

PLANT VARIETY PROTECTION



*Filicula maxima, argenteo
pulvere conspersa! Tourn:
Inst: pag: 542.*

*Adiantum nigro simile
albissime pulvere con-
spersum. Plin. 99.
C.B.X.5.1.355*

UPOV

Gazette and Newsletter
of the International Union
for the Protection of New
Varieties of Plants

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GAZETTE

NEW MEMBERS OF UPOV

LATVIA

On July 30, 2002, the Government of Latvia 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 Latvia one month after the deposit of its instrument of accession, i.e., on August 30, 2002. Latvia became the fifty-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.

BELARUS

On December 5, 2002, the Government of Belarus 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 Belarus one month after the deposit of its instrument of accession, i.e., on January 5, 2003. Belarus became the fifty-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 following genera and species.

1. *Triticum aestivum* L. emend. Fiori et Paol. [*Triticum aestivum* L. ssp. *vulgare* (Vill., Host) Mackay]
2. *Secale cereale* L.
3. *Hordeum vulgare* L. sensu lato [*H. vulgare*, L., *Hordeum* L.]
4. *Triticosecale* Witt.
5. *Avena sativa* L., *Avena nuda* L.
6. *Fagopyrum esculentum* Moench.
7. *Pisum sativum* L. sensu lato
8. *Lupinus luteus* L.
9. *Lupinus angustifolius* L.
10. *Trifolium pratense* L.
11. *Linum usitatissimum* L. f. *elongata*
12. *Linum usitatissimum* L. var. *intermedia* Vav. et Ell.
13. *Brassica napus* L.
14. *Solanum tuberosum* L. [*S. tuberosum* L. sensu lato]
15. *Brassica oleracea* convar. *capitata* L. Alef. var. *Capitata* L. f. *alba* DC
16. *Brassica oleracea* convar. *capitata* L. Alef. var. *Capitata* L. f. *rubra* (L.) Thell.
17. *Brassica oleracea* convar. *capitata* (L.) Alef. var. *Sabauda* L.
18. *Lycopersicon lycopersicum* (L.) Karst ex Farwell
19. *Allium cepa* L.

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

CZECH REPUBLIC

On October 24, 2002, the Government of the Czech Republic deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The 1991 Act of the Convention entered into force for the Czech Republic one month after the deposit of its instrument of accession, i.e., on November 24, 2002.

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

HUNGARY

On December 1, 2002, the Government of Hungary 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 1991 Act of the Convention entered into force for Hungary one month after the deposit of its instrument of accession, i.e., on January 1, 2003.

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

MODIFICATION OF FEES**POLAND**

By virtue of the Decree of the Polish Minister for
Agriculture and Rural Development of August 27,

2001 (Polish Official Journal No. 97, text 1061),
the fees are as follows:

| No. | Fee / Group | I | II | III | IV | V |
|-----|--|-----------------------------|------|------|------|------|
| | | PLN (Polish Zlotych) | | | | |
| 1. | Application fee for NLI | 500 | | | | |
| 2. | Application fee for PBR | 500 | | | | |
| 3. | Examination fee for DUS (per year) | 700 | 650 | 600 | 550 | 500 |
| 4. | Examination fee for VCU (per year) | 2000 | 1800 | 1600 | 1300 | 1000 |
| 5. | Issue (award) fee for NLI | 200 | | | | |
| 6. | Issue (award) fee for PBR | 100 | | | | |
| 7. | Annual maintenance fee for NLI | | | | | |
| | • First to fifth years | 400 | 360 | 320 | 260 | 200 |
| | • Subsequent years | 800 | 720 | 640 | 520 | 400 |
| 8. | Annual maintenance fee for PBR | | | | | |
| | • First to fifth years | 140 | 130 | 120 | 110 | 100 |
| | • Subsequent years | 280 | 260 | 240 | 220 | 200 |
| 9. | Application fee for prolongation of inclusion a variety in NLI (for next 10 years) | 500 | | | | |
| 10. | Issue (award) fee for the prolongation of inclusion a variety in NLI | 200 | | | | |

1. Groups

Group I

- Spring barley, winter wheat, spring wheat, winter triticale, oats, winter rye, sugar beet, potato, winter oilseed rape;

Group II

- Fodder maize, pea (edible varieties), red clover, perennial ryegrass, Italian ryegrass;
- Onion, cucumber (outdoor varieties), white cabbage, carrot (edible varieties), tomato (outdoor varieties)
- Apple (fruit varieties), plum (fruit varieties), sour cherry (fruit varieties), strawberry;

Group III

- Winter barley, field bean, pea (fodder varieties), yellow lupin, white clover, hybrid lucerne, meadow fescue, cocksfoot, timothy, fodder beet, flax, common tobacco;
- Cauliflower, garden beet, celeriac, dwarf French bean, garden pea, hop;
- Apple (rootstock varieties);
- Black currant;

Group IV

- Spring triticale, blue lupin, smooth stalked meadowgrass, westerwold ryegrass;
- Leek, brussels sprouts, tomato (varieties grown under cover), root parsley, head lettuce, spinach;
- Rose (varieties grown under cover), gerbera, carnation, chrysanthemum;
- Raspberry, red currant, blueberry;

Group V

- All other species not included in groups I-IV.

2. Time limits for fee remittance

2.1 Application fee shall be remitted jointly with an application.

2.2 Examination fee shall be remitted

- For the first year – in 60 days time on receipt of notification on acceptance of a variety for official testing;

- For the second year of official testing

a) in June – for varieties sown/planted from February 1st to July 31st

b) in November – for varieties sown/planted from August 1st to January 31st

For the subsequent years of official testing – in 60 days time on receipt of notification on continuation of official testing.

2.3 Issue fee shall be remitted in 60 days from the receipt of the decision on entry into NLI/grant of PBR.

2.4 Maintenance fee should be remitted:

- For the first calendar year in 60 days from receipt of decision on entry into NLI/grant of PBR;

- For the other calendar years by June of every year.

3. If DUS testing is carried out for the purpose of entry into NLI and grant of PBR jointly – only one fee for DUS testing is in force.

4. Varieties of biennial and perennial species – for the first year of DUS and VCU testing (when a variety is sown or planted) the fee paid shall amount to 30% of the normal fee.

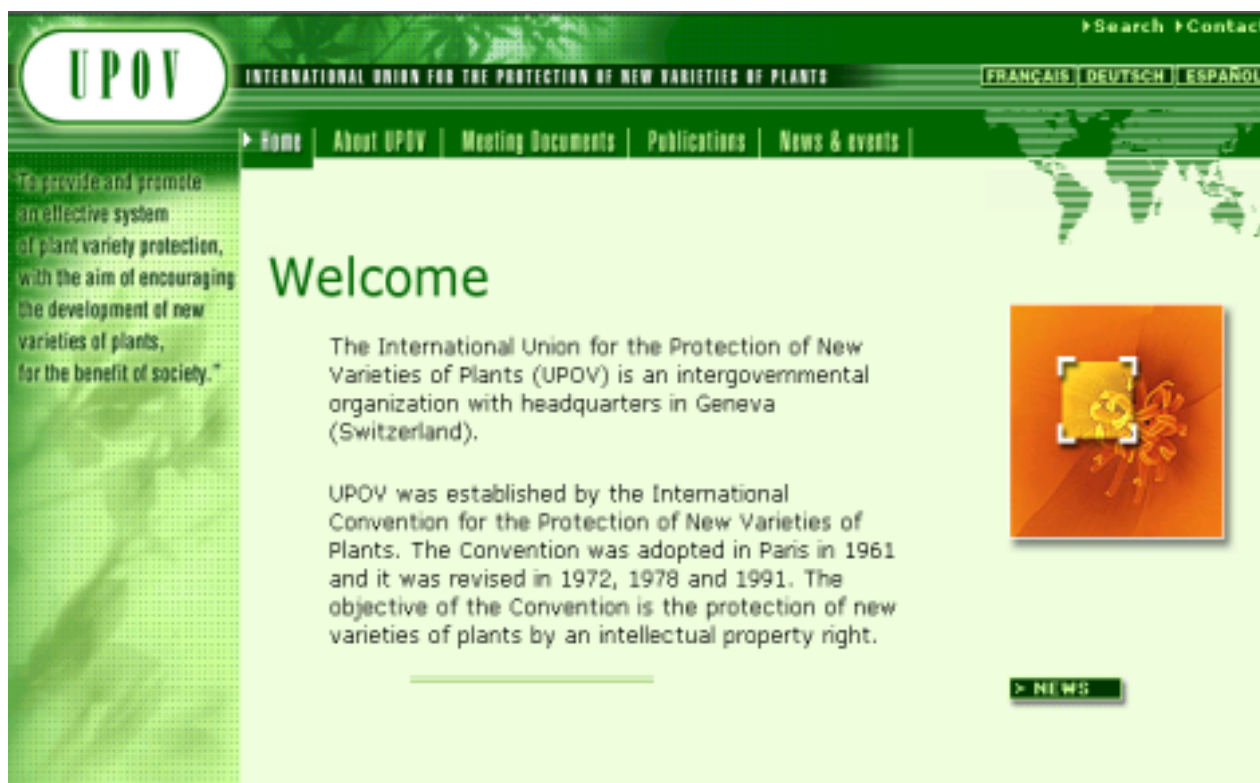
5. If a variety shall be applied into NLI for different kinds of use, a fee for VCU testing should be remitted separately for every kind of VCU testing.

6. Fee for DUS testing of agricultural hybrid shall increase by 100% independently of the number of its components.

NEWSLETTER

www.upov.int

NEW UPOV WEBSITE



The UPOV Website has been redesigned and is now available in four languages: English, French, German and Spanish. The Website is divided into four main areas for easy reference:

About UPOV

Mission Statement
Introduction
UPOV Convention
Membership
UPOV Working Bodies
Position on Key Issues
Contact Us
Links

Meeting Documents

UPOV Calendar
Council
Restricted Area

Publications

UPOV Convention
Laws and Treaties
General Introduction to DUS
Test Guidelines
Plant Variety Protection Statistics
List of Taxa Protected
Cooperation in Examination
Practical Technical Knowledge
Gazette and Newsletter

News and Events

News and Events
Calendar
Press Releases

CASE LAW

NETHERLANDS

PROVISIONAL JUDGMENT ON ESSENTIALLY DERIVED VARIETIES (EDVs)*

In a dispute between two holders of plant breeders' rights (PBR), the Civil Court of The Hague in the Netherlands rendered a provisional judgment on the question of essentially derived varieties (EDVs) in October 2002.

The parties involved

Party A, having its residence in the Netherlands, has a PBR, issued on the basis of Regulation 2100/94 of the Council of the European Union (hereafter referred to as a Community Plant Breeders' Right (Community PBR)) for two varieties of the species *Gypsophila*: 'Blancanieves' and 'Summer Snow'.

Party B, having its residence in Israel, has a Community PBR for the variety 'Dangypmini' of the same species.

The type of dispute

Party B claims that the varieties 'Blancanieves' and 'Summer Snow' are essentially derived from the variety 'Dangypmini' for which Party B has a Community PBR. It is claimed by Party B that the two DNA tests performed on its behalf demonstrate that 'Blancanieves' is a mutant of 'Dangypmini'. On the basis of that claim, Party B has summoned Party A to stop the distribution of material of 'Blancanieves' and 'Summer Snow'.

Party A denies the claim and has had its own DNA test performed. Party A brought the dispute to the Civil Court of The Hague.

The provisional judgement

Since the DNA tests do not involve the variety 'Summer Snow', the judge argues that Party B has failed to found its suspicion that the said variety is a mutant of 'Dangypmini'. Therefore it is assumed that all actions of Party B with respect to 'Summer Snow' are wrongful.

The relevant question with respect to 'Blancanieves' is whether the harvested material of that variety resembles the original variety as far as the expression of the characteristics resulting from the variety 'Dangypmini' are concerned. That question has been rephrased in the judgment: "In other words – expressed in the terminology of the UPOV treaty – whether 'Blancanieves' has kept the 'essential characteristics' of the genotype of the original variety 'Dangypmini'."

The Court took into consideration that, apart from differences in the genotypes of the two varieties, the phenotype of 'Blancanieves' differs from that of 'Dangypmini' on several points according to the test results presented. In the provisional judgment, the Court qualifies these characteristics as essential characteristics, resulting from the genetic material of 'Blancanieves' which are not present in 'Dangypmini'. Party B has not persuaded the Court that these essential differences are related to the act of derivation, meant in Article 13, sub-section 6, of EU Regulation 2100/94.

Consequently it is assumed, provisionally, that it is not probable that 'Blancanieves' is a mutant of 'Dangypmini', covered by the scope of the breeder's right granted to the breeder of 'Dangypmini'.

An updated summary will be provided if and when the final judgment has been rendered.

* This summary has been provided by Mr. Krieno Fikkert, Secretary, Board for Plant Breeders' Rights, Netherlands.

NEW ZEALAND

COURT DECISION ON BREACH OF CONFIDENCE - DISCLOSURE OF A CONFIDENTIAL PROPAGATING TECHNIQUE

“PVR Poacher sues Gamekeeper - and Wins”*

A nursery in New Plymouth, New Zealand, has won an action in breach of confidence against the New Zealand police [*Stepping Stones Nursery Limited v Attorney General (for New Zealand Police)*]. The case has a most unusual set of facts.

Evidence gathered by the police in a criminal investigation was used in a civil action by a plant variety right holder. The Judge found that the police had committed a breach of confidence by providing the information to the holder, not justified by any public interest. However, although the Judge did decide the nursery was entitled to some damages, these were limited to detriment caused only by actions of the police. It was a victory, but a Pyrrhic one.

The action arose as a result of a complaint to the police by another nursery, Duncan and Davies Nurseries (DD), alleging that Stepping Stones Nursery (SS) had stolen budwood of DD's maple tree variety, Red Dragon. The variety was protected by a plant variety right. The police found no evidence of theft, but did find 1,700 Red Dragon plants in various stages of propagation. The police told DD of the existence of these plants and provided information of how they were propagated.

DD sued SS for plant variety right infringement. That action was eventually settled when SS took a licence from DD. SS then turned their attention to the police. Shortly before the end of the limitation period for doing so they sued the police for breach of confidence in releasing to DD the information gathered in the criminal investigation.

The Court had no difficulty in concluding that, in the circumstances of the police investigation, the information was confidential. The question the Court went on to consider was whether or not there was any public interest overriding the duty of the police not to disclose commercially sensitive information of a competitor to DD. The Judge concluded that there was no such public interest and therefore a breach of confidence had occurred.

Stepping Stones Nursery had claimed damages under five headings:

1. Defending a plant variety right infringement proceeding
2. Loss of chance to successfully apply for a compulsory licence
3. Loss of sales from contracted growers who had turned around and sold plants to a subsidiary of DD
4. Loss of a commercial advantage by disclosure of SS's secret propagating techniques to DD, and
5. General exemplary damages.

The Judge had disposed of the first three grounds. Whatever detriment SS had suffered was not a result of the actions of the police, but because SS had propagated 1,700 plants in breach of DD's plant variety right. The police disclosure did not cause the detriment, it only gave DD the opportunity to enforce its rights.

SS did succeed on the fourth ground of special damages claimed. It was because of the police disclosure that a confidential propagating technique developed by SS was put into the hands of DD.

On the fifth point the Judge held that SS was entitled to nominal general damages. He also stated that SS was entitled to exemplary damages, which would be determined once a decision of the Privy Council allowing an appeal from the New Zealand Court of Appeal on exemplary damages had been published. If the parties cannot agree on the quantum of these damages there may be an epilogue to this decision.

In the end, justice was done. The plaintiff nursery did not receive the quantum of damages they were seeking because they had been the main authors of their own fate. The police were given the message that, while they are defenders of public rights, they are not always defenders of private rights.

It would be interesting to speculate upon a situation where the police had simply said to DD that they had found no evidence of any crime. Would DD have succeeded if they had gone to court to seek discovery of the police report, allowing them to pursue the infringement action?

* The review of this case is reproduced with the kind permission of A.J.Park, Intellectual Property Lawyers and Consultants, New Zealand. The article was previously published in A.J.Park's "IP Newz", issue no. 29, November 2002, and in the January 2002 issue of the "New Zealand Plant Variety Rights Journal".

UPOV CALENDAR OF MEETINGS OF 2003

| | |
|--|---|
| April 7 (afternoon) to 9 (Geneva, Switzerland) | Technical Committee |
| April 10 (Geneva, Switzerland) | Administrative and Legal Committee |
| April 11 (Geneva, Switzerland) | Consultative Committee |
| April 11 (Geneva, Switzerland) | Extraordinary Session of the Council |
| June 10 to 13 (Tjele, Denmark) | Technical Working Party on Automation and Computer Programs |
| June 23 to 27 (Roelofarendsveen, Netherlands) | Technical Working Party for Vegetables |
| September 3 to 5 (Tsukuba, Japan) | Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular |
| September 8 to 12 (Tsukuba, Japan) | Technical Working Party for Agricultural Crops |
| September 22 to 26 (Niagara Falls, Canada) | Technical Working Party for Ornamental Plants and Forest Trees |
| September 29 to October 3 (Niagara Falls, Canada) | Technical Working Party for Fruit Crops |
| October 20 and 21 (Geneva, Switzerland) | Administrative and Legal Committee |
| October 22 (Geneva, Switzerland) | Consultative Committee |
| October 23 (Geneva, Switzerland) | Council |
| October 24 (Geneva, Switzerland) | WIPO-UPOV Symposium |

**STATES PARTY TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS**

International Convention for the Protection of New Varieties of Plants*
UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

Status on December 5, 2002

| State | Date on which State became member of UPOV | Number of contribution units | Latest Act ¹ of the Convention to which State is party and date on which State became party to that Act |
|-------------------------------|---|------------------------------|--|
| 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 | 1978 Act..... July 14, 1994 |
| Belarus | January 5, 2003 | 0.2 | 1991 Act..... January 5, 2003 |
| Belgium ² | December 5, 1976 | 1.5 | 1961/1972 Act..... December 5, 1976 |
| Bolivia | May 21, 1999 | 0.2 | 1978 Act..... May 21, 1999 |
| Brazil | May 23, 1999 | 0.25 | 1978 Act..... May 23, 1999 |
| Bulgaria..... | April 24, 1998 | 0.2 | 1991 Act..... April 24, 1998 |
| Canada | March 4, 1991 | 1.0 | 1978 Act..... March 4, 1991 |
| Chile..... | January 5, 1996 | 0.2 | 1978 Act..... January 5, 1996 |
| China..... | April 23, 1999 | 0.5 | 1978 Act ³ April 23, 1999 |
| Colombia..... | September 13, 1996 | 0.2 | 1978 Act..... September 13, 1996 |
| Croatia | September 1, 2001 | 0.2 | 1991 Act..... September 1, 2001 |
| Czech Republic..... | January 1, 1993 | 0.5 | 1991 Act..... November 24, 2002 |
| Denmark ⁴ | October 6, 1968 | 1.5 | 1991 Act..... April 24, 1998 |
| Ecuador..... | August 8, 1997 | 0.2 | 1978 Act..... August 8, 1997 |
| Estonia | September 24, 2000 | 0.2 | 1991 Act..... September 24, 2000 |
| Finland..... | April 16, 1993 | 1.0 | 1991 Act..... July 20, 2001 |
| France ⁵ | October 3, 1971 | 5.0 | 1978 Act..... March 17, 1983 |
| Germany..... | August 10, 1968 | 5.0 | 1991 Act..... July 25, 1998 |
| Hungary | April 16, 1983 | 0.5 | 1991 Act..... January 1, 2003 |
| 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 |
| 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 |
| Mexico..... | August 9, 1997 | 0.75 | 1978 Act..... August 9, 1997 |
| Netherlands..... | August 10, 1968 | 3.0 | 1991 Act ⁶ April 24, 1998 |
| New Zealand..... | November 8, 1981 | 1.0 | 1978 Act..... November 8, 1981 |
| Nicaragua..... | September 6, 2001 | 0.2 | 1978 Act..... September 6, 2001 |
| Norway..... | September 13, 1993 | 1.0 | 1978 Act..... September 13, 1993 |
| Panama..... | May 23, 1999 | 0.2 | 1978 Act..... May 23, 1999 |
| Paraguay..... | February 8, 1997 | 0.2 | 1978 Act..... February 8, 1997 |
| Poland..... | November 11, 1989 | 0.5 | 1978 Act..... November 11, 1989 |
| 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 |
| 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 ⁷ | May 18, 1980 | 1.5 | 1961/1972 Act..... May 18, 1980 |
| 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 |
| Ukraine..... | November 3, 1995 | 0.5 | 1978 Act..... November 3, 1995 |
| United Kingdom..... | August 10, 1968 | 5.0 | 1991 Act..... January 3, 1999 |
| United States of America..... | November 8, 1981 | 5.0 | 1991 Act ⁸ February 22, 1999 |
| Uruguay..... | November 13, 1994 | 0.2 | 1978 Act..... November 13, 1994 |

(Total: 52 States)

* 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 and financial 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.

ADDRESSES OF PLANT VARIETY PROTECTION OFFICES IN UPOV MEMBER STATES

ARGENTINA

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AUSTRALIA

Registrar
Plant Breeders' Rights Office
P.O. Box 858
Canberra, A.C.T. 2601

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Telex 61 289
Fax. (61-2) 6272 36 50
website: www.affa.gov.au/pbr

AUSTRIA

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Landwirtschaft
Sortenschutzamt
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BELARUS

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BELGIUM

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BOLIVIA

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BRAZIL

Serviço Nacional de Proteção de Cultivares –
SNPC
(*National Plant Varieties Protection Service*)
Secretaria de Apoio Rural e Cooperativismo -
SDR
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Central Office “Variety Testing”
Executive Agency for Variety Testing, Field
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CROATIA

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ITALY

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LEGISLATION

ARGENTINA

SEED LAW – FARMER’S PRIVILEGE

MEASURES ADOPTED* IN CONNECTION WITH THE “FARMER’S PRIVILEGE” PROVIDED FOR IN ARTICLE 27 OF LAW 20.247 ARE THE FOLLOWING:

Article 1. (The Directorate of the National Seeds Institute decrees that:) The conditions determining eligibility for the “farmer’s privilege” provided for in Article 27 of Law 20.247 are the following:

- (a) To be a farmer.
- (b) To have acquired the original seed legally.
- (c) To have obtained the present seed from that legally acquired;
- (d) To set aside from the harvested grain the amount of seed that will be used for subsequent sowing, distinguishing it by variety and quantity, prior to processing.

There shall be no farmer’s privilege where the farmer has acquired seed for sowing otherwise than by setting it aside himself, whether free of charge or for consideration (purchase, exchange, donation, etc.).

- (e) The purpose of the seed set aside to be sowing by the farmer on his own farm and for his own use.

Purposes other than sowing by the farmer shall not be covered by Article 27 of Law No. 20.247.

The purposes of sale, permutation or exchange by the farmer himself or through an intermediary are expressly excluded.

The exception shall benefit the farmer alone and not third parties.

- (f) The seed set aside for the farmer’s own use shall be kept separate from the remainder of the grain, its identity and individuality being preserved from the time at which it is taken from the land by the farmer, and that identity shall be maintained throughout the process of processing, packaging and storage up to the time at which it is sown on the farmer’s land.

