>Triticum spelta</i> L.	Spelt wheat

## b) Fodder plants:

<i>Lupinus luteus</i> L.	Yellow lupine
<i>Medicago sativa</i> L.	Lucerne
<i>Pisum sativum</i> L. (partim)	Field pea
<i>Trifolium alexandrinum</i> L.	Berseem/Egyptian clover
<i>Trifolium resupinatum</i> L.	Persian clover
<i>Vicia faba</i> L.	Field bean
<i>Vicia sativa</i> L.	Common vetch

## c) Potatoes:

<i>Solanum tuberosum</i> L.	Potatoes
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## d) Oil and fibre plants:

<i>Brassica napus</i> L. (partim)	Swede rape
<i>Brassica rapa</i> L. (partim)	Turnip rape
<i>Linum usitatissimum</i> L.	Linseed (except flax)

## Annex No. 2 to Act No. 408/2000 Coll.

## Rates Tariff of Maintenance Fee

The maintenance fee for the duration of plant variety rights for the protected variety equals

a) for the first year of the duration of protected rights	CZK 800,
b) for the second year of the duration of protected rights	CZK 800,
c) for the third year of the duration of protected rights	CZK 800,
d) for the fourth year of the duration of protected rights	CZK 800,
e) for the fifth year of the duration of protected rights	CZK 1,000,
f) for the sixth year of the duration of protected rights	CZK 1,000,
g) for the seventh year of the duration of protected rights	CZK 1,000,
h) for the eighth year of the duration of protected rights	CZK 1,000,
i) for the ninth year of the duration of protected rights	CZK 1,200,
j) for the tenth year of the duration of protected rights	CZK 1,200,
k) for the eleventh year of the duration of protected rights	CZK 1,200,
l) for the twelfth year of the duration of protected rights	CZK 1,200,
m) for the thirteenth year of the duration of protected rights	CZK 1,500,
n) for the fourteenth year of the duration of protected rights	CZK 1,500,
o) for the fifteenth year of the duration of protected rights	CZK 1,500,
p) for the sixteenth year of the duration of protected rights	CZK 1,500,
r) for the seventeenth year of the duration of protected rights	CZK 2,000,
s) for the eighteenth year of the duration of protected rights	CZK 2,000,
t) for the nineteenth year of the duration of protected rights	CZK 2,000,
u) for the twentieth year of the duration of protected rights	CZK 2,000,
v) for each subsequent year of the duration of protected rights	CZK 4,000.

## Annex No. 2

Repealed

(The to-date Annex No. 3 is denoted as Annex No. 2).

**ICELAND**

**BREEDER'S RIGHT ACT\***  
**No. 58 of May 19, 2000**  
*(date of entry into force May 26, 2000)*  
**Amended by Act No. 72/2003**  
*(date of entry into force April 10, 2003)*

Chapter I  
 General Provisions

Article 1

A person who has bred, or discovered and developed a new variety (a variant or a strain of a plant species) or another person who has acquired the person's right, a breeder, can, in accordance with the present Act, acquire exclusive right to exploit it for professional reasons. A right concerning a variety (breeder's right) is granted on the basis of an application filed with the Breeder's Right Committee, cf. Article 22.

The Minister of Agriculture is responsible for the implementation of the present Act.

Article 1a

This Act covers varieties of all genera and species of plants, including hybrids of genera and species.

In this Act the term "variety" refers to a plant grouping of the same species or sub-species pursuant to the most precise known botanical taxonomy, which, regardless of whether all the conditions for protection under the law are met, can be:

- a) defined by the characteristics expressing a specific genotype or combination of genotypes,
- b) distinguished from other plant groupings by at least one of the above characteristics, and
- c) considered as a unit with respect to the potential for propagation without changes in their characteristics.

Plant groupings may consist of entire plants or parts of plants if the parts can be used to breed whole plants; both are referred to herein as variety constituents.

The expression of characteristics pursuant to a) may be either invariant or variable among similar variety constituents of the same kind, provided that the level of variation is determined also by genotype or combination of genotypes.

Article 2

A breeder's right may be granted if a variety is:

1. clearly distinct, i.e. clearly distinguishable from other varieties which are known at the time of the filing of the application, cf. paragraph 2;
2. sufficiently uniform, i.e. if its relevant characteristics are sufficiently uniform subject to the variation that may be expected from the particular method of propagation;
3. stable, i.e. 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;
4. new, i.e. material for its propagation or its harvested material has not, on the application date for breeder's rights and with the breeder's consent, been sold or offered for sale to the public or otherwise assigned for purposes of exploitation for professional reasons:
  - a) in Iceland, for more than one year;
  - b) outside Iceland, for more than four years, but six years in the case of trees or vines.

The existence of a variety shall be deemed to be a matter of common knowledge provided it has been sold or offered for sale to the public, entered in an official register of varieties, or it is a matter of common knowledge by other means. Where a variety has been

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\* Translation provided by the Icelandic authorities.

characterized in an application for a breeder's right, a patent application, or an application for its entry into an official register of varieties in this country or in another state, its existence shall be deemed a matter of common knowledge from the time of the filing of the application onward. This will only apply given the aforementioned applications have lead to approval.

## Chapter II Application

### Article 3

An application for the entry of a variety into an official register of varieties shall be filed in writing with the Breeder's Right Committee.

An application for a variety shall comprise a characterization of the variety and specify in particular what distinguishes it from other varieties. It shall also include a suggested denomination for the variety together with the name and address of its innovator. The applicant's name, identification number and address shall also be indicated.

Where the applicant and the innovator are not the same person the applicant shall verify his or her authority to apply for a breeder's right.

Where the applicant neither resides nor is established in this country or in any State Party to the Agreement on the European Economic Area [or the Agreement Establishing the European Free Trade Association]<sup>1</sup> he shall have an agent residing, or who is established, in this country.

The Breeder's Right Committee may instruct the applicant to provide, within a prescribed period, any information required to process his or her application. The Breeder's Right Committee may also instruct the applicant to provide, within a prescribed period, documents and material for examination, cf. Article 9.

The applicant shall pay an application fee of ISK 30 000.

### Article 4

On receipt of a valid application it shall be entered into the Breeder's Right Committee's Diary without

delay and a copy of the application, together with an inscription containing the date of entry into the Diary, shall be forwarded to the applicant.

The Diary shall be open to the public with the exception of information on lines forming a hybrids variety and their characterization, provided the applicant has insisted that such information will be kept secret.

### Article 5

If, within a prescribed period of time, the applicant does not provide information, or documents and material requested by the Breeder's Right Committee in accordance with the fifth paragraph of Article 3, the Committee may delete the application from the Diary.

### Article 6

From the date of application onward the applicant has the right of protection of a variety preceding that of others who subsequently apply for protection of the same variety.

On request submitted by the applicant the Breeder's Right Committee can deem the application to have been received concurrently with the first application for breeder's right in any Member State of The International Union for the Protection of New Varieties of Plants (UPOV), provided the first application was filed during the last twelve months before the date of application in this country. The period is calculated from the filing date of the first application and the application date is not counted as part of this period. Such request shall be included in the application and evidence produced of the receipt of the first application within three months from the date of application in this country. The breeder is allowed a period of two years after the expiry of the priority period, or the same time from the rejection or withdrawal of an application, to furnish to the Breeder's Rights Committee any information, documents or material required for the purposes of examination of the application, as provided in Chapter III.

### Article 7

As soon as possible, after the entry of an application into the Breeder's Right Committee's Diary, the

Committee shall conduct a preliminary examination to determine if a variety fulfils the conditions of protection.

If the Committee is of the opinion, on having concluded the examination, that the conditions have been fulfilled it shall publish a notification in the National Gazette, including an appeal to possible interested parties to object against the registration of the variety within a prescribed period.

On the other hand, if the Committee is of the opinion that conditions have not been fulfilled the applicant shall be given time to submit observations. The application shall be notified in the National Gazette, provided the applicant's observations have changed a conclusion drawn earlier.

#### Article 8

If, on the basis of observations submitted, the Breeder's Right Committee decides to delete an application from its Diary and cancel the examination, a notification shall be published to that effect in the National Gazette.

The Breeder's Right Committee will not rule on questions concerning the applicants right to a variety. The Committee shall call the parties attention to the fact that matters of dispute may be presented to a Court of Law. Where the Committee is notified of a court action the application shall be inscribed accordingly.

### Chapter III Examination and Registration

#### Article 9

The Breeder's Right Committee shall, before a variety can be protected and subject to Article 21, determine whether the variety is in compliance with the conditions for protection, cf. Article 2, by way of a special examination if necessary, and whether it has the distinctive characteristics specified in the application.

The applicant may be required to make a payment to the Committee owing to its examinations expenses, cf. the first paragraph of this Article. Such a payment shall in no case exceed ISK 30 000.

#### Article 10

Where a variety is deemed to be in compliance with the conditions for protection, the Breeder's Right Committee shall register it in the official register of varieties under an approved variety denomination, cf. Article 11.

The Breeder's Right Committee can reject an application for registration of a variety if the applicant does not answer, within a prescribed period, the Committee's plea to propose a denomination of the variety or propose a new denomination for it, if the Committee holds the belief that the proposed denomination does not meet the conditions imposed.

Where an action has been brought before a court of law, cf. the second paragraph of Article 8, a note to that effect shall be entered into the official register of varieties.

#### Article 11

An approved denomination shall be applied to designate a variety, which shall be maintained even when the variety is no longer protected.

The denomination may not consist solely of figures except where this is an established practice for designating varieties of the species in question. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder. It must be different from every denomination, which already designates an existing variety of the same plant species or of a closely related species.

An additional denomination may be used in relation to the variety denomination.

The Breeder's Right Committee may, in special cases and at the breeder's request, authorize a different denomination for a variety from that which was originally approved.

The Minister of Agriculture may establish more express rules on variety denominations.

#### Article 12

On having registered a variety the Breeder's Right Committee will issue a breeder's right document and

deliver it to the applicant against the payment of a registration fee of ISK 3 000. This document is valid for one year and is renewable one year at a time for up to 25 years.

Protection in accordance with a breeder's right document is renewed by way of a payment of the annual fee to the Breeder's Right Committee. The annual fee is due on the date of issue of the breeder's right document. The annual fee for each year from the first year of payment until the 10th year of payment is ISK 3 000. The fee for each year from the 11th year until the 25th year is ISK 6 000. The fee for each year from the 26th year until the 30th year is ISK 9 000.

Notwithstanding the first paragraph of this Article the Minister of Agriculture may provide for a longer period of validity with respect to a breeder's right document concerning specified species and genera, thus allowing a variety to be protected for up to 30 years.

A registration notice shall publish in the National Gazette.

#### Article 13

Subsequent to registration the Breeder's Right Committee may check the breeder's compliance with the requirement to preserve the variety in a satisfactory manner. For this purpose, and within the period prescribed by the Committee, the breeder shall provide the Committee with necessary material for propagation of the variety in question.

#### Article 14

The Breeder's Right Committee shall declare a breeder's right granted by it null and void when it is established:

1. that a variety does not comply with the conditions of being distinct and new, laid down in subparagraphs 1 and 4 of the first paragraph of Article 2, at the time of the grant of the breeder's right;
2. that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, a variety

does not comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2, at the time of the grant of the breeder's right.

3. that a breeder's right has been granted to a person not entitled to such right, unless it is transferred to the person entitled to such right.

The Breeder's Right Committee may delete a variety from the official register of varieties if:

1. the breeder files a request with the Committee to that effect;
2. the annual fee is unpaid;
3. a variety does no longer comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2; or
4. the breeder does not answer, before the end of a prescribed period, the Committee's plea to:
  - a) provide it with necessary material for propagation of the variety for the purpose of surveillance subsequent to registration, or
  - b) propose a new variety designation, where the Committee has, subsequent to registration of the variety, established that an approved designation does not comply with rules laid down by the Minister of Agriculture.

A variety shall be deleted from the official register of varieties two months after the breeder has been notified in a verifiable manner of the decision of the Breeder's Right Committee, unless he files a lawsuit before the end of that period.

#### Article 15

Where a variety has been deleted from the official register of varieties it will not be registered anew. The Breeder's Right Committee shall publish a notification to that effect in the National Gazette together with justifications.



Chapter IV  
Breeder's Right

Article 16

Breeder's right extends to the variety registered pursuant to this Act. Breeder's right also applies 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 in accordance with Article 2;
- c) varieties which cannot be produced without the repeated use of the protected variety.

For the purposes of subparagraph 1(a), a variety shall be considered essentially derived from another variety when:

- a) it is mainly derived from the initial variety, or from a variety that is itself mainly derived from the initial variety and retains the principal characteristics determined by the genotype or combination of genotypes of the initial variety;
- b) it is clearly distinguishable from the initial variety in accordance with Article 2;
- c) it conforms, apart from the differences resulting from the act of its derivation, to the initial variety in the essential characteristics resulting from the genotype or combination of genotypes of the initial variety;

A government regulation may be issued detailing the possible ways of deriving a variety pursuant to Paragraphs 1–2.

Article 17

A breeder's right entails that other persons are not permitted, without the authorization of the breeder, to utilise the propagating material or harvest of the protected variety as follows:

- a) production or reproduction;
- b) conditioning for the purpose of propagation;

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- c) offering for sale;
- d) selling or other marketing;
- e) exporting;
- f) importing;
- g) stocking for the purposes mentioned in a) to f) above.

The provisions of Paragraph 1 extend only to the harvest of a variety obtained by utilisation of propagating material of the variety provided that the breeder has not:

- a) authorised the utilisation, and
- b) had an opportunity to exercise his right under Paragraph 1.

A government regulation may be issued providing that in special circumstances the provisions of Paragraph 1 may also apply to products derived directly from the harvest of a party other than the breeder. However, this applies only if the products were obtained by the unauthorised use of the protected variety, provided that the owner of the right did not have reasonable means of exercising his right. To the extent that the provisions of Paragraph 1 apply to products derived directly from the harvest of the protected variety, such products shall also constitute a harvest under this Act.

The exercise of a breeder's right shall not contravene provisions enacted on the basis of the public good, morality or public safety, for the preservation of human, animal and plant health and life, for environmental protection, for the protection of property rights in industry or trade or to secure competition in trade or agriculture. The provisions of this Paragraph shall not curtail the rights of farmers provided for in Sub-paragraph 18(a).

Article 17a

A breeder may subject authorization for utilisation of a variety to conditions, including the condition of payment of a reasonable licence fee.

Persons who for commercial purposes propagate varieties or sell propagating material of varieties or

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utilise a variety by other means, shall provide the breeder with the necessary information for the purposes of the collection of license fees.

The conditions imposed by a breeder pursuant to Paragraph 1 above, e.g. on licence fees, shall apply only to the use and supply referred to in Paragraph 1 of Article 17. The conditions shall be reasonable and all producers shall receive equal treatment.

#### Article 18

Breeder's right does not constitute:

1. applications for private but not professional reasons;
2. applications in experiments;
3. use for breeding, i.e. for the purpose of developing new varieties, and, except where the provisions of Paragraphs 1-2 of Article 16 apply, use pursuant to Paragraph 1 of Article 17 in the case of such new varieties;
4. applications of material of a variety marketed by the breeder or his or her agent in the European Economic Area [or in a State Party to the Agreement Establishing the European Free Trade Association]<sup>2</sup>, provided that the above mentioned applications do not involve:
  - a) further propagation of the variety in question,
  - b) an export of material, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

Material, for the purposes of paragraph 1, means:

- a. propagating material of any kind, including whole plants and parts of plants;
- b. harvest;
- c. any product processed directly from harvested material.

#### Article 18a

In order to protect agricultural production, farmers may, notwithstanding the provisions of Paragraph 1 of Article 17, use the harvest from their own land for the purpose of growing varieties of specified plant species on their own land, provided that the variety in question is not a hybrid or synthetic variety. "Own land" means both the privately owned lands of farmers and estates held by farmers for residence and agriculture and other cultivation pursuant to agreements with landowners.

The Minister of Agriculture will decide, by means of a government regulation, which plant species shall fall within the scope of Paragraph 1 and on what conditions.

Farmers shall not be required to pay a licence fee for the use of a variety pursuant to Paragraph 1 if their production of agricultural crops pursuant to Paragraph 2 takes place in an area of land capable of yielding a maximum of 92 tons of cereals; the quantity of other agricultural crops shall be based on the same area of land. Other farmers are required to pay to the breeder a licence fee, but the Minister for Agriculture may decide on a price which is lower than the price paid in the same area for the use of propagating material of the same variety.

The Minister for Agriculture shall issue further rules concerning the implementation of this provision in a government regulation.

#### Article 19

The Breeder's Right Committee shall, after being requested to do so, examine whether conditions imposed by the breeder for his or her approval, in accordance with the second paragraph of Article 17, comply with the sixth paragraph of that Article.

#### Article 20

In the event that a breeder has not secured an adequate supply of material for the propagation of a protected variety in Iceland on reasonable terms and in the quantity and manner necessary to secure the production of food in Iceland and other important

public interests, the person desiring to utilise the variety may apply for a non-voluntary licence before the courts of law, provided that there is no reasonable justification for the neglect of the breeder.

A patent holder who cannot utilise his invention without violating an existing breeder's right may, subject to payment of a reasonable fee, apply for a non-voluntary licence to utilise the protected variety. A non-voluntary licence shall be granted only if the holder of a patent can demonstrate that the patent relating to the variety represents a technologically important advance and entails substantial benefits. If a breeder has obtained a non-voluntary license to utilise a patented invention pursuant to Paragraph 1 of Article 46 of the Patent Act No. 17/1991, the holder of the patent is entitled to a non-voluntary licence on reasonable terms to utilised the protected variety.

The provisions of Articles 49 and 50 of the Patent Act No. 17/1991 apply, as applicable, to non-voluntary licences under this Article. A court of law may order a breeder to supply the holder of a non-voluntary licence with the material necessary for the propagation of the variety.

#### Article 21

From the date of application until the date of registration in the official register of varieties, breeders may impose conditions, in accordance with the second paragraph of Article 17, provided they submit notification to that effect to the Breeder's Right Committee. In that case the protection period, in accordance with Article 12, is authentic from the date of registration of the said notification in the Breeder's Right Committee's Diary. The provisions of Articles 11 and 20 shall apply in a similar way in the application period.

In the event that a cultivator pays licensing fee before the application has been dealt with, the fee shall be credited to a deposit account under the breeder's name. The amount shall become accessible once the variety has been registered. If the application is rejected, the fee shall be reimbursed at a certain rate of interest.

Every person is free to use a variety for propagation purposes, where an application for the protection of

that variety has been withdrawn or rejected. Cultivators, who have used the variety in the application period, will acquire the same status as if they were using an unprotected variety.

### Chapter V Administration

#### Article 22

The Minister of Agriculture will appoint the members of the Breeder's Right Committee for four years at a time whose duty is to implement Chapters II to IV of the present Act.

The Committee shall be composed of at least three members and five members at the most. At least one member of the Committee shall be an expert in the cultivation and breeding of exploitable plants and another an expert in the field of property right.

#### Article 23

Decisions of the Breeder's Right Committee, based on Chapters II to IV, shall not be subjects of recourse to other administrative bodies.

#### Article 24

[Where a breeder neither resides nor is established in this country, in any State Party to the Agreement on the European Economic Area or a State Party to the Agreement Establishing the European Free Trade Association, matters can be referred to his or her agent.<sup>3</sup> Where the breeder or his or her agent cannot be reached, the provisions of the Civil Proceedings Act or the Act on the Publication of Law and Administrative Affairs shall be observed, as appropriate.

#### Article 25

A person, who deliberately restricts the right of a breeder pursuant to the present Act or pursuant to rules based on it, shall be fined.

A legal person, who commits such an offence, may be sentenced to pay monetary damages.

## Article 26

A person, who deliberately or negligently restricts the right of a breeder, shall pay an equitable fee for the exploitation of a variety and compensations for other damages caused by his or her restrictions.

Chapter VI  
Entry into Force and Other Provisions

## Article 27

The Minister of Agriculture may, in the framework of Regulation, lay down more express provisions on the implementation of the present Act.

## Article 28

The present Act shall enter into force forthwith.

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Footnotes:

- <sup>1</sup> Article 34 of Act No 72/2003.
- <sup>2</sup> Article 35 of Act No 72/2003.
- <sup>3</sup> Article 36 of Act No 72/2003.

**JAPAN****THE SEEDS AND SEEDLINGS ACT\***

(Act No. 83 of May 29, 1998)

Last Amendment by Act No. 59 of June 17, 2005

(This English translation of the Seeds and Seedlings Act has been translated (through the revisions of Act No. 59 of 2005 (Effective December 1, 2005)) in compliance with the Standard Bilingual Dictionary (March 2006 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. The Government of Japan shall not be responsible for the accuracy, reliability or currency of the legislative material provided in this Website, or for any consequence resulting from use of the information in this Website. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

- Section 5. Infringement (Articles 33 to 37)
- Section 6. Maintenance and Cancellation of Variety Registration (Articles 38 to 42)
- Section 7. Miscellaneous Provisions (Articles 43 to 48)
- Chapter 3. Designated Seeds and Seedlings (Articles 49 to 55)
- Chapter 4. Penal Provisions (Articles 56 to 62)
- Supplementary Provisions (Extract)

## Chapter 1. General Provisions

The Seeds and Seedlings Act  
(Act No. 83 of May 29, 1998)  
Last Amendment by Act No.59 of June 17, 2005  
The Seeds and Seedlings Act (Act No. 105 of 1947)  
is entirely revised.

(Purpose)  
Article 1

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

Chapter 1. General Provisions (Articles 1 to 2)

Chapter 2. Variety Registration System

Section 1. Variety Registration and Application for Variety Registration (Articles 3 to 12)

(Definitions, etc.)  
Article 2

Section 2. Publication of Application (Articles 13 to 4)

Section 3. Examination (Articles 15 to 18)

Section 4. Breeder's Right (Articles 19 to 32)

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

\* Translation provided by the Japanese authorities as contained in their website:  
<http://www.hinsyu.maff.go.jp/english/index.htm>.

forestry and aquatic products, and a “plant” shall mean an individual of agricultural, forestry and aquatic plants.

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

(3) The term “seeds and seedlings” as used in this Act shall mean entire plants or parts of plants used for propagation.

(4) The term “processed products” as used in this Act shall mean the products made directly from the harvested material obtained from the seeds and seedlings and which are designated by the Cabinet Order.

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

- (i) production, conditioning, offering for transfer, transferring, exporting, importing or stocking for the purpose of these acts, of seeds and seedlings of the variety; and
- (ii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of these acts, of the harvested material obtained through using seeds and seedlings of the variety (limited to cases where the holder of the breeder’s right or the holder of the exclusive exploitation right has not had reasonable opportunity to exercise his/her right for the acts mentioned in the preceding item).
- (iii) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for the purpose of these acts, of the processed products of the variety (limited to cases where the holder of the breeder’s right or the holder of the exclusive exploitation right has not had reasonable opportunity to exercise his/her right for the acts mentioned in the preceding two items).

