

Der Rat**C/55/15****Fünfundfünfzigste ordentliche Tagung
Genf, 29. Oktober 2021****Original:** Englisch
Datum: 4. Oktober 2021**PRÜFUNG DER VEREINBARKEIT DES GESETZES ZUM SCHUTZ VON PFLANZENZÜCHTUNGEN
(ZÜCHTERRECHTE) 2001 VON JAMAICA MIT DER AKTE VON 1991 DES UPOV-ÜBEREINKOMMENS***vom Verbandsbüro erstelltes Dokument**Haftungsausschluss: dieses Dokument gibt nicht die Grundsätze oder eine Anleitung der UPOV wieder***ZUSAMMENFASSUNG**

1. Mit Schreiben vom 27. September 2021 an den Generalsekretär der UPOV, das am 27. September 2021 eingegangen ist, ersuchte Frau Lilyclaire Bellamy, Geschäftsführende Direktorin des Amts für Geistiges Eigentum von Jamaika (JIPO) um Prüfung der Vereinbarkeit des Gesetzes zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 von Jamaika (nachstehend „Gesetzentwurf“) mit der Akte von 1991 des UPOV-Übereinkommens (nachstehend „Akte von 1991“). Das Schreiben ist in Anlage I dieses Dokuments wiedergegeben. Anlage II enthält eine Abschrift des Gesetzentwurfs auf Englisch.

2. Der Rat wird ersucht,

a) die Analyse in diesem Dokument zur Kenntnis zu nehmen;

b) eine positive Entscheidung über die Vereinbarkeit des Gesetzes zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 von Jamaika mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen, die es Jamaika ermöglicht, seine Beitrittsurkunde zur Akte von 1991 zu hinterlegen, sobald der Gesetzentwurf ohne Änderungen angenommen wurde und das Gesetz in Kraft getreten ist; und

c) den Generalsekretär zu ermächtigen, die Regierung von Jamaika über diese Entscheidung zu unterrichten.

HINTERGRUND

3. Artikel 34 Absatz 3 der Akte von 1991 sieht vor: „Jeder Staat, der dem Verband nicht angehört, sowie jede zwischenstaatliche Organisation ersuchen vor Hinterlegung ihrer Beitrittsurkunde den Rat um Stellungnahme, ob ihre Rechtsvorschriften mit diesem Übereinkommen vereinbar sind. Ist der Beschluss über die Stellungnahme positiv, so kann die Beitrittsurkunde hinterlegt werden.“

4. Das Verbandsbüro stellte seit 2015 Unterstützung bei der Ausarbeitung von Rechtsvorschriften gemäß der Akte von 1991 des UPOV-Übereinkommens für die Regierung von Jamaika bereit. Vertretungen von Jamaika nahmen 2017 und 2021 an den Arbeitstagungen zur Ausarbeitung von Rechtsvorschriften gemäß der Akte von 1991 des UPOV-Übereinkommens (Arbeitstagungen für Rechtsvorschriften) teil. Von Mai 2016 bis September 2021 gab das Verbandsbüro Bemerkungen zu verschiedenen Fassungen des Gesetzentwurfs ab.

5. Mit Schreiben vom 27. September 2021 an den Generalsekretär der UPOV, das am 27. September 2021 eingegangen ist, ersuchte Frau Lilyclaire Bellamy, Geschäftsführende Direktorin des Amts für Geistiges Eigentum von Jamaika (JIPO) um Prüfung der Vereinbarkeit des Gesetzes zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 von Jamaika (nachstehend „Gesetzentwurf“) mit der Akte von 1991 des UPOV-Übereinkommens (nachstehend „Akte von 1991“). Das Schreiben ist in Anlage I dieses Dokuments wiedergegeben. Anlage II enthält eine Abschrift des Gesetzentwurfs auf Englisch.

GRUNDLAGE FÜR DEN SCHUTZ VON PFLANZENZÜCHTUNGEN IN JAMAICA

6. In Jamaika wird der Schutz von Pflanzenzüchtungen gemäß der Akte von 1991 des UPOV-Übereinkommens dem Gesetzentwurf unterstehen, sobald dieser angenommen wurde. Eine Analyse des Gesetzentwurfs folgt in der Reihenfolge der wesentlichen Bestimmungen der Akte von 1991.

Artikel 1 der Akte von 1991: Begriffsbestimmungen

7. Abschnitt 2 des Gesetzentwurfs enthält Begriffsbestimmungen von Sorte und Züchter, die jeweils den Begriffsbestimmungen in Artikel 1 Nummer iv und vi der Akte von 1991 entsprechen.

Artikel 2 der Akte von 1991: Grundlegende Verpflichtung der Vertragsparteien

8. Abschnitt 3 des Gesetzentwurfs enthält Bestimmungen, die der grundlegenden Verpflichtung in Artikel 2 der Akte von 1991 entsprechen.

Artikel 3 der Akte von 1991: Gattungen und Arten, die geschützt werden müssen

9. Abschnitt 4 des Gesetzentwurfs lautet folgendermaßen:

„4. Das Gesetz findet auf alle Pflanzengattungen und -arten Anwendung.

10. Abschnitt 4 des Gesetzentwurfs entspricht der Verpflichtung in Artikel 3 Abschnitt 2 der Akte von 1991.

Artikel 4 der Akte von 1991: Inländerbehandlung

11. Abschnitt 5 des Gesetzentwurfs enthält Bestimmungen über die Inländerbehandlung, die den Bestimmungen in Artikel 4 der Akte von 1991 entsprechen.