A person interested in availing himself of the farmer’s privilege shall prove compliance with the conditions set forth in this Article.

Article 2. Neither the breeder’s authorization under Article 44 of Decree No. 2183/91 nor labelling of the seed under Article 9 of Law No. 20.247 shall be required in the case of the farmer setting aside, packaging, storing, depositing and sowing seed in any of the plots that constitute his farm without altering the boundaries thereof.

For the purposes of this Article, “farm” means the various plots of land of one and the same owner, regardless of the nature of the tenancy.

In the event of the seed having to be moved from one plot of land to another that belongs to the same owner, the move shall be recorded in the relevant documentation (waybill, consignment note, guide, etc.). The documentation shall give the name of the farmer, the plots of land from which the seed comes and for which it is destined, the amount of seed and its variety and the dates of sending and arrival of the seed; the documentation shall remain in the farmer’s possession, and shall be presented or handed over at the request of the National Seeds Institute.

Where the seed present on the land or farm of the farmer is covered by the concepts of “exposed to the public” or “delivered to users for whatever reason” provided for in Article 8 of Decree No. 2183/91, the seed shall be labelled and the owner shall have the authorization of the owner of the cultivar, in the case of protected varieties, depending on the various situations provided for in Article 41(c), (d), (g), (h), (i) and (j) of the said Decree.

Article 3. Where the farmer decides to package and/or store the seed of a protected variety set aside for his own use in a cooperative, warehouse, plant or deposit belonging to a third party, whether natural person or legal entity, he shall, sufficiently in advance of the removal of the seed from his land, seek the permission of the owner of the variety in an recorded communication (registered letter, telegram with advice of receipt, etc.).

The breeder-owner shall inform the farmer in a recorded communication of his acceptance or rejection of the request for permission within a period not exceeding 30 working days following the date of receipt thereof.

The silence of the breeder in response to the request for permission shall be considered acceptance thereof on expiry of the aforesaid period.

Article 4. The farmer who delivers seed to a third party for processing and/or deposit with a view to his own use thereof shall take responsibility for its identity (variety of the species), and shall so state on the identification label.

Article 5. For the purposes of the foregoing Article, the processor or depositary shall ask the farmer for a document in duplicate, signed by the latter, which shall compulsorily contain the following particulars:

* Adopted on February 28, 1996. Translation from Spanish prepared by the Office of the Union.

- (a) Full name of the farmer, with, in the case of legal entities, corporate designation and the position occupied by the signatory within it, including the relevant confirmatory stamp or seal;
- (b) True address of the farmer or domicile in the case of legal entities;
- (c) Document number of the signatory;
- (d) Assurance that the intended purpose of the seed delivered is exclusively the recipient's own use (Article 27 of Law No. 20.247);
- (e) Declaration, by the farmer, of the variety or varieties of seed to be delivered, with an express mention of the number of gross kilograms for each variety;
- (f) Declaration of the exact location of the plot or plots of the farmer's land on which the seed is to be sown, with specific details of the place in which it is situated (department, district, etc.), and the means of access to it from the place of processing;
- (g) Type of occupancy of the building or buildings specified in paragraph (f) (ownership, rental, leasehold, etc.);
- (h) Period, with the details of the probable starting or ending date of the sowing of the seed intended for own use on the property referred to in (f);
- (i) Period of time in which the seed in question will be held on deposit, and approximate date of removal.

Article 6. The document shall be received by the processor or depositary, who shall record on it the date of receipt, and deliver the copy to the farmer, keeping the original in his possession.

The processor or depositary shall request of the farmer a copy of the breeder-owner's authorization, or of the request for authorization in the event of refusal, in respect of each protected variety, which shall bear the signature of the farmer and be accompanied by the aforementioned document.

The processor or depositary shall be under the obligation to keep on file for a minimum period of 18 months following receipt, entirely on his own responsibility, all the documentation provided for in this Article.

If any of the particulars under Article 5 are different, the farmer shall draw up a new document in duplicate incorporating the changes, and shall hand it to the processor or depositary within a period not exceeding seven days of the change being observed, and the latter shall act as specified earlier.

Article 7. The document provided for in the foregoing Article shall have the character of a sworn statement by the farmer in which he assumes total responsibility for the particulars set down therein.

Similarly, the processor or depositary shall be responsible for the veracity of the particulars reported by the farmer as specified in Article 5(a), (b), (c) and (i), having had to verify their accuracy.

Article 8. The processor or depositary shall issue the farmer a certificate of deposit for the seed that the latter hands to him for his own sowing, with pre-printed correlative numbering.

The certificate of deposit shall specify the proper name or corporate designation of the farmer and his address, the species and variety of the seed, its weight according to the official weighing carried out, a statement to the effect that it is seed for own use within the meaning of Article 27 of Law No. 20.247, the estimated date of delivery of the reserved seed to the farmer and a record of the farmer's submission of the authorization or authorizations of the breeder-owners in the case of protected varieties.

Article 9. Once the farmer's seed has been processed, the packaging shall bear a special label which shall differ in color and characteristics from the labels used for commercial seed, measuring not less than 10cm x 20cm on which shall be printed in distinct and readily legible lettering the notice "FARMER'S SEED FOR OWN USE; ARTICLE 27 OF LAW NO. 20.247."

The label shall compulsorily give also the following information:

- (a) Proper name of the farmer, or corporate designation in the case of legal entities, and private or business address;
- (b) Proper name or corporate designation, address and registration number in the National Register of Seed Trade and Control of the processor or identifier;
- (c) Name of the species;
- (d) Name of the variety;
- (e) Percentage of physico-botanical purity by weight, where lower than the values specified by regulation;
- (f) Percentage of germination by number, where below the values specified by regulation;
- (g) Net contents;
- (h) Year of harvesting;
- (i) "Treated seed - poison" in red lettering where the seed has been treated with toxic substances.

The following notice shall be added on the back of the same label, in a prominent place and in distinct capital letters: "The identity of this seed has been declared by in (address) The seed covered by this label may not be used for a purpose other than sowing on his land by the person named thereon as provided in Article 44 of Decree 2183/91. Any sale, marketing or delivery in whatever form is prohibited on pain of the possessors of the seed being liable to the sanctions provided for in Chapter VII of Law 20.247."

Article 10. The processor or depositary shall be the person responsible for the correct labelling of the seed as specified in the foregoing Article, namely in the form of labels supplied by the farmer or manufactured on his instructions, and for having the appropriate authorization or request for authorization in the event of refusal, for protected varieties supplied by the owner-breeders to the farmer as provided in Article 6 hereof. Where the farmer has not secured the authorization specified in the foregoing paragraph, the processor and/or depositary shall be under the obligation to serve notice on the breeder-owner to give his authorization in order that the packaging and storage of the said seed may proceed in accordance with Article 41(b) and (i) of Decree 2183/91.

To that end he shall submit, together with the request for authorization, a copy of the document handed to him by the farmer under Article 5.

The breeder shall respond within the period specified in Article 3, which provision shall apply fully to the present case. The processor, depositary or identifier who fails to comply with the obligations specified in this Article shall be liable to the appropriate sanctions under Chapter VII of Law No. 20.247.

Article 11. The documentation specified in the foregoing Articles shall be submitted to the inspectors of the National Seeds Institute at their request, on pain of application of the sanctions provided for in Articles 38 and 39 of Law No. 20.247.

Article 12. Where the breeder-owner refuses the authorization requested under Article 3 or 10 hereof, the farmer shall submit to INASE, without need for any advance notice, a copy

of the request submitted to the breeder and of the notice of refusal, duly signed by the person concerned, as all the documentation specified in Article 5 shall be.

The farmer shall likewise specify the proper name or corporate designation, address and registration number in the National Register of Seed Trade and Control of the processor or depositary to whom or which his seed will be delivered, the period of time in which the seed will be processed and deposited, the probable date of its removal, subject to the recorded communication to the Certification and Control Directorate, with 30 days of advance notice, of the date of sowing of the seed and the designation of the land on which it will be sown, accompanied by a plan of the property and certified copies of the documentation supporting his ownership.

INASE, when in possession of the documentation required under this Article, together with such additional documentation as it may consider relevant, shall proceed to evaluate and verify the claimed own use and issue a finding thereon.

Failure by the farmer to submit all the documentation and information specified in this Article within the periods mentioned, and any additional documentation and information that may have been required, shall result in rejection of the request for the farmer's privilege under Article 27 of Law No. 20.247.

Article 13. The foregoing shall be communicated, published, conveyed to the Directorate of Official Registration and placed on record.

BELARUS**PLANT VARIETY PATENT LAW***

This Law shall govern both economic and moral relations arising out of the breeding (discovering, developing), legal protection and use of patented varieties of plants.

The provisions of this Law shall apply to the plant genera and species according to a list as established by the Cabinet of Ministers of the Republic of Belarus.

TITLE I**LEGAL PROTECTION OF VARIETIES OF PLANTS****Article 1****Definitions**

For the purposes of this Law:

“harvested material” shall mean entire plants or parts of plants disposed of for the purposes other than reproduction of a variety;

“propagating material” shall mean plants, seeds, seedlings, bulbs or any other parts of plants intended for the purposes of multiplication;

“creator (breeder) of a variety” shall mean the person who, by his creative activity, bred the variety;

“variety” shall mean a group of plants which, irrespective of whether the conditions of patentability are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, and can be distinguished from any other group of plants of the same botanical taxon by the expression of at least one of the said characteristics. The variety may be represented by a plant or by two or more plants, or by a part or by two or more parts of a plant, provided that the part or the parts in question may be used for reproduction of entire plants of the variety.

“protected variety” shall mean a variety registered in the Official Register of Protected Varieties of the Republic of Belarus (hereinafter referred to as the “Register of Protected Varieties”).

Article 2**Conditions of Patentability of a Plant Variety**

A variety shall be granted legal protection where the variety is

- new,
- distinct,
- uniform and
- stable.

A variety shall be deemed to be new if, at the date of filing of the application for the grant of a plant patent (hereinafter referred to as the “application”), propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the variety in the territory of the Republic of Belarus earlier than one year before that date, and

- in the territory of any other State earlier than four years or, in the case of trees and of vines, earlier than six years before the said date.

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

Common knowledge may be established by reference to the fact that it is public knowledge that another variety is produced, reproduced, conditioned for the purpose of propagation, stocked for any of the above-mentioned purposes, offered for sale, sold, exported or imported.

The filing of an application for the granting of a title of protection for another variety, in any country, shall be deemed to render that other variety a matter of common knowledge, provided that the application leads to the granting of a patent, of a breeder’s right or of any similar means of protection or to the entering of the said other variety in the official register of varieties.

The variety shall be deemed to be uniform if, having regard to the particular features of its propagation, its plants are sufficiently uniform in their characteristics.

* Entered into force on July 1, 1995. Translation prepared by the Office of the Union.

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

The essential characteristics which permit a variety to be defined and distinguished may be either morphological or physiological, but, in any case, must be capable of precise description.

Article 3

Legal Protection of the Variety

The right to a variety is protected by the State and shall be attested by a plant variety patent (hereinafter referred to as a "plant patent").

The plant patent shall be granted by the State Patent Office of the Republic of Belarus (hereinafter referred to as the "Patent Office") and shall attest the authorship of the variety, the priority date of the variety and the exclusive right of the owner of the plant patent to use the variety, except for limitations specified in this Law.

The plant patent shall produce its effects for 25 years following the date of registration of the variety in the Register of Protected Varieties.

The scope of protection of a variety shall be defined by its official description registered in the Register of Protected Varieties and by the sample of plant material of the variety in the reference collection of the State Committee for the Testing of Varieties to the Republic's Authority for the Administration of Agriculture (hereinafter referred to as the "State Committee").

The official description should contain the morphological, physiological and other characteristics of the variety on which the grant of the plant patent is based; if deemed necessary, it may be supplemented or amended by the State Committee.

TITLE II

CREATORS AND PLANT PATENT OWNERS

Article 4

Creator (Breeder) of the Variety

The person whose creative work has resulted in the variety shall be recognized as the creator (breeder).

Where the variety is the result of the joint creative work of two or more persons, those persons shall all be recognized as joint creators. The conditions governing the exercise of the rights in the variety jointly created by two or more persons shall be determined by agreement between them.

Persons who have made no personal creative contribution to the breeding of the variety, having merely provided the creator (or creators) with technical, organizational or material assistance, or helped in the securing of rights in the variety, shall not be recognized as joint creators.

The authorship of the variety shall belong to the creator and shall be an inalienable personal right. That right shall benefit from protection of unlimited duration.

The creator of the variety who is not the owner of the plant patent in that variety shall receive remuneration from the owner of the plant patent on the basis of agreement between them.

Article 5

Owner of the Plant Patent

The plant patent shall be granted:

- to the creator (or creators);
- to the person or persons (whether natural persons or legal entities) who, subject to the existence of a contract, is or are mentioned by the creator (or creators) in the application or in the request filed with the Patent Office prior to the registration of the variety;
- to the creator's heir.

Where a salaried employee (hereinafter referred to as "employee") creates a service variety as a result of a specific task entrusted to him by his employer, the plant patent shall be granted to the employer if the employee and the employer have entered into a contract that so provides.

A variety shall be deemed to be a service variety if the variety relates to the employer's area of activity, and if the employee created it in connection with work forming part of his duties, or used data or means that his employer has put at his disposal.

In such a case the employee shall be bound to inform his employer in writing of the service variety that he has created. The employer, in his turn, shall inform the employee in writing, within three months following the date on which he received the said information from him, whether he intends to apply for a plant patent. If the employee and the employer have not entered into a contract concerning the right to the plant patent, or if the employer has elected not to apply for a plant patent or failed to respond within the three-month period, the plant patent shall be granted to the employee who created the variety. In that case the employer shall be entitled to use the variety under conditions specified in a license agreement.

Other relations concerning service varieties created by employees in the course of their work shall be regulated by the laws of the Republic of Belarus.

Article 6The Rights of the Plant Patent Owner

The following acts in respect of the propagating material of the protected variety shall require the authorization of the owner of the plant patent:

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

The owner of the plant patent may at his discretion make any such authorization subject to conditions and limitations.

The acts referred to in indent one of this Article in respect of harvested material obtained through the unauthorized use of propagating material of the protected variety shall also require the authorization of the owner of the plant patent, unless the owner has had reasonable opportunity to exercise his right in relation to the said propagating material.

Article 7Essentially Derived and Certain Other Varieties

The provisions of Article 6 of this Law shall also apply in relation to

- varieties which are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety,
- varieties which are not clearly distinguishable in accordance with Article 2 from the protected variety and
- varieties whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from another variety ("the initial variety") when

- it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- it is clearly distinguishable from the initial variety; and
- except for the differences which result from the act of derivation it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a somaclonal mutant, the selection of a mutant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 8Exceptions to the Rights of the Plant Patent Owner

The rights of the owner of the plant patent shall not extend to

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes; and
- acts done for the purpose of breeding other varieties and, except where the provisions of Article 7 of this Law apply, acts referred to in Article 6 of this Law in respect of such other varieties.

Article 9Exhaustion of the Plant Patent Owner's Rights

The plant patent owner's rights shall not extend to acts concerning any material of the protected variety which has been sold or otherwise marketed by the owner of the plant patent or with his consent in the territory of the Republic of Belarus or which has been exported by him into a country which does not protect varieties of the botanical species to which the variety belongs for processing or final consumption purposes.

The provisions of indent one of this Article shall not apply where the selling or other marketing involves further propagation of the variety in question or an export of material of the variety to enable the propagation of the variety in a country which does not protect varieties of the plant genus or species to which the variety belongs.

TITLE III

PROCEDURE FOR THE GRANT OF THE PLANT PATENT

Article 10Application for a Plant Patent

The application for a plant patent shall be filed with the Patent Office:

- by the creator (breeder);
- by the employer where the circumstances specified in indent two of Article 5 of this law obtain;

- by the person, whether natural person or legal entity, to whom the creator or the employer has contractually assigned the right to file an application or to whom that right has been transferred by succession.

The application may be filed through a patent attorney registered to practice before the Patent Office or through an authorized agent resident in the Republic of Belarus.

Natural persons residing outside the Republic of Belarus or legal entities having their headquarters in a foreign country shall, for the grant and maintenance of plant patents in the Republic of Belarus, only act through patent attorneys or authorized agents.

The application shall relate to one variety and shall contain:

- a completed application form as supplied by the Patent Office;
- a completed technical questionnaire as supplied by the Patent Office;
- a power of attorney where the application is filed through a patent attorney or an authorized agent;
- a document attesting payment of the prescribed fee or exemption from such payment or the existence of circumstances that warrant a partial reduction in the said fee.

The requirements that have to be met by the elements constituting an application shall be specified by the Patent Office.

For the purposes of the examination, the Patent Office may require the furnishing of other necessary documents and plant materials.

Article 11

Assignment of the Right to the Plant Patent and of the Right to Use a Variety

The right to the plant patent and the right conferred by the plant patent to use the variety may, under the plant patent transfer or under the license contract, be assigned to any natural person or legal entity.

The contract shall be registered with the Patent Office, failing which it shall be deemed null and void.

Article 12

Priority of a Variety

The priority of a variety shall be determined by the date of receipt, by the Patent Office, of the application containing the elements referred to in indent four of Article 10 of this Law.

The priority of a variety may be determined by the date on which an initial application in respect of the same variety was filed in a State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties, provided that the Patent Office receives the application for which such priority is claimed within 12 months from the said date.

The applicant who wishes to avail himself of the right of priority of the initial application shall state the fact on filing the application with the Patent Office. A copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed and samples or other evidence that the variety, which is the subject matter of both applications is the same, shall be furnished within a period of three months.

The applicant shall be allowed a period of two years after the filing of the application, where the first application has been rejected or withdrawn, in which to furnish any necessary documents or materials required for the purpose of the examination.

Article 13

Variety Denomination

The variety shall be designated by a denomination which will be its generic designation.

The denomination of a variety must be short. It must enable the variety to be identified. It must be different from every denomination which designates an existing variety of the same botanical species or of a closely related species. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, origin or value of the variety, or the identity of the creator or of the plant patent owner.

The denomination of a new variety shall be submitted by the applicant to the Patent Office. If it is found that such denomination does not satisfy the requirements of indent one of this Article, the Patent Office shall refuse to register it and shall require the applicant to propose another denomination within a period of two months.

The denomination shall be registered in the Register of Protected Varieties at the same time as the protected variety is registered therein.

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

Any person who offers for sale or markets propagating material of the protected variety shall be obliged to use the denomination of that variety within the territory of the Republic of Belarus or within the territory of any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties, even

after the expiration of the term of the plant patent in that variety, except where prior rights prevent such use.

Prior rights in a trade mark, trade name or other similar indication, when in possession of third persons who are not applicants, shall not be affected.

If, by reason of a prior right, the use of the denomination of a variety is forbidden to the person who is obliged to use it, the Patent Office shall have the right to require that the plant patent owner submits another denomination for the variety.

The variety denomination submitted to the Patent Office must be the same as that submitted in any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties. Such denomination shall be accepted by the Patent Office, unless it considers such denomination unsuitable by virtue of indent one of this Article.

Article 14

Examination of the Application

The examination of the application, which shall consist in an examination as to form and a substantive examination, shall be carried out by the Patent Office in accordance with this Law and the implementing regulations thereof drawn up by the same Office.

The applicant shall have the right, on his own initiative or at the request of the official patent examiner, to intervene, in person or through his patent attorney or authorized agent, to settle questions raised in the course of the examination as to form and the substantive examination.

In the course of the examination the applicant shall have the right, on his own initiative or upon request, to complete, specify or correct elements of the application, on condition that the identity of the variety in respect of which the application is filed remains the same.

Additional elements filed at the invitation of the Patent Office or of the State Committee shall be filed within two months following the date of receipt of the invitation. The response period may be prolonged at the applicant's request, provided that the said request reaches the Patent Office before the current period expires. In that case the examination period shall be prolonged accordingly.

If the applicant has failed to keep to the prescribed period or has not responded to the examiner's invitation, the application shall be deemed to have been withdrawn.

The application may be withdrawn at the applicant's request.

Applications taken into consideration by the Patent Office shall not be returned to the applicant.

Article 15

Examination of the Application as to Form

The application shall undergo examination as to form within one month following the date of receipt thereof by the Patent Office.

The examination as to form of the application shall serve to ensure that the requisite documents are all present and to determine whether the claimed variety in respect of which the application is made relates to the subject matter eligible for protection under this Law.

If necessary, the applicant may be invited to supply more details on his application within two months following the date of receipt of the invitation. In that case the examination period shall be prolonged accordingly.

If it is found that the variety in respect of which the application is made does not relate to the subject matter eligible for protection under this Law, or that the applicant has not provided the necessary additional details within the time set or that he has not submitted the documents that were missing on the date of receipt of the application, the said application shall not be taken into consideration and the applicant shall be notified accordingly.

If the application is taken into consideration, the Patent Office shall inform the applicant of the priority date that it has accorded to the variety.

In the event of disagreement with the decision taken on the examination as to form, the applicant shall have the right to appeal to the Examination Appeal Board of the Patent Office (hereinafter referred to as the "Appeal Board") against the decision within two months following the date on which he received notice thereof. The appeal shall be ruled upon within one month following receipt thereof.

Article 16

Publication of the Application

The Patent Office shall publish the particulars of every application that has successfully undergone examination as to form on expiration of a period of six months from the date of completion of the said examination. The list of published particulars shall be determined by the Patent Office. After the particulars of the application have been published, any person shall have the right to acquaint himself with the application documents.

Publication of the particulars of the application shall not take place where, before the publication period expires, the decision to grant a plant patent has been taken or the application has been withdrawn or has been the subject of a final decision of refusal.

The creator of the variety may forgo being mentioned as such on publication of the particulars of the application if he is not the prospective owner of the plant patent.

Article 17

Provisional Legal Protection

A variety in respect of which an application has been filed shall enjoy provisional legal protection as from the date of publication of the particulars of the application and up to the date of registration of the variety in the Register of Protected Varieties.

Any natural person or legal entity using the claimed variety during the period specified in indent one of this Article shall pay compensation to the owner of the plant patent after the grant thereof, in an amount to be determined by agreement between the parties. The provisional legal protection shall be deemed never to have been granted where a final decision of refusal has been taken.

During the period of the provisional legal protection, the applicant shall enjoy the rights of the owner of the plant patent as referred to in Articles 6 and 7 of this Law.

Article 18

Substantive Examination of the Application

The substantive examination of the application shall serve to determine the priority date of the variety where that date has not been determined in the course of the examination as to form, and to ascertain whether the variety is patentable.

The substantive examination shall include the ascertaining of the novelty of the variety, and also the assessment of the distinctness, uniformity and stability of the variety and shall be performed within the time limits and on the basis of testing techniques to be established by the State Committee.

In the course of the assessment of the distinctness, uniformity and stability of the variety, the State Committee may, if deemed necessary, base its assessment:

- on growing or other tests with material of the variety carried out by the State Committee;
- on test results obtained under agreements concluded with organizations, institutions or individual persons of the Republic of Belarus, or with the competent authorities for testing varieties in States with which the Republic of Belarus is party to bilateral or multilateral agreements for the protection of plant varieties;
- on tests conducted by or on behalf of the applicant whether inside or outside the Republic of Belarus.