(6) The term “designated seeds and seedlings” as used in this Act shall mean seeds and seedlings (excluding those of forest trees) which are designated by the Minister for Agriculture, Forestry and Fisheries, and appear in the form of seeds, spores, stems, roots, seedlings, saplings, scions, rootstocks, spawn or other parts of plants designated by the Cabinet Order as requiring certain matter to be labeled at the time of their sale, in order to facilitate identification of the quality, and the term “seed and seedling dealer” as used in this Act shall mean any person engaged in the sale of designated seeds and seedlings in the course of trade.

(7) The Minister for Agriculture, Forestry and Fisheries, shall, after having heard the opinions of the Agricultural Materials Council, determine and publicly notice the important characteristics referred to in paragraph (2) of this Article for each of the classes, specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, of agricultural, forestry or aquatic plants.

## Chapter 2. Variety Registration System

### Section 1 Variety Registration and Application for Variety Registration

#### (Condition for Variety Registration) Article 3

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

- (i) the variety is clearly distinguishable, in all or parts of the characteristics, from any other variety which has been publicly known in Japan or foreign states before the filing of the application for variety registration.
- (ii) all of the plants of the variety at the same propagation stage are sufficiently similar in all of the characteristics.

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

(2) When the filing of an application for variety registration or an equivalent application in a foreign state leads to the granting of the breeder's right, the variety shall be deemed to have been publicly known at the time of the filing of the application.

#### Article 4

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

- (i) when there is more than one denomination for the variety;
- (ii) when the denomination is identical or similar to a registered trademark pertaining to the seeds and seedlings of the variety or a registered trademark pertaining to goods similar to the said seeds and seedlings;
- (iii) when the denomination is identical or similar to a registered trademark pertaining to services relating to the seeds and seedlings of the variety or goods similar to the said seeds and seedlings; or
- (iv) when it is likely to cause misidentification of the variety or confusion in respect of its identification (excluding the cases set forth in the preceding two items).

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

#### (Application for Variety Registration) Article 5

(1) A person desiring a variety registration shall submit an application to the Minister for Agriculture, Forestry and Fisheries, pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries, stating the following matters:

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

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

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

#### (Application Fee) Article 6

(1) The applicant shall pay an application fee for his/her application specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries but not exceeding 47,200 Yen.

(2) The provision set forth in the preceding paragraph shall not be applied when the applicant is the national government, including Independent Administrative Institution designated by the Act on General Rules of Independent Administrative Institution (Act No.103 of 1999) Article 2 paragraph (1) that are designated by the Cabinet Order to deal with variety breeding

activities; this proviso shall apply to the paragraph (3) of this Article, Article 38 paragraphs (2) and (3), and Article 47 paragraph (2).)

(3) Notwithstanding the provision of paragraph (1) of this Article, when the national government and another person jointly apply for variety registration and they have an agreement on the sharing of the breeder's right to be granted by variety registration, such other person shall pay an amount calculated by multiplying the amount of the application fee set forth in paragraph (1) of this Article by the percentage of the share of such other person.

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

(Transfer of the Title of Applicant)  
Article 7

(1) The title of applicant may be transferred.

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

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

(Variety Bred by an Employee as part  
of his/her Duties)  
Article 8

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

transferred to him, or, when the employee etc. has had a variety registered, have the breeder's right transferred to the employer etc. or establish an exclusive exploitation right on the registered variety for him, shall be null and void. However, this shall not apply when the breeding of the variety by reason of its nature falls within the scope of the business of the employer etc. and, moreover, the acts resulting in the breeding of the variety fall within the duties of the employee etc. (hereinafter referred to as a "variety bred by an employee as part of his/her duties").

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

(3) When an employee etc. or his/her successor has been granted a variety registration relating to a variety bred by himself as part of his/her duties, his/her employer etc. or his/her successor shall receive a non-exclusive exploitation right on the variety concerned.

(First-to-file Rule)  
Article 9

(1) When two or more applications for variety registration are filed for a variety or for varieties that are identical or not clearly distinguishable from each other on the basis of characteristics, only the first applicant shall be considered for the grant of variety registration.

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

(3) An application for variety registration filed by a person who is not a breeder shall, for the purpose of



paragraph (1) of this Article, be deemed not to be an application for variety registration.

(Rights of Foreign Nationals)  
Article 10

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

- (i) when the State to which the person belongs or the State in which the person has domicile or residence (in the case of a juridical person, its registered office) is one of the member States of 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 (hereinafter referred to as "Contracting Parties") or member States of intergovernmental organizations which are bound by the said Convention (hereinafter referred to as "Intergovernmental Organizations"; "Contracting Parties and Intergovernmental Organizations" being hereinafter collectively referred to as "Contracting Parties etc.")
- (ii) when the State to which the person belongs or the State in which the person has domicile or residence (in the case of a juridical person, its registered office) is a member States of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972 and on October 23, 1978 (including the State in relation to which Japan is to apply the Convention pursuant to the provision of Article 34 (2) of the said Convention; hereinafter referred to as "Member States") and if the said State provides protection for the plant genus or species to which the person's applied variety belongs (excluding the case prescribed in the preceding item).
- (iii) when the State to which the person belongs provides Japanese nationals with the protection of varieties under the same conditions as for its own nationals (including a State which provides such protection for Japanese nationals under the condition that Japan allows enjoyment of the

breeder's right and other rights related to the breeder's right for the nationals of that State) and if the said State provides protection for the plant genus or species to which the person's applied variety belongs (excluding the cases prescribed in the preceding two items).

(Right of Priority)  
Article 11

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

- (i) a person who has filed an equivalent application or applications for variety registration in a Contracting Party, an Intergovernmental Organization or a Member State (hereinafter referred to as "application in a Contracting Party") or his/her successor (the person or his/her successor shall be limited to a Japanese national, a person belonging to a Contracting Party etc. or Member States, or a person having a domicile or residence (in the case of a juridical person, its registered office) in Japan, a Contracting Party etc. or a Member State): when the application for variety registration, on the variety pertaining to the said application in a Contracting Party, is filed within one year from the day following the date of filing of the first application in a Contracting Party (hereinafter referred to as the "date of application in a Contracting Party"); or
- (ii) a person who has filed an equivalent application for variety registration in a State prescribed in item 3 of Article 10 which allows a Japanese national to claim a right of priority under the same conditions as Japan does (excluding Contracting Party and Member State; hereinafter referred to as a "Designated State") or his/her successor (the person or his/her successor shall be limited to a Japanese national or a person belonging to the Designated State): when the application for variety registration, on the variety pertaining to the said application in a Designated State, is filed within one year from the day following the date of the filing of the first application in a Designated State (hereinafter referred to as the "date of application in a Designated State").

(2) Where the applicant claims a right of priority pursuant to the provisions of paragraph (1) of this Article, any application for variety registration, publication, such acts as transfer or other acts made in relation to a variety which is identical to or not clearly distinguishable from the applied variety on the basis of the characteristics, within a period from the date of application in a Contracting Party or the date of application in a Designated State to the date of the application for variety registration, shall not constitute a ground for preventing the said variety from registration.

(Amendment of Application for  
Variety Registration)  
Article 12

(1) The Minister for Agriculture, Forestry and Fisheries may order the application for variety registration to be amended, fixing an adequate time limit, in the following cases;

(i) the application for variety registration has not complied with the formal requirements specified in this Act or in orders or ordinances pursuant to this Act; or

(ii) the applicant does not pay the application fee that should be paid pursuant to the provisions of paragraph (1) of Article 6.

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

Section 2. Publication of Application

(Publication of Application)  
Article 13

(1) When an application for variety registration is received (or when a amended application for variety registration is received if, pursuant to the provision of paragraph (1) of Article 12, amendment of the application for variety registration has been ordered), the Minister for Agriculture, Forestry and Fisheries shall publish the application for variety registration

without delay by publicly noticing the following matters:

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

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

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

(iv) the denomination of the applied variety;

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

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

(2) When the application for variety registration is surrendered, withdrawn or dismissed after the publication of the application, or when the application for variety registration is rejected, the Minister for Agriculture, Forestry and Fisheries shall publicly notice that effect.

(Effects etc. of Publication of Application)  
Article 14

(1) When the applicant for a variety registration has, after publication of his/her application, and having given notification in a written statement setting forth the particularities of the applied variety, he may claim, against a person who exploited in the course of trade between the time of the notification and the registration, that applied variety, a variety which is, on the basis of its characteristics, not clearly distinguishable from that applied variety, or a variety to which the provisions of each item of Article 20 paragraph (2) would apply if that said applied variety would have been registered, compensation equivalent to the amount of money which the applicant may receive if that applied variety were registered. Even in the absence of the notification, this provision shall apply to a person who exploited in the course of trade the applied variety (including a variety which, on the basis of its characteristics, is not clearly distinguishable from the said applied variety or a variety to which the provision of each item of Article 20 paragraph (2)) before its registration, if he had known that the variety which he exploited was the applied variety pertaining to the publication of the application.

(2) The right to claim compensation prescribed in paragraph (1) of this Article can be exercised only after the registration of the variety.

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

(4) When the application for variety registration has been surrendered, withdrawn or dismissed after the publication of the application, or when the application for variety registration has been rejected, or when the variety registration is canceled pursuant to the provisions of either item 1 or 4 of Article 42 paragraph (1), or when a decision to cancel the variety registration has become final and conclusive, which upholds the ground for an objection to the variety registration pursuant to the Administrative Appeal Act (Act No. 160 of 1962), or when a judgment to cancel or to confirm nullity of the variety registration becomes final and conclusive, the right to claim compensation under paragraph (1) of this Article shall be deemed never to have existed.

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

### Section 3. Examination

#### (Examination of Applied Variety) Article 15

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

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

(3) The Minister for Agriculture, Forestry and Fisheries may request relevant administrative organizations, educational establishments or other persons deemed to be appropriate, to conduct such on-site inspections as prescribed in paragraph (2) of this Article.

(4) Items to be checked, examination methods and other requirements for the conduct of the growing tests set forth in paragraph (2) of this Article shall be determined by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(5) The NCSS may request relevant administrative organizations, educational establishments or other persons deemed to be appropriate, to conduct such growing tests as set forth in paragraph (2) of this Article with the consent of the Minister for Agriculture, Forestry and Fisheries.

(6) The Minister for Agriculture, Forestry and Fisheries may, when it finds it necessary to ensure the appropriate conduct of the growing tests, issue orders to the NCSS in relation to the conduct of such growing tests as set forth in paragraph (2) of this Article.

#### (Order to Change Denomination) Article 16

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

(2) When the denomination, after the publication of application, is changed pursuant to the provision of the preceding paragraph, the Minister for Agriculture, Forestry and Fisheries shall publicly notice information to that effect.

(Rejection of Application for Variety Registration)  
Article 17

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

- (i) the applied variety may not be registered pursuant to the provisions of Article 3 paragraph (1), Article 4 paragraph (2), Article 5 paragraph (3), Article 9 paragraph (1) or Article 10; or
- (ii) the applicant, without justifiable grounds, fails to comply with the order prescribed in Article 15 paragraph (1), refuses to receive an on-site inspection as prescribed in paragraph (2) of the said Article or fails to comply with the order prescribed in paragraph (1) of Article 16.

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

(Variety Registration)  
Article 18

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

(2) A variety shall be registered in the Registry of Plant Varieties in which the following matters shall be entered:

- (i) the registration number and the date of variety registration;
- (ii) the genus or species of the agricultural, forestry or aquatic plant to which the variety belongs;
- (iii) the denomination of the variety;
- (iv) the characteristics of the variety;
- (v) the duration of the breeder's right;

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

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

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

Section 4. Breeder's Right

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

(1) A breeder's right shall be granted by the registration of the variety.

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

(Effects of the Breeder's Right)  
Article 20

(1) The holder of a breeder's right shall have an exclusive right to exploit, in the course of trade, the variety which is registered (hereinafter referred to as "registered variety") and varieties which, on the basis of their characteristics, are not clearly distinguishable from the registered variety. However, when an exclusive exploitation right is granted in relation to the breeder's right, the exclusive right of the holder of the breeder's right does not extend to the areas where the holder of the exclusive exploitation right has an exclusive right to exploit these varieties.

(2) The holder of the breeder's right for a registered variety shall have exclusively the same right as the right which, if varieties related to the registered variety in ways described in the following items are registered, the breeders of the aforementioned related varieties will have. In this case, the provisions of the proviso of paragraph (1) of this Article shall be applied mutatis mutandis.

- (i) varieties which are bred from a registered variety by changing some of the latter's characteristics while retaining the essential characteristics of the latter by selection of a variation or variations, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety on the basis of the characteristics; or
  - (ii) varieties whose production requires the repeated use of the registered variety.
- (3) When a registered variety is bred from a variety other than the said registered variety by changing some of the latter's characteristics while retaining the essential characteristics of the latter by the methods pursuant to the Ordinance of the Ministry of Agriculture, Forestry and Fisheries prescribed in item 1 of paragraph (2) of this Article, paragraph (2) of this Article and paragraph (2) of Article 21 shall be applied by changing the words "the following items" in paragraph (2) of this Article to "item 2", and by further changing the words "each item of paragraph (2) of Article 20" to "item 2 of paragraph (2) of Article 20."

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

(1) The effects of a breeder's right shall not extend to the following acts:

- (i) use of the variety for the purpose of breeding new varieties and for other experimental and research purposes;
- (ii) production of seeds and seedlings of the registered variety, by a person who has a patent right for the process of breeding the registered variety (including a variety which is, on the basis of its characteristics not clearly distinguishable from the registered variety; hereinafter the same shall apply in this paragraph) or a person who has been granted an exclusive license or non-exclusive license to use the said patent, by means of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for these purposes, of the said seeds and seedlings;

- (iii) production of seeds and seedlings of the registered variety after the extinction of the patent right set forth in item (ii) of this paragraph, by means of the process pertaining to the said patent, or conditioning, offering for transfer, transferring, exporting, importing or stocking for these purposes, of the said seeds and seedlings; or
- (iv) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for these purposes, of the harvested material obtained from the seeds and seedlings set forth in items (ii) and (iii) of this paragraph.
- (v) production, offering for transfer or lease, transferring, leasing, exporting, importing or stocking for these purposes, of the processed products pertaining to the harvested material set forth in item (iv) of this paragraph.

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

(3) The provision of paragraph (2) of this Article shall not be applied to the use of seeds and seedlings of a variety, which belongs to one of the genera or species designated by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as being propagated vegetatively.

(4) When seeds and seedlings, harvested material or processed products of a registered variety etc. are transferred by the holder of the breeder's right, the holder of an exclusive exploitation right or the holder

of a non-exclusive exploitation right, or as the result of the acts listed in any of the items of paragraph (1) of this Article, the effects of the breeder's right for the said registered variety shall not extend to the exploitation of the transferred seeds and seedlings, harvested material or processed products. However, this provision shall not apply to the production of seeds and seedlings of the said registered variety etc., nor to the exportation of seeds and seedlings to a State which does not protect varieties of the plant genus or species to which the said registered variety belongs nor to the exportation of harvested material to the said State for a purpose other than final consumption.

(Obligation of Using a Denomination, etc.)  
Article 22

(1) When seeds and seedlings of a registered variety (including a variety whose registration has already expired: hereinafter the same shall apply in this Article) are offered for transfer or are transferred in the course of trade, the denomination of the said registered variety (where the denomination has been changed pursuant to the provisions of Article 41 paragraph (2), the denomination as changed) shall be used.

(2) When seeds and seedlings of a variety being other than a registered variety but belonging to the same genus or species of the agricultural, forestry or aquatic plants to which the aforementioned registered variety belongs or belonging to the genus and species of agricultural, forestry and aquatic plants specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries to be similar to the genus or species to which the aforementioned registered variety belongs, are offered for transfer or are transferred in the course of trade, the denomination of the said registered variety shall not be used.

(Co-owners of a Breeder's Right)  
Article 23

(1) Each of the co-owners of a breeder's right may neither transfer his/her share nor grant a pledge upon it without the consent of the other co-owners.

(2) Each of the co-owners of a breeder's right may, unless otherwise prescribed by contract, exploit the

registered variety etc. without the consent of the other co-owners.

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

(Extinction of a Breeder's Right due to the  
Dissolution of a Juridical person, etc.)  
Article 24

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

- (i) a juridical person holding a breeder's right dissolves, and the breeder's right should vest in the national treasury pursuant to the provisions of Article 72 paragraph (3) of the Civil Code or equivalent Acts; or
- (ii) a natural person holding a breeder's right dies, and the breeder's right should vest in the national treasury pursuant to the provisions of Art.959 of the Civil Code.

(Exclusive Exploitation Right)  
Article 25

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

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

(3) An exclusive exploitation right may be transferred only in the following cases; together with the business in which the variety is exploited, with the consent of the holder of the breeder's right, or by inheritance or other general successions.

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

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

(Non-exclusive Exploitation Right)  
Article 26

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

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

(Non-exclusive Exploitation Right by virtue of Prior Breeding)  
Article 27

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

(Award)  
Article 28

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

(2) When the consultations set forth in paragraph (1) of this Article have not reached an agreement or if the consultation is unable to take place, the person prescribed in the said paragraph may apply the Minister for Agriculture, Forestry and Fisheries for an award.

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

accordingly and shall give them an opportunity to state their opinion, fixing an adequate time limit.

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

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

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

(7) When an award is taken in accordance with paragraph (2) of this Article, the Minister for Agriculture, Forestry and Fisheries shall notify the parties and other persons who have rights registered in relation to the registered variety, accordingly.

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

(Transfer, etc. of a Non-exclusive Exploitation Right)  
Article 29

(1) A non-exclusive exploitation right, with the exception of such as is granted by award set forth in paragraph (2) of Article 28, may be transferred together with the business in which the variety is exploited, only with the consent of the holder of the breeder's right (in the case of a non-exclusive exploitation right on an exclusive exploitation right, the holder of the breeder's right and the holder of that exclusive exploitation right; this proviso shall apply also in paragraph (2) of this Article), or inheritance or other general succession.

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

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

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

(Pledge)  
Article 30

(1) When a breeder's right or an exclusive or non-exclusive exploitation right is the purpose of a pledge, the pledgee may not exploit the said registered variety etc. unless otherwise prescribed by contract.

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

(Surrender of the Breeder's Right, etc.)  
Article 31

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

(2) When there is a pledgee or a holder of a non-exclusive exploitation right referred to in Article 25 paragraph (4) in relation to an exclusive exploitation right, the holder of the exclusive exploitation right may surrender his/her exclusive exploitation right only with the individual consent of such persons.

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

(Effects of Registration)  
Article 32

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

(i) the transfer (other than by inheritance or other general succession), extinction by surrender, or restrictions on the disposal, of a breeder's right;

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

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

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

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

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

(5) The transfer, modification, extinction or restriction on the disposal of a non-exclusive exploitation right or the grant, transfer, modification, extinction or restriction on the disposal of a pledge on a non-



exclusive exploitation right may not set up against any third party unless it is registered.

#### Section 5. Infringement

##### (Injunction) Article 33

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

(2) The holder of a breeder's right or the holder of an exclusive exploitation right who is making the requisition prescribed in paragraph (1) of this Article may demand the destruction of the seeds and seedlings, the harvested material or the processed products on which the act of infringement was committed, or the objects used for the act of infringement, or other measures necessary to prevent the infringement.

##### (Presumption, etc. of Amount of Damages) Article 34

(1) Where the holder of a breeder's right or of an exclusive exploitation right claims, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, compensation for damages caused to him by the infringement, any profits gained by the infringer through the infringement shall be presumed to be the amount of damages suffered by the holder of the breeder's right or the holder of the exclusive exploitation right

(2) The holder of a breeder's right or of an exclusive exploitation right may claim, against a person who has intentionally or negligently infringed his/her breeder's right or exclusive exploitation right, the amount of money which he would be entitled to receive from the exploitation of the registered variety etc., as the amount of damages suffered by him.

(3) The provision of paragraph (2) of this Article shall not preclude a claim for damages exceeding the amount prescribed in the said paragraph. In such cases, when the infringer of the breeder's right or the exclusive exploitation right had neither intent nor

gross negligence, the court may take this into consideration when awarding damages.

##### (Presumption of Negligence) Article 35

A person who has infringed a breeder's right or an exclusive exploitation right of another person shall be presumed to have been negligent with respect to the act of infringement.

##### (Submission of Documents) Article 36

In litigation pertaining to the infringement of a breeder's right or an exclusive exploitation right, the court may, upon the request of a party, order the other party to submit documents necessary for the assessment of the damages caused by the said infringement. However, this provision shall not apply when the person possessing the documents has justifiable grounds for refusing their submission.

##### (Measures for Recovery of Reputation) Article 37

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

#### Section 6. Maintenance and Cancellation of a Variety Registration

##### (Registration Fee) Article 38

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

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

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

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

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

(6) The registration fee for the second year and subsequent years prescribed in paragraph (1) of this Article shall be paid in the previous year or earlier.

(7) When the registration fee is unable to be paid within the time limit prescribed in paragraph (6) of this Article, the fee may be paid within 6 months from the expiration of the time limit.

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

(Payment of the Registration Fee by  
Interested Persons)  
Article 39

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

(2) The interested person who has paid the registration fee pursuant to the provision of paragraph (1) of this Article may claim reimbursement of the expense to the extent that the holder of the breeder's right is actually making a profit.

(Examination of a Registered Variety)  
Article 40

(1) The Minister for Agriculture, Forestry and Fisheries may order the holder of a breeder's right or of an exclusive exploitation right to submit entire plants or parts of plants of the registered variety and other material, when it is found necessary to examine whether the characteristics of the registered variety are maintained.

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

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

(Change of Denomination of a Registered Variety)  
Article 41

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

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

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

(Cancellation of the Variety Registration)  
Article 42

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

- (i) when it has turned out that the variety was registered in violation of the provisions of Article 3 paragraph (1), Article 4 paragraph (2), Article 5 paragraph (3), Article 9 paragraph (1) or Article 10;
- (ii) when it has turned out that, after the variety registration, the registered variety no longer satisfies the requirements listed in item 2 or 3 of Article 3 paragraph (1);
- (iii) when, after the variety registration, the holder of the breeder's right has become a person who may not enjoy a breeder's right pursuant to the provisions of Article 10;
- (iv) when the registration fee for the first year is not paid within the period prescribed in Article 38 paragraph (5);
- (v) when the registration fee and the surcharge are not paid within the period prescribed in Article 38 paragraph (7);
- (vi) when the person who was ordered to submit material pursuant to the provisions of Article 40 paragraph (1) fails to comply with the order without justifiable grounds; or
- (vii) when the person who was ordered to submit another denomination of the registered variety pursuant to the provisions of paragraph (1) of this Article fails to comply with the order without justifiable grounds.

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

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

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

- (i) the case falling under item 1 or 4 of paragraph (1) of this Article: the time of variety registration;
- (ii) the case falling under item 3 of paragraph (1) of this Article: the time when the said item became applicable; or
- (iii) the case falling under item 5 of paragraph (1) of this Article: the time when the time provided in Article 38 paragraph (6) has passed.

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

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

Section 7. Miscellaneous Provisions

(Jurisdiction for a Overseas Resident)  
Article 43

With respect to the breeder's right or any other right relating to a breeder's right of a person who has neither domicile nor residence (nor registered office, in the case of a juridical person) in Japan, the location of the Ministry of Agriculture, Forestry and Fisheries

shall be deemed to be the location of property set forth in Article 5 paragraph (4) of the Code of Civil Procedure (Act No. 109 of 1996).

(Special Provisions for filing of an Objection to a Variety Registration)  
Article 44

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

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

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

(Registration, etc. in the Registry of Plant Varieties)  
Article 45

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

- (i) the grant, transfer, extinction or restriction on the disposal, of a breeder's right;
- (ii) the grant, preservation, transfer, modification, extinction or restriction on the disposal, of an exclusive exploitation right or of a non-exclusive exploitation right; or
- (iii) the grant, transfer, modification, extinction or restriction on disposal, of a pledge on a breeder's right, on an exclusive exploitation right or on a non-exclusive exploitation right.

(2) In addition to those matters listed in this Act, any matter necessary for variety registration and the

Registry of Plant Varieties shall be provided by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

(Request for Certification, etc.)  
Article 46

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

- (i) certification relating to an application for variety registration or a registered variety;
- (ii) issue of an transcript or extract of the Registry of Plant Varieties or
- (iii) inspection or copying of the Registry of Plant Varieties or an application filed set forth in Article 5 paragraph (1), photograph (s) or other material attached thereto (excluding those which the Minister for Agriculture, Forestry and Fisheries considers necessary to be kept confidential).

(2) Rules of Act Concerning Access to Information Held by Administrative Organs (Act No. 42 of 1999) shall not be applied to the Registry of Plant Varieties, to applications as referred to in Article 5 paragraph (1), nor to photographs or related material attached thereto (referred to in the next paragraph as "the Registry of Plant Varieties, etc.")

(3) With regard to data entered into the Registry of Plant Varieties etc. pertaining to information on individual natural persons possessed by administrative organs (as prescribed in Article 2 paragraph (3) of the Act on the Protection of Information on Individual Natural Persons Possessed by Administrative Organs (Act No. 58 of 2003)), the provisions of Chapter 4 of the said Act shall not be applied.

(Fees)  
Article 47

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

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

(Effects of Convention)  
Article 48

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

Chapter 3. Designated Seeds and Seedlings

(Notification by Seed and Seedling Dealers)  
Article 49

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

- (i) the name and the domicile of the dealer;
- (ii) the kinds of designated seeds and seedlings which the dealer handles; and
- (iii) other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

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

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

(Labeling of Designated Seeds and Seedlings)  
Article 50

(1) Designated seeds and seedlings shall not be sold unless the package is furnished with a label containing the following matters or with a voucher showing the

said matters have been attached. This provision, however, shall not apply where the matters listed in items 1 to 4 inclusive and item 6 of this Article pertaining to designated seeds and seedlings are shown by a notice or other readily visible means, or where designated seeds and seedlings are sold by a person other than seed and seedling dealers.

- (i) the name and the domicile of the seed and seedling dealer providing the matters;
- (ii) the type and the variety name (in the case of grafted saplings, the types and the variety names of scion and rootstock);
- (iii) the place of production;
- (iv) in the case of seed, the date of production or the time limit of validity, and the germination percentage;
- (v) the quantity; and
- (vi) any other matters specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

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

(3) In addition to paragraphs (1) and (2) of this Article, with regard to certain designated seeds and seedlings for which labeling is deemed necessary for users in the identification of the location suitable for growing, usage and other characteristics relevant to growing or exploitation and in the selection of varieties suitable to their natural and economic conditions, the Minister for Agriculture, Forestry and Fisheries shall determine and publish the matters to be shown for identification and any other standard relating to the said labeling, with which the seed and seedling dealer should comply.

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

(Order relating to Designated Seeds  
and Seedlings)  
Article 51

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

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

(Standards relating to the Production, etc. of  
Designated Seeds and Seedlings)  
Article 52

(1) The Minister for Agriculture, Forestry and Fisheries shall, when it is found particularly necessary to secure the distribution of designated seeds and seedlings of good quality, determine and publish standards relating to the production, conditioning, stocking or packaging, of the said designated seeds and seedlings, that should be complied with by persons producing the said seeds and seedlings in the course of trade and seed and seedling dealers.

(2) The Minister for Agriculture, Forestry and Fisheries may, when either a person producing the designated seeds and seedlings in the course of trade or a seed and seedling dealer fails to comply with the standards pursuant to the provisions of paragraph (1) of this Article, issue to such a person a recommendation to the effect that the standards be complied with.

(3) The Minister for Agriculture, Forestry and Fisheries may, when any person producing the designated seeds and seedlings in the course of trade or any seed and seedling dealer fails to comply with the recommendation set forth in paragraph (2) of this Article, publish the fact of non-compliance.

(Collection of Designated Seeds and Seedlings)  
Article 53

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

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

(Collection of Designated Seeds and Seedlings  
made by the NCSS or the National Livestock  
Breeding Center)  
Article 53-2

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

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

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

(4) In the case referred to in paragraph (1) of this Article, officials of the NCSS or the NLBC performing the collection pursuant to the provisions of the said

paragraph shall show a certificate to identify his/her status if seed and seedling dealers so require.

(Orders to the NCSS or the NLBC)  
Article 53-3

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

(Collection of Reports, etc.)  
Article 54

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

(Delegation of Authority to Prefectural Governors)  
Article 55

(1) Part of the authority of the Minister for Agriculture, Forestry and Fisheries under the provisions of Article 50 paragraph (4), Article 51, Article 52 paragraph (2) and (3), Article 53 and Article 54 may be delegated to Prefectural Governors, pursuant to the provisions of the Cabinet Order.

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

Chapter 4. Penal Provisions

Article 56

Any person who has infringed a breeder's right or an exclusive exploitation right shall be punished by imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

Article 57

Any person who has obtained a variety registration by means of a fraudulent act shall be punished by

imprisonment with work for not more than one year or by a fine of not more than 1,000,000 yen.

Article 58

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

- (i) a person who has sold designated seeds and seedlings with false labeling concerning the matters to be shown pursuant to the provisions of paragraphs (1) and (2) of Article 50; or
- (ii) a person who has sold designated seeds and seedlings in violation of the disposition laid down pursuant to the provisions of Article 51 paragraph (1) or (2).

Article 59

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

- (i) a person who failed to notify pursuant to the provisions of Article 49 or made false notification;
- (ii) a person who, without justifiable grounds, has refused, obstructed or recused collection set forth under Article 53 paragraph (1) or Article 53-2 paragraph (1); or
- (iii) a person who failed to submit a report or document specified pursuant to the provision of Article 54 or submitted a false report or document.

Article 60

When a representative of a juridical person, or an agent, a employee or any other worker of a juridical person or individual has committed an act of violation falling under any of the following items with regard to the business of said juridical person or individual, not only the offender shall be punished but also said juridical person shall be punished by the fine prescribed in the following items or said individual shall be punished by the fine prescribed in any of these Articles.

(i) Article 56: fine of not more than 100,000,000 yen;

(ii) Articles 57, 58 or item 1 or 3 of Article 59: fine prescribed in any of these Articles.

#### Article 61

If the NCSS or the NLBC violated the order prescribed in Article 15 paragraph (6) (including the cases when it is applied mutatis mutandis pursuant to Article 40 paragraph (3)) or Article 53-3, officers of the NCSS and the NLBC that conducted the violation shall be punished by an administrative penalty of a civil fine of not more than 200,000 yen.

#### Article 62

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

#### Supplementary Provisions (Extract) Supplementary Provisions (Extract from Act No.59 of June 17, 2005)

#### (Interim Measure for Processed Products)

Article 2 No effect of a breeder's right shall extend to the processed products, prescribed in Article 2.4 of the Seeds and Seedlings Act (as revised by this Act, and hereinafter, the "New Act"), that were produced in or imported to Japan before the commencement of this Act.

#### (Interim Measure for the Duration of a Breeder's Right)

The provision of Article 19.2 of the New Act only applies to a breeder's right pertaining to any variety which is registered after the commencement of this Act; while the provisions then in force shall remain applicable to a breeder's right pertaining to any variety which was registered before the commencement of this Act.



**MOROCCO****LAW ON THE PROTECTION OF NEW PLANT VARIETIES\***

Adopted by the Chamber of Representatives of Morocco  
on December 19, 1996

CHAPTER I  
GENERAL PROVISIONS

Article 1

New plant varieties (varieties) shall be protected under the provisions of this Law and of the texts implementing this Law.

Article 2

For the purposes of this Law:

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

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

(b) "propagating material for the production of plants" means

- reproductive material such as seed and fruit;
- vegetative propagating material such as plants or parts of plants, cuttings, tubers, bulbs, rhizomes.

(c) "breeder" means

- the person who has bred, or discovered and developed, a variety;

- the person who is the employer of the aforementioned person or who has commissioned the latter's work, except where otherwise agreed by contract;

- the successor in title of the first or second aforementioned person, as the case may be.

(d) "breeder's right" means the right of the breeder provided for in this Law.

(e) "Competent Office" means the governmental services determined by regulation for the application of this Law and its implementing regulations.

CHAPTER II  
CONDITIONS OF PROTECTION

Article 3

The grant of the breeder's right shall not be subject to any conditions other than those laid down in Article 5 of this Law, provided that the variety is designated by a denomination in accordance with the provisions of Article 14 below, that the applicant complies with the formalities provided for by this Law and its implementing regulation and that he pays the fees referred to in Article 60 below.

Article 4

Only those varieties shall be protected that belong to the genera and species included in the list drawn up by the Office which shall state for each genus or species those elements covered by the breeder's right.

Article 5

A breeder's right shall be granted if following the prior examination referred to in Article 50 below, the variety is recognized to be new, distinct, uniform and stable.

\* Translation provided by the Office of the Union.

## Article 6

The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material or a transformed product of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purposes of exploitation of the variety for more than one year in Morocco or for more than four years or, in the case of trees and vines, for more than six years abroad.

## Article 7

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.

In particular, any other variety shall be deemed a matter of common knowledge if there exists for that variety in any other country an application for protection, provided that such application leads to the granting of a breeder's right, or an entry in an official variety register, as of the date of the application or of the entry, as the case may be. A variety may also be deemed a matter of common knowledge by reference to various factors such as cultivation or marketing already in progress, inclusion in a reference collection, or precise description in a publication.

## Article 8

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.

## Article 9

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## Article 10

Any plant variety may be granted a title of protection known as a "plant variety certificate."

The right to protection for a variety shall belong to the first to file an application, unless proved otherwise.

## Article 11

A breeder's right may be applied for by:

- Moroccan natural and legal persons;
- foreign natural and legal persons having their place of residence or their registered offices in Morocco;
- nationals of States whose legislation affords to Moroccan nationals protection that is at least equivalent to that provided by this Law and natural and legal persons having their place of residence or registered offices on the territory of such States.

## Article 12

Any breeder who has duly filed an application for the protection of a variety with a State that affords to Moroccan nationals protection at least equivalent to that provided by this Law (the "first application") shall, for the purpose of filing an application for the grant of a plant breeder's right for the same variety with the Competent Office (the "subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the letter.

## Article 13

In order to benefit from the right of priority referred to in Article 12 above, the breeder shall, in the subsequent application, claim the priority of the first application. The Competent Office may require the breeder to furnish within a period of three months as from the filing date of the subsequent application a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed, together with samples or any other evidence that the variety which is the subject matter of both applications is the same. 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, a period

laid down by the Competent Office as from the rejection or withdrawal, in which to furnish to the Competent Office any information, document or material required by this Law for the purpose of the examination referred to in Article 50 below.

Events occurring within the period referred to in Article 12 above, such as the filing of another application or the publication or use of the variety that is the subject matter of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

#### Article 14

A variety shall be designated by a denomination which will be its generic designation. Such denomination shall not:

- (a) be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder, or be liable to cause confusion with any other denomination that has already been filed or registered for an existing variety of the same botanical species or of a similar species;
- (b) be contrary to public policy, morality or international conventions;
- (c) consist solely of figures except where this is an established practice for designating varieties of the species concerned.

If the same variety has already been filed or registered in another State, the denomination that has been used must be adopted unless it is not suitable for reasons of a linguistic nature, of public policy or of morality, or unless the denomination does not satisfy the requirements of the first paragraph above. Where such is the case, the breeder shall be required to propose another denomination in accordance with Article 41 below.

#### Article 15

Any person who offers for sale or markets propagating material of a protected variety on the territory of Morocco shall be required to use the denomination of that variety, even after the end of the term of protection, subject to third-party rights.

Morocco

Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of a variety denomination is forbidden to a person who, under the provisions of the first paragraph above, is obliged to use the denomination, the Competent Office shall require the breeder to propose another denomination for the variety.

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

### CHAPTER III SCOPE OF PROTECTION

#### Article 16

The breeder's right shall cover:

- (a) the protected variety,
- (b) any variety that is not clearly distinguishable in accordance with Article 7 above from the protected variety,
- (c) any variety that is essentially derived from the protected variety, where the protected variety is not itself an essentially-derived variety and
- (d) any variety whose production requires the repeated use of the protected variety.

Subject to the provisions of Articles 17 and 18 below, the following acts in respect of the propagating material of the protected variety and of the varieties referred to in the first paragraph above shall require the authorization of the breeder:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned above.

Subject to the provisions of Articles 17 and 18 below, if the breeder has not been in a position to exercise his right with respect to the propagating material,

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he may exercise his right concerning the acts referred to in the second paragraph above with respect to the harvested material or the transformed produce.

For the purposes of item (c) above, a variety is "essentially derived from another variety (initial variety)" if

- (a) the variety 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) the variety is clearly distinguishable from the initial variety and,
- (c) except for the differences which result from the act of derivation, the variety 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.

#### Article 17

The breeder's right shall not extend to:

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purpose of breeding other varieties, and also acts referred to in the second and third paragraphs of Article 16 above in respect of such other varieties on condition that:
  - \* the protected variety is not used repeatedly in order to produce the new variety;
  - \* the new variety is not essentially-derived from the protected variety where the latter variety is not itself an essentially-derived variety;
  - \* the new variety is clearly distinguishable from the protected variety;
- and to acts done by farmers for propagating purposes on their own holdings by using the product of the harvest which they have obtained

by cultivating the protected variety, with the exception of fruit trees and ornamental and flower plants.

#### Article 18

The breeder's right shall not extend to acts concerning material of the protected variety or a variety essentially derived from the protected variety which has been sold or marketed by the breeder or with his consent, unless such acts:

- (a) involve further propagation of the variety in question or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of the first paragraph above, "material" means in relation to a variety:

- (a) propagating material of any kind,
- (b) harvested material, including entire plants and parts of plants, and
- (c) any product made directly from the harvested material.

#### Article 19

The term of protection shall be determined by the Office for each species. It may not be less than 20 years for agricultural crops and not less than 25 years for trees and vines.

The term of protection shall begin with the issue of the certificate.

### CHAPTER IV TRANSFER AND LOSS OF RIGHTS

#### Article 20

The rights deriving from an application for a certificate or from a certificate may be transferred in whole or in part.

They may be the subject, in whole or in part, of the grant of an exclusive or non-exclusive exploitation license.

The rights afforded by an application for a certificate or a certificate may be invoked with respect to a licensee who fails to comply with the limits set out in the license in accordance with the preceding paragraph.

Subject to the case referred to in Article 61 below, transfer of the rights referred to in the first paragraph shall not affect rights acquired by third parties prior to the date of the transfer.

The acts comprising a transfer or a license as referred to in the first two paragraphs shall be set out in writing, on pain of nullity.

#### Article 21

Any public or private law person may, on expiry of three years after the issue of a certificate or of four years after the filing date of an application, obtain a compulsory license under that certificate, subject to the conditions set out in Articles 22 to 24 below, if at the time of the request, and save for legitimate reasons, the holder of the certificate or his successor in title:

- (a) has not begun to exploit the subject matter of the certificate on the territory of Morocco nor has made effective and serious preparation to exploit it or
- (b) has not marketed the product which is the subject matter of the certificate in a quantity sufficient to satisfy the needs of the domestic market or
- (c) if exploitation or marketing of the variety in Morocco has been abandoned for more than three years.

#### Article 22

The application for a compulsory license shall be presented to the competent court. It shall be accompanied by proof that the applicant was unable to obtain a license from the holder of the certificate and that he is in a position to exploit the variety in a serious and effective manner.

A compulsory license may only be non-exclusive. It shall be granted under specific conditions, particularly as to its duration, its scope and the amount of the royalties thereunder.

Such conditions may be modified by a decision of the competent court, at the request of the holder of the certificate or of the licensee.

#### Article 23

Any transfer of the rights under a compulsory license shall be subject, on pain of nullity, to authorization from the competent court.

#### Article 24

If the holder of a compulsory license does not comply with the conditions on which the license was granted, the holder of the certificate and, where appropriate, the other licensees may request the competent court to withdraw that license.

#### Article 25

A variety essential to human or animal life or which involves public health may be exploited *ex officio* by any person who can give the necessary technical and professional guarantees.

*Ex officio* exploitation shall be decided by an administrative order.

#### Article 26

As from the day of publication of the administrative act which decides the *ex officio* exploitation of a plant variety certificate, any person who has the necessary technical and professional qualifications may request the grant of a license known as an "*ex officio* license."

Such license may only be non-exclusive. It shall be applied for and granted subject to the conditions laid down by regulation.

An *ex officio* license shall be granted under specific conditions, particularly as to its duration and its scope.

The royalties under an *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the competent court.

An *ex officio* license shall take effect as of the date of notification to the parties of the act granting the license.

#### Article 27

If the holder of an *ex officio* license fails to comply with the required conditions, forfeiture may be declared in accordance with the conditions laid down by regulation.

#### Article 28

The State may at any time obtain *ex officio* for the needs of defense a license to exploit a plant variety that is the subject matter of an application for a certificate or of a plant variety certificate, whether exploitation is to be carried out by the State itself or on its behalf.

The *ex officio* license shall be granted by means of an administrative order under the conditions laid down by regulation.

The administrative order shall lay down the conditions under the license. The royalties under the *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the administrative court of Rabat.

The license shall take effect as of the date of the application for an *ex officio* license.

#### Article 29

The rights deriving from an *ex officio* license may be neither assigned nor transferred.

#### Article 30

The rights of the owner of a plant variety certificate shall be cancelled:

- (1) if it is established that the protected variety no longer fulfills the conditions set out in Articles 8 and 9,
- (2) if he is unable to furnish to the Competent Office the information, documents or plant material used for the maintenance of his variety,

(3) if he fails to propose, in the event of cancellation of the denomination of the variety after grant of the title, another denomination,

(4) if he does not pay the fees for services rendered, where appropriate, for maintaining his right.

Cancellation shall be ordered in accordance with the conditions established by regulation.

If cancellation is ordered on the grounds of item 4 above, the holder of the certificate may, within six months following the expiry of the prescribed period, lodge an appeal for reinstatement of his rights if he can give legitimate reasons for his failure to pay the fees for services rendered. However, such appeal shall not prejudice any rights acquired by third parties.

A breeder whose rights are liable to be cancelled under items 2 or 3 above shall be summoned to remedy the situation by means of a notice served on him by the Competent Office. If such summons has remained without effect on expiry of a period of two months as from receipt of the notice, the breeder's rights shall be cancelled.

#### Article 31

The cancellation of a breeder's right shall be notified to the holder of the certificate. It shall be entered in the National Register of Plant Variety Certificates and published in the Plant Variety Protection Bulletin.

#### Article 32

Seizure of a certificate shall be effected by means of an extrajudicial instrument served on the owner of the certificate, on the Competent Office and on any persons holding rights in the certificate; as a result of seizure, no subsequent changes to the rights deriving from the certificate may be invoked against the creditor effecting the seizure.

On pain of nullity of the seizure, the creditor effecting the seizure shall be required, within the prescribed period of time, to petition the competent court for validation of the seizure and for the purposes of offering the certificate for sale.

## Article 33

The holder of a certificate may at any time surrender in whole or in part the rights deriving from the certificate.

Surrender shall be effected by a written statement addressed to the Competent Office. It shall take effect on the day of its publication in the Plant Variety Protection Bulletin referred to in Article 59 below.

However, surrender may be withdrawn prior to publication in the Bulletin referred to in the preceding paragraph.

Where real property rights, under a pledge or license, have been entered in the National Register of Plant Variety Certificates, surrender shall only be admissible if accompanied by the consent of the holders of such rights.

## Article 34

At the request of any person who can prove a legitimate interest, the competent court may be requested to declare a plant variety certificate null and void

- if it is established that the variety was not new and distinct at the time the breeder's right was granted or
- if it is established that the information and documents concerning uniformity and stability furnished by the breeder were not effectively satisfied at the time the breeder's right was granted or
- if it is established that the breeder's right was granted to a person not entitled thereto, unless it is transferred to the person entitled thereto.

## CHAPTER V JOINT OWNERSHIP OF CERTIFICATES

## Article 35

Subject to the provisions of Article 38 below, joint ownership of an application for a certificate or of a certificate shall be governed by the following provisions:

- (a) Each joint owner may exploit the new plant variety for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the variety or who have not granted licenses. Failing amicable agreement, such compensation shall be laid down by the competent court.
- (b) Each joint owner may take action for infringement for his own exclusive benefit. The other joint owners shall be notified of the action for infringement. Judgment shall be deferred until such notification has been proved.
- (c) Each joint owner may grant to a third party a non-exclusive license for his own benefit subject to equitable compensation for the other joint owners who do not personally exploit the new variety or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the competent court.

However, the draft licensing agreement shall be notified to the other joint owners, accompanied by an offer for transfer of the share at a specified price.

Within three months of such notification, any joint owner may oppose the granting of a license on condition that he acquires the share of the joint owner wishing to grant the license.

Failing agreement within the time limit laid down in the preceding paragraph, the price shall be set by the competent court. The parties shall have one month from notification of the court decision to forego the granting of a license or the purchase of the joint ownership share, without prejudice to any damages that may be due. Costs shall be borne by the renouncing party.