The State Committee may require the applicant to furnish all the necessary information, documents or propagating material, or to invite the applicant to conduct certain tests by himself.

The Patent Office shall base the results of the substantive examination as to distinctness, uniformity and stability on the report and the opinion of the State Committee and shall

take the decision to grant a plant patent or to refuse the application.

The applicant shall have the right to acquaint himself with the documents used in the course of the examination, and to inspect the testing procedure.

The applicant may, within two months following the date on which he received the decision on his application, request copies of the documents cited against it, and also test results.

Article 19

Appeal Against the Decision on the Application and Restoration of Rights Determined by Time Limits

In the event of disagreement with the decision taken on the substantive examination, the applicant shall have the right, within three months following the date on which he received the decision or, if he so requested, copies of the documents cited against his application or test results, to appeal to the Appeal Board stating his arguments. The appeal shall be considered within four months following the date of receipt thereof. In the case of a complex application, that period may be prolonged with the agreement of the applicant. The applicant shall have the right, either in person or through his agent, to take part in the consideration of his appeal.

The applicant may appeal to the courts against the ruling of the Appeal Board within a period of one year following the date on which the said ruling was made.

The applicant who has failed to observe the time limits specified in indents three and four of Article 14, in indents three and six of Article 15, in indent seven of Article 18 and in indents one and two of Article 19 of this Law may have his rights restored by the Patent Office if he presents a legitimate excuse and pays a fee.

The request for restoration of a right determined by a time limit may be filed not later than twelve months after the time limit in question has expired.

Article 20

Publication of the Particulars of the Plant Patent

The Patent Office shall, after the decision to grant a plant patent has been taken, and subject to the payment of the issue fee by the applicant, publish the particulars of the plant patent in its official Bulletin. Those particulars shall include the name of the plant patent owner and the name of the creator (or creators), except where the latter has (or have) elected not to be mentioned as such, the effective date of the plant patent, the denomination of the protected variety and the description thereof.

The full list of published particulars shall be determined by the Patent Office.

The plant patent owner shall have the right to file with the Patent Office a request for correction of unintentional mistakes in the plant patent, provided that the scope of legal protection is not thereby extended.

Article 21

Registration of the Variety and Grant of the Plant Patent

At the same time as it publishes the particulars of the plant patent, the Patent Office shall register the variety in the Register of Protected Varieties and shall grant a plant patent to the person in whose name the plant patent has been applied for. If a plant patent has been applied for in the name of two or more persons, one plant patent shall be issued to them.

The layout of the Register of Protected Varieties and that of the plant patent and the list of particulars included therein shall be determined by the Patent Office.

Where the creator is not the plant patent owner, the Patent Office shall issue him a breeder's certificate attesting his status as creator.

TITLE IV

NULLITY AND CANCELLATION OF THE PLANT PATENT

Article 22

Nullity of the Plant Patent

Throughout the period of its validity, a plant patent shall be declared null and void by any natural person or legal entity when it is established

- (1) that the conditions of patentability as to novelty and distinctness of the protected variety were not complied with at the time of the grant of the plant patent;
- (2) that, where the examination decision has been essentially based upon information and documents furnished by the applicant (breeder), the conditions of patentability as to uniformity and stability of the protected variety were not complied with at the time of the grant of the plant patent, or
- (3) that the plant patent wrongly names the creator or the plant patent owner, unless it has been transferred to the true breeder or patent owner.

No plant patent shall be declared null and void for reasons other than those referred to in (1) to (3), above.

The opposition to the grant of the plant patent filed on the grounds referred to in (1) and (2) of indent one of this

Article shall be considered by the Appeal Board within a period of six months following the date on which it was received.

The opposition and the decision of the Appeal Board that lies therefrom shall be brought to the attention of the plant patent owner.

In the event of disagreement with the ruling taken by the Appeal Board on the grounds referred to in (1) and (2) of indent one, the opponent and the plant patent owner may, within six months following the date on which the ruling was made, appeal to the Courts.

The opposition to the grant of the plant patent filed on the grounds specified in (3) of indent one of this Article shall be considered by the Appeal Board on the basis of the Tribunal's decision on the authorship of a variety or on the identification of the plant patent owner.

Article 23

Premature Termination of the Plant Patent

The validity of the plant patent shall terminate prematurely in the event that:

- it is declared null and void under Article 22 of this Law;
- the plant patent owner fails to pay the annual plant patent maintenance fee by the prescribed time limit;
- the plant patent owner files a written request to that effect with the Patent Office;
- the conditions of patentability as to uniformity and stability of the protected variety are no longer fulfilled;
- the owner of the plant patent does not provide the Patent Office, after being requested to do so and within a prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety, or
- where the denomination of the variety is canceled, with another suitable denomination.

No plant patent shall be prematurely terminated for reasons other than those specified above.

The Patent Office shall publish information concerning the premature termination of the validity of the plant patent in its official Bulletin.

TITLE V

USE OF PROTECTED VARIETIES

Article 24Use of the Protected Variety

Where two or more persons are owners of the same plant patent, their relations covered by that plant patent in the use of the protected variety shall be determined by an agreement between them. In the absence of an agreement each of the plant patent owners shall have the right to use the protected variety at his discretion, except with respect to the licensing and assignment of the plant patent.

Any natural person or legal entity wishing to use the protected variety in the territory of the Republic of Belarus shall enter into a license agreement with the owner of the plant patent.

Article 25License Agreements

Under a license agreement the plant patent owner (licensor) grants the right to use the protected variety to a third party (licensee) within the limits specified in the agreement, and the latter undertakes to pay the licensor the agreed royalties and to perform such other acts as are provided for in the exclusive or non-exclusive license agreement. An exclusive license agreement confers on the licensee the exclusive right to use the protected variety within the territory and within the time limits specified in the agreement. The exclusive license may allow the licensee to grant sublicenses and to seek compensation from the plant patent infringer for damages. In the absence of any provision to the contrary in the exclusive license agreement, the licensor shall have the right to use the plant patent himself.

A non-exclusive license confers on the licensee the right to use the protected variety with third parties. The non-exclusive license allows the licensor to retain all the rights deriving from the plant patent, or to perform all the acts specified in Articles 6 and 7 of this Law and to grant as many non-exclusive licenses as may be possible in respect of all or any of the acts referred to in the said Articles.

Article 26Open Licenses

The owner of a plant patent may submit to the Patent Office, for official publication, a declaration in which he undertakes to grant any person the right to use the protected variety on the basis of a non-exclusive license.

In such a case the fee for the maintenance of the plant patent shall be reduced by 50% as from the year following the year of publication of the said declaration.

Any person wishing to use the protected variety shall be required to enter into a license agreement with the plant patent owner.

Article 27Compulsory Licenses

In the event of non-use or insufficient use of the variety on the territory of the Republic of Belarus three years after the date of registration of the variety in the Register of Protected Varieties, any person who wishes to use the protected variety and is ready to do so may, if unable to enter into a license agreement with the plant patent owner, bring an action before the Courts with a view to the grant of a non-exclusive compulsory license, in which the limits of the use of the variety, the amount of royalties, the time limits and procedure for payment thereof, and also the amount of propagating material of the protected variety to be provided, shall be specified.

The compulsory license shall not be granted if the owner of the plant patent can prove that the non-use or insufficient use of the variety is justified by legitimate reasons.

The compulsory license may be terminated by the court during the whole period of its duration where the licensee fails to fulfill the conditions under which that license has been granted to him.

Article 28Infringement of the Plant Patent

Any natural person or legal entity using a protected variety in a manner contrary to Articles 6 and 7 of this Law shall be deemed to be infringing the plant patent.

At the request of the owner of the plant patent, an order shall be issued that the infringement of the plant patent cease and the owner of the plant patent shall be compensated by the infringer for damages sustained in accordance with the laws in force in the Republic of Belarus.

The exclusive licensee may also bring an action against the infringer of the plant patent, except where the license agreement provides otherwise.

Article 29Maintenance of Characteristics of the Protected Variety

The owner of the plant patent shall, throughout the whole period of the validity of the plant patent, maintain the protected variety in a condition ensuring that the variety continues to show characteristics defined for the protected variety at the date of the grant of the plant patent.

The owner of the plant patent shall be obliged to afford to the State Committee propagating material of the protected variety requested by that State Committee to conduct check

tests as to distinctness, uniformity and stability, including also facilities to inspect the measures taken for the maintenance of the variety.

TITLE VI

INSTITUTIONAL BASIS FOR THE LEGAL PROTECTION OF VARIETIES AND DEFENSE OF THE RIGHTS OF CREATORS AND PLANT PATENT OWNERS

Article 30

The Patent Office

The Patent Office shall, in accordance with this Law, carry out an integrated policy in the field of legal protection of varieties. It shall receive applications for the grant of plant patents, undertake the examination thereof, reject applications or grant plant patents, register varieties, issue plant patents, publish official information, and issue general rules and implementing regulations under this Law.

Article 31

The State Committee

The State Committee shall assess the distinctness, uniformity and stability of varieties in respect of which applications have been filed, prepare reports and give opinions to the Patent Office on the distinctness, uniformity and stability of varieties and perform such other functions as are specified in the Regulations for testing varieties as to patentability to be enacted by the Cabinet of Ministers of the Republic of Belarus.

Article 32

Judicial Bodies Responsible for Hearing Disputes Arising From Infringements of Plant Patent Legislation

Disputes arising from infringements of plant patent legislation shall be within the jurisdiction of the people's district (or municipal) courts, the Municipal Tribunal of Minsk, the regional courts, the Supreme Court of the Republic of Belarus, the Patent Tribunal and the commercial courts.

Article 33

Competence of the Courts Responsible for Hearing Disputes Arising From Infringements of Plant Patent Legislation

The competence of district (or municipal) courts, the Municipal Tribunal of Minsk, the regional courts, the Supreme Court of the Republic of Belarus and the commercial courts, in particular, extend to disputes arising from:

- the authorship of a variety;
- the identification of the plant patent ownership;
- violations of the exclusive right to use a protected variety and of other economic rights of the plant patent owner;
- conclusion and implementation of license agreements for the use of a protected variety;
- the payment of compensation under this Law.

The nature of the disputes within the jurisdiction of the Patent Tribunal, and also the organization and method of operation of the Tribunal, shall be laid down by the Law of the Republic of Belarus on the Patent Tribunal of the Republic of Belarus.

Article 34

Liability for Infringement of Creators' (Breeders') Rights

Any person who usurps authorship, acquires the status of joint creator (breeder) by force or, without the consent of the creator, discloses the subject matter of the application, shall incur liability under the legislation in force.

Article 35

Liability for Infringement of Plant Patent Legislation

Any person who, in pursuance of his duties, shows negligence or bad faith in the making of an application, the use of a variety or the payment of remuneration to its creators shall incur liability under the legislation in force.

An official plant patent examiner shall incur disciplinary liability if he discloses the subject matter of an application prior to the publication thereof, except where that disclosure, by its nature, makes him liable to criminal sanctions under the legislation in force.

Officials and other employees of the Patent Office and of the State Committee shall not, for the duration of their employment and for three years following the termination thereof, either file applications or directly or indirectly acquire entitlement to a plant patent, or make applications on behalf of any person.

Article 36

Inheritance of Rights

The right to file an application, the right to a plant patent, the rights of the plant patent owner to a variety, and also the right to remuneration and profits out of the use of the variety, shall be inherited.

TITLE VII

FINAL PROVISIONS

Article 37Plant Patent Fees

The performance of any legal acts in relation to plant patents shall be subject to the payment of plant patent fees and charges. A list of acts for which fees are payable, the amounts of the fees and the time limits for the payment thereof, and also the conditions governing exemption from fees and the reduction or reimbursement of fees, shall be determined by the Cabinet of Ministers of the Republic of Belarus.

The fees shall be payable by the applicant, the owner of the plant patent, and by another interested natural person or legal entity.

Article 38Right to Protect Varieties Abroad

The creator (breeder) or his successor in title shall be entitled to file applications and apply for the grant of plant patents abroad.

The creator (breeder) or his successor in title may choose any State, with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties, at whose competent authority to file his first application for the grant of a plant patent.

The creator or his successor in title may apply to the competent authorities of other States party to international multilateral agreements for the protection of plant varieties for the granting of plant patents without waiting for the grant to him of the plant patent by the competent authority of the State with which the first application was filed.

The Patent Office shall not refuse to grant a plant patent to the applicant who is a national of any State with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties and shall not limit the duration of that plant patent on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other such State.

Article 39Rights of Foreign Natural Persons and Legal Entities and Stateless Persons

Foreign natural persons and legal entities and stateless persons shall enjoy the rights provided for in this Law and other legislative acts on the protection of new varieties of plants of the Republic of Belarus on the same footing as natural persons or legal entities of the Republic of Belarus.

Article 40Rights of Enterprises Established in the Republic of Belarus with Foreign Capital

The provisions of this Law shall apply to enterprises established in the Republic of Belarus with foreign capital.

Article 41International Treaties

If an international treaty to which the Republic of Belarus is party contains provisions different from those contained in this Law, the provisions of the said international treaty shall be applicable.

Article 42Effects in Belarus of Authors' Certificates, Certificates or Applications Under the Regulations for the Legal Protection of New Varieties of Plants in the Soviet Union

The effects of authors' certificates or certificates for new plant varieties granted under the Regulations for the legal protection of new varieties of plants in the Soviet Union shall be valid in the territory of the Republic of Belarus in accordance with the provisions of the applicable legislation of the Soviet Union before this Law has entered into force.

Authors and applicants shall have the right to file joint requests for the grant of plant patents of the Republic of Belarus with respect to varieties in relation to which a 25-year term from the filing date of the application has not yet expired. The requests shall be filed with the Patent Office.

Applicants wishing to maintain the effects of their applications for the grant of authors' certificates for new varieties filed before this Law has entered into force, for which tests have been conducted by the State Committee for the Testing of Agricultural Crops to the Ministry for Agriculture and Food Economy of the Republic of Belarus and decisions have been taken with a view to their conditioning, shall have the right, jointly with authors, to request that they be granted plant patents of the Republic of Belarus if the said varieties fulfill the requirements of patentability under this Law.

The request shall be filed with the Patent Office within a period of 12 months after the entry into force of this Law.

The applications in respect of which the above-mentioned requests have been filed within the specified time limits shall be processed according to the provisions of this Law, except for the requirements of novelty under Article 2 thereof.

The plant patents of the Republic of Belarus granted on the requests for revalidation of the authors' certificates of the Soviet Union, under decisions on conditioning or on the basis of the applications the processing of which has not been completed, shall produce their effects from the date of their issue to the expiration of a 25-year term from the filing date of the application.

Article 43

The Entry Into Force

This Law shall enter into force on July 1, 1995.

The laws in force in the Republic of Belarus shall be applicable until the existing legislation is brought into conformity with this Law, in so far as such laws do not contravene the provisions thereof.

This Law shall govern legal relations which came into existence after its entry into force.

Article 44

Institutional and Legal Procedures for Enacting this Law

Before this Law enters into force, the Cabinet of Ministers of the Republic of Belarus shall:

- establish the list of varieties to which this Law is applied;
- adopt such rules and regulations within its competence as have been specified in this Law and bring into conformity with this Law the existing decisions of the Government;
- submit proposals for the approval by the Supreme Soviet of the Republic of Belarus concerning administrative and criminal sanctions against violations of this Law.

KENYA

THE SEEDS AND PLANT VARIETIES ACT, 1972*
(as last amended in 2002)

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An Act of Parliament to confer power to regulate transactions in seeds, including provision for the testing and certification of seeds; for the establishment of an index of names of plant varieties; to empower the imposition of restriction on the introduction of new varieties; to control the importation of seeds; to authorize measures to prevent injurious cross-pollination; to provide for the grant of proprietary rights to persons breeding or discovering new varieties; to establish a Tribunal to hear appeals and other proceedings; and for purposes connected with and incidental to the foregoing.

ENACTED by the Parliament of Kenya, as follows: -

PART I – PRELIMINARY

Short title and commencement

1 This Act may be cited as the Seeds and Plant Varieties Act, 1972, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint and the Minister may appoint different days in respect of different provisions of this Act.

Interpretation

2 In this Act, unless the context otherwise requires –

“authorized officer” in connexion with any provision of this Act, means a public officer authorized by the Minister by notice of the Gazette to exercise the functions specified in such provision;

“compulsory licence” means a licence granted by the Minister under section 23 of this Act;

“the Index” means the index of names of plants varieties prepared under section 7 of this Act;

“Minister” means the Minister for the time being responsible for matters relating to agriculture;

* Text provided by the Kenyan Plant Health Inspectorate Services (KEPHIS) of the Seeds and Plant Varieties Act of 1972, as last amended and published on June 7, 2002, in the Official Kenya Gazette, Supplement No. 49.

“plant breeder’s rights” means rights granted under section 17 of this Act;

“plant variety” means an assemblage of cultivated individuals which are distinguished by any character (morphological, physiological, cytological, chemical or others) significant for the purpose of agriculture, horticulture or forestry, and which when reproduced (sexually or asexually) retain their distinguishing characters;

“positive direction” means a positive direction given under paragraph 1 of the Third Schedule to this Act in regard to an application for plant breeder’s rights;

“seed” means that part of a plant which is or is intended to be used for propagation and includes any seed, seedling, corm, cutting, bulb, bulbil, layer, marcott, root, runner, scion, set, split, stem, stock, stump, sucker or tuber so used or intended to be so used;

“seed analyst” means a suitably qualified person on the staff of a testing station;

“sell” includes barter, exchange and offering or exposing for sale;

“scheme” means a scheme relating to plant breeder’s rights made under Part V of this Act;

“seeds regulations” means regulations made under section 3 of this Act;

“statutory statement” means a statement given in pursuance of seeds regulations, whether the statement be in the form of a notice or other document, or in the form of particulars given on any label, container or package, or in any other form, and includes a statement delivered under subsection (5) of section 30 of this Act.

PART II – SEEDS

Seeds regulations

3.(1) The Minister, after consultation with representatives of such organizations as he deems to have a substantial interest in the matter to be regulated and of such other interests as appear to him to be concerned, may make regulations for the regulation and control of the production, processing, testing, certification and marketing of seeds, and without prejudice to the generality of this power, such regulations may, in particular, be made for any or all of the following purposes –

- (a) for ensuring that reliable and adequate information is afforded as to the nature, condition and quality of seeds intended for sale;
- (b) for preventing the sale of seeds which are deleterious, or which have not been produced in specified conditions, or which have not been tested for purity or germination, or which are of a plant variety of which the performance has not been subjected to trials;

- (c) for requiring the registration of persons growing any specified crop for the main purpose of seed production, or of persons selling any seed;
- (d) for preventing the spread of plant disease by the sale of seeds;
- (e) for requiring the treatment of seed, by any specified means, for the control of plant disease and regulating the importation, quality testing and sale of any material used in such treatment;
- (f) for regulating the descriptions under which seed is sold;
- (g) for regulating, controlling or prohibiting the export of seeds;
- (h) for prescribing anything which, under this Part, is to be prescribed or which, under any other provision of this Act, is to be prescribed by seeds regulations.

(2) Seeds regulations may include provisions as to the packets, bags, trays or other containers in which seed may be sold or delivered to purchasers, and requirements as to the marking of such containers.

(3) Without prejudice to any provisions of this section, seeds regulations may: -

- (a) require information to be given in a prescribed manner, which may include the giving of it on any label, container, or package, as regards seeds which are sold, and may require the seller to deliver a statement, containing prescribed particulars, to the purchaser within such time as may be limited by the regulations;
- (b) require any of the particulars contained in such statement to be particulars ascertained on a test of the seeds;
- (c) prohibit the selling of seeds which have not been certified in the prescribed manner, or which contain more than a prescribed proportion of weed seeds, or of weed seeds of a prescribed kind, or which lack any other prescribed quality factor;
- (d) prohibit the use, in relation to the sale of seeds, any prescribed name, designation or description except where the seeds have been grown or selected under the prescribed conditions;
- (e) require persons who deal in seeds to supply to the prescribed authority information as to, and to keep records of –
 - (i) transactions in seeds generally or in seeds of specified kinds;
 - (ii) statutory statements given or received by them, and other statements or invoices given or received by them in connection with the sale of seeds;
 - (iii) processes or treatments applied to seeds;

- (iv) the results of tests of seeds, and authorize prescribed persons to call for production of such records;
 - (f) where persons who deal in seeds also grow seeds, require such persons to supply to the prescribed authority information as to, and keep records of –
 - (i) Acreages sown;
 - (ii) the yields of the crops; and authorize prescribed persons to call for production of such records;
 - (g) regulate the procedure to be observed at, and the conduct of testing stations and other establishments at which tests may be carried out for the purposes of the regulations;
 - (h) regulate the manner in which tests are to be made for the purposes of this Part.
- (4) In prescribing the manner in which samples are to be taken for the purposes of this Part or of seeds regulations, such regulations _
- (a) may impose conditions as to the persons empowered to take samples and the places where they may be taken;
 - (b) may require the person taking a sample to give part of it to the owner of the seeds or to some other person, may prescribe the manner in which the sample is to be divided into parts, and may impose duties in respect of the making or labeling and the preservation of the parts of the sample;
 - (c) may provide for the identification, by the labeling or marketing of their container, or by some other method, of seeds from which a sample has been taken.
- (5) Seeds regulations may exempt, or authorize the exemption of, any person or class of persons, or persons generally, from compliance with any of the provisions of the regulations, and may provide that such exemptions are to be or may be made, subject to conditions.
- (6) Any person who includes in a statutory statement anything which is false in a material particular shall be guilty of an offence.

Civil liabilities of sellers of seeds

- 4.(1) If and so far as seeds regulations provide that a statutory statement shall constitute a statutory warranty for the purposes of this section, the statutory statement, when received by a purchaser, and notwithstanding any contract or notice to the contrary, shall have effect as a written warranty by the seller that the particulars contained in the statutory statement are true.
- (2) If and so far as seeds regulations apply this subsection to the particulars in a statutory statement and prescribe limits of variation in relation to those particulars, those particulars shall, for the purposes of any legal proceedings on a contract

for the sale of the seeds to which the statutory statement relates, be deemed to be true except so far as there is a misstatement in the particulars which exceeds the limits of variation so prescribed.

- (3) If and so far as seeds regulations apply this subsection to the particulars in a statutory statement, such particulars shall, for the purposes of any legal proceedings on a contract for the sale of seeds to which the statutory statement relates, be deemed to be true unless it is made to appear on a test carried out at a testing station, and made on a sample taken in the prescribed manner and within the prescribed period, that the particulars were untrue.
- (4) Where a purchaser intends to obtain a test of seeds for the purposes of subsection (3) of this section, the seller of the seeds shall give written notice of such intention not more than the prescribed period after delivery to the purchaser of the seeds under the sale, and seeds regulations shall prescribe a procedure for the taking of a sample of seeds to be tested for the purposes of the said subsection which will afford to the seller of the seeds or his agent an opportunity of being present when the sample is taken, and of obtaining part of the sample.
- (5) A contravention of seeds regulations shall not affect the validity of a contract for the sale of seeds or the right to enforce such a contract.