- (d) An exclusive license may only be granted with the agreement of all the joint owners or with the authorization of the court.
- (e) Each joint owner may, at any time, assign his share. The joint owners shall have the right of preemption during a period of three months as from notification of the intended assignment. Failing agreement on the price, such price shall be set by the competent court. The parties shall have a period of one month as from notification of the court's decision to forego the sale or the

purchase of the joint ownership share, without prejudice to any damages which may be due; the costs shall be borne by the renouncing party.

#### Article 36

The provisions of Articles 960 to 981 of the DOC shall not apply to joint ownership of an application for a certificate or of a certificate.

#### Article 37

The joint owner of an application for a certificate or of a certificate may notify the other joint owners that he relinquishes his share in their favor. Once the relinquishment has been entered in the National Register of Plant Variety Certificates or, in the case of an unpublished application for a certificate, as from its notification to the Competent Office, such joint owner shall be relieved of all obligations towards the other joint owners. The latter shall divide the relinquished share between them in proportion to their rights in the joint property, except where otherwise agreed.

#### Article 38

The provisions of Articles 35 to 37 above shall apply in the absence of any agreement to the contrary.

The joint owners may derogate therefrom at any time by means of a joint ownership agreement.

### CHAPTER VI FILING OF APPLICATIONS FOR PLANT VARIETY CERTIFICATES

#### Article 39

Applications for plant variety certificates shall be filed with the Competent Office in the form and subject to the conditions laid down by regulation.

Natural and legal persons not having a place of residence or a registered office in Morocco shall be required to appoint a representative having a place of residence or a registered office in Morocco.

Except as otherwise stipulated, the power of attorney of the representative appointed in accordance with the preceding paragraph shall extend to all acts that

relate to exercise of the breeders' right and to receipt of all notifications referred to in this Law, with the exception of withdrawal of the application for a plant variety certificate or renunciation in whole or in part of the rights deriving from such certificate.

#### Article 40

The benefit of the filing date of the application shall be acquired if all elements required by regulation in accordance with the first paragraph of Article 39 above have been furnished on filing and if the fees for services rendered established in accordance with Article 60 of this Law have been paid.

If the filing does not contain the above-mentioned elements, the application shall be declared inadmissible and returned to the applicant. Any fee that has been paid will be refunded to the applicant.

Any material errors are to be remedied within two months following notification made to the applicant, failing which the application shall be rejected and returned to the applicant.

#### Article 41

A provisional reference may be given at the time of filing of the application in place of a denomination in order to designate the variety which is the subject matter of the application. In such case, the denomination shall be proposed, on pain of inadmissibility of the application, within two months of the notification addressed to the holder of the application by the Competent Office.

#### Article 42

A copy of the application for a plant variety certificate shall be returned to the applicant, on filing, bearing an attestation of the day and time of filing of the application and including a registration number.

#### Article 43

The application shall be entered in the National Register of Applications for Plant Variety Certificates referred to in Article 58 below in the order of filing and under the number that has been allocated to the applicant.



This number shall be shown on all notifications addressed to the applicant up to issue of a plant variety certificate, if appropriate.

#### Article 44

Up to issue of a plant variety certificate, the applicant may request correction of any material errors ascertained in the filed elements.

The request shall be submitted in writing and shall contain the wording of the modifications proposed by the applicant. It shall be entered in the National Register of Applications for Plant Variety Certificates and shall only be admissible if accompanied by evidence of payment of the required fee for services rendered.

### CHAPTER VII PROSECUTION OF APPLICATIONS FOR PLANT VARIETY CERTIFICATES

#### Article 45

Each duly filed application for a plant variety certificate shall be published in the Plant Variety Protection Bulletin referred to in Article 59 below.

The particular purpose of such publication shall be to inform all persons having an interest therein of the application for a plant variety certificate.

As from the day of publication referred to in the preceding paragraphs, all persons may inspect the application as entered in the National Register of Applications for Plant Variety Certificates.

#### Article 46

Within a period of three months as from the date of publication referred to in the preceding Article, any person having an interest therein may submit observations in writing to the Competent Office.

Such observations shall be reasoned and may only concern the fact that the variety applied for is not eligible for protection in accordance with the provisions of Articles 5 and 14 of this Law.

#### Article 47

Any opposition concerning the breeder's claim to the variety for which a plant variety certificate is sought shall be submitted directly to the competent courts.

It shall be entered in the National Register of Applications for Plant Variety Certificates.

#### Article 48

Where the variety denomination proposed by the breeder or his successor in title was not included in the initial application or where the breeder proposes, at the request of the Office, a new denomination, such denomination shall be published in the Bulletin referred to in Article 59 below.

#### Article 49

Any observations submitted shall be notified by the Competent Office to the holder of the application.

The holder shall have a period of one month as from the day on which he confirms receipt of the notification to submit his arguments or his defense.

#### Article 50

Once the application has been duly registered, the Competent Office shall prosecute the application for a plant variety certificate and, where appropriate, examine the observations relating thereto.

During prosecution, a prior examination of the variety shall be effected to ascertain whether the variety is new, distinct, uniform and stable in accordance with Article 5 of this Law.

The Competent Office shall determine the list of domestic or foreign technical bodies authorized to carry out the prior examination of the varieties for which a plant variety certificate is sought.

#### Article 51

Prosecution shall be suspended at the written request of any person who furnishes proof that he or she has instituted before a competent court proceedings to

claim ownership of the application for the plant variety certificate. However, the tests ordered by the Office may be carried out.

Prosecution shall be resumed once the court decision on the proceedings referred to in the first paragraph above becomes final. It may also be resumed at any time with the written consent of the person who has instituted the proceedings claiming ownership. Such consent shall be irrevocable. During that period, the holder of the application may not withdraw the application without the written consent of the person who has instituted the proceedings to claim ownership. Further, such person shall be required to participate in the prosecution of the application in the same way as the holder of the application.

#### Article 52

When the various measures of the prosecution have been completed, a summary report of the results of the prosecution shall be notified to the holder of the application. The applicant shall have two months to submit his observations. He may, during that period, inspect the complete examination file at the relevant service of the Competent Office.

Any person who has submitted observations in accordance with the provisions of this Law shall be informed of the conclusions of the report which concern his intervention. At his request, the Competent Office may authorize him to inspect the file concerning that intervention. He may submit further observations within the same period of time as referred to above.

### CHAPTER VIII ISSUE OF PLANT VARIETY CERTIFICATES

#### Article 53

On expiry of the time limit referred to in the preceding Article 52, the Competent Office shall take a decision on the application. It may decide either the issue of a plant variety certificate or the rejection of the application or an additional examination in accordance with the conditions and time limits that it shall determine.

Its decision shall be reasoned. It shall be notified to the applicant and, where appropriate, to persons

having made observations.

#### Article 54

The plant variety certificate shall be issued by the Competent Office in accordance with the conditions set out by regulation. It shall be drawn up in the name of the holder of the application for a plant variety certificate. If the holder of the application is not the breeder, the name of the latter shall be included in the plant variety certificate.

The plant variety certificate shall take effect as of the date of the application.

#### Article 55

The certificate shall be entered in the National Register of Plant Variety Certificates.

#### Article 56

The issue of a plant variety certificate shall be published in the Plant Variety Protection Bulletin within a period of three months as from the date of notification of issue made to the holder of the plant variety certificate.

#### Article 57

As from the date of publication referred to in Article 56 above, any person may inspect the plant variety certificate as entered in the National Register of Plant Variety Certificates.

The Competent Office shall keep the elements of the certificate application files relating to titles of protection, in the original or as a reproduction, until a period of five years has lapsed after the end of protection.

The National Registers of Applications for Plant Variety Certificates and of Plant Variety Certificates shall be kept indefinitely.

### CHAPTER IX MISCELLANEOUS

#### Article 58

The Competent Office shall keep a National Register of Applications for Plant Variety Certificates and a

National Register of Plant Variety Certificates.

Applications for plant variety certificates shall be entered in chronological order in the National Register of Applications for Plant Variety Certificates.

Additional particulars or information relating to each application for a certificate, of which the list shall be laid down by regulation, shall also be entered in that Register.

Plant variety certificates shall be entered in the National Register of Plant Variety Certificates in their order of issue.

The list of additional particulars or acts to be entered in that Register shall be laid down by regulation.

The courts shall address to the Competent Office a full and gratuitous copy, for entry of the additional notices subsequent to a court decision, of those decisions that concern the existence, scope and exercise of rights deriving from the protection afforded by this Law.

#### Article 59

The Office shall publish a "Plant Variety Protection Bulletin."

The frequency and content of the Bulletin shall be laid down by regulation. Acts concerning grant of a certificate, transfer of ownership, grant of a right of exploitation or a pledge, in relation to a plant variety certificate, cancellation of a certificate, surrender in whole or in part of the rights under a certificate may only be invoked against other persons if they have been duly published in the Plant Variety Protection Bulletin.

#### Article 60

An order issued in accordance with the provisions of the first paragraph of Article 17 of the Basic Finance Law promulgated by Dahir No. 1-72-260 of 9 Sha'ban 1392 (September 18, 1972) shall lay down the fees for services rendered by the State in application of this Law and its implementing texts.

## CHAPTER X LEGAL PROCEEDINGS

### Article 61

If a plant variety certificate has been sought either for a plant variety appropriated from the person who has bred or discovered and developed the variety, or his successors in title, or in violation of a statutory or contractual obligation, the injured person may claim ownership of the application for the certificate or of the plant variety certificate.

Proceedings shall be statute-barred three years after the publication of the issue of the certificate.

However, in the event of bad faith at the time of grant or of acquisition of the certificate, the time limit shall be of three years after the expiry of such certificate.

As from the day on which a person has furnished proof of having instituted proceedings, the owner of the application for a certificate or of a certificate may not withdraw such application or renounce such certificate in whole or in part except with the written consent of the person who has instituted proceedings.

### Article 62

Any violation of the rights of the owner of a plant variety certificate as set out in Article 16 of this Law shall constitute an infringement implying the civil liability of the person committing the violation.

The holder of a compulsory or *ex officio* license as referred to in Articles 21, 26 or 28 of this Law and, unless otherwise agreed, the holder of an exclusive right of exploitation may institute the liability proceedings referred to in the first paragraph above if, after notification, the owner of the certificate has not instituted such proceedings.

The holder of a certificate shall be entitled to take part in proceedings instituted by a licensee under the preceding paragraph.

Any holder of a license shall be entitled to take part in proceedings instituted by the holder of the

certificate in order to obtain damages for any prejudice he has personally suffered.

#### Article 63

Acts committed prior to publication of the issue of the certificate shall not be held to violate the rights deriving from a certificate. However, acts committed after a true copy of the application for a certificate has been notified to a person presumed liable may be ascertained and prosecuted.

#### Article 64

The holder of an application for a plant variety certificate or of a certificate shall be entitled, with a court authorization, to proceed with a detailed description, with or without seizure, of any plants or parts of plants or of any elements of reproduction or vegetative propagation alleged to have been obtained in violation of his rights. This right shall also be available to the assignee of an exclusive right of exploitation or the holder of an *ex officio* license, subject to the conditions set out in the second paragraph of Article 62 above.

Where the claimant fails to petition the court within a period of 15 days as from the day on which the seizure or the description takes place, the description or seizure shall be automatically null and void, without prejudice to any damages which may be claimed.

#### Article 65

Detailed description, with or without seizure of the plants, part of plants or elements of reproduction or vegetative propagation of the variety that is alleged to be counterfeited, under Article 64 above, shall be ordered by the presiding judge of the court within whose jurisdiction the operations are to be carried out.

The order shall be given on a simple request and on presentation of either the plant variety certificate or, in the case referred to in Article 63 of this Law, of an authentic copy of the application for a plant variety certificate.

If the request is presented by the assignee of an exclusive right of exploitation or by the holder of a compulsory or an *ex officio* license as referred to in

Articles 21, 26 or 28 of this Law, the petitioner shall be required to prove failure to act on the part of the holder of the plant variety certificate after having been notified and invited to institute proceedings.

#### Article 66

If seizure is ordered, the court may require the petitioner to furnish a guarantee to be deposited before the seizure is effected. On pain of nullity and of damages awarded against the official of the registry or the bailiff, the latter shall be required, prior to carrying out the seizure, to give to the holders of plants, parts of plants or elements of reproduction or vegetative propagation of the variety concerned a copy of the order and, where appropriate, of the act recording the deposit of a guarantee. Those same holders shall be given a copy of the seizure report.

#### Article 67

At the request of the injured party, and where such measure proves necessary to enforce the prohibition on continued infringement, the court may order confiscation to the benefit of the injured party of any plants or parts of plants or elements of reproduction or vegetative propagation obtained in violation of the rights of the owner of the plant variety certificate and, where appropriate, of the instruments specifically intended for use in the reproductive cycle.

The value of the confiscated articles shall be taken into account when calculating the indemnity to be awarded to the beneficiary of the sentence.

#### Article 68

The civil and criminal proceedings under this Chapter shall be statute-barred after three years counted from the acts concerned.

The institution of civil proceedings shall suspend the limitation of criminal proceedings.

#### Article 69

Where a variety that is the subject matter of an application for a certificate or a plant variety certificate is exploited for the needs of defense by the State or its contractors, subcontractors and subsidiary without a license having been granted to them, the court

hearing the case may not order either cessation or interruption of exploitation nor confiscation as provided for in Article 67 above.

If an expert opinion or a description, with or without seizure, is ordered by the presiding judge of the court hearing the case, no expert opinion or description or seizure shall be carried out and no investigation in the enterprise shall be undertaken if the contract for research or reproduction or propagation comprises a defense security classification.

The same shall apply where research, reproduction or propagation are carried out in a military establishment.

The presiding judge of the court hearing the case may, if so requested by the entitled person, order an expert opinion which may be carried out only by persons approved by the governmental authority responsible for defense and in the presence of its representatives.

Such exploitation shall automatically incur the liability under this Article for the persons concerned.

#### Article 70

The presiding judge of a court hearing infringement proceedings, acting in summary jurisdiction, may provisionally prohibit, subject to a daily fine, the continued performance of the acts alleged to be infringing or may subject continuation of the acts to the provision of guarantees intended to cover the indemnification of the holder of the plant variety certificate or the holder of an exclusive right of exploitation.

A request for prohibition or constitution of guarantees shall be admitted only if the substantive proceedings appear warranted and are instituted within a short period calculated as of the day on which the holder of the certificate or the holder of an exclusive right of exploitation obtained knowledge of the facts on which the proceedings are based. The court may subject prohibition to the provision by the plaintiff of guarantees intended to cover possible indemnity for the prejudice suffered by the defendant if the infringement proceedings subsequently prove unwarranted.

#### Article 71

The production and business secrets of the parties concerned shall be safeguarded.

The other party shall not be given knowledge of any evidence liable to disclose such secrets except where compatible with their safeguard.

#### Article 72

Civil disputes arising between the parties from the application of this Law shall be heard by the first instance courts located at the seat of the appeal court district.

The competent first instance courts and the districts in which such jurisdictions exercise the tasks allocated to them shall be laid down by regulation.

#### Article 73

Notwithstanding, where appropriate, the penalties laid down by special laws, particularly that concerning the repression of fraud, any person who knowingly violates the rights of the holder of a plant variety certificate, as defined in Article 16 of this Law, shall be liable to a fine of between 3,000 and 30,000 Moroccan dirhams.

The court may also order destruction of the product and/or propagating material in dispute.

In the event of a repeated offense, imprisonment of between two months and one year may also be ordered. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been finally convicted of the same offense within the preceding five years.

#### Article 74

Public proceedings to apply the penalties laid down in Article 73 above may only be instituted by the public prosecutor on a complaint by the injured party.

The court hearing the case may not take a decision until the civil court has confirmed the existence of the offense in a final decision. Nullity of the plant variety certificate or matters of the ownership of such certificate may only be pleaded by the defendant before the civil court.

#### Article 75

Any person who improperly claims to be the holder of a certificate or of an application for a plant variety certificate shall be liable to a fine of between 3,000 and 30,000 Moroccan dirhams.

In the event of a repeated offense, the fine may be doubled. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been finally convicted of the same offense within the preceding five years.

## CHAPTER XI TRANSITIONAL PROVISIONS

### Article 76

By derogation from the provisions of Article 6 above, an application for protection may also be submitted, during a transitional period of one year as from the entry into force of this Law, in respect of varieties that have been offered for sale, marketed or distributed in Morocco or abroad prior to the entry into force of this Law. If protection is granted, its duration shall be reduced by the number of full years that have elapsed between the time at which the variety was offered for sale, marketed or distributed for the first time and the time at which the application was submitted.

The same rule shall apply *mutatis mutandis* to varieties of species newly entered in the list of species to be protected after entry into force of this Law.

**UKRAINE****LAW OF UKRAINE ON THE PROTECTION OF PLANT VARIETY RIGHTS\***  
*(as amended on November 2, 2006) (Consolidated text)*

(Verkhovna Rada Gazette (VRG), 1993, N 21, p. 218)

(Enters in to force by Resolution of VR  
N 3117-XII on 21.04.93, VRG, 1993, N 21, p. 219)

(As amended by Law  
N 2986-III on 17.01.2002, VRG, 2002, N 23, p. 163)

(As amended by Law N 311-V on 02.11.2006.)

This Law shall govern the proprietary and personal non-proprietary relations arising in connection with acquisition, implementation and the protection of intellectual property rights for a plant variety.

Section I  
GENERAL PROVISIONS

Article 1  
Definition of terms

In this Law, the terms listed below are used in such meaning:

author of a variety (breeder)– the person who directly created or discovered and improved a variety;

botanical taxon – an individual group of plants related by common characteristics and properties, by means of which a taxonomic category may be conferred on them.

use of a variety – any act relating to a variety, that indicated in the list of acts of this Law, requiring authorization of the patent holder;

patent holder - the person to whom the proprietary rights of intellectual property for a plant variety certified by a patent belongs to for the period defined by this Law;

owner of the proprietary right of intellectual property for dissemination of a variety – the person to whom the proprietary right of intellectual property for

dissemination of a variety certified by a certificate on the State registration of a variety belongs to for the period defined by this Law;

member-state – a State which has acceded to the International Convention for the Protection of New Varieties of Plants, adopted on December 2, 1961 and revised on November 10, 1972, on October 23, 1978, and on March 19, 1991.

examination authority – a scientific institution, empowered by the State body to examine applications, verify the preservation of a variety and carry out other tasks arising from this Law;

application for a plant variety (application) – the set of documents required for registration of a variety and obtaining protective documents certifying the rights for the variety;

applicant –the person who has filed the application;

harvested material –the harvested plants or parts of plants, grown from the planting material;

competent authority of a member - state – an authority of a member - state registering the rights for varieties;

characteristics –features according to which the varieties are distinguished during the examination of an application, ignoring their economic value;

person – a natural person or legal entity;

patent – a protective document that certifies the priority and the proprietary right of intellectual property for a plant variety;

maintainer of a variety - a natural person or legal entity that, for the period of the validity of the proprietary right of intellectual property for dissemination of a plant variety defined by this Law, certified by a certificate on the State registration of a

\* Translation provided by the Ukrainian authorities.

plant variety, ensure the maintenance of a variety in the process of its economic turnover by means of the maintenance of characteristics resulting from a given genotype or combination of genotype according to the expression which has been settled during the State registration;

planting material – a material carrier of a variety, plant and their part that are considered to be suitable for the reproduction of entire plants;

dissemination of a variety – the commercial distribution of planting material - a material carrier of a variety entered in the Register of varieties;

Register of applications – the State Register of Applications for Plant Varieties;

Register of patents – the State Register of the Intellectual Property Rights for Plant Varieties;

Register of varieties – the State Register of Plant Varieties Suitable for Dissemination in Ukraine;

employer – the person, legal entity or a natural person, where (or with whom) a breeder works under the labor contract;

certificate of authorship for a variety – protective document certifying the personal non-proprietary right of authorship for a variety;

certificate on the State registration of a plant variety - a protective document that certifies the proprietary right of intellectual property for dissemination of a plant variety;

plant variety – an individual group of plants (clone, line, first-generation hybrid, population) within a botanical taxon of the lowest known rank, which, irrespective of whether the conditions of origin of legal protection are fully met or not:

- can be defined by the state of the expression of the characteristics that results from a given genotype or combination of genotypes;
- can be distinguished from any other group of plants by the state of the expression of at least one of these characteristics;
- can be considered as a unit from the point of view

of its suitability for being propagated unchanged of entire plants of a variety;

State body – the government authority of state administration on matters of the legal protection of intellectual property for plant varieties that operates in a structure of the central authority of executive power on problems of the agrarian policy.

## Article 2

### Legislation of Ukraine on plant variety rights

The legislation of Ukraine on plant variety rights shall be based on the Constitution of Ukraine, and consists of Civil Code of Ukraine, this Law, and international agreements in the sphere of the protection of plant variety rights, consent for the binding nature of which is given by the Verkhovna Rada of Ukraine, and other regulations adopted according to them.

## Article 3

### Scope of this Law

This Law shall be applied to varieties of all genera and species of plants.

The legal norms of this Law in the case of determination of variety suitability for dissemination in Ukraine, the rights for dissemination in Ukraine shall not be applied to plant varieties which are used with ornamental purposes.

## Article 3-1

### The legal subjects of the intellectual property right for a plant variety

The subjects of the intellectual property right for a plant variety are:

- 1) author (authors) of a plant variety;
- 2) other persons who have been granted the proprietary rights of intellectual property for a plant variety under an agreement or by the law.

## Article 4

### Implementation of the standards of international agreements

If an international agreement, consent for the binding nature of which in Ukraine is given by the Verkhovna Rada of Ukraine, contains rules other than those



established by this Law and the regulations issued in accordance with it, the rules of the international agreement shall be applied.

#### Article 5

##### Rights of foreigners and stateless persons

Foreigners and stateless persons shall acquire, carry out and enjoy the protection of plant variety rights in accordance with this Law equally with the citizens and legal entities of Ukraine, except the cases provided for directly by this Law, by other legislative acts of Ukraine or by international agreements.

#### Article 6

##### Powers of the Cabinet of Ministers of Ukraine in the sphere of protection of plant variety rights

The Cabinet of Ministers of Ukraine shall:

- direct and coordinate the work of the central authorities of executive power on the implementation of this Law;
- issue regulations on matters relating to the protection of plant variety rights and monitor their implementation; assign to the position and relieve a leader and his deputies of the State body of their posts on the presentation of the leader of the central authorities of executive power on problems of the agrarian policy;
- establish consultative bodies, in order to ensure an effective realization of their powers in the sphere of the protection of plant variety rights for guaranteeing of constitutional rights and liberties of the citizens of Ukraine in the case of regulation their proprietary and non- proprietary relations that arise in connection with acquiring, implementation and the protection of intellectual property for a plant variety;
- organize international cooperation in relation to the protection of plant variety rights.

#### Article 7

##### Powers of the central authority of executive power in the sphere of intellectual property

The central authority of executive power in the sphere of intellectual property shall participate in:

- realization of the State policy in the sphere of protection of plant variety rights as the objects of intellectual property;
- supervision of the implementation of this Law;
- establishment of the general requirements for the normative provision of the protection of plant variety rights;
- preparation of expert conclusions concerning varieties denominations as regards their relations to trade marks for goods and services, and indications of the origin of goods;
- generalization of a practice of applying the legislation on the protection of plant variety rights, working out proposals on its improvement and their inclusion for consideration by the Cabinet of Ministers of Ukraine, in accordance with the established procedure;
- international cooperation relating to the protection of plant variety rights.

#### Article 8

##### Powers and obligations of the central authority of executive power on agrarian policy in the sphere of protection of plant variety rights

The central authority of executive power on agrarian policy shall:

- implement the State policy in the sphere of the protection of plant variety rights;
- organize and supervise the implementation of this Law;
- approve the regulations for drafting and filing of applications, carrying out their examination, and exercise control for their adherence;
- grant patents for plant varieties and certificates of authorship for plant varieties;
- provide the progress of the scientific, material and technical potential in the sphere of the protection of plant variety rights.
- coordinate the forming and implementation of international scientific and technical programs and

projects on the protection of plant variety rights under the joint agreements;

- encourage the development of innovation activities in the area of variety study and the protection of plant variety rights;
- give the State order for a qualifying examination of the new plant varieties.

#### Article 9

Powers and obligations of the State body in the sphere of the protection of plant variety rights

1. The State body shall implement this Law and other regulations for the protection of plant variety rights, and shall carry out the following functions:

- generalize a practice of applying the legislation on the protection of plant variety rights, work out proposals on its improvement and, in accordance with the established procedure, present them for consideration by the central authority of executive power on agrarian policy;
- define the empowered examination authorities, register and entrust them with the examination of applications;
- draw up the draft regulations for writing and filing of applications, and present them for approval to the central authority of executive power on agrarian policy;
- organize the receipt of applications, carrying out of their examination and take decisions thereon;
- keep Register of applications, Register of patents and Register of varieties, and ensure the State registration of applications, patents and varieties;
- organize verification of the preservation of varieties;
- ensure the verification of compliance with the standards of this Law on the use of variety denominations;
- ensure the publication of the official information on patents granted for plant varieties and certificates of authorship for plant varieties, and

issue the Catalogue of plant varieties suitable for dissemination in Ukraine;

- carry out the international cooperation in the sphere of the legal protection of plant varieties and represent the interests of Ukraine in matters relating to the protection of plant variety rights in international organizations, in accordance with the legislation in force;
- adopt regulations, in prescribed manner, within the limits of its powers;
- organize information-related and publishing activities in the sphere of the protection of plant variety rights;
- organize the scientific and research work on improvement of the legislation, activities in the sphere of the protection of plant variety rights and on development of the state testing of plant varieties;
- organize the work relating to training and retraining of specialists from the State system of the protection of plant variety rights;
- entrust the institutions that form a constituent part of the State system of the protection of plant variety rights in accordance with their specialization, and as well as the examination authorities to carry out individual tasks defined by this Law, by Regulation on the State body and by other regulations in the sphere of the legal protection for intellectual property;
- perform other duties in accordance with the relevant Regulations approved in the prescribed manner;
- carry out a study of varieties after the registration, propagation of the new and promising plant varieties;
- create and popularize the scientific and technical products;
- approve the sectorial and inter-sectorial programs of scientific and research, research and development works in the sphere of the protection of plant variety rights;

- acts as customer for production of the scientific and technical products, take a part in introduction of the results of the accomplished scientific and technical methods;
- participate in the working out of normative documents for products, processes, services, if there are no national standards in this field or, if there is a necessity to establish requirements that exceed or supplement the requirements of the national standards;
- organize and participate in international scientific meetings (fora, symposiums, conferences, etc.), coordinate participation of the scientific institutions in activities of foreign and international scientific companies, associations and unions on the rights of their members in the sphere of intellectual property for a plant variety;
- define and approve, on the consent with the relative authorities of the executive power, financial and economic norms, the amounts of the fees for carrying out of work, giving paid services by the examination authorities of the State system of the protection for a plant variety and carry out, within the framework of its powers, the control for observance of these norms;

2. The State body may be empowered by the central authority of executive power on agrarian policy to carry out the management by the property of examination authorities relating to the State ownership, establish, reorganize and disband such authorities, conclude and cancel the contracts with their senior officials.

3. The State body's activities shall be funded from the State Budget of Ukraine.

## Section II CONDITIONS GOVERNING THE ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS FOR PLANT VARIETIES

### Article 10 Plant variety rights

1. The following plant variety rights may be acquired pursuant to this Law:

- personal non-proprietary intellectual property rights for a plant variety;
- proprietary intellectual property rights for a plant variety;
- proprietary intellectual property rights for a plant variety dissemination.

These rights shall be acquired for the variety which is met the criteria defined by this Law and this variety is designated by a denomination in accordance therewith.

2. The certificate on authorship for a plant variety certifies non-proprietary intellectual property rights for the plant variety.

3. The patent for a plant variety certifies proprietary intellectual property rights for the plant variety.

The scope of the legal protection of a variety for which a patent has been granted shall be defined by the series of characteristics laid down in the description of the variety entered in the Register of patents.

4. The certificate on the State registration of a plant variety certifies proprietary intellectual property rights for plant variety dissemination.

5. The rights for a variety in question shall be acquired in accordance with the procedure established by this Law.

### Article 11

The criteria of the plant variety suitability for acquisition of intellectual plant variety rights on it

1. Varieties to which the rights may be acquired shall be a clone, line, first-generation hybrid and population.

2. A variety shall be considered as suitable one for acquisition of the right thereto as the object of intellectual property, if the expression of the characteristics that result from a given genotype or combination of genotypes, the variety is new, distinct, uniform and stable.

3. A variety shall be deemed to be new if, prior to the date on which the application is considered to have been filed, the applicant (breeder) or other

person with his permission has not sold or transferred by any other method material of the variety for commercial use:

(a) in the territory of Ukraine – one year prior to this date;

(b) in the territory of another State – in the case of trees and shrubs and of vines earlier than six years and, as regards other types of plants, earlier than four years before this date.

4. The novelty of a variety shall not be lost, if any of its material has been marketed, even before the dates indicated in paragraph 3(a) and (b) of this Article:

- with misuse to the detriment of an applicant;
- in the performance of an agreement on transfer of the right to file an application;
- in the performance of an agreement on propagation of the reproductive material of a variety and its examination on suitability for dissemination, provided that harvested material was transferred solely to the applicant and not used to produce of the variety;
- in the performance of the measures defined by the legislation, in particular with regard to biological safety or the forming of the Register of varieties;
- as a by or waste product obtained when a variety is created or developed, without reference to the variety and only for consumption purposes.

5. Varieties of plant genera and species to which property right, according to paragraph 1 of section IX of this Law was restricted, may be recognized as suitable for the protection without making requirements, laid down in part three of this Article, to a variety. With that, the date of priority shall be determined by the date of receipt by the State body of the application for registration of the variety. The period of validity of proprietary intellectual property rights for a plant variety established in Article 39 of this Law shall be shorter for the period from the date of the State registration of the variety to the date of the State registration of plant variety rights. The temporary protection, provided for by Article 30, is not effected in relation to such varieties.

6. A variety shall meet the requirement of distinctness, if by the expression of its characteristics, it is clearly distinguishable from any other variety of common knowledge, before the date on which an application is deemed to be filed.

A variety, contrary to that claimed, shall be deemed to be a matter of common knowledge, if:

(a) it is disseminated on a certain territory in any State;

(b) information on the expression of its characteristics has become public in the world, in particular, by means of their description in any publication already issued;

(c) it is presented as a sample in open to common use collection;

(d) it is granted the legal protection and/or entered in an official Register of plant varieties in any State; in addition it is considered to be a matter of common knowledge from the date of filing of the application for the granting of rights or entering in the Register.

7. A variety shall be deemed to be uniform if, taking into account the particular features of its propagation, all plants of this variety remain sufficiently similar (uniform) in its basic characteristics noted in the variety description.

8. A variety shall be deemed to be stable if its basic characteristics, noted in the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

9. Origin of proprietary intellectual property rights for a plant variety shall not depend on additional conditions which are differ from the conditions laid down in this Article, if the variety is designated by a denomination according to Article 13, and all requirements, provided for by this Law including payments of the fees due, have been met by an applicant.

#### Article 12

##### Conditions for the State registration of a variety

The State registration of a variety is carried out in case the variety is distinct, uniform and stable, it is

designated by a denomination and the variety suitable for dissemination in Ukraine.

#### Article 13 Variety denomination

1. The variety shall be designated by a denomination, which must enable it to be identified and distinguished from any other denomination of an existing variety of the same plant species or of a closely related species in Ukraine and in other Member States.

2. A variety denomination shall include its generic or species designation and the name itself.

3. The name itself may take the form of any word, combination of words, combination of words and figures or combination of letters and figures.

4. A variety denomination shall not:

(a) contravene the principles of humanity and morality;

(b) consist solely of figures except where this is an established practice for designating varieties, or it is constituted exclusively of signs or designations indicating the type, maturity group, quality, purpose, the value, origin or cultivation technology;

(c) mislead or cause confusion concerning the characteristics, the value, geographical origin of the variety, and also the identity of the author of the variety or other person concerned;

(d) be identical or so similar to that it may be confused with a variety denomination, the rights to which have been acquired in Ukraine or in another Member State.

5. A variety must be proposed in Ukraine and in another Member State under the same denomination except as such denomination is unsuitable within the territory of Ukraine.

6. Any rights, connected with the accepted variety denomination, shall not hamper its free use in relation to this variety, even after the expiration of the legal protection of this variety.

#### Article 14

Suitability of a variety for dissemination in Ukraine

A variety shall be deemed to be suitable for dissemination in Ukraine, if it is distinguishable, uniform and stable, may be used to satisfy the needs of society and is not forbidden for dissemination on the grounds of threat to health and life of humans, cause of harm to fauna and flora and to the preservation of the environment. The criteria of prohibition for dissemination of varieties in Ukraine shall be worked out by the State body and approved by the central authority of executive power on agrarian policy.

#### Section III PROCEDURE FOR ACQUIRING OF INTELLECTUAL PROPERTY RIGHTS FOR A PLANT VARIETY

#### Article 15

The general provisions of the procedure for acquiring the rights for a plant variety

1. The plant variety rights shall be acquired in Ukraine by filing an application to the State body, formal examination of the application and the State registration of the rights.

2. The plant variety rights in foreign States shall be acquired independently of the acquisition of such rights in Ukraine.

3. On behalf of breeders (authors of varieties), applicants and patent holders in relations governed by this Law may be act their representatives, in particular those specializing in intellectual property, registered in accordance with the relevant provisions approved by the Cabinet of Ministers of Ukraine. In that case, relations with the representatives are considered in the same way as relations with authors, applicants and patent holders.

#### Article 16

Breeder's right (author of a variety)

1. The right to file an application for a plant variety shall belong to the author of the variety (breeder), unless otherwise specified by this Law.

2. If a variety has been bred jointly by several breeders, they shall have the right to file an application jointly, unless otherwise provided for by an agreement between them. The refusal by one or more of them from execution the right to file an application shall not suspend such right for the others co-authors of a variety.

3. Where the conditions of an agreement relating to the authors of a variety are reviewed, the State body shall, at the joint request of the persons indicated in the application as the authors and also of the authors not stated in the application, insert changes into the appropriate documents in accordance with the established procedure, provided that the request has been received prior a decision on the State registration of the rights for plant variety and payment of the relative fee.

4. The rights of authorship, which are the personal non-proprietary rights and shall be protected without time limit, pursuant to the provisions of Article 37 of this Law, belong to the author of a variety (breeder).

#### Article 17 Employer's right

1. If a variety is bred by a breeder in connection with the fulfillment of a labor contract or an agreement between the employer and the breeder on creation of a variety at the request, using know-how of the employer, then, unless otherwise provided for by the labor contract or the agreement between the employer and the breeder on creation of a variety at the request, the right to file an application for a variety shall belong to the breeder and the employer jointly.

2. Subject to the conditions laid down in the first part of this Article, the breeder of a variety shall submit a written notification of the variety he has obtained, with a sufficiently full description, to the employer.

3. If the labor contract or the agreement between the employer and the breeder on creation of a variety at the request, provide for the right of filing of an application solely by the employer, the employer must, within 60 days of the date of receiving the author's notification, file an application for a plant variety to the State body or vest the right thereto to another person, or decide to retain the information on the variety as confidential one or as a commercial secret.

Within this period, the employer must conclude with the author of a variety a written agreement on the level and terms of payment of his equitable remuneration (royalty), in accordance with the economic value of the variety and other benefit to the employer. The State body may establish the minimum rates of the remuneration in question.

4. If an employer (an employer's successor) does not satisfy the requirements of part three of this Article within the prescribed period, or does not use the variety while preserving the information on it as confidential for more than four years from the date on which notification is received from the breeder of the variety, the right to file an application and to obtain a patent shall be assigned to the breeder and the employer shall retain the preferential right to acquire a non-exclusive license to use the variety.

5. Disputes concerning the level and terms of payment of remuneration received by the author of a variety from the employer shall be settled by the courts.

#### Article 18 Successor's right

The right to file an application for a plant variety shall be held accordingly by the breeder's or employer's successor.

#### Article 19 Right of the first applicant

If a plant variety bred by two or more authors (groups of authors) independently of each other, the rights for a plant variety shall belong to the applicant whose application has an earlier filing date or, if priority is claimed, an earlier priority date, provided that the application in question is not considered withdrawn or has not been withdrawn, or a decision has not been taken on refusal to grant a patent.

#### Article 19-1 Right of any person

1. Any person may file an application on acquiring the right for dissemination of a variety, attributed to of common knowledge, without the rights of intellectual property for it.

Article 20  
Application for a plant variety

1. An application for a plant variety shall be filed to the State body by a person entitled to do so, pursuant to Articles 16, 17 and 18 of this Law.

2. An application should be related solely to one variety.

3. An application shall be drafted in the Ukrainian language and shall contain:

- a written request on recognition of the rights for a plant variety with indication of the types of these rights which an applicant has intention to obtain;
- the name (title) and address of residence (seat) of the applicant;
- the name and address of residence of the author(s);
- a designation of the botanical taxon (in the Ukrainian and Latin languages);
- the proposed variety denomination;
- Technical questionnaire of a variety;
- a designation of the factors for determination the suitability of the variety for dissemination in Ukraine (if the intention to obtain the proprietary right of intellectual property for dissemination of a plant variety is indicated in an application);
- information on the origin of the variety which contain methods and initial forms that are used for its creation;
- details of any other applications in respect of this variety;
- information on the commercial use undertaken;
- proof of the fee payment for filing of the application;
- other information stipulated by the State body, required for acquiring the rights to the variety.

5. The author (breeder) shall be entitled to request

that no reference be made to him as such in any kind of publication relating to the application or the patent.

If renunciation of an author (authors) of his (their) personal non-proprietary rights of intellectual property for a plant variety is specified by a labor contract or by an agreement between the author and the employer on creation of a variety at the request, but intention to acquire the non-proprietary rights of intellectual property for a plant variety is not indicated in the written declaration, the name and address of residence of the author(s) may not be mentioned in an application.

6. Samples of the planting material shall be attached to the application, in accordance with the procedure established by the State body.

7. Other requirements for the documents of the application shall be determined by the State body.

8. A fee shall be payable for filing an application. A document indicative of the payment of the fee shall be submitted to the State body together with the application, or within two months of the application filing date.

Article 21  
Date on which an application is deemed  
to have been filled

1. The application filing date shall be considered to be the date on which the State body receives all the application materials specified in Article 20(3) of this Law, or part of the materials containing at least:

- (a) information on identifying the applicant, set out in writing in the Ukrainian language;
- (b) a designation of the botanical taxon (in the Ukrainian and Latin languages);
- (c) the proposed by the applicant variety denomination or temporary designation of the variety;
- (d) if priority is claimed – the name of the Member State in which a previous application for this variety has been filled, and the filing date of this application;
- (e) Technical questionnaire of a variety;

2. If the State body considers that, at the time they are received, the application materials do not meet the requirements of the first part of this Article; it shall inform the applicant thereof.

A two-month period shall be allocated for inclusion of amendments in the materials, starting from the date on which the applicant receives notification from the State body. If, within this time, non-compliance is eliminated, the application filing date shall be considered to be the date on which the State body receives the corrected materials. Otherwise, the application shall be deemed not to have been filed, notification of which shall be sent to the applicant.

3. A decision to establish the application filing date shall be sent by the State body to the applicant once the document concerning payment of the application filing fee has been received. In the case of non-payment or late payment of the fee, the decision shall not be sent, and the application shall be considered to have been withdrawn.

#### Article 22

##### Right to application priority

1. An applicant shall be entitled to claim priority according to the filing date of a previous application for the same variety with the competent authority of another member-state, provided that the application is filed with the State body not later than twelve months from the filing date of the previous application with the competent authority of the other member-state and, on the application filing date, the previous application was valid. If the last day of this period is a non-working day, the period shall be extended until the first subsequent working day.

2. An applicant wishing to claim priority shall file a priority claim, a copy of a previous application together with an indication of the filing date of this application and its number, certified by the body with which it was filed, and a translation thereof into Ukrainian. These documents shall be submitted to the examining authority prior to the end of a three-month period from the application filing date.

3. The terms indicated in first and second parts of this Article, missed as a result of circumstances unforeseen and independent of the applicant, may be extended by two months, on the condition of

paying of the corresponding fee. Otherwise, the applicant shall lose his priority right.

#### Article 23

##### Application confidentiality

1. Materials of an application is deemed to be a confidential information and shall be kept by the State body in secret from the date on which the application is received by the State body till the date of publication the information on the application pursuant to the requirements of subparagraph (b) part 5 Article 26 of this Law. During this period access of third parties to the application materials is prohibited, except for the cases provided by the legislation.

The results of a variety examination are deemed to be confidential information and shall be kept by the State body in secret. During carrying out the examination, access of third parties to its results is prohibited, except for the cases when such access is stipulated by the legislation.

Persons are to blame for infringement of the requirements in the case of the confidentiality of application materials bear the responsibility provided for by the laws of Ukraine.

#### Article 24

##### Withdrawal of an application

An applicant shall be entitled to withdraw an application at any time up to the date when he receives a decision on the registration of a variety.

#### Article 25

##### Examination of application

1. The examination of an application shall have the status of a State scientific and technical examination. It shall be conducted in order to establish whether the application and variety meet the requirements of this Law and of the preparation of the reasoned expert conclusions and decisions on the application.

2. An application shall be examined by expert authorities appointed by the State body, in accordance with this Law and the rules established on the basis thereof.



3. Examination of an application shall consist of a formal examination (examination of formal features) and a qualified (technical) examination.

4. An applicant shall be entitled, at his own initiative or on a proposal by the State body, either personally or through his representative, to participate, in accordance with the established procedure, in the examination of issues arising during the conduct of an examination.

5. An applicant shall be entitled, at his own initiative, to make corrections to an application and to refine the characteristics represented in the Technical questionnaire. These corrections and refinements shall not be taken into account, if they are received by the State body after the date on which the applicant received a decision on the application.

A fee shall be payable for the filing of a request by an applicant to make corrections and refinements to an application after the relevant information has been entered in the Register of Applications.

#### Article 26

##### Formal examination

1. A formal examination of an application shall be carried out in order to determine whether the formal features of the application meet the requirements of this Law and comply with the rules for drafting and filing an application drawn up by the Office on the basis thereof.

2. During a formal examination:

(a) the application filing date shall be determined in accordance with Article 21 of this Law;

(b) it is verified whether the content of the application documents complies with the requirements of Article 20(3) of this Law;

(c) an application shall be compared with a copy of a previous application submitted by the applicant, where such a copy is submitted to the competent authority of the member-state, and the priority date shall be established in accordance with Article 22 of this Law;

(d) it shall be established whether the application filing fee has been paid.

(e) on the base of the State body's decision, entitlement of an applicant to file an application shall be verified.

3. The date of application shall be determined on the grounds of received materials:

(a) notification shall be sent to the applicant of the acceptance of the application for examination, together with the application number and filing date;

(b) the following information shall be entered in the Register of Applications:

the application number and the filing date;

the priority date (if priority is claimed);

the name (title) of an applicant;

a designation of the botanical taxon (in the Ukrainian and Latin languages);

variety denomination.

4. If the date of application shall not be determined on the grounds of received materials, the application is deemed not to have been filed, and an expert conclusion indicating the date of receipt of these materials should be sent to the applicant.

5. Where the formal features of the application comply with the established requirements and positive conclusions are received in relation to paragraph 2(a), (b) and (d) of this Article:

(a) an expert conclusion on the positive results of a formal examination and commencement of carrying out a qualifying examination is sent to the applicant;

(b) information on the application shall be published in the official publishing, with indication:

the application number and the filing date;

variety denomination;

the name (title) of an applicant or his representative;

(c) the competent authority of each member-state shall be informed of the variety denomination proposed by the applicant.

6. The first notification to the applicant of a formal examination, which may be the notification according to paragraph (a) of this Article, according to paragraph (4) of this Article, or paragraph (a) of this Article, shall be sent by the State body not later than six months after the date on which it receives the application materials.

7. Following publication of the information on the application, any person shall be entitled to consult the application materials, in accordance with the established procedure.

8. If the formal features of an application do not comply with the established requirements, an appropriate expert conclusion shall be sent to the applicant.

The applicant shall remove the indicated incompatibility within two months of the date on which he receives the expert conclusion. This period may be extended by six months, provided that the corresponding fee has been paid. Otherwise, a decision shall be sent to the applicant on the refusal to grant the State registration for the plant variety rights.

A term missed for valid excuse shall be renewed, provided that the applicant submits a request within twelve months of the date of its termination and that the corresponding fee has been paid.

#### Article 27 Qualifying examination

1. A qualifying examination shall envisage a series of tests to be carried out as a requirement for the preparation of an expert conclusion on an application, and also a decision to be taken on the State registration of a variety and the rights thereto.

2. A qualifying examination shall be commenced under the conditions set out in paragraph (5) of Article 26 of this Law and provided that preliminary fee payments have been effected for each year of its conducting.