*Defences in proceedings for offences
against seeds regulations*

- 5.(1) If and so far as seeds regulations for the purposes of this section prescribed limits of variation in relation to the particulars in a statutory statement, it shall be a defence to proceedings under this Act for including in a statutory statement any false particulars to prove that the mis-statement in the particulars alleged to be false do not exceed the limits of variation so prescribed.
- (2) Subject to the provisions of this section, it shall be a defence to proceedings –
- (a) under this Part for including false particulars in a statutory statement; or
 - (b) for an offence against seeds regulations relating to the nature, condition or quality of any seeds; or
 - (c) for an offence against seeds regulations relating to a prescribed name or designation or description,
- to prove –
- (i) that the accused took all reasonable precautions against committing an offence of the kind alleged and had not at the time of the alleged offence any reason to suspect that an offence was being committed by him, and
 - (ii) where the accused obtained the seeds to which the alleged offence relates from some other person, that on demand by or on behalf of the prosecutor the accused gave all the information in his power with

respect to the name and address of that other person and with respect to any statutory statement or other document in his possession or power relating to the seeds and the contract of sale.

- (3) If, in any proceedings under this Part for including false particulars in a statutory statement, any of the particulars alleged to be false are particulars which, by seeds regulations, are to be particulars ascertained by means of a prescribed test, the defence under subsection (2) of this section shall not be available unless it is proved –
- (a) that those particulars were ascertained on such a test and that the test was made not earlier than the date, if any, prescribed for the purpose; or
- (b) that –
- (i) the accused purchased the seeds from another person who, in connexion with sale, duly delivered to the accused a statutory statement giving particulars of the seeds which were the same as the particulars alleged to be false; and
- (ii) the accused had no reason to believe that paragraph (a) of this subsection did not apply in relation to those particulars.

Presumption regarding statutory statements

6. For the purposes of this Part and of any seeds regulations, any statutory statement made in respect of seeds which are in distinct portions shall be presumed to be made both in respect of the seeds as a whole and also in respect of each portion taken separately.

Index of names of plant varieties

- 7.(1) The Minister may, in accordance with the provisions of this section, cause to be prepared an index of names of plant varieties for use in connection with the sale of seeds of those varieties.
- (2) The Index shall be compiled in sections, and each section shall define the class of plant varieties to which it relates in such terms as to make it possible to determine whether any plant variety belongs to the class or not, irrespective of whether that variety is for the time being in the Index or not.
- (3) Different sections of the Index may be prepared, and may be brought into force, at different times.
- (4) Notice of the coming into force of a section of the Index, and of all additions, corrections and erasures in a section of the Index after it has come into force, shall be published in the Gazette, and in such other manner as is appropriate for ensuring that persons particularly concerned with the Index, or with the class of plant varieties to which the section of the Index relates, have their attention drawn to it.

(5) After a section of the Index has come into force, any person who, in selling seed of a plant variety for which a name is given in that section, uses some name not given in the Index for plant variety, being a name which serves or is intended by him to serve to distinguish the seed from seed of other plant varieties within the class to which the section relates, shall be guilty of an offence.

(6) The Minister may, for the purposes of this section, arrange for the establishment of a reference collection of plant material.

(7) The First Schedule to this Act shall have effect as to the procedure for compiling the Index and the other matters therein mentioned.

(8) In this section and sections 8 and 9 and the First Schedule to this Act –

“class” means a class of plant varieties to which a section of the Index relates;

“name” includes any designation, and for the purposes of those provisions, a plant variety shall not be regarded as distinct from another plant unless it is sufficiently distinguishable by one or more of such important characteristics as may be prescribed.

Restrictions on sales of seeds of unindexed plant varieties

8.(1) Subject to the provisions of this section, after a section of the Index has come into force any person who, in selling seed of a plant variety which is within the class to which that section of the Index relates, but which is not in the Index, uses a name which serves or is intended by him to serve distinguish such seed from seed of other plant varieties within that class, shall be guilty of an offence.

(2) Subsection (1) of this section shall not apply to a person who reasonably believes that the seed –

- (a) is to be used for scientific purposes or for the purposes of research; or
- (b) will be used outside Kenya.

(3) Where any person makes, or proposes to make, arrangements under which some other person uses seed under the control of the first-mentioned person for the purposes of increasing the first-mentioned person’s stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from the seed, and any unused seed, becomes or remains the property of the first-mentioned person, subsection (1) of this section shall not apply –

- (a) to a sale of the seed by the first-mentioned person to the other person as part of such arrangements; or
- (b) to a sale by that other person to the first-mentioned person of seed produced, directly or indirectly, from that seed.

(4) Except as provided by paragraph 3 (3) of the First Schedule to this Act, an application for the inclusion of a plant variety in the appropriate section of the Index after it has come into force shall be granted only –

- (a) when the agro-ecological value surpasses that of the existing ones in some aspect according to the results in official tests;
- (b) is sufficiently distinguishable from any other variety whose existence is a matter of common knowledge at the time of application;
- (c) is sufficiently varietal pure and stable in its essential characteristics.

(5) If at any time it appears to the Minister that a decision cannot be given on an application in respect of an annual mentioned in subsection (4) of this section within three years from the time when the applicant has complied with the conditions prescribed under the First Schedule to this Act, or if so directed by the Tribunal, he shall cause an entry to be made in the Index giving to the plant variety concerned such provisional name as is appropriate, and when the decision is given such correction shall be made to the Index as may be necessary to give effect to the decision.

9.(1) The Minister may, by order, bring this section into force for any class of plant varieties within the Index, and thereafter this section shall apply to any new plant variety within that class.

(2) For the purposes of this section, a plant variety shall be a new plant variety if it was not in the Index on the date when the order under subsection (1) of this section came into force, unless it has been exempted under subsection (3) of this section.

(3) The Minister may, on an application from any person and on being satisfied that seed of a plant variety, although not in the Index, was in commercial use in Kenya before the order under subsection (1) of this section came into force, exempt that plant variety from the provisions of this section.

(4) Subject to the provisions of this section, it shall be an offence –

- (a) to sell seed of a new plant variety to which this section applies; or
- (b) to advertise any such seed for use,

until seed of that plant variety has been submitted for the purpose of performance trials in accordance with this section, and until a report on the result of such trials has been published in the prescribed manner, and this subsection shall apply whether or more an offer or advertisement relates only to sales after the trials and report.

(5) Subsection (4) of this section shall apply to a sale of any seed which is not in Kenya when the sale is made, but, subject to the provisions of this section, where a person has acquired seed of a new plant variety to which this section ap-

plies, being seed which was not in Kenya when he acquired it, he shall be guilty of an offence if, in the course of business he –

- (a) uses any of that seed in Kenya as reproductive material at any time when, under subsection (4) of this section, it is unlawful to sell seed of that plant variety; or
- (b) at any time so disposes of any of that seed, otherwise than by way of sale, while it is in Kenya as to make it available for use in Kenya as reproductive material.

(6) Subsection (4) of this section shall not apply to any sale of the kind described in subsection (3) of section 8 of this Act, and subsection (5) of this section shall not apply to the use of seed for the purpose of carrying out tests or trials.

(7) If it appears to the Minister that a new plant variety to which this section applies has undergone performance trials and that an adequate report of the result of those trials is generally available, or that there is any other sufficient reason for exempting such variety from the provisions of subsections (4) and (5) of this section shall cease to apply to seed of that plant variety, but without prejudice to any liability for any offence previously committed.

(8) For all new plant varieties to which this section applies there shall be a time limit by which, so far as practicable, the report on the result of the performance trials is to be published, and if such report is not published within such time limit, subsections (4) and (5) of this section shall cease to apply to seed of that plant variety, but without prejudice to any liability for any offence previously committed.

(9) The time limit in respect of an annual crop for the purposes of subsection (8) of this section shall, except so far as seeds regulations may otherwise provide for any class or part thereof, be three years from the date on which the performance trials commence.

(10) Entries made in a section of the Index after an order under this section has come into force in relation thereto shall –

- (a) be made in such a manner as will distinguish those entries from all earlier entries, and as will indicate which of the later entries relate to plant varieties exempted under subsection (3) of this section; and
- (b) contain additional entries showing when subsections (4) and (5) of this section have ceased to apply to seeds of the plant varieties concerned.

(11) Without prejudice to any other provision of this Part, seeds regulations may provide –

- (a) for the manner of making applications under subsection (3) of this section, and of making applications for submitting plant varieties for performance trials;
- (b) for the information to be afforded by an applicant and the materials to be submitted at the time of application of subsequently;

- (c) for the manner in which reports are to be published and brought to the attention of those concerned;
 - (d) for the compiling of a register of applications for the submission of seeds for performance trials, of the reports of the results of such trials and of the dates of publication of the reports, and for including entries which will show the date when the time limit under subsection (8) of this section will fall;
 - (e) for requiring the publication of notice of any direction under subsection (7) of this section, and of any class where a report is not published within the time limit under subsection (8) of this section;
 - (f) for the payment of fees in respect of matters under this section.
- (12) Reference in this section to advertising are references to advertising in any medium, including sound and television broadcasting, but do not include the communication of information in any publication for scientific purposes or purposes of research.

Offences, etc.

- 10.(1) If any information submitted by or on behalf of –
- (a) a person making an application or representation in respect of any matter connected with the compilation or alteration of the Index; or
 - (b) an applicant under subsection (3) of section 9 of this Act;
- is false in any material particular, and the person giving such information knows that it is false, or gives such information recklessly, he shall be guilty of an offence.
- (2) Notwithstanding any provision of any other written law as to time limits in criminal proceedings, proceedings in respect of an offence under section 7, 8 or 9 of this Act may be brought at any time not more than two years from the date upon which it is alleged that such offence was committed.
- (3) It shall be a defence to proceedings in respect of an offence under section 7, 8 or 9 of this Act to prove –
- (a) that the accused took all reasonable precautions against committing an offence of the kind alleged and had not at the time of the alleged offence any reason to suspect that an offence was being committed by him; and
 - (b) where the accused obtained the seeds to which the alleged offence relates from some other person, that, on demand or on behalf of the prosecutor, the accused gave all the information in his power with respect to the name and address of that other person and with respect to any statutory statement or other document in his possession or power relating to those seeds and the contract of sale.

PART III – SEED TESTING

Seed testing stations

11. The Minister shall, either alone or in conjunction with any other body, establish one or more official seed testing stations.

Certificates of test

12.(1) A certificate of the result of a test by a seed analyst of a sample taken by an authorized officer for the purposes of any of the provisions of this Act shall be in the form prescribed by the seeds regulations.

(2) A certificate of the result of a test at a testing station of any sample taken for the purposes of this Act, and purporting to be issued by a seed analyst –

- (a) if the sample was taken by an authorized officer, shall, if a copy of the certificate has been served on the accused, be sufficient evidence of the facts stated in the certificate in any proceedings for an offence under this Act; or
- (b) if the sample was taken by a person other than an authorized officer in order to obtain a test for the purposes of subsection (3) of section 4 of this Act, shall be sufficient evidence of the facts stated in the certificate in any such legal proceedings as are mentioned in that subsection,

unless, in either case, either party to the proceedings requires that the person issuing the certificate be called as a witness.

Use of samples in criminal proceedings

13.(1) Evidence shall not be adduced in proceedings for an offence under Part II of this Act respecting a sample taken by an authorized officer unless the sample was taken in the manner prescribed by seeds regulations.

(2) Seeds regulations shall provide for samples being divided into a least two parts, and for one of the parts being given to the owner of the seeds or to such other person as may be prescribed by seeds regulations, and shall provide for a third part of the sample to be retained for production in all cases where use may be made of it by the court under this section.

(3) A certificate in the form prescribed by seeds regulations purporting to be issued by an authorized officer and stating that a sample was taken in the prescribed manner shall be sufficient evidence of the facts stated in the certificate.

(4) If part of a sample taken by an authorized officer is sent to a testing station, it shall be so sent as soon as practicable after the sample is taken.

(5) A copy of a certificate issued by a seed analyst stating the result of a test of part of a sample taken by an authorized officer shall be sent to the person to whom any other part of the sample is given.

(6) In any proceedings for an offence under this Act in respect of seeds which have been sampled by an authorized officer, the accused shall not be required to plead to the charge less than fourteen days from the day upon which he has received a copy of any certificate of a seed analyst which the prosecutor intends to adduce as evidence.

(7) In proceedings for including in a statutory statement false particulars concerning matters which are, under seeds regulations, to be ascertained for the purposes of the statement by a test of the seeds, if any sample of the seeds has been taken by an authorized officer the part of such sample required to be retained as mentioned in subsection (2) of this section shall be produced at the hearing, and the court, if it thinks fit on the request of either party, shall cause the part so produced to be sent to a seed analyst who shall transmit to the court a certificate of the result of a test of that part of the sample.

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(8) A sample taken in accordance with the Seeds Act prior to its repeal by this Act shall be deemed to have been taken in the prescribed manner for the purposes of subsection (1) of this section.

Tampering with samples

14. If any person –

- (a) tampers with any seeds so as to procure that a sample taken in the manner prescribed by seeds regulations for any purpose does not correctly represent the bulk of the seeds; or
- (b) tampers with any sample so taken; or
- (c) with intent to deceive, sends, or causes or allows to be sent, to any testing station, to be tested for any purpose, a sample of seeds which to his knowledge does not correctly represent the bulk of the seeds,

he shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

PART IV CONTROL OF IMPORTS AND PREVENTION OF CROSS-POLLINATION

Control of imports of potentially deleterious seeds

15.(1) If it appears to the Minister that it is necessary or expedient that he should be able to exercise the powers conferred by this section for the purpose of preventing the importation into Kenya –

- (a) of seeds which, if used as reproductive material in Kenya, will or may cause deterioration of domestic types of plants by cross-pollination, physical admixture or other means; or

- (b) of seeds which are unsuitable for use in Kenya because they are of a type or variety which have been developed in countries with different climate, different hours of daylight or other different conditions.

he may, by order, apply this section to seeds of any type or variety specified in the notice.

(2) An order under this section may provide for excepting from a specified type or variety any description of seeds defined in any manner and, in particular, any description of seeds defined by reference to the country or territory where they were grown or from which they have been consigned to Kenya, or any seeds which are the subject of a prescribed certificate.

(3) The importation of all seeds to which this section applies is prohibited except under the authority, and in accordance with the terms, of a licence granted by an authorized officer, and any person who imports or attempts to import any seeds in contravention of this subsection shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) A licence under subsection (3) of this section may be, to any degree, general or specific, and may be modified or revoked by an authorized officer at any time.

(5) An order under this section shall be made after consultation with representatives of such interests as appear to the Minister to be concerned and may –

- (a) include provision as to the methods by which importers may be required to prove whether consignments of seeds fall within any exception specified in the order;
- (b) prescribe the form and manner in which applications are to be made for licences and the form of licences, and the fees payable therefor;
- (c) contain such other transitional, supplemental and incidental provisions as appear to the Minister to be expedient.

Prevention of injurious cross-pollination

16.(1) This section shall have effect for the purpose of maintaining the purity of seeds of any types and varieties of plants specified in an order under subsection (2) of this section.

(2) The Minister may by order bring this section into force in an area in any part of Kenya in which persons are engaged in growing crops of seeds of any type or variety of plant specified in the order, if he is satisfied that in that area satisfactory arrangements, whether legally enforceable or not, have been made for locating such crops so as to isolate them from crops or plants which might cause injurious cross-pollination.

(3) An order under this section –

- (a) shall be made after consultation with the persons responsible for the arrangements mentioned in subsection (2) of this section, and with persons representative of such other interests as appear to the Minister to be concerned;

- (b) shall state the types and varieties of plants which are to be protected by the order;
 - (c) shall specify the kinds and crops of plants which are to be controlled in the area to which the order relates; and
 - (d) may relate to more than one area and, if so, may make different provisions under paragraphs (a) and (b) of this subsection in respect of the different areas to which it relates.
- (4) If in any area where this section is in force controlled crops or plants are growing and, on application made in accordance with the Second Schedule to this Act, the Minister is satisfied –
- (a) that they are causing, or may cause, injurious cross-pollination in a protected crop which is being grown in that area; and
 - (b) in the case of controlled crops or plants which are not self-sown, that the person growing them did not give to the persons responsible for the arrangements mentioned in subsection (2) of this section such notice of his intention to grow those crops or plants to the flowering stage as would have enabled them to take any appropriate steps for altering the arrangements,

he may serve a notice on the occupier of the land where the controlled crops or plants are growing requiring him to take such steps as may be specified in the notice for the purpose of preventing any of the controlled crops or plants from causing or continuing to cause injurious cross-pollination in the protected crops.

(5) If the person served with a notice under subsection (4) of this section does not comply with any requirement in the notice, the Minister may authorize any person to enter on the land concerned and do what the person so served has failed to do or, if in the opinion of the Minister that would no longer serve the purpose for which the notice was served, may also take such action as appears to the Minister appropriate for that purpose, and where, when the default occurs, further obligations remain under the notice, the Minister may also take such action as appears to him appropriate to meet the purposes for which those further obligations were imposed.

(6) Where the Minister takes any action under subsection (5) of this section he may recover from the person on whom the notice was served a sum equal to the reasonable cost incurred by the Minister or his agents in taking such action, and such sum shall be a civil debt recoverable summarily by the Minister.

(7) Any person authorized in writing by the Minister may, on production if so required of his authority, at all reasonable times enter on any land, but not into any dwelling-house, in an area where this section is in force for the purpose of ascertaining whether controlled crops or plants are growing on the land or of inspecting and taking samples of any controlled crops or plants growing on the land.

(8) A notice under this section or the Second Schedule to this Act may be served by leaving it at, or sending it by pre-

paid registered post to, the last known address of the person on whom it is to be served, and if it is not practical after reasonable inquiry to ascertain his name and address, the notice may be served by addressing it to him as “the occupier” of the land and affixing it or a copy of it to some conspicuous object on the land.

(9) Without prejudice to any other proceedings under this section, any person who –

- (a) unreasonably fails to comply with any requirement in a notice under this section; or
- (b) obstructs or impedes, or attempts to obstruct or impede, a person acting in the exercise of the powers conferred by subsection (5) of this section,

shall be guilty of an offence.

(10) In this section, and in the Second Schedule to this Act –

“controlled crops or plants” means crops, grown for any purpose, of the types of varieties of plants which are protected by an order in the area concerned, and such additional kinds of crops or plants, whether grown or self-sown and whether of those or any other types or varieties, as may be specified in such order for the purposes of this definition;

“the occupier”, in the case of unoccupied land, means the person entitled to the occupation of the land;

“protected crop” means a crop of a type or variety of plant, which is protected by an order in the area concerned, being a crop grown for the purpose of producing seeds.

PART V – PLANT BREEDER’S RIGHTS

Grant of plant breeder’s rights

17.(1) Rights may be granted in accordance with this Part in respect of plant varieties of such species or groups as may be specified by a scheme made by the Minister under this Part.

(2) Subject to this Part, plant breeder’s rights shall be granted by the authorized officer if he is satisfied that the conditions laid down in section 18 of this Act are fulfilled.

(3) The Third Schedule to this Act shall have effect for the protection of an applicant for plant breeder’s rights pending a decision on his application.

(4) Before making a scheme, the Minister shall consult representatives of such organizations as he deems to have a substantial interest in the matter to be regulated and of such other interests as appear to the Minister to be concerned, and any scheme –

- (a) may make different provisions for different species or groups of plant varieties;
- (b) may contain such supplemental, incidental and transitional provisions as appear to the Minister to be appropriate;

(c) may be varied or revoked by a subsequent scheme,

so, however, that the variation or revocation of a scheme shall not prejudice a grant of plant breeder's rights made before the variation or revocation takes effect.

Conditions for grant of rights

18.(1) The conditions laid down in this section must be fulfilled as respect both the applicant for plant breeder's rights and the plant variety to which the application relates.

(2) An applicant for plant breeder's rights must be the person who bred or discovered the plant variety concerned, or his successor in title, and the provisions of Part I of the Fourth Schedule to this Act shall have effect regarding priorities between two or more persons who have independently bred or discovered a plant variety.

(3) A plant variety must conform to the rules set forth in Part II of the Fourth Schedule to this Act.

(4) References in this section and in the Fourth Schedule to this Act to the discovery of a plant variety are references to the discovery of a plant variety growing in the wild or occurring as a genetic variant, whether artificially induced or not.

Period for which rights exercisable

19.(1) A scheme shall prescribe the period, not exceeding twenty-five years, for which plant breeder's rights are to be exercisable.

(2) As regards fruit trees and their root-stocks, forest and ornamental trees and grapevines, the period prescribed under this section shall be not less than eighteen years, and a statement in a scheme to the effect that a species or group of plant varieties fall under this subsection shall be conclusive.

(3) As regards plant varieties not coming within subsection (2) of this section, the period prescribed under this section shall be not less than fifteen years.

(4) Subject to the following provisions of this section, the period for which plant breeder's rights are exercisable shall be the relevant period prescribed by the scheme concerned commencing on the day on which the grant of the plant breeder's rights takes effect.

(5) If, on the application of the holder of any plant breeder's rights, an authorized officer is satisfied that, for reasons beyond the control of the applicant, such holder has not been adequately remunerated by the grant of the rights, such officer may extend the period for which such rights are exercisable, subject to such restrictions, conditions and other provisions, if any, as the officer concerned may think appropriate so, however –

(a) that the period as extended shall not exceed twenty-five years; and

(b) where the period as extended is less than twenty-five years, no further extension shall be made under this subsection.

(6) A holder of plant breeder's rights may at any time make an application to the authorized officer offering to surrender his rights and if, after notice of the application has been given in the prescribed manner, and after the prescribed procedure for hearing any person on whom the right to object has been conferred by the regulations has been followed, such officer is satisfied that the rights may properly be surrendered, he may accept the offer and terminate the rights concerned.

(7) The Minister shall cancel the grant of plant breeder's rights in any case where he is satisfied –

(a) that any information submitted in the application for the grant of the rights, or any information submitted by or on behalf of the applicant in connexion with the application, was incorrect and that, if the authorized officer had known that such information was incorrect, he would have refused the grant; or

(b) that facts have been discovered which, if known before the grant, would have resulted in the grant being refused on the grounds that rule 1 or rule 2 in Part II of the Fourth Schedule to this Act was not satisfied in respect of the plant variety concerned.

(8) The authorized officer shall revoke or, if it has begun, terminate, any extension under subsection (5) of this section if at any time he is satisfied that any information submitted in the application under that subsection or any information submitted by or on behalf of the applicant, was incorrect and that, if the true facts had been known before the extension had been allowed, the application would have been refused.

Nature of rights

20.(1) Subject to the provisions of this Part, and of any other written law, the holder of plant breeder's rights in a plant variety shall have the exclusive right to do, and to authorize others to do, the following –

(a) produce reproductive material of the variety for commercial purposes, to commercialize it, to offer it for sale, to export it, to stock it for any of these purposes and to have any or all of their activities performed.

(b) in the circumstances described in the Fifth Schedule to this Act, to exercise the other rights therein specified.

and subject to the provisions of this section, infringements of plant breeder's rights shall be actionable at the suit of the holder of such rights, and in any proceedings for such an infringement all such relief, by way of damages, injunction, account or otherwise shall be available in any corresponding proceedings in respect of infringements of other proprietary rights:

Provided that in so far as the production and the stocking for production of the propagating material of a variety for which plant breeder's rights have been granted, is undertaken solely for research purposes or for developing new varieties in the

breeder's own nursery this shall not be deemed to be at variance with the exclusive right of the holder of a plant breeder's rights.

(2) Paragraph (a) of subsection (1) of this section shall not apply to the sale of reproductive material which is not in Kenya when it is sold, but if any person purchases such material outside Kenya and uses it in Kenya as reproductive material, the purchase and subsequent use shall together constitute an infringement of the plant breeder's rights and the purchaser shall be liable to be proceeded against in respect of such infringement, and reference in this subsection to using reproductive material of a plant variety as reproductive material in Kenya includes reference to so disposing of that material (otherwise than by way of sale) while it is in Kenya as to make it available for use in Kenya as reproductive material.

(3) There shall be no right to damages in respect of an infringement of plant breeder's rights –

- (a) if the person infringing the rights was not aware, and had no reasonable grounds for suspecting, that the plant variety in question was the subject of such rights; or
- (b) in a case where the infringement consists of a breach of conditions attached to a licence, if that person had no notice of any of those conditions,

but the person who would, but for the foregoing provisions of this subsection, be entitled to damages shall be entitled to an account of profits in respect of the infringement, and to payment of any amount found due on the account, whether any other relief is granted under this section or not.

(4) The holder of plant breeder's rights may, in authorizing other persons to exercise his exclusive rights, impose any conditions, limitations or restrictions which may be imposed by the holder of any other kind of proprietary rights, and plant breeder's rights shall be assignable in the same manner as other kinds of proprietary rights.

(5) A sale of the reproductive material of a plant variety which is the subject of plant breeder's rights, being a sale by the holder of such rights or by any other person authorized to grant a licence in those rights –

(a) shall not imply that the seller authorizes the purchaser to produce the reproductive material sold to him.

(6) In this section and in the Fifth Schedule to this Act, references to selling reproductive material include references to any transaction effect in the course of business –

- (a) under which the property in the reproductive material passes from one person to another; or
- (b) under which such material is made over by one person to another in pursuance of a contract under which such material is made over by one person to another in pursuance of a contract under which he will use the material for growing further reproductive material or other crops,

and paragraph (b) of this subsection shall apply irrespective of whether the contract provides that the property in the crop will be in the person to be regarded as the seller, or the person to be regarded as the purchaser, or a third party, and any reference to purchasing or a purchaser shall be construed accordingly.

Protected plant varieties

21.(1) The Minister may by regulations under this section provide for the selection of names for plant varieties which are the subject of applications for plant breeder's rights and for the keeping of a register of the names so selected.

(2) The Minister shall cause notice of all entries made in the register, including alterations, corrections and erasures, to be published in the Gazette and in such other manner as appears to the Minister to be convenient for bringing such entries to the attention of all persons connected therewith.

(3) After a section of the Index has come into force, the part of the register dealing with the class of plant varieties to which that section relates shall, so far as practicable, be combined with the Index.

(4) Without prejudice to the generality of subsection (1) of this section, regulations made thereunder may in particular –

- (a) prescribe the circumstances in which representations may be made regarding any decision as to the name to be registered in respect of any plant variety;
- (b) make provision for the publication or service of notices of decisions which are to be made;
- (c) prescribe the times at which, and the circumstances in which, the register may be inspected by members of the public.

(5) If, where a name is registered under this section for a plant variety, any person uses that name, or a name so nearly resembling it as to be likely to deceive or cause confusions, in selling –

- (a) reproductive material of a different plant variety within the same class; or
- (b) where under paragraph 1 of the Fifth Schedule to this Act plant breeder's rights in the first-mentioned plant variety have been extended to material other than reproductive material, that other material from a different plant variety within the same class,

such use of the name shall be a wrong actionable in proceedings by the holder of plant breeder's rights in such first-mentioned plant variety, but it shall be a defense to a claim for damages in any such proceedings that the defendant took all reasonable precautions against committing a wrong of the kind alleged and had not, when using the name, any reason to suspect that it was wrongful.

(6) In this section, “name” includes any designation, and references to plant varieties as being within the same class are references to them as all being within one class which is either –

- (a) a class consisting of all plant varieties of the species or groups prescribed by any one scheme; or
- (b) any other class of plant varieties prescribed for the purposes of this subsection by any scheme.

Maintenance of reproductive material

22.(1) The provisions of this section shall apply in relation to all plant varieties except such as fall within any species or group which is excluded from such provisions by a scheme.

(2) Every holder of a plant breeder’s rights shall ensure that, throughout the period for which the rights are exercisable, he is in a position to produce to an authorized officer reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics taken into account when the rights were granted in respect of the variety.

(3) It shall be the duty of every holder of plant breeder’s rights to afford to an authorized officer all such information and facilities as such officer may request for the purpose of ascertaining whether such holder is fulfilling his obligation under subsection (2) of this section, including facilities for the inspection of the measures taken for the preservation of the plant variety.

(4) If at any time the Minister is satisfied that any holder of plant breeder’s rights –

- (a) has failed to comply with any request made under subsection (3) of this section; or
- (b) is no longer in a position to fulfil his obligations under subsection (2) of this section,

he shall cancel the grant of such rights.

Licences

23.(1) The holder of plant breeder’s rights has the obligation to stock the market with propagating material at reasonable prices and he may do this by himself or he may grant such licences as are necessary to stock the market with propagating material on reasonable terms and conditions.

(2) The obligation referred to in subsection (1) of this section, shall include the obligation of the holder of plant breeder’s rights to furnish the licence with the propagating material he needs at a reasonable price if he is to make proper use of the licence.

(3) If the Minister, upon the application of any person, is of the opinion that the stocking of the market with propagating material is not adequately ensured, he shall communicate this to the holder of the plant breeder’s rights, stating the reasons

for his opinion and shall enable him to remedy the situation and, if the holder fails to do so, grant any such rights as respects the plant variety in the form of a compulsory licence to interested parties.

(4) A scheme may prescribe for the purposes of this subsection a period or periods for any species or group, or different species or groups, of plant varieties and a compulsory licence in respect of such plant varieties shall not have effect during the specified period commencing on the date upon which the plant breeder’s rights concerned were granted.

(5) In entertaining applications for settling the terms of compulsory licences, the Minister shall endeavor to secure that the plant variety is available to the public at reasonable prices, that is distributed as widely as possible, that it is maintained in quality, and that there is reasonable remuneration for the holder of the plant breeder’s rights concerned.

(6) A compulsory licence may include terms obliging the holder of the plant breeder’s rights to make reproductive material available to the licensee.

(7) Where –

- (a) the holder of the plant breeder’s rights to which an application under subsection (3) of this section relates is, or is represented by, a society or other organization which has as its main object, or one of its main objects, the negotiation or granting of licences to exercise plant breeder’s rights, either as the holder of the rights or as agent for holders; and
- (b) an organization, whether claiming to be representative of persons requiring licences or not, or a person whether requiring a licence or not, applies to the Minister for an opportunity of making representations concerning the application, and the Minister is satisfied that such organization or person has a substantial interest in the application and that the application involves issues which may affect other applicants for compulsory licences under this section; and
- (c) if the applicant under paragraph (b) of this subsection is an organization, the Minister is satisfied that it is reasonably representative of the class of persons which it claims to represent,

the Minister shall afford to the organization or person applying under paragraph (b) of this subsection an opportunity of making representations to him and of being heard by the Minister or by a person appointed by the Minister for that purpose.

(8) The Minister, before granting a compulsory licence shall satisfy himself that the applicant is financially and otherwise in a position, and intends, to exploit the rights to be conferred upon him in a competent and businesslike manner, and that the grant of such licence will not compromise the maintenance of the reproductive material concerned.

(9) Without prejudice to the remedies available to the holder of a compulsory licence by the taking of proceedings in any court, the Minister may, if it is represented to him by any per-

son that the holder of the plant breeder's rights concerned has failed to meet any obligation imposed upon him by such licence, and if he is satisfied that the representatives are correct, cancel the grant of such plant breeder's rights.

(10) The Minister may at any time, on application made by any person concerned, extend or limit, or vary in any other respect, or revoke, a compulsory licence.

(11) A compulsory licence may be granted whether or not the holder of the plant breeder's rights concerned has previously granted licences to the applicant for the compulsory licence or to any other person, and shall not be an exclusive licence.

(12) If and so far as any agreement purports to bind any person not to apply for a compulsory licence it shall be void.

Regulations

24.(1) The Minister may make regulations for the purposes of this Part, and without prejudice to the generality of that power, such regulations may provide for –

- (a) applications for the grant of plant breeder's rights;
 - (b) the charging of fees, including periodical fees payable by the holders of plant breeder's rights;
 - (c) anything which is to be prescribed under this Part.
- (2) Regulations under this section may permit an authorized officer –
- (a) in the case of any failure to pay any fees payable in connection with an application to such officer under this Part, to refuse such application; and
 - (b) in the case of a failure of a holder of plant breeder's rights to pay any fees payable in connection with those rights, to cancel the grant of those rights,

with or without a right of appeal, and the regulations may provide for the restoration of the application or grant if the failure to pay fees is made good.

- (3) Regulations under this section may, in particular –
- (a) prescribe the information and facilities to be afforded by an applicant for the grant of plant breeder's rights, and the reproductive and other plant material to be submitted at the time of the application or subsequently;
 - (b) prescribe the tests, trials, examinations and other steps to be taken by such applicant or an authorized officer before a grant of plant breeder's rights is made, and the time within which any such steps are to be taken;
 - (c) restrict the making of repeated applications upon the same subject;

- (d) prescribe the circumstances in which representations may be made upon any matter under this Part;
- (e) make provision for the keeping of registers and records of matters under this Part, and the rectification of such registers and records, and prescribe the circumstances in which they may be inspected by members of the public;
- (f) make provision for the publication or service of notice of applications and decisions made under this Part;
- (g) prescribe the manner of dealing with objections to applications under this Part.

False representation and information

25.(1) Any person who, knowingly or recklessly, makes any false representation that he is entitled to exercise any plant breeder's rights, or any rights derived therefrom, shall be guilty of an offence, and for the purposes of this subsection it shall be immaterial whether or not the plant variety in respect of which such representation is made is actually the subject of any plant breeder's rights.

- (2) If any information –
- (a) submitted in any application under this Part for a decision against which an appeal lies to the Tribunal; or
 - (b) submitted by or on behalf of the applicant in connection with any such application; or
 - (c) given in pursuance of a request made under subsection (3) of section 22 of this Act.

is false in any material particular and the person giving such information knows that it is false or gives the information recklessly he shall be guilty of an offence.

Application of Part to Government

26.(1) If any servant or agent of the Government infringes any plant breeder's rights or makes himself liable to civil proceedings under section 21 of this Act, and the infringement or wrong is committed with the authority of the Government, then civil proceedings in respect of the infringement or wrong shall lie against the Government.

- (2) Subject to subsection (1) of this section, no proceedings shall lie against the Government by virtue of the Government Proceedings Act in respect of the infringement of plant breeder's rights or of any wrong mentioned in the said subsection.
- (3) This section shall have effect as if contained in Part II of the Government Proceedings Act.

Interpretation of Part

27.(1) References in this Part to reproductive material are references to reproductive material of plant varieties and include references –

- (a) to seed for sowing;
 - (b) to seed potatoes and other vegetative propagating material;
 - (c) to whole plants, as well as parts of plants, where these may be used as reproductive material; and
 - (d) to ornamental plants and parts thereof when used commercially as propagating material in the production of ornamental plants and cut flowers.
- (2) References in this Part to an applicant for plant breeder's rights include, where the context allows, references to the applicant's predecessors or successors in title.

PART VI – THE SEEDS AND PLANTS TRIBUNAL

Establishment of Tribunal

28.(1) There shall be a Seeds and Plants Tribunal in relation to which the provisions of the Sixth Schedule to this Act shall apply.

(2) The Minister may make regulations under this section in respect to any appeals to the Tribunal under this Act, or under any regulations made under this Act, for all or any of the following purposes –

- (a) to authorize any person, in addition to the appellant and the person whose decision is appealed against, to appear and be heard as parties to any appeal;
- (b) to provide for suspending, or authorizing or requiring the suspension of, the operation of any decision pending the final determination of any appeal in respect thereof;
- (c) to provide for the publication of notices or the taking of other steps for securing that persons affected by any such suspension are informed thereof.

Jurisdiction of Tribunal

29.(1) Any person aggrieved by a decision –

- (a) to refuse any application under subsection (4) of section 8 or subsection (3) of section 9 of this Act; or
- (b) to allow or refuse the grant of plant breeder's rights; or
- (c) to cancel the grant of plant breeder's rights; or
- (d) to allow or refuse an application under subsection (5) of section 19 of this Act; or
- (e) to terminate an extension granted under the said subsection (5); or
- (f) to allow or refuse any application made under subsection (1), (7) or (8) of section 23 of this Act,

may appeal to the Tribunal against such decision.

(2) Any regulations made under this Act may confer rights of appeal to the Tribunal from decisions taken under such regulations.

(3) There shall be a final appeal to the High Court, from a decision of the Tribunal, on any question of law, but subject thereto a decision of the Tribunal shall be final and conclusive.

(4) The Tribunal shall, in addition to any other jurisdiction conferred upon it, hear and determine any matters agreed to be referred to the Tribunal by an arbitration agreement relating to the infringement of plant breeder's rights, or to matters which include such infringement, but subsection (3) of this section shall not apply in relation to any jurisdiction conferred by this subsection.

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(5) The fees payable to the Tribunal for acting under any arbitration agreement shall be such as the Tribunal may determine, and nothing in section 11 of the Arbitration Act, 1968, shall be taken as applying to the Tribunal.

(6) In this section, "arbitration agreement" has the meaning assigned to it in section 2 of the Arbitration Act, 1968.

PART VII – GENERAL

Powers of entry

30.(1) The powers of entry conferred by subsection (3) of this section may be exercised for the purpose of exercising –

- (a) the further powers conferred by subsections (4) and (5) of this section; or
- (b) any powers of calling for, inspecting or taking copies of records or other documents conferred by seeds regulations;

or for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, including any vehicle or vessel, any contravention of any of the provisions of this Act or any regulations made thereunder.

(2) This section shall not authorize entry into any premises which are used exclusively as a private dwelling.

(3) An authorized officer may, on production if so required of proof of his authority, at all reasonable hours enter any premises –

- (a) which he has reasonable cause to believe to be used for any purpose of a business in the course of which seeds are sold, whether the sale is by wholesale or retail, and whether the person conducting it acts as principal or agent; or
- (b) on which he has reasonable cause to believe that there is any seed which has been sold and which are to be delivered, or are in the course of delivery, to the purchaser,

and the power of entry under this paragraph may be exercised when the seed is in transit in the course of delivery to the purchaser, and in particular when it is in any vehicle or vessel in the course of delivery.

- (4) An authorized officer may, on any premises, including a vehicle or vessel, which he has power under this section to enter, examine any seed which he finds there and may without payment take samples of any seed so found.
- (5) The owner of any seeds which are offered or exposed for sale, or are stored for the purposes of sale, or any person authorized to sell such seeds, may be required by an authorized officer to deliver to him such statement, if any, as the person selling them would, by seeds regulations, be obliged to deliver to a purchaser of such seeds, and to deliver it within the time prescribed for such a statement.
- (6) This section shall apply with regard to –
- (a) all kinds of seeds in respect of which an offence may, under any circumstances, be committed under seeds regulations; and
- (b) seeds of all plant varieties which are within any class to which a section of the Index which has come into force relates.
- (7) Any person who –
- (a) fails to comply with any requirement made under subsection (5) of this section; or
- (b) gives a statement under that subsection which is false in any material particular; or
- (c) obstructs or impedes, or attempts to obstruct or impede, any authorized officer acting in exercise of the powers conferred by this section,

shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

Institution of criminal proceedings

31.(1) Notwithstanding any provision of any other written law as to time limits in criminal proceedings, where a part of sample has been tested by a seed analyst proceedings for including in a statutory statement false particulars concerning the matters which, under seeds regulations are to be ascertained for the purposes of the statement by a test of the seeds, being proceedings relating to the seeds from which the sample was taken, may be brought at any time not more than six months from the time when the sample was taken.

(2) If, at any time before a test is begun to ascertain whether a part of a sample of seeds is of a specified variety or type, and not more than six months after the sample was taken, the person to whom any other part of the sample was given, or any other person, is notified in writing by an authorized officer, that it is intended to test the seeds and that, after the test, pro-

ceedings may be brought against that person for including in a statutory statement a false statement that seeds were of a specified variety or type, then, notwithstanding any provision of any other written law as to time limits in criminal proceedings, any such proceedings relating to the seeds from which the sample was taken may be brought against the person so notified at any time not more than two years from the time when the sample was taken, and a certificate purporting to be issued by an authorized officer and stating that a person was so notified shall be sufficient evidence of that fact.

(3) Proceedings for an offence relating to a statutory statement which has been delivered to a purchaser of seeds, or relating to seeds which have been sold and delivered, may be brought before a court having jurisdiction at the place of delivery of the statement or seeds.

General provisions as to offences

32.(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Proceedings for any offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a person before the appropriate court in Kenya having jurisdiction in the place where that person is for the time being.

General penalty

33. Any person guilty of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Supplemental provisions as to regulations

34. Any regulations under this Act –
- (a) may make different provision for different types or classes of plant varieties, for different seasons of the year, and for other different circumstances;
- (b) may contain such supplemental, incidental and transitional provisions may appear to the Minister to be expedient;
- (c) may provide penalties not exceeding those mentioned in section 33 of this Act for any breach of the regulations.

Repeal. Cap. 326.

35. The Seeds Act is hereby repealed.

FIRST SCHEDULE

PROCEDURE FOR COMPILING AND AMENDING THE INDEX

1.(1) As a first step in compiling a section of the Index, the Minister shall, after consultation with representatives of such organizations as he deems to have a substantial interest in the matter to be regulated and of such other interests as appear to him to be concerned, cause to be prepared a provisional list of plant varieties which are within the class of plant varieties to which the section of the Index will relate, and the seeds of which are in commercial use as reproductive material.

(2) The Minister shall publish the provisional list in the Gazette and in such other manner as appears to him appropriate for ensuring that the persons particularly concerned have their attention drawn to the list, and shall publish with the list a notice giving the necessary information as to the manner in which and time within which applications seeking additions, corrections and erasures may be made.

(3) The Minister may bring a section of the Index into force notwithstanding that the section is incomplete because the Minister has not come to a determination in regard to any particular plant varieties.

2. The Minister may, at any time after a section of the Index comes into force, entertain applications from persons seeking additions, corrections and erasures in that section, and may make such additions, corrections and erasures as may appear to him to be called for notwithstanding that no application has been made in that behalf.

3.(1) If at the time when a name, or more than one name, is being selected for a plant variety for the purposes of the Index, there are one or more names which are for the time being in use for that plant variety, that name, or names from among those names, shall be preferred unless the Minister is satisfied that there are special circumstances calling for the use of a name or names not so in use.

(2) The Minister may require a person making an application for the inclusion of a plant variety in a provisional list, or in a section of the Index, to submit a name for that plant variety.

(3) If it appears to the Minister that no name in use or submitted to him is suitable, he may refuse to include the plant variety in the Index until a name has been submitted which is, in his opinion, suitable.

4. The Minister may require persons making applications which involve the question whether two or more plant varieties are distinct, to supply information and material for carrying out examinations, trials and tests.

5.(1) The Minister, after consultation with representatives of such interests as appear to him to be concerned, may make regulations –

- (a) governing the form and manner in which applications may be made under this Schedule;
- (b) prescribing the period within which a person making application under this Schedule is to supply material or information in support of his representations;
- (c) prescribing the quantity and kind of material to be so supplied;
- (d) prescribing the manner in which applications are to be made in respect of any matter connected with the alteration of the Index, and for the information to be afforded and the material to be submitted, in connection with any such application.

(2) Regulations under this paragraph may prescribe the fees to be charged for carrying out examinations, tests and trials and for making searches in the Index.

SECOND SCHEDULE

CROSS-POLLINATION INJURING PROTECTED CROPS

1. An application under section 16 of this Act seeking the issue of a notice under that section shall be in writing.

2. Before deciding whether to issue a notice in accordance with the application, the Minister shall serve a notice on the occupier of the land concerned giving him particulars of the application and informing him of his right to make representations.

3. The Minister shall, if so requested within such time as may be specified in the notice under paragraph 2 of this Schedule, afford to the applicant and to the occupier of the land an opportunity of appearing before and making representations to a person appointed by the Minister for the purpose.

4. In deciding whether to issue a notice in accordance with the application, and in deciding the terms thereof, the Minister shall have regard –

- (a) to the need to maintain, in the interests of the public, the purity of the seed of the protected crop;
- (b) to the degree to which the injurious cross-pollination will or may diminish to the value of the protected crop or disturb arrangements made for the purpose of maintaining the purity of the seeds thereof;
- (c) to the value, if any, of the controlled crops or plants and the inconvenience or disturbance involved in complying with a notice.

THIRD SCHEDULE

PROTECTION OF APPLICANT FOR RIGHTS
WHILE APPLICATION IS PENDING

1.(1) An applicant for the grant of plant breeder's rights shall, in his application, state whether he is also applying for a direction by the authorized officer under this Schedule in respect of the plant variety to which the application relates.

(2) An applicant applying for a protective direction shall include in the application an undertaking to the effect that, subject to the exceptions in subparagraph (3) of this paragraph, in the period between the making of the application and the time when the question whether the application is to be allowed or refused is finally determined (or, if the undertaking is discharged under this Schedule at an earlier time, until that time) no plants of the plant variety, and no material forming part of, or derived from plants of that variety, will be offered or exposed for sale or sold in Kenya by the applicant or with his consent.

(3) An undertaking under this paragraph shall not prevent the applicant from making an offer for sale or sale which in the period before the application would be permitted by subparagraphs (3), (4) or (5) of paragraph 2 of Part II of the Fourth Schedule to this Act, or the exposure for sale of material where an offer for sale of that material would be so permitted.

(4) If the authorized officer is satisfied that the applicant has duly given the undertaking, and that he has furnished that officer with all such information, facilities and material as that officer may require for the purposes of the application for the grant of plant breeder's rights, the officer may, if he thinks fit, give a protective direction.

(5) The authorized officer shall not give a protective direction if there is any evidence before him tends to show that the applicant, or the person whose successor in title the applicant claims to be, is not the person who bred or discovered the plant variety to which the application relates.

2.(1) While a protective direction is in force, anything which, if the plant breeder's rights to which the application in question relates had been granted, would have constituted an infringement of those rights, or would under subsection (5) of section 21 of this Act have been actionable in proceedings by the holder of those rights, may be the subject of proceedings under this paragraph.

(2) Proceedings may be brought under this paragraph, by the applicant in whose favour the protective direction is made, against any person for an injunction requiring that person, while the protective direction is in force, not to do any of the things which may be the subject of proceedings under this paragraph, and the court may, if it thinks fit, grant an injunction accordingly on such terms as appear to the court to be just.

(3) An undertaking not to institute or prosecute proceedings under this paragraph, whether or not any consideration is given for the undertaking, shall be void, and if the authorized officer is satisfied that an applicant in whose favour a protective direction has been given has given any such undertaking, whether or not the undertaking be enforceable at law, he shall withdraw the protective direction.

(4) A protective direction shall cease to be in force when the question whether the application for the grant of plant breeder's rights is to be allowed or refused is finally determined, or at such earlier time as is provided under the provisions of this schedule.