The fee shall be paid within two months of the date on which an applicant receives an expert conclusion on the positive results of a qualifying examination or a report with the results of the examination for a previous year.

An applicant shall be entitled to apply to the State body with a request to postpone the commencement of a qualifying examination.

3. The fee for carrying out a qualifying examination for varieties not subject to the examination on the suitability for dissemination at the centers of the State body shall be lower than the similar fee for varieties subject to such testing.

4. When carrying out the qualifying examination:

(Paragraph "a", part 4 of Article 27 is excluded on the base of the Law N 311-V of 02.11.2006)

(b) the proposed variety denomination shall be examined, in accordance with the procedure defined in Article 28 of this Law;

(c) novelty of the variety shall be determined in accordance with paragraphs (3) and (4) of Article 11 of this Law.

If an aspiration to acquire proprietary rights of the intellectual property for a plant variety and proprietary right of the intellectual property for dissemination of a plant variety is indicated in the declaration, and it is determined that novelty was lost, an expert conclusion is addressed to an applicant that acquiring of proprietary rights of the intellectual property for a plant variety for that reason is not possible and shall be continued qualifying examination with the aim of acquiring of proprietary right of the intellectual property for dissemination of a plant variety;

(d) it shall be determined whether the variety meets the criteria of distinctness, uniformity and stability, in accordance with Article 11(5), (6) and (7) of this Law, and the State body shall determine the lists of genera and species, varieties of which are subject to the examination at its centers;

(e) the examination on the suitability for dissemination shall be carried out in accordance with the provisions of Article 29 of this Law. In that regard, the results of such examination carried out by the competent authority of any member - state, can be taken into account;

(f) possible objections raised by third parties against acquiring the rights for a plant variety shall be examined according to the procedure specified in Article 30 of this Law.

5. Based on the results of a qualifying examination in accordance with the procedure defined by Article 31 of this Law, a grounded expert conclusion shall be put forward on an application, and a decision shall be taken on the State registration of a variety and the grant of a patent, or on the refusal to register a variety and to grant a patent.

6. When carrying out a qualifying examination, the State body and its examination authority shall be entitled to request from the applicant additional materials, information, documents, samples and so on, as required for the examination.

The applicant shall be entitled, within one month of the date of receiving the request to provide copies of the materials opposed to an application. The State body or its examination authority shall provide these copies free of charge within one month of the date on which it receives the applicant's request.

The applicant shall be obliged to supply the materials, information and so on, requested by the State body or its examination authority, within two months of the date on which it receives the request or copies of the materials opposed to the application. Otherwise, the application shall be deemed to have been withdrawn and a notification shall be sent to the applicant.

A deadline missed for valid reasons shall be renewed, provided that the applicant submits a request within twelve months of the date of its termination and that the corresponding fee has been paid.

#### Article 28

##### Examination of a variety denomination

1. The proposed variety denomination shall be examined in order to determine whether this denomination complies with the requirements of Article 13 of this Law.

(Part 2 of Article 28 is excluded on the base of the Law N 311-V of 02.11.2006)

3. Where the State body reveals that the proposed variety denomination does not comply with the established requirements, an expert conclusion shall be sent to the applicant requesting that another denomination be proposed for the variety.

4. Any person may file with the State body a reasoned objection regarding the proposed variety denomination, within three months of the date of its official publication. The competent authority of any member - state may submit its comments in this regard.

The State body shall send the objections and comments to the applicant.

5. An applicant shall inform the State body of his position on the expert conclusion in question, and the objections and comments raised, within three months of the date of their receipt. He may refute them, and remain the proposed variety denomination unchanged, or propose another denomination for the variety.

The period in question shall be extended by six months, provided that the corresponding fee has been paid. Otherwise, an application shall be deemed to have been withdrawn, and the applicant shall be notified accordingly.

A deadline missed for valid reasons shall be renewed, provided that a request is submitted within twelve months of the date of its expiry and that the corresponding fee has been paid.

6. The alternative variety denomination proposed by the applicant shall be officially published. The competent authority of each member - state shall be informed accordingly. The examination of a new denomination shall be carried out in accordance with the same procedure as used for the denomination of the variety proposed previously.

7. On the results of consideration of the objection or comments made, an expert conclusion shall be sent to the applicant and/or the person raising the objection.

8. If the examination carried out has not revealed a disparity of the proposed variety denomination with the requirements of Article 13 of this Law, an expert conclusion on approval of the denomination shall be sent to the applicant.

9. At the request of an applicant, a variety denomination approved by the State body may be changed, provided that a request is received prior to a decision on creation of the right for a plant variety and the corresponding fee has been paid.

10. The variety denomination shall be approved by a decision on creation of the right for a plant variety and shall be registered at the same time as information on the variety is entered in the appropriate publications.

The competent authority of each member - state shall be advised of the registered variety denomination.

11. After the approval of the variety denomination by a decision on creation the right for a plant variety, the State body can change the variety denomination, if it is determined that it meets no more the conditions laid down in Article 13 of this Law, or the holder of a patent or any other person demand to prohibit using of the existing variety denomination.

The State body shall give a possibility to the holder of a patent to propose a new variety denomination and then acts in accordance with this Article.

The competent authority of each member - state shall be informed of changing the variety denomination.

#### Article 29

##### Examination on the suitability for dissemination

1. The State body shall determine the list of genera and species, varieties of which are subject to the examination on the suitability for dissemination at its centers. Relating to genera and species, which have not been entered to the abovementioned list, a decision is taken on the basis of information furnished by an applicant.

2. The examination on the suitability for dissemination of a variety shall be carried out by the State body and by the examination authorities determined thereby, provided that preliminary payment of appropriate fee has been effected.

3. Determination of variety suitability for dissemination in Ukraine shall be carried out in accordance with Article 14 of this Law.

4. Experimental samples of varieties, imported into Ukraine for the purposes of examination on the suitability for dissemination, shall not be subject to customs import tax, or to a quota system, licensing, certification and the State sanitary and hygiene inspection; and the quarantine inspection of these samples shall be performed free of charge. The

customs clearance of such samples shall be effected without certification of compliance on the basis of documentary evidence from the State body that these samples are being imported for the examination on the suitability for dissemination.

5. The State body shall inform the applicant, on an annual basis, of the results of the examination of a variety and shall also submit comments to him on those results.

6. Where the State body considers the examination results to be insufficient for the purposes of compiling an expert conclusion on an application, it may, following consultations with the applicant, to carry out the additional examination.

7. Where the examination has been conducted, at the request of the State body, by another legal entity, its results shall be forwarded solely to the State body, and any other use thereof by this entity shall be possible only with the State body's authorization.

#### Article 30

##### Objections raised by third parties to the registration of a variety

1. Any person may lodge with the State body a reasoned objection in regard to creation of the rights for a plant variety on the grounds that this does not comply with the relevant requirements laid down in this Law, within three months of the date of publication the information on the application being officially published.

The State body shall dispatch a copy of the objection raised to the applicant.

2. An applicant shall be obliged to inform the State body of his position in relation to an objection within three months of the date of its receipt. He may refute the objection, and remain the application unchanged, amend or withdraw it.

The indicated period shall be extended by six months, provided that the corresponding fee has been paid. Otherwise, the application shall be deemed to have been withdrawn, and the applicant shall be notified accordingly.

A deadline missed for valid reasons shall be renewed, provided that a request is submitted by the applicant

within twelve months of its expiry and that the corresponding fee has been paid.

3. The applicant's response whereby the application is remained unchanged or amended shall be made known to the person submitting the objection. That person shall be given one month to inform the State body that he wishes to maintain the objection or to withdraw it.

4. Where notification is received that the objection is being maintained, the objection shall be considered by the State body. It shall be entitled to request, from the person submitting the objection, the requisite materials, information, documents, samples and so on.

5. The results of the consideration of the objection shall be communicated to the person submitting the objection and to the applicant.

#### Article 31 Decision on application

1. Where the results of the qualifying examination of a claimed variety comply with the requirements of this Law, the State body shall take a decision on creation of the rights for a plant variety. If the claimed variety does not meet the requirements of this Law, a decision shall be taken to refuse on creation of the rights for a plant variety.

The decision taken shall be forwarded to the applicant.

2. Proprietary rights of intellectual property for a plant variety shall enter into force of the date of payment of the State duty for creation thereof.

3. Proprietary right of intellectual property for dissemination of a plant variety shall enter into force of the date of the fee payment for creation thereof.

4. The State duty for creation of proprietary rights of intellectual property for a plant variety and the fee for creation of proprietary right of intellectual property for dissemination of a plant variety shall be paid within three months of the date on which the applicant receives the notification. Otherwise, the decision taken shall be cancelled and the applicant is notified about it.

The decision shall be cancelled relating to creation of proprietary rights of intellectual property for a plant variety, if the State duty is not effected.

The decision shall be cancelled relating to creation of proprietary rights of intellectual property for dissemination of a plant variety, if the fee is not effected.

#### Article 32 Temporary legal protection

1. The information entered in the Register of applications concerning a variety shall entitle the applicant to the temporary legal protection of the application filing date.

2. The temporary legal protection shall lie in the fact that the applicant is entitled to receive compensation for the losses he has suffered, following the publication of information on the application, from the person who was informed by the applicant that information on the application had been entered in the Register of applications. The compensation in question may be obtained by the applicant only once he has been granted a patent.

(Part 3 of Article 32 is excluded on the base of the Law N 311-V of 02.11.2006)

4. The effect of the temporary legal protection shall cease from the day following the date of the State registration of the plant variety rights or of the date on which information is entered in the Register of applications concerning the withdrawal of an application or the adoption of a decision to refuse the State registration of the plant variety rights.

#### Article 33 State registration of the plant variety rights

1. The State registration of proprietary rights of intellectual property for a plant variety shall be carried out on the base of a decision on the State registration of the plant variety rights. Information, set out by this Law and by the Regulation relating to the Register of patents, shall be entered in the Register of patents following the State duty is paid and the document on this payment is available.

The State registration of proprietary rights of intellectual property for dissemination of a plant variety shall be carried out on the base of a decision

on the State registration of the plant variety rights. Information, set out by this Law and by the Regulation relating to the Register of varieties, shall be entered in the Register of varieties following the relative fee is paid and the document on this payment is available.

2. The Register of varieties shall contain the aggregate of the official information concerning the State registration of proprietary right of intellectual property for dissemination of a plant variety, which is constantly kept on electronic and paper carriers. Such information shall, in particular, include:

- (a) a designation of the botanical taxon (in the Latin and the Ukrainian languages);
- (b) a variety denomination;
- (c) the name of the author(s);
- (d) the application number and filing date;
- (e) description of a variety;
- (f) an indication of characteristics of suitability of the variety for dissemination in Ukraine;
- (g) geographical and zonal recommendations for use of the variety.

3. The Register of patents shall contain the aggregate of the official information concerning the State registration of proprietary right of intellectual property for a plant variety, which is constantly kept on electronic and paper carriers. Such information shall, in particular, include:

- (a) the number and the date of registration of the plant variety rights;
- (b) a designation of the botanical taxon (in the Latin and the Ukrainian languages);
- (c) a variety denomination;
- (d) the application number and filing date;
- (e) the priority date;
- (f) a description of the variety;

(g) the publication date of information on the registration of the plant variety rights;

(h) the name of the author(s); the name (title) of a person, who is the holder of a patent and preserves a variety;

(i) information on the grant of licenses for using a variety;

(j) information on a transfer of the plant variety rights.

4. The information entered in the registers shall be available for general use.

5. The information entered in the registers can be amended. Changes made on the initiative of the person to whom the rights belong shall be entered in the register, provided that the corresponding fee has been paid.

#### Article 34

Publication of information entered in the registers

The information entered in the Register of varieties and the Register of patents and a description of the variety shall be published in the State body's official journal.

#### Article 35

Issue of documents on plant variety rights

1. Within one month of the date of the State registration of a plant variety the author(s) shall be issued with a certificate of authorship for a plant variety and the applicant shall be granted the patent for a plant variety and certificate on the State registration of a plant variety by the State body.

(Part 2 of Article 35 is excluded on the base of the Law N 311-V of 02.11.2006)

3. If there is more than one author of a variety, a certificate of authorship for the variety shall be issued to each author.

4. If the plant variety rights are held by several persons, a patent for the plant variety and a certificate of the State registration of the plant variety shall be granted to the person indicated first in the application,

unless otherwise agreed by the applicants. The certified copies may be issued to other applicants at their request and provided that the relevant fee has been paid.

5. The patent, the certificate on the State registration, the certificate on authorship for varieties of genera and species not included to the lists of genera and species, varieties of which are subject to the examination on conformity with the criteria of distinctness, uniformity and stability, as well as the examination on suitability for dissemination at the centers of the State body shall be granted under the responsibility of the applicants for ensuring that the varieties meet the criteria defined by this Law.

#### Article 36

##### Appeal against a decision on an application

An applicant shall have the right to appeal against any decision taken by the State body concerning an application by applying to the courts.

#### Section IV

##### RIGHTS AND OBLIGATIONS RELATED TO A PLANT VARIETY

#### Article 37

##### Personal non-proprietary right of authorship for a variety

1. The person who bred a variety shall be recognized as the author thereof. That person shall acquire the personal non-proprietary rights of intellectual property for a plant variety from the date of the State registration of the plant variety rights.

2. Natural persons who have not made a personal creative contribution to the breeding of a variety, but have only provided the author(s) with technical, organizational or financial assistance during the breeding of the variety and/or drawing up of the application, shall not be recognized as the authors of the variety.

3. The personal non-proprietary rights of intellectual property for a plant variety shall not be alienated or assigned, and shall be valid without time-limit.

4. The author of a variety shall have the right, at his own request, to obtain a certificate of authorship for a plant variety.

5. The author of a variety shall be entitled to propose a variety denomination he has bred and to include his own name in the variety denomination.

6. The authors of a variety, which is the result of their joint creative work, shall have equal rights according to this Law, unless otherwise agreed by them in writing.

7. A person recognized as the author of a variety shall be entitled to:

(a) prevent other persons from acquiring and distorting his authorship;

(b) request that his name should not be publicized as the author of the variety and not indicated as such in publications;

(c) request that his name be indicated when the variety is used, if this is possible in practical terms.

This list of the personal non-proprietary author's rights shall not be exhaustive.

8. In cases where the composition of authors is reviewed, at the joint request of the persons indicated in the application as authors, and also of the persons not indicated in the application as authors, changes shall be made to the corresponding documents in accordance with the established procedure, provided that the request was received before a decision on the State registration of the plant variety rights has been taken.

#### Article 38

##### Right to dissemination of a variety in Ukraine

1. The right to dissemination of a variety in Ukraine shall arise from the date on which a decision on the State registration of proprietary right of intellectual property for dissemination of a plant variety is taken. Varieties of genera and species not included to the lists of genera and species, varieties of which are subject to the examination on suitability for dissemination, that are approved by the State body, a decision on the State registration of the plant variety rights is, simultaneously, a decision on the State registration of a plant variety.

(Part 2 of Article 38 is excluded on the base of the Law N 311-V of 02.11.2006)

a plant variety shall be the right of the holder of a patent to use a variety and the exclusive right to authorize or prohibit the use of the variety by other persons.

2. The exclusive right to authorize or prohibit the use of the variety shall be such that no one may, without the authorization of the holder of a patent, carry out the following acts in relation to planting material of the variety:

- (a) production or reproduction (for propagation purposes);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other commercial use;
- (e) exporting outside the customs territory of Ukraine;
- (f) importing into the customs territory of Ukraine;
- (g) stocking for any of the purposes mentioned in subparagraphs (a) to (f) of this part.

The holder of a patent may stipulate his authorization by certain conditions and limitations.

Having regard to the provisions of Article 44 of this Law, the acts referred to in subparagraphs (a) to (f) of this Article in respect of harvested material of a variety, obtained through the unauthorized use of planting material of the variety, shall require the authorization of the holder of a patent, unless the latter has had opportunity to exercise his right in relation to the planting material of the variety.

Having regard to the provisions of Article 44 of this Law, the acts referred to in subparagraphs (a) to (f) of this Article in respect of a product made directly from harvested material of a variety, obtained through the unauthorized use of the harvested material of the variety, shall require the authorization of the holder of a patent, unless the latter has had opportunity to exercise his right in relation to the harvested material of the variety.

3. The provisions of part (2) of this Article shall also be applied to a variety:

(a) which is essentially derived from a variety of the patent's holder (essentially inherits the characteristics of the variety of the patent's holder), provided that the variety of the patent's holder is not essentially derived from another variety;

(b) which is not clearly distinguishable from the variety of the patent's holder;

(c) whose production requires the repeated use of the variety of the patent's holder.

4. A variety shall be deemed to be essentially derived from another variety (the initial variety), which is clearly distinguishable from the initial variety, but:

(a) retains the expression of the essential characteristics that result from the genotype or a specific combination of genotypes of the initial variety;

(b) conforms to the genotype or combination of genotypes of the initial variety, excluding the differences stipulated by the origin;

(c) essentially derived varieties may be obtained by the selection of a naturally induced mutant, or of a somaclonal variant, or by the selection of plants of the initial variety, backcrossing or by genetic engineering methods.

5. The proprietary right of the holder of a patent may be the subject of security and may be used in joint activities; in particular it may serve as a contribution to the business capital or property of a legal entity, as well as being the subject of other commercial use authorized by law.

6. The holder of a patent shall bring into effect his proprietary right at his own discretion but, in that regard, the proprietary rights of the holders of patents of other varieties shall not be infringed.

7. Proprietary rights of intellectual property for a plant variety, which belong jointly to several persons, shall be carried out according to an agreement between them. Where such agreement does not exist, the rights of intellectual property for a plant variety, which belong to several persons, shall be carried out in common.



## Article 39-1

## Proprietary rights of intellectual property for dissemination of a plant variety

1. The proprietary rights of intellectual property for dissemination of a plant variety shall be the right of the holder for dissemination of a variety and authorize or prohibit the use of a variety for dissemination by other persons.

2. The right to authorize or prohibit dissemination of a variety shall be such that no one may, without the authorization of the holder of proprietary right of intellectual property for dissemination of a plant variety, carry out the following acts in relation to planting material of the variety:

(a) offering for sale;

(b) selling or other commercial use;

(c) stocking for any of the purposes mentioned in subparagraphs (a) and (b) of this part.

## Article 40

## Transfer (alienation) of proprietary rights to a variety and assignment of the right to use the variety

1. The holder of a patent shall have the right to assign his proprietary right to the variety, on the basis of an agreement, to any person who shall become his legal successor.

2. The holder of a patent shall be entitled to bequeath his proprietary rights to the variety by right of succession.

3. The holder of a patent may grant any person the authorization (a license) to use the variety on the basis of a license agreement. According to the license agreement, the holder of the variety (licensor) shall transfer the right to use the variety to another person (licensee) who shall assume the obligations to make to the licensor payments, specified by the agreement, and carry out other activities foreseen by the exclusive or non-exclusive license agreement.

4. During the validity of proprietary rights of intellectual property for a plant variety, the holder of a patent shall be entitled, in accordance with the established procedure, to submit to the State body,

for the official publication, the statement of willingness to grant the authorization to any person to use the variety (open license). In this case, the fee for maintaining the validity of the exclusive right of the holder of a patent shall be reduced by 50 per cent, beginning from the year following the year of publication of such statement.

If no individual has declared to the holder of a patent of his intentions regarding the use of the variety and has not expressed a desire to conclude a license agreement, he may submit a written request on withdrawal of his statement. In that case, the fee for maintaining the validity of the exclusive right of the holder of a patent shall be paid in full, beginning from the year following the year of publication of such request.

5. A license agreement and an agreement on transfer of proprietary rights of intellectual property for a plant variety shall be deemed to be valid, if they are concluded in writing and signed by the parties of the agreement.

6. The grant of a license to use a variety and assignment of proprietary rights of intellectual property for a plant variety shall be deemed to be valid for third parties from the date on which the relevant information is officially published that is carried out on the grounds of entry of relative information in the Register of patents.

The fees shall be paid for the inclusion of information in question in the Register of patents and amendments thereto, made at the initiative of the parties to an agreement.

7. Proprietary rights of intellectual property for a plant variety, which belongs to a legal entity in liquidation, may be assigned (alienated) to another legal entity, in accordance with the established legal procedure.

## Article 41

## Validity of proprietary rights of intellectual property for a plant variety

1. The validity of proprietary rights of intellectual property for a plant variety shall be limited to a period established by this Law and shall be maintained, provided that the fee has been paid for maintenance of its validity.

2. The period of validity of proprietary rights of intellectual property for a plant variety shall begin on the day following the date of the State registration of the right and shall expire on the last day of the:

(a) thirty-fifth calendar year, calculated from 1 January of the year following the year of the State registration of these rights for varieties of trees, shrubs and vines;

(b) thirtieth calendar year, calculated from 1 January of the year following the year of the State registration of these rights for all other varieties.

3. When the period of validity of proprietary rights of intellectual property for a plant variety expires, or in case of its early termination or refusal thereof, in accordance with Articles 50 and 51 of this Law, this variety shall enter the public domain and may be freely used by any person, taking into account the provisions of Article 38(2) and (3) of this Law.

#### Article 42

Fee for maintaining the validity of proprietary rights of intellectual property for a plant variety and maintaining the validity of proprietary rights of intellectual property for dissemination of a plant variety

1. The fee for maintaining the validity of proprietary rights of intellectual property for a plant variety or the validity of the proprietary rights of intellectual property for dissemination of a plant variety shall be paid for each year, beginning from the calendar year following the year of the State registration of the rights. The fee for the following year shall be effected during the last four months of the current calendar year. The fee for maintaining the validity of proprietary rights of intellectual property for a plant variety or the validity of proprietary rights of intellectual property for dissemination of a plant variety in the first calendar year following the year of the State registration may also be paid within the first four months of that year.

2. The validity of the rights shall cease from the first day of the year for which a fee has not been paid.

3. The fee for maintaining the validity of proprietary rights of intellectual property for a plant variety may be paid within twelve months after the expiry of the prescribed period. In this case, the amount of the fee shall be increased by fifty per cent. When the fee is

paid, the validity of the rights shall be re-established from the day following the entry of the relevant information in the Register of patents.

When the fee is paid, the validity of the right for dissemination shall be re-established from the day following the entry of the relevant information in the Register of varieties taking into consideration provisions of Article 50-1.

4. If the established fee is not paid within the twelve months in question, information shall be officially published on termination the validity of proprietary rights of intellectual property for a plant variety or proprietary right of intellectual property for dissemination of a plant variety.

#### Article 43

##### Compulsory license for using a variety

1. A compulsory license for using a variety shall provide the person obtaining it with the right to use the variety, without the permission of the holder of a patent. Compulsory licenses for the use of varieties can be issued by the Cabinet of Ministers of Ukraine and by the court.