3.(1) The authorized officer may at any time, if in all the circumstances it appears to him to be just, withdraw a protective direction, and shall do so if he is satisfied that there has been a breach of the undertaking given by the applicant under paragraph 1 of this Schedule.

(2) The undertaking given by an applicant under paragraph 1 of this Schedule shall cease to be binding when the protective direction is withdrawn.

4.(1) If at any time the authorized officer is satisfied that there has been a breach of the undertaking given under paragraph 1 of this Schedule, he may refuse the application for the grant of plant breeder's rights.

(2) If there is a breach of an undertaking given under paragraph 1 of this Schedule, the applicant shall be guilty of an offence.

FOURTH SCHEDULE

PART 1 – PRIORITIES BETWEEN APPLICANTS
FOR RIGHTS

1.(1) If the plant variety was independently bred or discovered by two or more persons, the first of those person who makes an application relating to that variety in the form prescribed for the purposes of this Schedule by regulations under section 24 of this Act shall be the person entitled to the grant of plant breeder's rights.

(2) As between two persons making applications on the same date, the one who was first in a position to make a valid application for the grant of plant breeder's rights, or would have been first in that position if Part V of this Act and the relevant scheme had always been in force, shall be the person entitled to a grant of plant breeder's rights.

2.(1) For the purposes of paragraph 1 of this Part, an application duly made in a country to which this paragraph applies when the application is made shall be treated as if duly made under this Act if the conditions in this paragraph are satisfied.

(2) No account shall be taken under this paragraph of an application made in a country outside Kenya at a time when the plant variety to which the application relates was not one falling within a species or group prescribed by a scheme as a species or group in respect of which plant breeder's rights may be granted.

(3) Not more than twelve months after the application duly made in that country, the applicant must make his application under this Act in the form prescribed for the purpose by regulations under section 24 of this Act, being a form which includes a claim in respect of the priority of the application in the said country.

(4) Within three months of the application under this Act, a copy of the documents constituting the application in the said country, certified as correct by the authority in that country to whom the application is made, must be submitted to the authorized officer.

(5) If applications have been made in more than one country to which this paragraph applies, and have been so made at different dates, the period of twelve months mentioned in subparagraph (3) of this paragraph shall be taken from the earlier or earliest of those applications, and subparagraph (4) of this paragraph shall be construed accordingly.

(6) If priority is established for an application by virtue of this paragraph after a grant of plant breeder's rights have been made in pursuance of an application against which the priority is established, the authorized officer shall cancel that grant.

(7) The Minister may, by notice in the Gazette, designate any country or territory as a country to which this paragraph applies, and may from time to time vary or revoke any such order but not so as to prejudice applications already made in Kenya or elsewhere.

3. Regulations under section 24 of this Act may provide for the forfeiture of any priority obtained under this Schedule if the person making the application does not, within a period prescribed by the regulations, satisfy all the requirements which are to be satisfied by an applicant before a grant of plant breeder's rights can be made.

PART II – RULES FOR GRANT OF RIGHTS

1.(1) The plant variety must –

- (a) be sufficiently distinguishable by one or more important morphological, physiological or other characteristics from any other variety whose existence is a matter of common knowledge at the time of the application, whatever may have been the origin, artificial or natural, of the initial variation from which it resulted;
- (b) be sufficiently varietal pure;
- (c) be sufficiently uniform or homogenous having regard to the particular features of its sexual reproduction or vegetative propagation;
- (d) be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the application prescribes a particular cycle of reproduction or multiplication, at the end of each cycle.

(2) For the purposes of subparagraph (1) of this paragraph, common knowledge may be established by reference to plant varieties already in cultivation or exploited for commercial purposes, or those included in a recognized commercial or botanical reference collection, or those of which there are precise descriptions in any publication.

2.(1) Subject to this Schedule, in the period before the scheme by virtue of which the application is made came into force, no plants of the variety, and no material forming part of, or derived from, plants of the variety may have been offered for sale or sold by any person in Kenya or elsewhere.

Provided that the restriction imposed by this subparagraph shall not apply to sales or offers for sale made outside Kenya during the period of six years in the case of trees and vines, and four years in the case of others, ending with the date of the application.

(3) Subparagraphs (1) and (2) of this paragraph shall not apply –

- (a) to an offer for sale of a stock of material of any plant variety in connexion with an offer for sales of the title to apply for the grant of plant breeder's rights in respect of that plant variety; or
- (b) to any sale of material to any plant variety if at the time of the sale or subsequently the purchaser becomes the person entitled to make an application for the grant of plant breeder's rights in respect of that plant variety.

(4) Where an applicant makes, or proposes to make, arrangements under which some other person uses reproductive material of the plant variety under the control of the applicant for the purpose of increasing the stock of the applicant, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from that reproductive material, and any unused reproductive material, becomes or remains the property of the applicant, then subparagraphs (1) and (2) of this paragraph shall not apply –

- (a) to a sale or offer for sale of the reproductive material by the applicant to any such person as part of such arrangements; or
- (b) to a sale by such person to the applicant of the material produced, directly or indirectly, from that reproductive material.

3.(1) Where an application for the grant of plant breeder's rights is made at a time not later than twelve months after this Part comes into operation, and the applicant does not ask for a protective direction, subparagraphs (1) and (2) of paragraph 2 of this Part shall not apply to an offer for sale or sale in the period beginning six months before this Part comes into operation and ending with that time if the authorized officer is satisfied that the applicant took all steps reasonably open to him to ensure that any person to whom material of the plant variety has been offered or sold during the said period has been informed in writing that an application for a grant of plant breeder's rights may be made in respect of the variety.

(2) Where an application is allowed by virtue of this paragraph, subsection (2) of section 23 of this Act shall not apply to any compulsory licence granted in respect of the plant variety to which the application relates.

FIFTH SCHEDULE

PLANT BREEDER'S RIGHTS IN SPECIAL CASES

Sale of cut blooms, fruits, etc

1.(1) If it appears to the Minister that, in the case of any species or group of plant varieties, plant breeders will not receive adequate remuneration unless they have control over the production or propagation of the plant variety in Kenya for the purpose of sales of cut blooms, fruit or some other part or product of plants of the variety, and the control will be of substantial benefit to the plant breeders, he may, by a scheme, provide that, in respect of any plant variety of the species or group prescribed by the scheme, plant breeder's rights shall include the exclusive right to, and to authorize others to, produce or propagate that variety for the purpose of selling such parts or products of the variety as may be prescribed by the scheme.

(2) A scheme conferring any such rights may also provide that plant breeder's rights shall include the exclusive right to, and to authorize others to, sell the parts or products of the variety in relation to which the rights are extended in so far as they are obtained by the seller from plants of the variety which the seller has himself produced or propagated.

Use of reproductive material for production of certain other plant varieties

2. Plant breeder's rights shall include the exclusive right to, and to authorize others to, use the reproductive material of the plant variety concerned for the purpose of producing, in order to sell it, the reproductive material of another plant variety if, but only if, the nature of that other variety is such that repeated production of the reproductive material of that other variety is not possible without the repeated use of reproductive material of the plant variety to which the rights relate.

SIXTH SCHEDULE

THE SEEDS AND PLANTS TRIBUNAL

The Chairman

1.(1) The Minister shall appoint a chairman for the Tribunal who shall be a barrister, a solicitor or an advocate.

(2) The appointment of the chairman shall be for such term as the Minister may specify in the instrument of appointment, and a person who ceases to hold office as chairman shall be eligible for re-appointment.

(3) The chairman may at any time resign his office by notice in writing to the Minister.

(4) If the Minister is satisfied that the chairman is unfit to continue in office or incapable of discharging his duties, he may revoke the appointment of the chairman.

2. In the case of the temporary absence or inability to act of the chairman, the Minister may appoint any other person who is a barrister, solicitor or an advocate to act as deputy for the chairman, and a person so appointed shall, when so acting, have all the functions of the chairman.

The panels

3.(1) The Minister shall draw up and from time to time revise—

- (a) a panel of persons who have wide general knowledge in the field of agriculture, horticulture or forestry; and
- (b) a panel of persons who have specialized knowledge of particular species or groups of plants.

and the members of the Tribunal, other than the chairman and deputy chairman, shall be selected from those panels in accordance with this Schedule.

(2) The power to revise the panels shall include power to terminate a person's membership of either of them.

Remuneration

4. The Minister may pay to members of the Tribunal such remuneration and such allowances as the Minister may, with the approval of the Treasury, determine.

Procedure

5.(1) The jurisdiction of the Tribunal shall be exercised by three members consisting of the chairman and a member selected from each of the two panels, and references in this Act to the Tribunal shall be construed accordingly.

(2) The member from the panel of those with specialized knowledge shall be selected for his knowledge of the subject matter of a particular case or class or group of cases.

(3) The members of the panels who are to deal with any case shall be selected as follows –

- (a) the Minister may select a member or members to deal with that particular case or class or group of cases; or
- (b) the Minister may select for a class or group of cases members from amongst whom members to deal with any particular case shall be selected by the chairman.

(4) Any decision of the Tribunal shall be taken, in the event of a difference between the members, by votes of the majority.

(5) If, after the commencement of the hearing of any proceedings before the Tribunal, one of the three members of the Tribunal becomes incapable of continuing to hear the proceedings on account of sickness or for any other reasons, the proceedings may, with the consent of all parties thereto, be continued before the remaining two members of the Tribunal and heard and determined accordingly, but if the two members differ in opinion the case shall, on the application of any party to the proceedings, be re-argued before and determined by the Tribunal as ordinarily constituted.

(6) A decision of the Tribunal shall not be questioned on the ground that a member was not validly appointed or selected.

6.(1) The Tribunal, in exercising its statutory jurisdiction, may order any party to the proceedings to pay to any other such party either a specified sum in respect of the costs incurred by the second-mentioned party, or the taxed amount of those costs, and any costs required to be taxed for that purpose shall be taxed in the same manner and on the same scale as costs in a subordinate court of the first class.

The Chief Justice may make rules as to the procedure in connexion with proceedings before the Tribunal in exercise of its proceedings before the Tribunal in exercise of its statutory jurisdiction and as to the fees chargeable in respect of those proceedings, and in particular the rules may make provision –

- (a) as to the circumstances in which the Tribunal need not, or shall not, sit in public;
- (b) as to the form of any decision of the Tribunal;

- (c) as to the time within which such proceedings are to be instituted;

- (d) as to the evidence, and the form thereof, which may be required or admitted;

- (e) as to the examination of the parties and of witnesses;

- (f) as to the procedure for securing the attendance of witnesses and the production of documents.

(3) The chairman of the Tribunal shall have power to administer oaths to witnesses in any proceedings before the Tribunal.

(4) In this paragraph, “statutory jurisdiction” means any jurisdiction of the Tribunal exercisable by or under this Act or any other written law, except for its jurisdiction in any references under an arbitration agreement.

THE SEEDS AND PLANT VARIETIES (PLANT BREEDER'S RIGHTS) REGULATIONS, 1994*

its proceedings before the Tribunal in exercise of its statutory jurisdiction and as to the fees chargeable in respect of those proceedings, and in particular the rules may make provision –

- (a) as to the circumstances in which the Tribunal need not, or shall not, sit in public;
- (b) as to the form of any decision of the Tribunal;
- (c) as to the time within which such proceedings are to be instituted;
- (d) as to the evidence, and the form thereof, which may be required or admitted;
- (e) as to the examination of the parties and of witnesses;
- (f) as to the procedure for securing the attendance of witnesses and the production of documents.

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ARRANGEMENT OF REGULATIONS

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THE SEEDS AND PLANT VARIETIES ACT

(Cap. 326)

IN EXERCISE of the powers conferred by sections 21, 24 and 28 (2) of the Seeds and Plant Varieties Act, the Minister for Agriculture, Livestock Development and Marketing makes the following Regulations:-

THE SEEDS AND PLANT VARIETIES (PLANT BREEDER'S RIGHTS) REGULATIONS, 1994

Citation

1. These Regulations may be cited as the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, 1994.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“breeder” means a person who discovers or breeds a new plant variety and includes his successor in title;

“Committee” means the Plant Breeder's Rights Committee established by Regulations 3;

“grant” means a grant of plant breeder's rights;

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

“licensee” means a person licensed to exercise plant breeder's rights;

“plant” means a plant in the plant kingdom and includes flowering and non-flowering plant species;

“prescribed fee” means the fee prescribed by regulation 29;

“protective direction” means a direction by the authorized officer under the Third Schedule to the Act;

“reproductive material” means the reproductive part of a plant and includes seeds and other vegetative propagating material such as a whole plant or parts thereof.

* As adopted and published on November 25, 1994, in the Official Kenya Gazette, - Supplement No. 73.

The Plant Breeder's Rights Committee

3.(1) There shall be a Committee to be known as the Plant Breeder's Rights Committee, which shall consist of—

- (a) the Director of Agriculture, who shall be chairman;
- (b) the Director, Kenya Agriculture Research Institute;
- (c) the Director, Kenya Industrial Property Office;
- (d) the General Manager, Horticultural Crops Development Authority;
- (e) the Director, Kenya Forestry Research Institute;
- (f) the Director, National Seed Quality Control Service;
- (g) one representative of seed merchants; and
- (h) one representative of plant breeders.

(2) The Committee may co-opt a number of members not exceeding three to represent such interests as it may from time to time determine.

Functions of the Committee

4. The functions of the Committee shall be—

- (a) to develop plant breeder's rights policy;
- (b) with the approval of the Minister, to review plant breeder's rights regulations and standards as may from time to time be required;
- (c) to make recommendations on the registration of grantees;
- (d) to moderate cases of appeal by aggrieved persons;
- (e) to review and recommend appropriate plant breeder's rights;
- (f) to perform such other duties as may from time to time be assigned by the Minister.

Meetings of Committee

5. Subject to the directions of the Minister, the Committee shall meet at least once in every year.

Application for a grant

6.(1) An application for a grant shall be in Form I in the Schedule and shall be accompanied by the prescribed fee.

(2) Where the application is by a successor in title to the breeder, it shall be accompanied by—

- (a) the original or a certified copy of the deed of assignment; or
 - (b) the original or a certified copy of the certificate of grant of letters of administration; or
 - (c) such documentary evidence as is in the opinion of the authorized officer sufficient to establish the title of the application;
- (3) A person who—
- (a) has a substantial interest in the plant variety in respect of which the application is made; or
 - (b) is in a position to adduce evidence which is likely to be material to the consideration of the application,

may on application to the authorized officer, by afforded an opportunity of making representations concerning the application.

Forfeiture of right to grant

7.(1) A person entitled to a grant by virtue of paragraph 9 of the Fourth Schedule to the Act may forfeit such right if, on being served with notice by the authorized officer, he fails to make a valid application under regulation 4 within the period specified in the notice.

- (2) A notice under paragraph (1) shall be for such period not exceeding thirty days, as the authorized officer may specify.
- (3) A person aggrieved by an act or omission of the authorized officer under this regulation may appeal to the Tribunal within fourteen days.

Certificate of grant

8. A certificate of a grant shall be in Form II in the Schedule and shall be issued on payment of the prescribed fee.

Application for extension of the period of grant

9.(1) An application for extension of the period of a grant under section 19 (5) of the Act shall be in Form III in the Schedule and shall be in Form III in the Schedule and shall be accompanied by the prescribed fee.

- (2) Subject to paragraph (3), an application under this regulation shall be made not more than eighteen but not less than nine months before the date of expiry of the grant.
- (3) The authorized officer may accept a late application under this regulation if satisfied that the applicant's failure to lodge it within the prescribed period was due to circumstances beyond his control:

Provided the application is lodged at least three months before the date of expiry of the grant.

- (4) A person who—
- (a) is licensed to exercise any rights in the plant variety to which the application relates, or who otherwise has a substantial interest in the variety; or
- (b) is in a position to produce evidence which is likely to be material to the consideration of the application and any person or organization representing such licensee or person so interested,

may on application to the authorized officer, be afforded an opportunity to make representations concerning the application.

Application for compulsory licence

10.(1) An application for a compulsory licence shall be in Form IV in the Schedule and shall be accompanied by the prescribed fee.

(2) In addition to a person or organization entitled to make representations by virtue of section 23 (7) of the Act, a person licensed to exercise any right in the plant variety to which the application relates may apply to the Minister for an opportunity to make representations concerning the application.

(3) An application for the revocation, extension, limitation or other variation of the terms of a compulsory licence shall be in writing addressed to the authorized officer.

Application for protective direction

11.(1) An application for a protective direction shall be in Form V in the Schedule and shall be accompanied by the prescribed fee.

(2) A certificate of a protective direction shall be in Form VI in the Schedule, and shall be issued on payment of prescribed fee.

Withdrawal of protective direction

12.(1) If it is intended to withdraw a protective direction otherwise than on the request of the holder, the authorized officer shall give the holder thirty days' notice of the intention.

(2) A notice under paragraph (1) shall be in writing setting out the reasons for the intended withdrawal.

Application for surrender of grant

13.(1) An application for the surrender of a grant shall be in Form VII in the Schedule and shall be accompanied by the prescribed fee.

(2) A licensee of any right in the plant variety to which the application relates or a person who otherwise has a substantial interest in the variety may, on application to the authorized officer, be afforded an opportunity to make representations concerning the application.

Provision of information or evidence in support of application

14.(1) A person making an application under these Regulations shall provide the authorized officer with such information or evidence in support of the application as the authorized officer may require.

(2) In the case of an application for a grant, the applicant shall deliver to the authorized officer, or avail to him for examination, the reproductive or other plant material of the plant variety to which the application relates.

(3) In the case of any other application, the applicant shall deliver to the authorized officer the reproductive or other plant material as the authorized officer may require.

(4) The reproductive or other plant material delivered or availed by the applicant for examination by the authorized officer under this regulation shall be of such quality and description as authorized officer shall specify.

(5) If in the course of examination of any plant material delivered or availed to the authorized officer under this regulation any part thereof is lost or damaged, or is found to be unhealthy or otherwise unsuitable, the authorized officer may require the applicant to supply a further quantity of the plant material.

(6) The applicant shall at all reasonable times avail to the authorized officer such facilities as may be necessary for the inspection of plants, plant material trial grounds or other premises to which the application relates.

(7) The authorized officer may require an applicant to undertake trials or tests in connection with the plant variety to which his application relates, at such times and in such manner as the authorized officer may determine.

Refusal of repeated applications

15.(1) If an application under regulations 9, 10 or 13 is made within 12 months of a decision by the Minister or the authorized officer on the same matter, the Minister or the authorized officer may, if in his opinion the application lacks merit, refuse it.

(2) Before refusing an application under paragraph (1), the Minister or the authorized officer shall afford the applicant an opportunity to make representations thereon.

Notification of application

16.(1) The Minister shall notify every application under regulations 6, 9, 10 and 13 in the Gazette.

- (2) A notice under paragraph (1) shall specify—
- (a) the categories of the persons entitled to make representations concerning the application under the Act or these Regulations;
 - (b) the period within which an application for an opportunity to make representations may be made; and,
 - (c) any matters on which the Minister or the authorized officer should be satisfied by a person or organization applying for an opportunity to make representations.

Application for opportunity to make representations

17.(1) A person or organization entitled by virtue of the provisions of the Act or these Regulations to make representations concerning any matter may apply in the prescribed form, to the Minister or the authorized officer, for an opportunity to make representations.

- (2) An application under paragraph (1) shall be—
- (a) in Form VIII in the Schedule;
 - (b) accompanied by the prescribed fee; and
 - (c) lodged within the period specified in regulation 16.
- (3) The Minister or the authorized officer shall, on receipt of an application under this regulation, afford the applicant an opportunity of making representations to him in writing, or of being heard by him or by a person deputed by the Minister for that purpose.

Hearing of representations

18.(1) The Minister or the authorized officer shall appoint a date and place for the hearing of representations by any applicant under regulation 17.

- (2) In appointing the date and place for hearing, the Minister or the authorized officer shall have regard to—
- (a) the convenience of the applicant and any witnesses;
 - (b) the situation of any land or premises to be viewed in connection with the application; and
 - (c) any other relevant circumstances.
- (3) The Minister or the authorized officer shall give the applicant not less than 30 days' notice of the hearing.

(4) The applicant shall, at least 14 days before the date appointed for the hearing, deliver to the authorized officer two copies of any document intended to be relied on or tendered as evidence at the hearing.

- (5) The applicant may appear in person at the hearing or be represented by a person of his own choice.
- (6) At the hearing, the applicant or his representative may—
- (a) give evidence;
 - (b) call witness;
 - (c) subject to paragraph (7), produce any document; and
 - (d) cross-examine any witnesses called.

(7) No document shall be relied on or produced in evidence under paragraph (6) unless copies thereof are delivered to the authorized officer in accordance with paragraph (4).

(8) The Minister or the authorized officer may require any witness called at the hearing to give evidence on oath, affirmation or otherwise and may for that purpose administer oaths or affirmations.

(9) Subject to the directions of the Minister or the authorized officer in consultation with the applicant, the hearing shall be held in public.

(10) Before making his decision, the Minister or the authorized officer shall take into consideration any written representations made on the matter under regulation 17 (3).

(11) The Minister or the authorized officer shall give the applicant notice of his decision in writing, and shall specify therein the reasons for the decision.

(12) An applicant aggrieved by a decision of the Minister or the authorized officer under this regulation may appeal to the Tribunal within 14 days.

(13) Subject to regulation 19, a decision of the Minister or the authorized officer shall take effect on such date as he directs.

Appeals to the Tribunal

19.(1) In appointing the time and place for hearing an appeal under section 29 (1) (d), (e) or (f) of the Act, or under these Regulations, the Tribunal shall have regard to the matters specified in regulation 18 (2).

(2) Subject to paragraph (3), the operation of any decision appealed from shall be suspended pending the final determination of the appeal.

(3) Notwithstanding any appeal, the operation of a decision to extend the duration of a grant shall not be suspended if the duration of the initial grant expires before the final determination of the appeal.

Cancellation of grant

20.(1) The Minister shall give the grantee 30 days' notice of intended cancellation of a grant under section 19 (7) of the Act.

(2) A notice under paragraph (1) shall be in writing setting out the grounds for intended cancellation.

Proposal of name for plant variety

21(1) The authorized officer may require an applicant for a grant to propose a name for the plant variety to which the application relates within such time as he may specify.

(2) The authorized officer may reject a name proposed under paragraph (1) if the name—

- (a) is similar to that of a plant variety of the same class as the variety in respect of which the application is made either—
 - (i) a class consisting of the plant varieties of the species or groups prescribed by a scheme under Part V of the Act; or
 - (ii) a class prescribed for the purpose of section 21 of the Act.

or the name so nearly resembles the name of any plant variety as to be likely to deceive or cause confusion as to the identity of the variety; or

- (b) is likely to deceive or cause confusion as to the characteristics or value of the plant variety or as to the identity of the breeder; or
- (c) does not conform with international usage as regards the nomenclature of cultivated plants; or
- (d) is similar to or likely to be confused with—
 - (i) a registered trade mark; or
 - (ii) a trade name used in respect of the reproductive material of any kind; or
 - (iii) products of the plant variety in respect of which the application is made; or
 - (iv) products of a plant variety of the same class as the variety in respect of which the application is made, being a class specified under paragraph 2 (a); or
- (e) is in the opinion of the authorized officer otherwise undesirable.

(3) If the authorized officer rejects a proposed name under paragraph (2), he shall so inform the applicant specifying the grounds for the rejection, and shall require him to propose another name within such time as he may specify.

(4) The Minister shall publish in the Gazette, or in such manner as he may deem appropriate notice of every proposed name that is not rejected by the authorized officer under paragraph (2).

(5) A person may, within 21 days of publication of a notice under paragraph (4), object to the approval of a proposed name on any of the grounds specified in paragraph (2).

(6) An objection under paragraph (5) shall be in writing addressed to the authorized officer.

(7) The authorized officer shall consider any objection lodged under paragraph (5) before approving the proposed name.

(8) The Minister shall notify in the Gazette every name approved by the authorized officer under this regulation.

(9) If an applicant does not comply with a request of the authorized officer to propose a name within the period specified, the authorized officer may deem the application to be abandoned.

(10) An applicant for a grant, or a grantee may at any time propose to change the name approved under this regulation.

(11) Upon a proposal under paragraph (9), the procedure for proposed names prescribed by this regulation shall apply.

Registrar of plant varieties

22.(1) The authorized officer shall maintain a register of plant varieties into which he shall enter the details relating to—

- (a) a plant variety in respect of which a grant has been made; or
- (b) a plant variety in respect of which an application for a grant is under consideration,

specified in this regulation.

(2) As regards a plant variety in respect of which a grant has been made, the authorized officer shall enter in the register—

- (a) the name of the variety;
- (b) a description of its characteristics;
- (c) the reference number under which the variety is recorded in any reference collection of plant material maintained by the authorized officer;
- (d) the name and address of the grantee;
- (e) the date and duration of the grant;
- (f) such other particulars as are in the opinion of the authorized officer necessary.

(3) As regards a plant variety in respect of which an application for grant is under consideration, the authorized officer shall enter in the register—

- (a) the proposed name of the variety;
- (b) a description of the characteristics of the variety as provided by the applicant;
- (c) the date of grant of any protective direction;
- (d) the name and address of the applicant;
- (e) such other particulars as are in the opinion of the authorized officer necessary.

Botanical description and test results of variety

23. The authorized officer shall keep a botanical description and the results of any tests or trials of a plant variety in respect of which an application for a grant is made.

Inspection of registrar and documents

24. Any person may, during working hours, inspect the register and any documents lodged with or kept by the authorized officer, and may on payment of the prescribed fee, obtain a copy of the register or other document.

Address of grantee or applicant

25.(1) A grantee or a person making any application under these Regulations shall give to the authorized officer an address for service of any documents required to be served upon him.

(2) A grantee or applicant who changes his name or address shall forthwith notify the authorized officer.

Extension of period for compliance

26. The Minister or authorized officer may, on application extend the period set for compliance with any regulation if in the circumstances he deems it reasonable to do so.

Amendment of register records

27.(1) If the authorized officer receives notification of change of name or address of a grantee or applicant under regulation 26, he shall amend the register accordingly.

- (2) Where—
 - (a) the approved name of a variety is changed under regulation 22; or

- (b) the period of a grant expires or is extended; or
- (c) a grant is surrendered or cancelled,

the authorized officer shall also make such other amendments as may be necessitated by any information supplied to him.

Translation of documents

28. Where a document required to be submitted to the Minister, or authorized officer in connection with any matter is in a language other than the English language, it shall, unless the Minister or the authorized officer otherwise directs, be accompanied by a translation thereof in the English language.

Fees

29. The following fees shall be payable to the authorized officer for the purposes of the Act and these Regulations—

| TYPE OF FEES | US\$ |
|--|------|
| Application for a grant of PBR | 200 |
| Application for a protective direction | 40 |
| For technical evaluation of a variety | 600 |
| Annual fees for grant | 200 |
| Purchase of a report from a testing authority in another country | 320 |
| Replacement of lost or destroyed certificate | 40 |
| Claim of priority from a preceding application outside Kenya | 20 |
| For change of an approved denomination | 80 |
| Reinstatement of an abandoned application on petition | 80 |
| Surcharge for late payment | 60 |
| Application for a compulsory license | 70 |
| Application for extension of the period of a grant | 100 |
| Inspection of register and documents | 40 |
| Duplicate page of register or documents | 0.5 |
| Grant for PBR certificate | 240 |

REPUBLIC OF MOLDOVA

LAW ON THE PROTECTION OF PLANT VARIETIES* No. 915 / 1996 (as amended in 2000)

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* Adopted on June 11, 1996, and amended on June 23, 2000. The amendments entered into force on December 14, 2000. Translation provided by the Authorities of the Republic of Moldova.

This Law shall govern both the economic and the personal non-economic relations arising out of the creation, use and legal protection of plant varieties and shall apply to botanical genera and species of plants the list of which shall be approved by the Government of the Republic of Moldova.

CHAPTER I

GENERAL PROVISIONS

Article 1

Basic Terms

For the purposes of this Law:

“*variety*” means a plant grouping created by selection, which grouping:

- conforms to the criteria of patentability;
- presents the characteristics of a given genotype or combination of genotypes;
- can be distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics;
- may be represented by a single plant or plants, or by a single part or parts thereof provided that such part or parts may be used for the reproduction of entire plants of the variety;

“*categories of a variety*” means clone, line, hybrid, population;

“*material of a variety*” means whole plants, seeds, seedlings, bulbs or parts of plants intended for reproduction or for marketing for purposes other than reproduction of the variety;

“*applicant*” means a natural person or a legal entity who has filed an application for the grant of a variety patent under this Law;

“*patent owner*” means a person to whom a variety patent has been granted;

“*Register of Plant Varieties*” means the register containing the plant varieties that have been approved by the National Council for Plant Varieties of the Republic of Moldova and recommended for cultivation in the Republic of Moldova;

“*Register of Variety Patents*” means the register containing the plant variety patents in which the rights are protected in the Republic of Moldova;

“*Member State*” means a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised on November 10, 1972, October 23, 1978, and March 19, 1991.

Article 2

Legal Protection of a Variety

(1) Rights in a variety shall be recognized and protected on the territory of the Republic of Moldova and shall be certified by the grant of a variety patent (hereinafter referred to as “the patent”).

(2) The patent shall certify the priority of the variety, the authorship of the breeder and the exclusive right of the patent owner to use the variety.

(3) The term of the patent shall be

- a) 25 years from the date of the decision to grant the patent for varieties of trees, fruit trees and grapevine;
- b) 20 years from the date of the decision to grant the patent for varieties of other species.

(4) At the request of the patent owner the term of the patent may be extended for a period of 10 years.

Article 3

Scope of the Legal Protection of a Variety

The scope of the legal protection of a variety conferred by a patent shall be determined by the sum of essential characteristics of the variety as specified by the applicant in the description thereof.

Article 4

Authorities Responsible for the Legal Protection of Varieties

(1) The following authorities, established by the Government, shall carry out the State policy in the field of legal protection and use of varieties in the Republic of Moldova: the National Council of the Republic of Moldova for Plant Varieties (hereinafter referred to as “the Council”), the State Commission of the Republic of Moldova for Variety Testing (hereinafter referred to as “the State Commission”), and the State Agency on Industrial Property Protection of the Republic of Moldova (hereinafter referred to as “the Agency”).

(2) The Council shall be the principal authority in determining the State policy in the field of plant variety approval. Its decisions shall constitute the basis for the authorizations to use the varieties in the Republic of Moldova.

(3) The State Commission shall be the working body of the Council and an expert body to the Agency, in charge of carrying out tests in order to determine the economic value of the varieties and their compliance with the conditions of patentability prescribed in this Law. The State Commission shall keep the Register of Plant Varieties.

(4) The Agency shall receive and process applications for the grant of variety patents (hereinafter referred to as “the application”), carry out the examination thereof, effect registration, publish official information, grant patents and keep the Register of Variety Patents.

CHAPTER II

PATENTABILITY OF VARIETIES

Article 5

Conditions of Patentability of Varieties

- (1) The plant variety shall be patentable only where it is
- a) new,
 - b) distinct,
 - c) uniform and
 - d) stable.
- (2) The plant variety shall have a denomination in compliance with the conditions laid down in Article 18.

Article 6

Novelty

- (1) A plant variety shall be deemed to be new if, at the date of filing of the application for the grant of a patent with the Agency, material 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 commercial exploitation of the variety:
- a) in the territory of the Republic of Moldova, earlier than one year before that date;
 - b) in the territory of any other State, earlier than six years in the case of varieties of trees, fruit trees and grapevines, or, in the case of varieties of other species, earlier than four years before the said date.

Article 7

Distinctness

- (1) A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application with the Agency.
- (2) The existence of a variety may be established by the fact that it has been used, entered in an official register or a reference collection, or has been the subject of a precise description in a publication or in an application for the grant of a patent, provided that the application leads to the grant of a patent.

Article 8

Uniformity

A plant variety shall be deemed to be uniform if, subject to the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9

Stability

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

CHAPTER III

VARIETY AUTHORS AND PATENT OWNERS

Article 10

Author of a Variety

- (1) A person whose creative work resulted in the breeding, discovery or improvement (hereinafter referred to as “breeding”) of a variety shall be recognized as the author (the breeder) thereof.
- (2) Where a new variety is the result of joint creative work of two or more breeders, all such breeders shall be recognized as joint authors thereof. The conditions for exercising the rights in the variety shall be determined by agreement between them.
- (3) The authorship of a variety shall be an inalienable personal right. That right shall enjoy protection of unlimited duration.
- (4) The breeder shall have the right to be identified in the application for the grant of a patent, in the granted patent and in all publications relevant to his variety.

Article 11

Right to Obtain a Patent

- (1) The right to obtain a patent shall belong to the breeder or his successor in title.
- (2) Where the variety has been bred by several breeders, the right to obtain a patent shall belong to all breeders jointly. The waiving of the right to obtain a patent by one or more of the breeders shall not affect the right of the others, provided that they take the actions specified in this Law.
- (3) The right to obtain a patent for a variety bred under the conditions specified in Article 12 shall belong to the employer unless otherwise provided in the employment contract.

Article 12

Varieties Bred in the Line of Duty

(1) A variety shall be deemed to have been bred in the line of duty if, in breeding the variety, the breeder:

- a) carried out duties entrusted to him by virtue of his position;
- b) carried out duties specifically entrusted to him for the purpose of breeding a new variety;
- c) made use of material or financial means made available to him by the employer or a person who commissioned the breeding of the variety, as well as of knowledge and expertise gained during the employment.

(2) Where the notion that a variety has been bred in the line of duty is applicable only with regard to one or several breeders, the provisions of this Article shall only apply to such breeders, their employers or the persons who commissioned the breeding of the variety.

(3) Where the employer, within 60 days after having been notified by the breeder of the breeding of the new variety, has not filed an application for a patent, has not assigned his right to file an application to another person or has not instructed the breeder in writing to keep the new variety secret, the breeder shall acquire the right to file an application and to be granted a patent in his own name. The employer shall in that case be entitled on a preferential basis to be granted a non-exclusive license to use the variety.

(4) The right of a staff member of the State Commission or the Agency either to obtain a patent or to be identified as a co-author shall require confirmation by a decision of the Council for the duration of his employment contract with these organizations and one year thereafter.

(5) The person who has bred a new variety in the line of duty shall be entitled to be identified as author in conformity with Article 10 and shall have the right to an equitable remuneration. The amount of remuneration shall be determined on the basis of the profits derived from the use of the new variety during the term of the patent, as well as the economic value of the variety.

(6) The amount of remuneration shall be stipulated in a contract between the breeder and the employer or the patent owner and may not be less than 15% from any proceeds derived by the employer or the patent owner from the use of the new variety, including earnings derived from the sale of licenses.

(7) The remuneration shall be paid to the breeder by the employer or, where the employer is not the patent owner, by the employer and the patent owner jointly. Where the amount of remuneration has been found unreasonably inadequate in relation to the actual contribution by the breeder and the actual value of the variety, the amount of remuneration may be increased at the breeder's request. Where the employer fails to increase the remuneration, the dispute shall be referred to the courts.

Article 13

The Exclusive Right of the Patent Owner

(1) The patent owner holds the exclusive right on the protected patent and on the new variety of plant, authorizing him to exploit, under the condition that in the course of exploitation it does not infringe the rights of other patent owners, to use it and prohibit the third parties to perform the following acts with respect to the material of the variety:

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

(2) The provisions of paragraph (1) of this Article shall also apply to:

- a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b) varieties which are not sufficiently distinguishable from the protected variety;
- c) varieties whose seed production requires the repeated use of the protected variety.

(3) A variety shall be deemed to be essentially derived from another (initial) variety when, being clearly distinguishable from the initial variety,

- a) it is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- b) it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences caused by the use of such methods as selection of a natural or induced mutant, selection of a variant plant from the initial variety, backcrossing, or transformation by genetic engineering.

(4) Where there are several owners of the same patent, their relations with regard to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the owners shall be entitled to use the variety at his discretion and to institute infringement proceedings against any person who uses the variety without the authorization of the patent owners, but may not renounce, assign or license the patent without the consent of the other owners.

Article 14

Limitation of Patent Owner's Rights

- (1) The right of the patent owner shall not extend to the use of the material of the protected variety:
- a) for private use;
 - b) for scientific research and experiments or for non-commercial purposes;
 - c) as initial material for the purpose of breeding other varieties, and, except where the provisions of Article 13(1) and (2) apply, acts in respect of such other varieties.
- (2) The right of the patent owner shall not extend to the material of the protected variety, or of a variety referred to in Article 13(2), or any part of the plants of such a variety obtained directly from the material of that variety, which has been sold or otherwise 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 propagation of the variety in a country which does not protect the varieties of the genus or species to which the variety belongs, except where the exported material is intended for processing for final consumption purposes.
- (3) Activities of public authorities concerning the enforcement of industrial property laws shall not be regarded as infringement of the owner's rights, under the condition that the public authority in question acted in goodwill.

Article 15

Assignment of Rights

- (1) The right to own a patent, the rights arising out of the registration of a patent application with the Agency and the rights afforded by a patent may be assigned to any natural person or legal entity.
- (2) Transfer of rights may be performed either through an assignment contract, exclusive or nonexclusive license, or through succession, legal or testamentary inheritance.
- (3) Rights transferred through an assignment contract under paragraph (2) shall also have effect for third parties and shall determine the alteration of the legal status of the patent immediately as the contract is registered with the Agency.
- (4) Any provisions containing exclusive grantback conditions, conditions containing challenges to validity and coercive package licensing as well as any other conditions limiting fair competition based on professional principles shall not be included in license contracts.

CHAPTER IV

OBTAINING A PATENT

Article 16

Filing of the Patent Application

- (1) The application shall be filed with the Agency by the person entitled to obtain a patent under Article 11 of this Law.
- (2) The applicant may file a patent application with the competent authorities of other member States prior to the grant of a patent by the competent authority of the member State where he filed the first application.
- (3) Applications may be filed in person or through a representative in industrial property.

Article 17

Patent Application

- (1) The patent application shall relate to one variety only. It shall be filed on an official form and shall state the particulars of the breeder and the applicant.
- (2) The patent application shall include:
- a) a proposal for a denomination for the variety;
 - b) the description of the variety (technical questionnaire);
 - c) the applicant's declaration, on his responsibility, that the claimed variety satisfies the requirements of Article 6;
 - d) an evidence of the priority claimed, where relevant;
 - e) a power of attorney, where the application is filed through a representative in industrial property;
 - f) proof of payment of the prescribed fee.
- (3) The filing date of an application shall be deemed to be the date of receipt by the Agency of the request and the documents specified in paragraph (2)(a) and (b) of this Article.
- (4) The documents specified in paragraph (2)(c) to (f) of this Article may be submitted by the applicant within two months from the filing date of the patent application.
- (5) The patent application and the documents shall be written in Moldavian.
- (6) The Agency may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 18

Variety Denominations

- (1) The variety shall be designated by a denomination which will be its generic designation.
- (2) The denomination must enable the variety to be identified. It
 - a) may not consist solely of figures except where this is an established practice for designating varieties;
 - b) must not be liable to be misleading or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
 - c) must be different from every denomination which designates an existing variety of the same plant species or of a closely related species;
 - d) must be used even after the expiration of the term of the patent.
- (3) Where a patent application is filed for the same variety in the Republic of Moldova and in other countries, the variety must be submitted under the same denomination to all the countries concerned.
- (4) If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (5) of this Article, is obliged to use it, the Agency may require the breeder to submit another denomination for the variety.
- (5) Any person who, within the territory of one of the member States, offers for sale or markets the material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the term of the patent protecting that variety, except where the provisions of paragraph (4) of this Article apply.
- (6) When a variety is offered for sale or otherwise marketed, it shall be permitted to associate a trademark, trade name or other similar indication which enables the variety to be identified.
- (7) The denomination of the variety shall be entered into the Register of Plant Varieties at the same time as the patent is granted.

Article 19

Right of Priority

- (1) The priority of the variety shall be determined by the filing date of the application with the Agency.
- (2) Priority may be determined by the filing date of the first application in a member State where the application for which priority is claimed (subsequent application) has been filed with the Agency within 12 months from the said date.

(3) In order to establish priority, the applicant shall have to furnish to the Agency, within three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(4) Failure to comply with the time limits provided for in paragraphs (2) and (3) of this Article or to pay the prescribed priority fee shall cause the priority claim not to be recognized.

(5) The filing of another patent application, the publication of information on the variety or the use of the variety that is the subject of the first application, within the period provided for in paragraph (2) of this Article, shall not constitute a ground for rejecting the subsequent application and shall not give rise to any third-party right.

Article 20

Examination of the Patent Application

(1) The Agency shall, within the framework of the examination of the patent application, carry out a preliminary examination of the application and a examination as to form.

(2) In the course of the examination as to form, within one month, the Agency shall satisfy itself that all the documents under Article 17 of this Law have been filed with the Agency. Under a positive outcome, the Agency shall enter the data concerning the application in the National Patent Applications Register for New Plant Varieties.

(3) Within the framework of the preliminary examination, the Agency shall, within a period of three months following the filing date of the patent application:

- a) verify that the application includes all the documents specified in Article 17;
- b) verify that the documents comply with the prescribed conditions;
- c) verify that the claimed variety complies with the conditions prescribed in Article 6;
- d) verify that the variety denomination complies with the conditions prescribed in Article 18;
- e) determine the priority attaching to the variety, if applicable.

(4) The Agency may invite the applicant to furnish the missing documents or further elements of information, and the applicant shall be obliged to furnish them within two months from the date of receipt of the invitation. If the applicant fails to do so within the prescribed time limit and does not file a request for extension of the said time limit, the application shall be deemed to have been withdrawn.

(5) Where the preliminary examination finding is that the denomination of the variety does not comply with the conditions prescribed in Article 18, the applicant shall be invited to submit to the Agency another denomination within two months.

(6) In the event that the patent application meets the prescribed requirements, the Agency shall notify the applicant of the termination of the preliminary examination.”;

(7) Where the applicant disagrees with the decision taken by the preliminary examiners, he may, within three months following the date of receipt of the decision, lodge an appeal with the Board of Appeals of the Agency.

(8) The Agency shall publish the particulars of the application in the Official Gazette of Industrial Property (hereinafter referred to as “the Official Gazette”) after the expiration of three months from the date of registration of the patent application. The list of the particulars to be published shall be determined by the Agency.

(9) Upon completion of the examination as to form, the Agency shall provide the State Commission with a copy of the documents.

Article 21

Testing of the New Variety

(1) The State Commission shall carry out the testing of the new variety as to its compliance with the conditions of distinctness, uniformity and stability in its variety testing centers, experimental stations, specialized institutes, laboratories and specialized services in accordance with methodologies and within the periods prescribed by the State Commission in conformity with international standards.

(2) The applicant shall furnish to the State Commission, free of charge, any seeds and propagating material required for the purposes of testing.

(3) The applicant shall be required to pay the prescribed fee for carrying out the testing of the variety.

(4) Where the testing finding is that the new variety does not comply with the conditions prescribed in Articles 7 to 9, the State Commission shall decide not to recognize the variety; the breeder and the Agency shall be notified of the decision in writing. The breeder shall have the right to lodge, within three months from the date of receipt of the notification, an appeal with the Council, stating reasons therefor, against the decision of the State Commission.

(5) If the applicant fails to lodge the appeal within the prescribed time limit, the decision of the State Commission shall become final. In that case the Agency shall take the decision to reject the patent application.

(6) Where the new variety complies with the conditions prescribed in Articles 7 to 9, the State Commission shall provide the applicant with a precise official description of the

new variety and a certificate attesting the compliance of the variety with the conditions of patentability. The State Commission may, wherever necessary, correct the official description of the variety within the entire life of the patent. Requirements as to layout and contents of the certificate shall be specified by the State Commission.

(7) The State Commission may, for the purposes of variety testing, use the results of other official tests which have already been carried out.

Article 22

Publication of the Decision to Grant a Patent

(1) The Agency shall, within three months from the date of receipt of the certificate issued by the State Commission, and on the basis of the said certificate, take the decision to grant a patent.

(2) Within 3 months following the date of notification of the applicant, the Agency shall publish its decision to grant a patent or to reject the application in the Official Bulletin. The list of particulars shall be drawn by the Agency.

Article 23

Provisional Legal Protection

(1) During the period between the date of publication of the patent application and the date of publication of the decision to grant a patent, the variety shall be afforded provisional legal protection.

(2) Any person who, during the period of the provisional legal protection, uses the variety without the authorization of the patent owner, shall be liable to sanctions under Article 35.

(3) The patent owner shall be entitled to equitable compensation for damages from any person who, during the period of the provisional legal protection, has carried out without the authorization of the patent owner, any acts set out in Article 13.

(4) The provisional legal protection shall be deemed to have existed only where the patent has been granted.

Article 24

Withdrawal of the Patent Application

(1) The patent application may be withdrawn by the applicant by means of a written request before a decision to grant or to refuse to grant a patent has been taken.

(2) Where there are several applicants, the patent application may be withdrawn only with the consent of all applicants.

Article 25

Extension of the Time Limits

- (1) The time limits prescribed for the examination of the patent application by the Agency may, at the request of the applicant, be extended for a period of three months; such extension shall not be granted more than twice.
- (2) The request for extension of the time limits shall be subject to the payment of the prescribed fee.

Article 26

Grant of the Patent

- (1) At the same time as it publishes the decision to grant a patent, the Agency shall register the patent in the Register of Variety Patents. Within 3 months following the date of registration the Agency shall issue the patent to the person in whose name it was sought against payment of the prescribed fee and shall publish the respective information in the Official Bulletin.
- (2) The layout of the patent shall be established by the Agency in agreement with the State Commission.
- (3) After the decision to grant a patent has been taken, the patent owner shall deposit the quantity of material of the protected variety that is required for deposit at the address indicated by the State Commission.

CHAPTER V

LAPSE OF THE PATENT

Article 27

Invalidation of the Patent

- (1) A patent shall be invalidated where:
- a) the conditions prescribed in Articles 6 and 7 were not complied with at the time of the grant of the patent;
 - b) the name of the breeder or that of the patent owner contained in the patent is not correct.
- (2) No patent shall be invalidated for other reasons.