2. A compulsory license may be only non-exclusive and shall define the scope of use of a variety, the period of validity of the authorization, and the amount of and the procedure for paying remuneration to the holder of a patent.

3. The Cabinet of Ministers of Ukraine may issue, for a period of up to four years, a compulsory license to the designated person on grounds of emergency public need and, in the event of a military or emergency situation, provided that appropriate compensation is paid to the holder of a patent. For all that, the Cabinet of Ministers of Ukraine may request the holder of a patent to make available, subject to acceptable financial conditions to the licensee, material for propagation of a variety to an extent sufficient for appropriate enforcement of the rights provided by the compulsory license.

The grant of a compulsory license by the Cabinet of Ministers of Ukraine may be appealed to a court.

4. If after three years from the date of the State registration or from the date when the use of a variety was terminated, a variety is not used or is used to an

insignificant extent in Ukraine and, if any person refers to the holder of a patent with a proposal to conclude the license agreement and the holder of a patent refuses so to do without good reason, that person may file a claim to the court on the grant of a compulsory license allowing him to use the variety.

If the holder of a patent does not prove the fact that the variety has not been used or that the refusal to grant a license for it is based on good reasons, and the claimant proves that, in financial and all other senses he is able to enforce the rights granted by the license in a competent and effective manner, the compulsory license may be granted on a decision by the court for a period of up to four years.

5. A licensee shall pay the State duty for obtaining a compulsory license.

#### Article 44

Acts that are not recognized as an infringement of proprietary rights of intellectual property for a plant variety

The use of a variety without the consent (authorization) of the holder of a patent shall not be recognized as an infringement of proprietary rights of intellectual property for a plant variety in cases to which the following extend:

- (a) exhaustion of the exclusive right of the patent's holder;
- (b) the right of prior use and the right of re-establishment of the rights to a variety;
- (c) limitation of the validity of the exclusive right of the patent's holder.

#### Article 45

Exhaustion of proprietary rights of intellectual property for a plant variety

1. Proprietary rights of intellectual property for a plant variety shall not extend to acts concerning any material of the variety, or of a variety covered by the provisions of Article 39 (3) of this Law, as well as of a product derived directly from the said varieties, if they have been sold by the holder of a patent or with his consent in the territory of Ukraine, unless such acts:

(a) aimed at further propagation of the variety in question;

(b) connected with an export of planting material of the variety into a country which does not protect proprietary rights of intellectual property for varieties of the plants genus or species, to which the variety belongs, except where the exported material is solely for final consumption purposes.

(Article 46 is excluded on the base of the Law N 311-V of 02.11.2006)

#### Article 47

Restrictions of proprietary rights of intellectual property for plant variety

1. Proprietary rights of intellectual property for a plant variety shall not extend to acts of any person with planting material of the protected variety, provided for by the provisions of Article 39 (2) of this Law, if they are undertaken:

- (a) for private and non-commercial purposes;
- (b) for experimental purposes;
- (c) for the purpose of breeding other varieties on the basis of the protected variety, except the cases provided for by the provisions of Article 39 (3) and (4) of this Law.

2. Any person shall have the right to propagate, on his own farm and without this being considered an infringement of the proprietary rights of the holder of a patent, and for his own consumption, the harvested material which he has obtained on his own farm by growing the protected variety or a variety covered by the provisions of Article 39 (3) of this Law, provided that the variety belongs to one of the following botanical genera and species:

- beans (*Vicia faba*);
- common vetch (*Vicia sativa* L.);
- garden pea (*Pisum sativum* L.);
- rye (*Secale cereale* L.);
- potatoes (*Solanum tuberosum*);

- alexandrine clover (*Trifolium alexandrinum* L.);
- persian clover (*Trifolium resupinatum* L.);
- yellow lupine (*Lupinus luteus* L.);
- alfalfa (*Medicago sativa*);
- oleaginous flax, including fiber flax (*Linum usitatissimum* L.);
- garbanzo bean (*Cicer arietinum*);
- oat (*Avena sativa* L.);
- canary grass (*Phalaris canariensis* L.);
- soft wheat (*Triticum aestivum* L. Emend. Fiori et Paol.);
- durum wheat (*Triticum durum* Desf.);
- ryegrass (*Lolium multiflorum* Lam.);
- rape (*Brassica napus* L.);
- radish (*Brassica rapa* L.);
- rice (*Oriza sativa* L.);
- spelt (*Triticum spelta* L.);
- triticale (*X Triticosecale* Wittm.);
- barley (*Hordeum vulgare* L.).

3. The conditions of observance of the legitimate interests of the holder of a patent as regards the botanical genera and species mentioned in paragraph (2) of this Article shall be determined by the Cabinet of Ministers of Ukraine according to the following principles:

- (a) dimensions of land plots shall not be limited;
- (b) the harvested material may be brought to the sowing conditions for the purpose of propagation by the owner of a farm or through the provision of services;

(c) the owner of a small farm shall not pay remuneration to the holder of a patent (small farm owner shall be understood here as the owner of a small farm growing the harvested material in an area not exceeding the area required for producing 92 tones of grain);

(d) other farm owners using the variety shall have to pay to the holder of a patent, by the mutual agreement, remuneration which shall be lower than that paid according to the license agreement for propagation of the same variety in the same region.

4. Verification for implementing this Article and the rules issued in accordance therewith shall be carried out only by the holder of a patent, while the owners of the farms indicated in this part of the Article and persons providing services for them shall be obliged to supply the holder of a patent, at his request with appropriate information concerning the use of the variety. Such information may also be provided by officials, if it is obtained in the course of their duties.

#### Article 48

##### Obligations of the holder of a patent

1. The holder of a patent shall use his proprietary right to the variety conscientiously.
2. The holder of a patent shall ensure preservation of the variety or its initial components for the whole period of a patent validity.
3. At the request of the State body, the holder of a patent shall, within the prescribed period, submit to the State body or to the authority designated by the State body information, documents, material and samples of the protected variety, or their initial components, in order to:
  - (a) verify the preservation of the variety;
  - (b) define and renew the official sample of the variety;
  - (c) carry out a comparative examination between varieties.
4. The State body may oblige the holder of a patent to preserve the official sample.

Article 49  
Obligations relating to the use of  
a variety denomination

1. Any person who uses planting material of a variety shall be obliged to use the denomination of that variety even after the expiration of validity of the legal protection of that variety.
2. When a variety is being used, it shall be permitted to associate trade marks for goods and services and indication of the origin of goods with a variety denomination. In this case the denomination must be easily recognizable.

Section V  
TERMINATION OF THE VALIDITY OF PROPRIETARY  
RIGHTS OF INTELLECTUAL PROPERTY FOR A PLANT  
VARIETY AND RECOGNITION THEREOF AS INVALID

Article 50  
Early termination of the validity of proprietary  
rights to a variety

1. The validity of proprietary rights of intellectual property for a plant variety and of a patent, certifying that right, shall be subject to early termination, if the holder of a patent has refused of the right in accordance with the procedure defined by Article 51 of this Law.
2. The validity of proprietary rights of intellectual property for a plant variety shall be subject to early termination, if the fee for maintaining its validity is not paid, in accordance with Article 42 of this Law.
3. The validity of proprietary rights of intellectual property for a plant variety may be early terminated by the State body:
  - (a) at the request of any person concerning the loss of uniformity or stability of the variety as a result of the failure of the holder of a variety to preserve it and to confirm that the loss has occurred in accordance with the established procedure;
  - (b) where the holder of a patent, at the request of the State body, does not provide in good time, with the information, documents, materials and samples of a variety necessary for verifying uniformity or stability of the variety;

(c) where, at a request of the examination authority, a proposal for a new variety denomination is not provided in good time.

4. The validity of proprietary rights of intellectual property for a plant variety shall be terminated on the grounds indicated in paragraph (3) of this Article, on the day following the entry in the Register of patents of the corresponding information.
5. In case of elimination the grounds mentioned in paragraph (3) of this Article, on which the validity of proprietary rights of intellectual property for a plant variety has been terminated, the validity shall be renewed on the day following the entry in the Register of patents of the corresponding information.
6. Early termination of the validity of proprietary rights of intellectual property for a plant variety, in accordance with paragraph (3) of this Article, may be appealed to the court.

Article 50-1  
Termination of the validity of proprietary rights  
of intellectual property for dissemination  
of a plant variety

1. The validity of proprietary rights of intellectual property for dissemination of a plant variety and the certificates on the State registration of a variety, certifying it, shall be terminated, if the holder of proprietary rights of intellectual property for dissemination of a plant variety has refused to maintain the variety in the Register of varieties.
2. The validity of proprietary rights of intellectual property for dissemination of a plant variety shall be subject to termination, if the fee for the maintenance of the variety in the Register is not paid, in accordance with the provisions of Article 42 of this Law.
3. The validity of proprietary rights of intellectual property for dissemination of a plant variety may be terminated by the State body if:
  - (a) according to information of the State inspection on right protection for plant varieties pre-basic seed growing of a variety is absent;
  - (b) a variety has lost uniformity or stability due to the failure of the holder of a patent, or by a maintainer

of a variety to preserve it and the fact of this loss is confirmed by verifying of the variety preservation;

(c) the holder of proprietary rights of intellectual property for dissemination of a plant variety has infringed the conditions of a variety economic use referred to the provisions in Article 38.

4. The validity of proprietary rights of intellectual property for dissemination of a plant variety shall be terminated on the grounds laid down in part 3 of this Article, after information thereof has been entered in the Register.

5. After termination of the validity of proprietary rights of intellectual property for dissemination of a plant variety, dissemination of a variety shall be permitted to 30 June of the third year that is calculated from the date of termination.

6. In case of elimination the reasons, mentioned in part 3 of this Article, for which proprietary rights of intellectual property for dissemination of a plant variety has been terminated, it is renewed, provided that the variety is suitable for dissemination in Ukraine, according to the requirements of Article 14 of this Law, and the qualifying examination shall be conducted during one year cycle, at the request of the holder of proprietary rights of intellectual property for dissemination of a plant variety or of any person, who has possibilities for a variety economic use (maintainer of a variety).

The validity of proprietary rights of intellectual property for dissemination of a plant variety and the certificate on the State registration certifying that shall be renewed after information thereof has been entered in the Register.

#### Article 51

##### Renunciation of proprietary rights of intellectual property for a plant variety

1. The holder of a patent shall be entitled to renounce of proprietary rights of intellectual property for a plant variety and a patent certifying those rights by submitting a written notification to the State body.

2. The renunciation of proprietary rights of intellectual property for a plant variety and of a patent by one of the co-holders of a patent shall not lead to

termination of the validity of the rights and the patent, which shall remain the property of other co- holders of the patent.

3. The renunciation of the rights and of the patent shall enter into force from the date on which the State body receives a written notification, on the basis of which changes shall be entered in the Register of patents and officially published by the State body in its official journal.

4. The holder of a patent, who intends to renounce of the proprietary rights of intellectual property for a plant variety and of a patent, and at the same time is not the author (breeder) of the variety, must inform the author about that. In that case, the author of the variety shall have the preferential right to obtain proprietary rights of intellectual property for a plant variety and the patent, within three months of the date on which he receives notification to that effect.

5. If any license agreement with the holder is valid, the renunciation of proprietary rights of intellectual property for a plant variety and of a patent is possible only subject to the licensee's consent, unless otherwise agreed.

#### Article 52

##### Nullity of the right to a variety

1. Proprietary rights of intellectual property for a plant variety may be declared, completely or partially, null and void judicially, where:

(a) the variety was not distinct by the date on which the application is considered to have been filed;

(b) the variety was not new by the date on which the application is considered to have been filed;

(c) provided that the acquisition of proprietary rights of intellectual property for a plant variety has been essentially based upon information and documents furnished by the applicant, the variety was not uniform or stable by the date on which the application is considered to have been filed;

(d) proprietary rights of intellectual property for a plant variety has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

2. Together with recognition of proprietary rights of intellectual property for a plant variety null and void, the State registration of this right and of the patent certifying it shall be declared invalid to the same extent.

If proprietary rights of intellectual property for a plant variety declared as null and void they shall be deemed those that from the very beginning they had not consequences provided by this Law.

## Section VI ENFORCEMENT OF PLANT VARIETY RIGHTS

### Article 53 Infringement of the rights to a variety

1. The appropriation of authorship is an infringement of the personal non-proprietary rights of intellectual property for a plant variety.

2. The performance, without the authorization of the person holding proprietary rights of intellectual property for a plant variety, of any acts in relation to the variety, which require authorization pursuant to Article 39 of this Law, shall be deemed to be as infringement of proprietary rights of intellectual property for a plant variety.

3. Infringements of the rights to a variety shall be subject to liability, pursuant to the legislation in force.

4. A person whose rights to a variety have been infringed may request the:

(a) termination of the acts that infringe or create a threat of infringement of the right relating to the situation existed prior to the rule being infringed;

(b) recovery of the losses caused, including income not received;

(c) compensation for moral damage;

(d) application of other measures envisaged by the legislation and connected with the of plant variety rights enforcement.

The re-establishment of the infringed rights of the patent's holder may also be requested by a person entitled to use the variety according to a license

agreement, unless otherwise stipulated by this agreement.

5. A person who committed the infringement of the rights to a variety shall, at the request of the person to whom these rights belong, cease to infringe the rights and shall recover damage caused.

### Article 54 Disputes settled by the courts

1. A person, whose rights to a variety have been infringed, may apply to the court for the protection of those rights.

2. Disputes on any matters regarding relations governed by this Law may be settled by the courts.

3. In accordance with their jurisdiction, the courts shall examine disputes relating to the:

(a) creation of the rights to a variety and their State registration;

(b) varieties bred in connection with the performance of professional duties or on the instructions of an employer;

(c) authorship for a variety;

(d) remuneration for breeders;

(e) conclusion and enforcement of license agreements;

(f) identification of the holder of a patent;

(g) nullity of the rights to a variety;

(h) early termination of the rights;

(i) infringement of the personal non-proprietary and proprietary rights for a variety;

(j) recognition of a variety as suitable for use in Ukraine and so on.

### Article 55 Liability for infringement of the rights to varieties

1. The court shall be entitled to decide on:

(a) compensation for moral (non-proprietary) damage caused by the infringement of rights to a variety, and to determine the level of compensation;

(b) compensation for losses caused by the infringement of proprietary rights of intellectual property for a plant variety;

(c) recovery from the infringing party of the income received as a result of the infringement of the rights to a variety, including profit lost by the holder of a patent;

(d) recovery of compensation fixed by the court at between 10 and 50,000 minimum wages, taking into account whether the infringement was committed negligently or intentionally, instead of compensation for losses or the recovery of income;

(e) termination of an act creating the threat of infringement for plant variety rights

2. The courts may decide to impose on an infringing party a fine equal to ten per cent of the sum awarded by the court in a claimant's favor. The sum of the fines shall be transferred, in accordance with the established procedure, to the State Budget of Ukraine.

3. The courts may decide on:

(a) removal from commercial use or confiscation of any material of a variety or of a product obtained directly thereof, unlawfully obtained by the respondent (material and product of a variety, honestly acquired by other persons shall not be confiscated);

(b) removal or confiscation of materials and/or equipment which were used to a significant extent for the unlawful production of material of a variety.

#### Section VII FINAL PROVISIONS

##### Article 56 State duty and charges

1. The amount of the State duty, envisaged by this Law, and the procedure it is to be paid shall be

established by the legislation. The funds, obtained from the payment of the State duty, shall be charged to the State Budget of Ukraine and shall be aimed at the measures designed to implement the State policy in the sphere of the protection of plant variety rights, in particular to the payment of Ukraine's member contributions to the budget of the International Union for the Protection of New Varieties of Plants.

2. The amounts of the fees, envisaged by this Law, and the procedure they are to be paid shall be fixed by the Cabinet of Ministers of Ukraine.

3. The fees shall be paid into exchequer accounts of the State body or examination authorities carrying out, in accordance with their specialization, the specific tasks defined by this Law.

4. Revenues from the fees having a special purpose shall be used, according to the procedure defined by this Law, exclusively, to ensure development and functioning of the examination authorities.

#### Article 57

##### State stimulation of the breeding and use of new varieties

1. The State shall stimulate the breeding of new varieties of plants, establish for authors of varieties (breeders) preferential taxation and credit conditions, and shall provide them with other privileges in accordance with the legislation in force.

2. The honorary title of "Honored Breeder of Ukraine" shall be awarded to the breeders of high-yielding varieties widely disseminated in Ukraine.

#### Section VIII TRANSITIONAL PROVISIONS

##### Article 58

##### Legal status of patents granted prior to the entry into force of this Law

The valid patents of Ukraine for plant varieties, granted in accordance with the legislation effective prior to the entry into force of this Law, shall have equal legal status with the patents granted pursuant to this Law.



## Article 59

Validity of authorship certificates issued prior to the entry into force of this Law

The USSR authorship certificates for plant varieties as well as the authorship certificates of Ukraine for plant varieties, issued prior to the entry into force of this Law on the basis of Regulation No. 935 of the Cabinet of Ministers of Ukraine, of November 22, 1993, shall be valid. The authorship certificates in question may be exchanged free of charge for certificates on authorship for a variety, as established by this Law.

## Article 60

Peculiarities of the examination of an application for the grant of a patent for a plant variety, not completed prior to the entry into force of this Law

The examination of an application for the grant of a patent for a plant variety, not completed prior to the entry into force of this Law, shall henceforth be conducted in accordance with the procedure established by this Law. In that case, the compliance of the variety with the patentability conditions established by the law in force on the date the application is filed shall be determined.

Section IX  
RESULTING PROVISIONS

1. This Law shall enter into force on July 1, 2002.

2. Within five years of the day on which this Law enters into force, the genera and species of the plant varieties to which the right of the holder of a plant variety extends may be restricted by the Cabinet of Ministers of Ukraine, in accordance with the International Convention for the Protection of New Varieties of Plants, to which Ukraine is a party.

3. The Cabinet of Ministers of Ukraine shall, within three months of the day on which this Law enters into force:

- prepare and submit for consideration of the Verkhovna Rada of Ukraine proposals on bringing the laws of Ukraine into compliance with this Law;
- bring its governmental regulations into compliance with this Law;

- ensure that the authorities of executive power review and repeal the regulations which they have adopted and that contravene this Law;

- ensure that the regulations required for implementation of this Law are adopted.

4. Prior to the legislation of Ukraine being brought into compliance with this Law, laws and other regulations shall be implemented insofar as they do not contravene this Law.

5. The following amendments shall be made to Article 3 (6)(xxi) of Decree No. 7-93 on the State duty of the Cabinet of Ministers of Ukraine of January 21, 1993 (*Vidomosti of the Verkhovna Rada of Ukraine*, 1993, No.13, p.113; 2002, No. 6, p.43):

- in indent (1), the words " and for acts relating to the maintenance of the validity of patents for plant varieties" shall be deleted;

- indents (14) to (33) shall be replaced by two indents with the following content:

"for the registration of the plant variety right – 1.0 untaxed minimum of citizens' incomes;

for the grant of a compulsory license– 3.0 untaxed minimum of citizens' incomes for the right to use a variety."

President of Ukraine

Kyiv, April, 21, 1993

N 3116-XII

L. KRAVCIUK

*Members of the Union*

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act <sup>1</sup> of the Convention to which State/Organization is party and date on which State/Organization became party to that Act	
Albania.....	October 15, 2005	0.2	1991 Act.....	October 15, 2005
Argentina.....	December 25, 1994	0.5	1978 Act.....	December 25, 1994
Australia.....	March 1, 1989	1.0	1991 Act.....	January 20, 2000
Austria.....	July 14, 1994	1.5	1991 Act.....	July 1, 2004
Azerbaijan.....	December 9, 2004	0.2	1991 Act.....	December 9, 2004
Belarus.....	January 5, 2003	0.2	1991 Act.....	January 5, 2003
Belgium <sup>2</sup> .....	December 5, 1976	1.5	1961/1972 Act.....	December 5, 1976
Bolivia.....	May 21, 1999	0.2	1978 Act.....	May 21, 1999
Brazil.....	May 23, 1999	0.25	1978 Act.....	May 23, 1999
Bulgaria.....	April 24, 1998	0.2	1991 Act.....	April 24, 1998
Canada.....	March 4, 1991	1.0	1978 Act.....	March 4, 1991
Chile.....	January 5, 1996	0.2	1978 Act.....	January 5, 1996
China.....	April 23, 1999	0.5	1978 Act <sup>3</sup> .....	April 23, 1999
Colombia.....	September 13, 1996	0.2	1978 Act.....	September 13, 1996
Croatia.....	September 1, 2001	0.2	1991 Act.....	September 1, 2001
Czech Republic.....	January 1, 1993	0.5	1991 Act.....	November 24, 2002
Denmark <sup>4</sup> .....	October 6, 1968	1.5	1991 Act.....	April 24, 1998
Ecuador.....	August 8, 1997	0.2	1978 Act.....	August 8, 1997
Estonia.....	September 24, 2000	0.2	1991 Act.....	September 24, 2000
European Community.....	July 29, 2005	5.0	1991 Act.....	July 29, 2005
Finland.....	April 16, 1993	1.0	1991 Act.....	July 20, 2001
France <sup>5</sup> .....	October 3, 1971	5.0	1978 Act.....	March 17, 1983
Germany.....	August 10, 1968	5.0	1991 Act.....	July 25, 1998
Hungary.....	April 16, 1983	0.5	1991 Act.....	January 1, 2003
Iceland.....	May 3, 2006	0.2	1991 Act.....	May 3, 2006
Ireland.....	November 8, 1981	1.0	1978 Act.....	November 8, 1981
Israel.....	December 12, 1979	0.5	1991 Act.....	April 24, 1998
Italy.....	July 1, 1977	2.0	1978 Act.....	May 28, 1986
Japan.....	September 3, 1982	5.0	1991 Act.....	December 24, 1998
Jordan.....	October 24, 2004	0.2	1991 Act.....	October 24, 2004
Kenya.....	May 13, 1999	0.2	1978 Act.....	May 13, 1999
Kyrgyzstan.....	June 26, 2000	0.2	1991 Act.....	June 26, 2000
Latvia.....	August 30, 2002	0.2	1991 Act.....	August 30, 2002
Lithuania.....	December 10, 2003	0.2	1991 Act.....	December 10, 2003
Mexico.....	August 9, 1997	0.75	1978 Act.....	August 9, 1997
Morocco.....	October 8, 2006	0.2	1991 Act.....	October 8, 2006
Netherlands.....	August 10, 1968	3.0	1991 Act <sup>6</sup> .....	April 24, 1998
New Zealand.....	November 8, 1981	1.0	1978 Act.....	November 8, 1981
Nicaragua.....	September 6, 2001	0.2	1978 Act.....	September 6, 2001
Norway.....	September 13, 1993	1.0	1978 Act.....	September 13, 1993
Panama.....	May 23, 1999	0.2	1978 Act.....	May 23, 1999
Paraguay.....	February 8, 1997	0.2	1978 Act.....	February 8, 1997
Poland.....	November 11, 1989	0.5	1991 Act.....	August 15, 2003
Portugal.....	October 14, 1995	0.5	1978 Act.....	October 14, 1995
Republic of Korea.....	January 7, 2002	0.75	1991 Act.....	January 7, 2002
Republic of Moldova.....	October 28, 1998	0.2	1991 Act.....	October 28, 1998
Romania.....	March 16, 2001	0.2	1991 Act.....	March 16, 2001
Russian Federation.....	April 24, 1998	0.5	1991 Act.....	April 24, 1998
Singapore.....	July 30, 2004	0.2	1991 Act.....	July 30, 2004
Slovakia.....	January 1, 1993	0.5	1978 Act.....	January 1, 1993
Slovenia.....	July 29, 1999	0.2	1991 Act.....	July 29, 1999
South Africa.....	November 6, 1977	1.0	1978 Act.....	November 8, 1981
Spain <sup>7</sup> .....	May 18, 1980	2.0	1961/1972 Act.....	May 18, 1980

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act <sup>1</sup> of the Convention to which State/Organization is party and date on which State/Organization became party to that Act	
Sweden .....	December 17, 1971	1.5	1991 Act.....	April 24, 1998
Switzerland.....	July 10, 1977	1.5	1978 Act.....	November 8, 1981
Trinidad and Tobago.....	January 30, 1998	0.2	1978 Act.....	January 30, 1998
Tunisia.....	August 31, 2003	0.2	1991 Act.....	August 31, 2003
Ukraine .....	November 3, 1995	0.2	1991 Act.....	January 19, 2007
United Kingdom .....	August 10, 1968	2.0	1991 Act.....	January 3, 1999
United States of America .....	November 8, 1981	5.0	1991 Act <sup>8</sup> .....	February 22, 1999
Uruguay .....	November 13, 1994	0.2	1978 Act.....	November 13, 1994
Uzbekistan.....	November 14, 2004	0.2	1991 Act.....	November 14, 2004
Viet Nam.....	December 24, 2006	0.2	1991 Act.....	December 24, 2006

(Total: 63)

\* The International Union for the Protection of New Varieties of Plants (UPOV), established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organization having legal personality. Pursuant to an agreement concluded between the World Intellectual Property Organization (WIPO) and UPOV, the Director General of WIPO is the Secretary-General of UPOV and WIPO provides administrative services to UPOV.