Article 28

Premature Termination of the Patent

- (1) The validity of the patent shall expire prematurely where
- a) the variety no longer complies with the conditions of uniformity and stability;

- b) the patent owner refuses to provide, at the request of the State Commission, the information, documents or material of the variety deemed necessary for verifying the maintenance of the protected variety;
- c) the patent owner does not propose, where the denomination of the variety is cancelled after the grant of the patent, another denomination;
- d) the patent owner fails to pay the prescribed maintenance fee.

- (2) Where a patent is cancelled owing to failure to pay the prescribed maintenance fee, the patent may be restored provided that, within six months from the date of cancellation, the maintenance fee is paid.

Article 29

Surrender of the Patent

- (1) The patent owner may surrender the patent by means of a written request.
- (2) The surrender of the patent by one or more of the owners shall not terminate the validity of the patent, which shall remain the property of the other owners.
- (3) The surrender of the patent shall take effect on the date of receipt by the Agency of the written request. A record of the surrender of the patent shall be entered into the Register of Variety Patents and published in the Official Gazette.
- (4) The patent owner shall be obliged to notify the breeder of his intention to surrender the patent. In such a case the breeder shall, for a period of three months from the date of the notification, have a preferential right to obtain the patent in his name.
- (5) Where the patent is the subject of a license contract, the surrender of the patent shall only be possible with the agreement of the license holder unless otherwise provided in the license contract.

CHAPTER VI

THE USE OF THE PROTECTED VARIETY

Article 30

License Contract

- (1) A variety for which a patent application has been filed or a patent has been granted may be the subject of a license contract (exclusive or non-exclusive license contract).
- (2) Under a license contract the patent owner (the licensor) grants, within the limits specified in the contract, the right to use the protected variety to another natural person or legal

entity (the licensee). In such a case the licensee undertakes to make payments to the licensor and perform any other acts specified in the contract.

(3) Under an exclusive license the licensor transfers to the licensee the exclusive right to use the variety, within the limits specified in the license contract, beyond which the licensor retains the said right.

(4) Under a non-exclusive license the licensor, while granting the licensee the right to use the variety, retains all rights afforded by the patent, including the right to grant licenses to third parties.

Article 31

Compulsory License

“(1) The court may authorize the use of a new plant variety, without the consent of the patent owner, under the following conditions:

- a) authorization of such use shall be considered on its individual merits;
- b) before such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.

Such an use may be granted in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use; the right holder shall, nevertheless, be notified as soon as reasonable practicable;

- c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
- d) such use shall be non-exclusive and non-assignable, except with the part of the enterprise or goodwill which enjoy such use;
- e) any such use shall be authorized predominantly for the supply of the domestic market;
- f) any such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. Competent authorities shall have the authority to review the case, upon grounded request, if the conditions when conditions which led to such authorization are likely to recur.
- g) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- h) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority;

- i) provisions of the paragraphs b) and e) shall not apply where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when conditions which led to such authorization are likely to recur.”;

(2) The compulsory license shall only be granted to a person who is in a position to use the variety in a competent manner and within the scope specified in the license contract, which shall confer on its owner the right to receive initial material from the patent owner.

(3) The grant of a compulsory license shall not prejudice the right of the patent owner to use the protected variety or to grant licenses to others.

(4) The decision to grant a compulsory non-exclusive license shall be notified by the holder of the license to the Agency, which shall enter it in the National Register for Variety Patents. The Agency shall also publish in the Official Bulletin the data concerning granted non-exclusive compulsory licenses granted, as well as other related information within three months following the date of the registration of their registration with the Agency.

(5) In the event of failure to undertake preliminary actions to exploit the non-exclusive compulsory license within one year following the date of the grant by the license owner, the non-exclusive compulsory license may be cancelled. The non-exclusive compulsory license may also be cancelled in the event that the license owner fails to exploit the new variety within two years following the date of the grant.

CHAPTER VII

DISPUTES

Article 32

Settlement of Disputes

(1) Disputes between natural persons and legal entities arising from the implementation of this Law shall be examined by the Board of Appeals of the Agency, the Council or in court.

(2) The Board of Appeals of the Agency shall consider appeals against:

- a) the decision to grant or to refuse to grant a patent;
- b) the decision determining the priority date;
- c) the decision to invalidate a patent;
- d) the decision to prematurely terminate a patent.

- (3) The appeals shall be examined within three months from the date of their lodging.
- (4) The Board of Appeals of the Agency shall notify the parties to the dispute of its decision within 15 days from the date thereof.
- (5) The decision of the Board of Appeals of the Agency may be challenged, within three months from the date of its notification, in court.
- (6) Any appeal against the decision taken by the State Commission under Article 21 of this Law shall be considered by the Council in accordance with the procedures and within the time limits established by the Council.
- (7) The decision of the Council may be challenged in court.
- (8) The competence of the court and of the Specialized Arbitration Centre shall extend to disputes arising from:
 - a) the authorship of a variety;
 - b) varieties bred in the line of duty;
 - c) the identification of the patent owner;
 - d) the conclusion and execution of license contracts;
 - e) infringements of the exclusive right of the patent owner;
 - f) the establishment of the act of unauthorized use;
 - g) the payment of compensation under this Law;
 - h) other disputes arising out of the protection of rights conferred by a patent.

CHAPTER VIII

LIABILITY FOR INFRINGEMENT OF THE RIGHTS OF THE PATENT OWNER

Article 33

Infringement of the Exclusive Right of the Patent Owner

Any act in respect of the protected variety for which the authorization of the patent owner is required under Article 13 and which is done without such authorization shall be deemed to constitute an infringement of the exclusive right of the patent owner.

Article 34

Action for Infringement of the Exclusive Right of the Patent Owner

- (1) The patent owner or the owner of an exclusive license may bring an action for infringement of the exclusive right of the patent owner.

- (2) The owner of a compulsory license may bring an action for infringement of the exclusive right of the patent owner where the latter has not exercised his right to bring an action within six months after having been notified by the licensee.
- (3) Any licensee shall have the right to participate in the infringement proceedings if the action has been brought by the patent owner. The same shall apply to any patent owner where the action has been brought by a licensee.
- (4) The action for infringement of the exclusive right of the patent owner may include:
 - a) an action for establishment of the act of infringement,
 - b) an action for compensation for damages sustained,
 - c) an action for identification of the infringer.
- (5) Damages may be claimed within a period of five years from the date on which the prejudice was sustained, beyond which the right to claim damages shall cease to exist, except where the said time limit has been extended.

Article 35

Liability for Infringement of the Rights of the Patent Owner

- (1) Whoever infringes the rights of the patent owner shall be liable therefor in accordance with the legislation in force.
- (2) At the request of the patent owner, the infringer shall cease the infringement and compensate the owner for the damages sustained, including lost profits as well as expenses which may include appropriate attorney's fees.
- (3) In the course of court proceedings concerning the infringement of the rights of a patent owner, the court or the Specialized Arbitration Centre may, at the request of any party or on its own initiative, decide to apply the following measures in support of the suit:
 - a) to order the seizure of the infringing seeds or any other plant material, or of the property of the infringer,
 - b) to prohibit the use, production or sale of material of the protected variety.
- (4) The following acts shall be deemed to infringe the rights of the patent owner:
 - a) the disclosure of information constituting a trade secret in relation to any variety for which an application has been filed if the information is acquired in the performance of acts under this Law, except where such information is disclosed by the Board of Appeals of the Agency or a person carrying out his official duties with a view to secure protection for the variety under this Law;

- b) the use, for material of the variety that is produced and sold, of a denomination which is different from the registered denomination of the variety;
 - c) the use, for material of a variety that is produced and sold, of the denomination of a registered variety, where it is known that the said material is not from the registered variety;
 - d) the use, for material that is produced and sold, of a denomination which corresponds so closely to a registered denomination that it is misleading;
 - e) the sale of material of a variety in respect of which a patent has not been granted, thus willfully misleading the user.
- (5) The following acts shall also be deemed to infringe the rights of the patent owner, where they are committed willfully:
- a) making a false statement;
 - b) making a false entry in the Register of Variety Patents or in reporting documents or causing it to be made therein,
 - c) forging or causing forgery of the documents required under the provisions of this Law,
 - d) furnishing documents containing false information.

CHAPTER IX

INTERNATIONAL COOPERATION

Article 36

Rights of Foreign Natural Persons and Legal Entities

Foreign natural persons and legal entities from States which are party to international conventions to which the Republic of Moldova is party shall enjoy the rights provided for in this Law on the same footing as natural persons and legal entities from the Republic of Moldova. The provisions of this Law shall also apply to bilateral agreements or on the basis of reciprocity.

Article 37

Testing and Protection of New Varieties Abroad

- (1) Natural persons and legal entities from the Republic of Moldova shall have the right to choose the State in which they wish to file an application for the grant of a variety patent.
- (2) The State Commission may decide that the variety for which protection is sought will be tested in another State or by

an international organization provided that a corresponding bilateral or international agreement has been concluded with such State or organization.

(3) The applicant who has filed his first application in a foreign State shall be required to furnish information on the tests carried out in conformity with the conditions for protection prescribed by the legislation of that State.

(4) The cost of protection of a new variety abroad shall be borne by the applicant.

Article 38

International Treaties

Where an international treaty to which the Republic of Moldova is party contains provisions different from those specified in this Law, the former shall prevail.

CHAPTER X

FINAL PROVISIONS

Article 39

Representation

(1) Natural and legal persons domiciled in the Republic of Moldova and legal entities having their headquarters therein (national) entitled to the protection of a plant variety may act either directly or through a professional representative in industrial property, authorized by a power of attorney.

(2) Foreign natural and legal persons domiciled and having their headquarters therein shall act through professional representatives in industrial property in the Republic of Moldova, except where international treaties to which the Republic of Moldova is party provide otherwise.”;

(3) The activity of professional representatives in industrial property shall be subject to the regulations approved by the Government.”

Article 40

Fees

(1) The filling of the patent application, publication and examination of the application, grant of patent, its maintenance as well as the performance of any legal acts shall be subject to the payment of fees. Acts for which fees are payable, the amounts of fees and the time limits for the payment thereof shall be determined by the Government.

(2) The fees shall be payable by the applicant, the patent owner or other natural or legal entity concerned.

Article 41

Maintenance of the Variety

(1) The patent owner shall, throughout the life of the patent, maintain the variety in such a way that all characteristics defined in the description of the variety at the date of the grant of the patent are maintained.

(2) The State Commission may, for the purposes of testing the uniformity and stability of the protected variety, require the patent owner to furnish material of the variety, documents or any other necessary information.

Article 42

Use of the Variety for Production Purposes

Varieties shall be used for production purposes only in conformity with the provisions of this Law and where the prescribed certificate has been issued by the State Commission after the official testing of the variety has been carried out and where the variety has been entered in the Register of Plant Varieties.

Article 43

Promotion by the State of the Breeding and Use of Protected Varieties

The State shall promote the breeding and use of new plant varieties. The methods and means for the promotion shall be defined in the relevant legislative acts.

CHAPTER XI

TRANSITIONAL PROVISIONS

Article 44

This Law shall enter into force on the date of its publication.

Article 45

For the period until the legislation is brought into line with the provisions of this Law, the existing normative acts shall apply, provided that they are not contrary to the said provisions.

Article 46

It is hereby determined that:

- (a) authors' certificates granted in respect of varieties in the former Soviet Union shall be recognized as valid in the Republic of Moldova in accordance with the legislation in force on the date of the grant;
- (b) any person who uses in the Republic of Moldova, for his entrepreneurial purposes or for the purposes of his enterprise, a variety protected by an author's certificate granted in the former Soviet Union may proceed with such use. In such a case the breeder shall be entitled to remuneration according to the procedure and in the amount specified in Article 12 of this Law;
- (c) applications for the grant of a variety patent with respect to which the office procedure has not been completed on the date of entry into force of this Law shall be processed in accordance with the procedure prescribed by this Law;
- (d) patents for the varieties of the protected genera and species granted in the Republic of Moldova prior to the entry into force of this Law shall have a legal status equivalent to that of the patents granted under this Law.

Article 47

The Government of the Republic of Moldova shall:

- submit to the Parliament proposals on bringing the existing legislation into line with this Law,
- ensure the revision or abrogation by the ministries and departments concerned of the existing normative acts that are contrary to the provisions of this Law,
- approve the list of botanical genera and species the varieties of which are protected under this Law,
- approve the Statute and composition of the National Council of the Republic of Moldova for Plant Varieties, as well as the Statute and composition of the State Committee of the Republic of Moldova for Variety Testing,
- approve a list of acts for which fees are payable, the amounts of the fees and the time limits for the payment thereof.

**INDEX OF LEGISLATION
PUBLISHED IN PLANT VARIETY PROTECTION
- UPOV GAZETTE AND NEWSLETTER
(As of December 2002)**

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Andean Community</u> | | |
| 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 | 75 | Dec. 1994 |
| <u>Argentina</u> | | |
| Measures adopted in connection with the “farmer’s privilege” provided for in Article 27 of Law No. 20.247 | 94 | Dec. 2002 |
| Implementing Decree No. 2183/91 to the Law on Seed and Phytogenetic Creations | 70 | Feb. 1993 |
| Resolution No. 35/96 of February 28, 1996 | 81 | Apr. 1997 |
| <u>Australia</u> | | |
| Plant Breeder’s Rights Act 1994 (No. 110 of 1994) (amend. 1999) | 88 | June 2000 |
| Taxa Covered by Plant Variety Protection Legislation (All species of plants including fungi and algae, but excluding bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages) | 77 | May 1995 |
| Miscellaneous Information | | |
| Tariff of Fees | 64 | Aug. 1991 |
| Accession to the 1991 Act of the UPOV Convention | 87 | Mar. 2000 |
| <u>Austria</u> | | |
| Federal Law on the Protection of Plant Varieties (Variety Protection Law 2001) | 92 | Dec. 2001 |
| Federal Law on the Protection of Plant Varieties (Variety Protection Law) as amended by the Federal Law BGB1.I No. 72/1997 | 84 | Apr. 1998 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 92 | Dec. 2001 |
| Taxa Covered by Plant Variety Protection Legislation | 79 | July 1996 |
| Tariff of Fees | 78 | June 1995 |
| <u>Belarus</u> | | |
| Plant Variety Patent Law (of July 1, 1995) | 94 | Dec. 2002 |
| <u>Belgium</u> | | |
| Law on the Protection of New Plant Varieties (of May 20, 1975) | 59 | Jan. 1990 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 74 | July 1994 |
| Tariff of Fees | 42 | Mar. 1985 |

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>People's Republic of China</u> | | |
| Regulations of the People's Republic of China on the Protection of New Varieties of Plants | 85 | Oct. 1999 |
| Decree No. 3 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Forestry Part) | 90 | Dec. 2000 |
| Decree No. 13 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Agriculture Part) | 90 | Dec. 2000 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| <u>Colombia</u> | | |
| Decision 345 (see "Andean Community") | 75 | Dec. 1994 |
| 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 | 83 | Dec. 1997 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species) | 80 | Dec. 1996 |
| <u>Czech Republic</u> | | |
| Protection of Plant Variety Rights Act No. 408/2000 | 93 | June 2002 |
| Declaration of Continued Application | 70 | Feb. 1993 |
| Law on the Legal Protection of the Varieties of Plants and Breeds of Animals ¹ | 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 ¹ | 64 | Aug. 1991 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 94 | Dec. 2002 |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| <u>Denmark</u> | | |
| The Danish Plant Variety Protection Act Order No. 51 of February 5, 1996 | 87 | Mar. 2000 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 79 | July 1996 |

¹ Enacted by Czechoslovakia

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|------------|
| | Issue No. | Date |
| <u>Ecuador</u> | | |
| Decision 345 (see “Andean Community”) | 75 | Dec. 1994 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species) | 82 | Aug. 1997 |
| <u>Estonia</u> | | |
| Plant Variety Rights Act | 89 | Sept. 2000 |
| Miscellaneous Information | | |
| Taxa covered by Plant Variety Protection Legislation (all botanical genera and species) | 89 | Sept. 2000 |
| <u>European Union</u> | | |
| Council Regulation (EC) No. 2100/94 of July 27, 1994 on Community Plant Variety Rights | 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 | 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 | 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 | 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 | 89 | Sept. 2000 |
| Commission Regulation (EC) No. 2605/98 of December 3, 1998 Amending Regulation (EC) No 2100/94 on Community plant variety rights | 89 | Sept. 2000 |
| <u>Finland</u> | | |
| The Act on Plant Breeder’s Right (No. 789/1992) as amended (No. 238/1999, 5.3.1999) | 88 | June 2000 |
| Decree on the Plant Variety Board (No. 906 of October 9, 1992) | 71 | July 1993 |
| Decree on Breeders’ Rights (No. 907 of October 9, 1992) | 71 | July 1993 |

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|------------|
| | Issue No. | Date |
| <u>France</u> | | |
| Law on the Protection of New Plant Varieties (No. 70-489 of June 11, 1970) ¹ | 33 | Apr. 1983 |
| Decree Concerning the Committee for the Protection of New Plant Varieties (No. 71-454 of June 7, 1971) ³ | 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) | 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 | 81 | Apr. 1997 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom) | 80 | Dec. 1996 |
| Tariff of Fees | 55 | June 1988 |
| <u>Germany</u> | | |
| 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)) | 86 | Dec. 1999 |
| Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985 | 51 | Sept. 1986 |
| Miscellaneous Information | | |
| Reunification | 61 | Feb. 1991 |
| Tariff of Fees | 78 | June 1995 |
| <u>Hungary</u> | | |
| Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds) | 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 | 49 | Jan. 1986 |

¹ These texts have been integrated into the Intellectual Property Code

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Ireland</u> | | |
| Plant Varieties (Proprietary Rights) Act, 1980 | 32 | Feb. 1983 |
| Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 No. 41, 1998 | 88 | June 2000 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 78 | June 1995 |
| Tariff of Fees | 72 | Nov. 1993 |
| <u>Israel</u> | | |
| 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) | 86 | Dec. 1999 |
| Miscellaneous Information | | |
| Tariff of Fees | 67 | Feb. 1992 |
| <u>Italy</u> | | |
| Legislative Decree No. 455 (November 3, 1998) | 91 | June 2001 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 76 | Feb. 1995 |
| | 79 | July 1996 |
| Tariff of Fees | 70 | Feb. 1993 |
| <u>Japan</u> | | |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| Tariff of Fees | 66 | Dec. 1991 |
| <u>Kenya</u> | | |
| The Seeds and Plant Varieties Act of 1972 (as amended in 2002) | 94 | Dec. 2002 |
| The Seeds and Plant Varieties (Plant Breeders' Rights) Regulations, 1994 | 94 | Dec. 2002 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| <u>Kyrgyz Republic</u> | | |
| Law on the Legal Protection of Selection Achievements (May 26, 1998) | 90 | Dec. 2000 |
| Miscellaneous Information | | |
| Accession to the 1991 Act of the UPOV Convention | 88 | June 2000 |

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Mexico</u> | | |
| Federal Law on Plant Varieties | 82 | Aug. 1997 |
| Regulations of the Federal Plant Variety Law (Sept. 24, 1998) | 87 | Mar. 2000 |
| <u>Netherlands</u> | | |
| Territorial Extension of the Application of the UPOV Convention | 52 | June 1987 |
| Seeds and Planting Material Act (Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999) | 88 | June 2000 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All taxa of the plant kingdom) | 61 | Feb. 1991 |
| Tariff of Fees | 71 | July 1993 |
| <u>New Zealand</u> | | |
| 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 | 78 | June 1995 |
| Plant Variety Rights Amendment, an Act to Amend the Plant Variety Rights Act 1987, 2 September 1996 | 82 | Aug. 1997 |
| Plant Variety Rights Amendment Regulations 1997 | 82 | Aug. 1997 |
| Act No. 122 - Plant Variety Rights Amendment | 90 | Dec. 2000 |
| Miscellaneous Information | | |
| Tariff of Fees | 85 | Oct. 1999 |
| <u>Nicaragua</u> | | |

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Russian Federation</u> | | |
| Law on the Protection of Selection Achievements (of August 6, 1993) | 76 | Feb. 1995 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| Taxa Covered by Plant Variety Protection Legislation | 87 | Mar. 2000 |
| Taxa Covered by Plant Variety Protection Legislation | 92 | Dec. 2001 |
| <u>Slovakia</u> | | |
| Declaration of Continued Application | 70 | Feb. 1993 |
| 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) | 87 | Mar. 2000 |
| <u>Slovenia</u> | | |
| Law on Plant Variety Protection | 86 | Dec. 1999 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 85 | Oct. 1999 |
| <u>South Africa</u> | | |
| 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 | 82 | Aug. 1997 |

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Spain</u> | | |
| Law on the Protection of Plant Varieties No. 12/1975 of March 12, 1975 ¹ | 67 | Feb. 1992 |
| General Rules on the Protection of Plant Varieties (Approved by Royal Decree No. 1674/1977 of June 10, 1977) | 67 | Feb. 1992 |
| Law 3/2000 Governing the Protection of Plant Varieties | 91 | June 2001 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All plant genera and species) | 72 | Nov. 1993 |
| | 90 | Dec. 2000 |
| <u>Sweden</u> | | |
| Act of the Protection of Plant Breeders' Rights | 91 | June 2001 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species) | 81 | Apr. 1997 |
| Tariff of Fees | 85 | Oct. 1999 |
| <u>Switzerland</u> | | |
| 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) | 56 | July 1988 |
| Ordinance on the Protection of Plant Varieties | 61 | Feb. 1991 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 61 | Feb. 1991 |
| Tariff of Fees | 75 | Dec. 1994 |
| Tariff of Fees (Corrigendum) | 76 | Feb. 1995 |
| <u>Trinidad and Tobago</u> | | |
| The Protection of New Plant Varieties Regulations, 2000 | 92 | Dec. 2001 |
| The Protection of New Plant Varieties Act, 1997 | 85 | Oct. 1999 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 84 | Apr. 1998 |

¹ The law has been amended recently

| State Title of Law, etc. | Plant Variety Protection | |
|--|--------------------------|-----------|
| | Issue No. | Date |
| <u>Ukraine</u> | | |
| Law on the Protection of Plant Variety Rights (of April 21, 1993) | 76 | Feb. 1995 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 86 | Dec. 1999 |
| <u>United Kingdom</u> | | |
| Plant Varieties Act 1997 | 85 | Oct. 1999 |
| The Plant Breeder's Rights (Information Notices) (Extension to European Community Plant Variety Rights Regulations 1998) | 87 | Mar. 2000 |
| Statutory Instrument No. 1023 of 1998 The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998 | 87 | Mar. 2000 |
| Statutory Instrument No. 1024 of 1998 The Plant Breeders' Rights (Information Notices) Regulations 1998 | 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 | 87 | Mar. 2000 |
| The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002 | 93 | June 2002 |
| <u>United States of America</u> | | |
| 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) | 80 | Dec. 1996 |
| Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996 | 80 | Dec. 1996 |
| Plant Patent Amendments Act of 1998 | 91 | June 2001 |

| State Title of Law, etc. | Plant Variety Protection | |
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| | Issue No. | Date |
| <u>Uruguay</u> | | |
| Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract) | 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) | 76 | Feb. 1995 |
| Law No. 16.811 | 82 | Aug. 1997 |
| Miscellaneous Information | | |
| Taxa Covered by Plant Variety Protection Legislation | 76 | Feb. 1995 |