1. "1961/1972 Act" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972; "1978 Act" means the Act of October 23, 1978, of the Convention; "1991 Act" means the Act of March 19, 1991, of the Convention.
2. With a notification under Article 34(2) of the 1978 Act.
3. With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.
4. With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.
5. With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.
6. Ratification for the Kingdom in Europe.
7. With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.
8. With a reservation pursuant to Article 35(2) of the 1991 Act.

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 website: <http://mineco.fgov.be/opri-die.htm>

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 Secretaría Nacional de Agricultura y Ganadería  
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Secretaria de Desenvolvimento Agropecuário e  
Cooperativismo - SDC  
Ministério da Agricultura, Pecuária e  
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Central Office "Variety Testing"  
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website: <http://www.inspection.gc.ca/english/plaveg/pbrpov/pbrpove.shtml>

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website: <http://www.cnpvp.cn/default.htm>

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 The Volcani Center  
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## JAPAN

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 Tel. (81-3) 35 91 05 24  
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## JORDANIE

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## KENYA

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 website: <http://www.kyrgyzpatent.kg>

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 website: <http://www.vaad.gov.lv>

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 Smelio st. 8  
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 Tel. (370 5) 234 3647  
 Fax (370 5) 234 1862  
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 Av. Presidente Juárez No. 13  
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 techniques et de la répression des fraudes  
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## NEW ZEALAND

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## NICARAGUA

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## PORTUGAL

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## REPUBLIC OF KOREA

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## REPUBLIC OF MOLDOVA

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## RUSSIAN FEDERATION

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## SLOVENIA

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## SOUTH AFRICA

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## SPAIN

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## SWEDEN

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## TRINIDAD AND TOBAGO

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 Ministry of Legal Affairs  
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## TUNISIA

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The Commissioner  
Plant Variety Protection Office  
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Albania

Law No. 8880, dated April 15, 2002, on Plant Breeder's Rights  
(Issue 99 - Sept. 2005)

Andean Community

Decision 345 of the Subregional Integration Agreement (Cartagena Agreement), Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties, of October 21, 1993  
(Issue 75 - Dec. 1994)

Argentina

Measures adopted in connection with the "farmer's privilege" provided for in Article 27 of Law No. 20.247  
(Issue 94 - Dec. 2002)

Implementing Decree No. 2183/91 to the Law on Seed and Phylogenetic Creations  
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Resolution No. 35/96 of February 28, 1996  
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Australia

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(Issue 77 - May 1995)

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(Issue 64 - Aug. 1991)

Austria

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Federal Law on the Protection of Plant Varieties (Variety Protection Law) as amended by the Federal Law BGB1.I No. 72/1997  
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Taxa Covered by Plant Variety Protection Legislation  
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Belarus

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Belgium

Law on the Protection of New Plant Varieties (of May 20, 1975)  
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Taxa Covered by Plant Variety Protection Legislation  
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Bolivia

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#### Brazil

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#### Bulgaria

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Taxa Covered by Plant Variety Protection Legislation (Issue 84 - Apr. 1998)

#### Canada

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Regulations Respecting Plant Breeders' Rights (Issue 69 - Nov. 1992)

Taxa Covered by Plant Variety Protection Legislation (Issue 78 - June 1995)

(All species of the plant kingdom, except bacteria, algae and fungi) (Issue 85 - Oct. 1999)

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#### Chile

Law No. 19.342 on the Rights of Breeders of New Varieties of Plants (Issue 81- Apr. 1997)

Decree approving Regulations under Law No. 19.342 (Issue 81- Apr. 1997)

Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species) (Issue 79 - July 1996)

#### People's Republic of China

Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Issue 85 - Oct. 1999)

Decree No. 3 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Forestry Part) (Issue 90 - Dec. 2000)

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Taxa Covered by Plant Variety Protection Legislation (Issue 85 - Oct. 1999)

#### Colombia

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Decree No. 533 of March 8, 1994, introducing Regulations to the Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties as Amended by Decree No. 2468 of November 4, 1994 (Issue 83 - Dec. 1997)

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#### Croatia

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#### Czech Republic

Consolidated Text of Protection of Plant Variety Rights Act No. 408/2000 (No. 32/2006) 100 Dec. 2006  
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(Issue 93 - June 2002)

Law on the Legal Protection of the Varieties of Plants and Breeds of Animals<sup>1</sup>  
(Issue 64 - Aug. 1991)

Decree of the Federal Ministry of Agriculture and Food Concerning the Implementation of Certain Provisions of Law No. 132/1989 of the Collection of Laws on the Legal Protection of New Varieties of Plants and Breeds of Animals<sup>1</sup>  
(Issue 64 - Aug. 1991)

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Taxa Covered by Plant Variety Protection Legislation  
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#### Denmark

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#### Ecuador

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(Issue 82 - Aug. 1997)

#### Estonia

Plant Variety Rights Act  
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Taxa covered by Plant Variety Protection Legislation  
(all botanical genera and species)  
(Issue 89 - Sept. 2000)

#### European Community

Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights  
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Council Regulation (EC) No. 873/2004 amending Regulation (EC) No. 2100/94  
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Commission Regulation (EC) No. 1238/95 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the Community Plant Variety Office (CPVO) (Consolidated version)  
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Commission Regulation (EC) No. 1239/95 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the proceedings before the CPVO (Consolidated version)  
(Issue 99 - Sept. 2005)

<sup>1</sup> Enacted by Czechoslovakia

Commission Regulation (EC) No. 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94 (Consolidated version) (Issue 99 - Sept. 2005)

Council Regulation (EC) No. 2100/94 of July 27, 1994 on Community Plant Variety Rights (Issue 77 - May 1995)

Commission Regulation (EC) No. 1238/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the CPVO (Issue 89 - Sept. 2000)

Commission Regulation (EC) No. 1239/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the CPVO (Issue 89 - Sept. 2000)

Commission Regulation (EC) No. 1768/95 of July 24, 1995 Implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights (Issue 89 - Sept. 2000)

Council Regulation (EC) No. 2470/96 of December 17, 1996 Providing for an extension of the terms of a Community plant variety right in respect of potatoes (Issue 89 - Sept. 2000)

Commission Regulation (EC) No. 2605/98 of December 3, 1998 Amending Regulation (EC) No 2100/94 on Community plant variety rights (Issue 89 - Sept. 2000)

#### Finland

The Act on Plant Breeder's Right (No. 789/1992) as amended (No. 238/1999, 5.3.1999) (Issue 88 - June 2000)

Decree on the Plant Variety Board (No. 906 of October 9, 1992) (Issue 71 - July 1993)

Decree on Breeders' Rights (No. 907 of October 9, 1992) (Issue 71 - July 1993)

#### France

Law on the Protection of New Plant Varieties (No. 70-489 of June 11, 1970)<sup>2</sup> (Issue 33 - Apr. 1983)

Decree Concerning the Committee for the Protection of New Plant Varieties (No.71-454 of June 7, 1971)<sup>3</sup> (Issue 33 - Apr. 1983)

Order Concerning the Denomination of Plant Varieties in respect of which either an Entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a New Plant Variety Protection Certificate has been Issued (of September 1, 1982) (Issue 34 - June 1983)

Decree No. 95-1047 of December 28, 1995 amending the Intellectual Property Code (Regulatory Part) with respect to the scope of application of New Plant Variety Certificates and the Term and Scope of Breeders' Rights (Issue 81 - Apr. 1997)

Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom) (Issue 80 - Dec. 1996)

Tariff of Fees (Issue 55 - June 1988)

#### Germany

The Plant Variety Protection Law (Consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by: Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990); Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992); Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992); Article 72 of the Law of April 27, 1993 (entered into force on January 1, 1994); Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005); Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995); Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997)) (Issue 86 - Dec. 1999)

<sup>2</sup> These texts have been integrated into the Intellectual Property Code



Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985  
(Issue 51 - Sept. 1986)

Tariff of Fees  
(Issue 78 - June 1995)

#### Hungary

Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds)  
(Issue 84 - Apr. 1998)

Joint Decree Relating to the Execution of the Law on the Protection of Inventions by Patents (No. 4/1969 XII. 28) OMFB-IM of the President of the National Committee for Technical Development and the Minister of Justice, as Amended by Decree No. 4/1983 (V.12) IM of the Minister of Justice  
(Issue 49 - Jan. 1986)

#### Iceland

Breeder's Right Act (No. 58 of May 19, 2000)  
(Issue 100 - Dec. 2006)

#### Ireland

Plant Varieties (Proprietary Rights) Act, 1980  
(Issue 32 - Feb. 1983)  
Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 No. 41, 1998  
(Issue 88 - June 2000)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 78 - June 1995)

Tariff of Fees  
(Issue 72 - Nov. 1993)

#### Israel

Law on the Rights of the Breeders of Plant Varieties (Consolidated Text of the Plant Breeders' Rights Law, 5733-1973, as Amended by the Plant Breeders' Rights (Amendment) Law, 5744-1984 and as Amended by the Plant Breeder's Rights (Amendment No. 2) 5756-1996)  
(Issue 86 - Dec. 1999)

Tariff of Fees  
(Issue 67 - Feb. 1992)

#### Italy

Legislative Decree No. 455 (November 3, 1998)  
(Issue 91 - June 2001)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 76 - Feb. 1995)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 79 - July 1996)

Tariff of Fees  
(Issue 70 - Feb. 1993)

#### Japan

The Seeds and Seedlings Act as last amended on June 17, 2005  
(Issue 100 - Dec. 2006)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

Tariff of Fees  
(Issue 66 - Dec. 1991)

#### Kenya

The Seeds and Plant Varieties Act of 1972 (as amended in 2002)  
(Issue 94 - Dec. 2002)

The Seeds and Plant Varieties Regulations (1994)  
(Issue 94 - Dec. 2002)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

#### Kyrgyz Republic

Law on the Legal Protection of Selection Achievements (May 26, 1998)  
(Issue 90 - Dec. 2000)

Accession to the 1991 Act of the UPOV Convention  
(Issue 88 - June 2000)

#### Lithuania

Law on the Protection of Plant Varieties No. IX-618  
(Issue 96 - Dec. 2003)

Tariff of Fees  
(Issue 100 - Dec. 2006)

### Mexico

Federal Law on Plant Varieties  
(Issue 82 - Aug. 1997)

Regulations of the Federal Plant Variety Law  
(24.09.1998)  
(Issue 87 - Mar. 2000)

### Morocco

Law on the Protection of New Plant Varieties  
(December 19, 1996)  
(Issue 100 - Dec. 2006)

### Netherlands

Seeds and Planting Material Act (Consolidated Text  
of the Act of October 6, 1966, as Last Amended by  
the Act of January 28, 1999)  
(Issue 88 - June 2000)

Taxa Covered by Plant Variety Protection Legislation  
(All taxa of the plant kingdom)  
(Issue 61 - Feb. 1991)

Tariff of Fees  
(Issue 71 - July 1993)

### New Zealand

Amendment to Plant Variety Rights Act 1987 (October  
14, 1999)  
(Issue 90 - Dec. 2000)

Plant Variety Rights Act 1987, as Amended by the  
Plant Variety Rights Amendment Act 1990 of August  
1, 1990, and the Plant Variety Rights Amendment  
Act of July 1, 1994  
(Issue 78 - June 1995)

Plant Variety Rights Amendment, an Act to Amend  
the Plant Variety Rights Act 1987, 2 September 1996  
(Issue 82 - Aug. 1997)

Plant Variety Rights Amendment Regulations 1997  
(Issue 82- Aug. 1997)

Act No. 122 - Plant Variety Rights Amendment  
(Issue 90 - Dec. 2000)

Tariff of Fees  
(Issue 85 - Oct. 1999)

### Nicaragua

Law for the Protection of New Varieties of Plants  
No. 318  
(Issue 93 - June 2002)

### Norway

Act of March 12, 1993, Relating to the Plant Breeder's  
Rights  
(Issue 74 - July 1994)

Regulations concerning the Plant Breeder's Right as  
amended on February 6, 1995 and July 16, 1997  
(Issue 90 - Dec. 2000)

Taxa Covered by Plant Variety Protection Legislation  
(All plant genera and species)  
(Issue 80 - Dec. 1996)

Tariff of Fees  
(Issue 72 - Nov. 1993)

### Panama

Law No. 23 of July 15, 1997 on Industrial Property,  
Title V  
(Issue 90 - Dec. 2000)

Executive Decree No. 13 Regulating Title V of Law  
No. 23  
(Issue 90 - Dec. 2000)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 100 - Dec. 2006)

### Paraguay

Law 385/94 on Seeds and Cultivar Protection  
(Issue 83 - Dec. 1997)

Decree No. 7797/00 enacting Regulations under  
Law 385/94  
(Issue 90 - Dec. 2000)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 81- Apr. 1997)

Poland

Law on the Legal Protection of Plant Varieties  
(June 26, 2003)  
(Issue 97 - Sept. 2004)

Extract from Decree of the Minister for Agriculture,  
Forestry and Food Economy Concerning the Register  
of Varieties, the Role of Exclusive Rights on Varieties  
and the Control of Propagating Materials of April 14,  
1988, as Amended on September 25, 1990  
(Issue 68 - Apr. 1992)

Tariff of Fees  
(Issue 94 - Dec. 2002)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 80 - Dec. 1996)

Portugal

Decree-Law No. 213/90 of June 28, 1990  
(Issue 83 - Dec. 1997)

Ministerial Order No. 940/90 of October 4, 1990, as  
Amended by Ministerial order No. 351/91 of April 20,  
1990  
(Issue 66 - Dec. 1991)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 79 - July 1996)

Tariff of Fees  
(Issue 66 - Dec. 1991)

Republic of Korea

Seed Industry Law of January 26, 2001, under Law  
No. 6374  
(Issue 92 - Dec. 2001)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 92 - Dec. 2001)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 100 - Dec. 2006)

Republic of Latvia

Plant Varieties Protection Law (May 2002)  
(Issue 95 - April 2003)

Republic of Moldova

Law on the Protection of Plant Varieties No. 915/1996  
(Issue 94 - Dec. 2002)

Law on the Protection of Plant Varieties  
(Issue 85 - Oct. 1999)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

Romania

Law on the Protection of New Varieties of Plants No.  
255/1998  
(Issue 91 - June 2001)

Implementing Regulations of the Law on the  
Protection of New Varieties of Plants No. 255/1998  
(Issue 91 - June 2001)

Russian Federation

Law on the Protection of Selection Achievements (of  
August 6, 1993)  
(Issue 76 - Feb. 1995)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 87 - Mar. 2000)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 92 - Dec. 2001)

Slovakia

Law on the Protection Rights of New Varieties and  
Animal Breeds No. 132/1989 Coll. Laws, dated 15 Nov.  
1989 (amended 22/1996 Coll. Laws)  
(Issue 87 - Mar. 2000)

Singapore

Plant Varieties Protection Act 2004 (No. 22 of 2004)  
(Issue 96 - Sept. 2004)

Slovenia

Law on Plant Variety Protection  
(Issue 86 - Dec. 1999)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

South Africa

Plant Breeder's Rights Act No. 15 of 1976 as amended  
by Plant Breeders' Amendment Act No. 5 of 1980,  
Plant Breeders' Amendment Act No. 14 of 1981, Plant  
Breeders' Amendment Act No. 38 of 1983, Transfer  
of Powers and Duties of the State President, Act. No.  
97 of 1983 and Plant Breeders' Amendment Act, No.  
15 of 1996  
(Issue 82 - Aug. 1997)

Regulations Relating to Plant Breeder's Rights No. R  
1186 of 12 September, 1997  
(Issue 87 - Mar. 2000)

Genetically Modified Organisms Act No. 15 of 1997  
(Issue 93 - June 2002)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 85 - Oct. 1999)

Tariff of Fees  
(Issue 85 - Oct. 1999)

Spain

Law on the Protection of Plant Varieties No. 12/1975  
of March 12, 1975  
(67 - Feb. 1992)

General Rules on the Protection of Plant Varieties  
(Approved by Royal Decree No. 1674/1977 of June  
10, 1977)  
(Issue 67 - Feb. 1992)

Law 3/2000 Governing the Protection of Plant  
Varieties  
(Issue 91- June 2001)

Taxa Covered by Plant Variety Protection Legislation  
72 Nov. 1993 (All plant genera and species)  
(Issue 90 - Dec. 2000)

Sweden

Act (No. 2004:16) amending the Act on the Protection  
of Plant Breeders' Rights (1997:306)  
(Issue 91 - June 2001)

Act of the Protection of Plant Breeders' Rights  
(Issue 91- June 2001)

Taxa Covered by Plant Variety Protection Legislation  
(all botanical genera and species)  
(Issue 81- Apr. 1997)

Tariff of Fees  
(Issue 85- Oct. 1999)

Switzerland

Federal Law on the Protection of New Plant Varieties  
(Consolidated Text of the Federal Law of March 20,  
1975, as Amended by the Federal Law of October 10,  
1980)  
(Issue 56- July 1988)

Ordinance on the Protection of Plant Varieties  
(Issue 61- Feb. 1991)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 61- Feb. 1991)

Tariff of Fees  
(Issue 75- Dec. 1994)

Tariff of Fees (Corrigendum)  
(Issue 76- Feb. 1995)

Trinidad and Tobago

The Protection of New Plant Varieties Regulations,  
2000  
(Issue 92- Dec. 2001)

The Protection of New Plant Varieties Act, 1997  
(Issue 85- Oct. 1999)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 84- Apr. 1998)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 100- Dec. 2006)

#### Tunisia

Law No. 99-42 on Seed, Seedlings and New Plant Varieties (May 10, 1999)  
(96- Dec. 2003)

Decree No. 2000-102 of January 18, 2000  
(Issue 96- Dec. 2003)

Order of the Minister of Agriculture of June 24, 2000  
(Issue 96- Dec. 2003)

#### Ukraine

Law of Ukraine on the Protection of Plant Variety Rights (as amended on November 2, 2006)  
(Consolidated text)  
(Issue 100 - December 2006)

Amendment to the Law on the Protection of Plant Variety Rights (July 1, 2002)  
(Issue 95- April 2003)

Law on the Protection of Plant Variety Rights (of April 21, 1993)  
(Issue 76- Feb. 1995)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 86- Dec. 1999)

#### United Kingdom

Plant Varieties Act 1997  
(Issue 85- Oct. 1999)

The Plant Breeder's Rights (Information Notices)

(Extension to European Community Plant Variety Rights Regulations 1998)

Statutory Instrument No. 1023 of 1998 The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998  
(Issue 87- Mar. 2000)

Statutory Instrument No. 1024 of 1998 The Plant Breeders' Rights (Information Notices) Regulations 1998  
(Issue 87 - Mar. 2000)

Statutory Instrument No. 1025 of 1998 The Plant Breeders' Rights (Farm Saved Seed)(Specification of Species and Groups) Order 1998 87 Mar. 2000  
Statutory Instrument No. 1026 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specified-Information) Regulations 1998 87 Mar. 2000  
Statutory Instrument No. 1027 of 1998 The Plant Breeders' Rights Regulations 1998  
(Issue 87- Mar. 2000)

The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002  
(Issue 93 - June 2002)

#### United States of America

Plant Variety Protection Act (Consolidated Text of Public Law 91-577 of December 24, 1970, as Amended by Public Law 96-574 of December 22, 1980, Public Law 97-164 of April 2, 1982, Public Law 100-203 of December 22, 1987, Public Law 102-560 of October 28, 1992, Public Law 103-349 of October 6, 1994 and Public 104-127 of April 4, 1996)  
(Issue 80 - Dec. 1996)

Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996  
(Issue 80 - Dec. 1996)

Plant Patent Amendments Act of 1998  
(Issue 91 - June 2001)

Uruguay

Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract)  
(Issue 76 - Feb. 1995)

Decree No. 84/983, Introducing Law No. 15.173, Regulating the Production, Certification and Marketing of Seed, as Amended by Decree No. 418/987 of August 12, 1987, and Decree No. 519/991 of September 17, 1991 (Extract)  
(Issue 76- Feb. 1995)

Law No. 16.811  
(Issue 82 - Aug. 1997)

Taxa Covered by Plant Variety Protection Legislation  
(Issue 76 - Feb. 1995)