Artikel 5 bis 9 der Akte von 1991: Schutzvoraussetzungen, Neuheit, Unterscheidbarkeit, Homogenität, Beständigkeit

12. Die Abschnitte 10 bis 14 des Gesetzentwurfs enthalten Bestimmungen über die Schutzvoraussetzungen, die den Bestimmungen der Artikel 5 bis 9 der Akte von 1991 entsprechen.

13. Abschnitt 11, Unterabschnitte 2 und 3, enthält Bestimmungen zur freigestellten Bestimmung gemäß Artikel 6 Absatz 2 „Vor kurzem gezüchtete Sorten“ der Akte von 1991 wie folgt:

„2) Eine vor kurzem gezüchtete Sorte erfüllt die Voraussetzungen der Neuheit auch dann, wenn der Verkauf oder die Abgabe der Sorte im Hoheitsgebiet Jamaikas innerhalb von vier Jahren vor dem Tag der Einreichung des Antrags oder, im Falle von Bäumen und Reben, innerhalb von sechs Jahren vor diesem Tag erfolgt ist.

3) Unterabschnitt 2 ist nur auf Anträge auf Erteilung eines Züchterrechts anwendbar, die innerhalb von zwei Jahren nach Inkrafttreten des Gesetzes eingereicht werden.“

Artikel 10 der Akte von 1991: Einreichung von Anträgen

14. Abschnitt 18 des Gesetzentwurfs enthält Bestimmungen zur Einreichung von Anträgen. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die in Widerspruch zu Artikel 10 der Akte von 1991 stehen.

Artikel 11 der Akte von 1991: Priorität

15. Abschnitt 22 des Gesetzentwurfs enthält Bestimmungen zum Prioritätsrecht, die den Bestimmungen in Artikel 11 der Akte von 1991 entsprechen.

Artikel 12 der Akte von 1991: Prüfung des Antrags

16. Abschnitt 19 des Gesetzentwurfs enthält Bestimmungen über die Prüfung des Antrags, die den Bestimmungen in Artikel 12 der Akte von 1991 entsprechen.

Artikel 13 der Akte von 1991: Vorläufiger Schutz

17. Abschnitt 27 des Gesetzentwurfs enthält Bestimmungen über den vorläufigen Schutz, die den Bestimmungen in Artikel 13 der Akte von 1991 entsprechen.

Artikel 14 der Akte von 1991: Inhalt des Züchterrechts

18. Abschnitt 28 des Gesetzentwurfs enthält Bestimmungen über den Inhalt des Züchterrechts, die den Bestimmungen von Artikel 14 der Akte von 1991 entsprechen.

Artikel 15 der Akte von 1991: Ausnahmen vom Züchterrecht

19. Abschnitt 29 Unterabschnitt 1 des Gesetzentwurfs enthält Bestimmungen über die verbindlichen Ausnahmen vom Züchterrecht, die den Bestimmungen in Artikel 15 Absatz 1 der Akte von 1991 entsprechen.

20. Abschnitt 29 Unterabschnitte 2 bis 4 des Gesetzentwurfs enthält Bestimmungen zur freigestellten Ausnahme gemäß Artikel 15 Absatz 2 der Akte von 1991 wie folgt:

„2) In Bezug auf Sorten, die zu den in der vorgeschriebenen Liste aufgeführten landwirtschaftlichen Gattungen und Arten gehören, wird das Züchterrecht nicht verletzt, wenn Kleinbauern in angemessenem Rahmen und unter Wahrung der berechtigten Interessen des Züchters das Erntegut, das sie aus dem Anbau der geschützten Sorte, oder einer in Abschnitt 28 Unterabschnitt 4 Buchstabe a oder b erwähnten Sorte, im eigenen Betrieb gewonnen haben, im eigenen Betrieb zum Zwecke der Vermehrung verwenden.

3) Die Sorten von Zierpflanzen und forstlichen Baumarten sind von der Ausnahmeregelung in Unterabschnitt 2 ausgeschlossen.

4) Die Bedingungen für die Durchführung der Bestimmungen nach Unterabschnitt 2, einschließlich der Liste der landwirtschaftlichen Gattungen und Arten, sind in der Ausführungsverordnung festzulegen.“

Artikel 16 der Akte von 1991: Erschöpfung des Züchterrechts

21. Abschnitt 30 des Gesetzentwurfs enthält Bestimmungen über die Erschöpfung des Züchterrechts, die den Bestimmungen in Artikel 16 der Akte von 1991 entsprechen.

Artikel 17 der Akte von 1991: Beschränkungen in der Ausübung des Züchterrechts

22. Abschnitt 31 des Gesetzentwurfs enthält Bestimmungen über Beschränkungen in der Ausübung des Züchterrechts, die den Bestimmungen in Artikel 17 der Akte von 1991 entsprechen.

Artikel 18 der Akte von 1991: Maßnahmen zur Regelung des Handels

23. Abschnitt 32 des Gesetzentwurfs enthält Bestimmungen über Maßnahmen zur Regelung des Handels, die den Bestimmungen in Artikel 18 der Akte von 1991 entsprechen. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die in Widerspruch zu Artikel 18 der Akte von 1991 stehen.

Artikel 19 der Akte von 1991: Dauer des Züchterrechts

24. Abschnitt 33 des Gesetzentwurfs enthält Bestimmungen über die Dauer des Züchterrechts, die den Bestimmungen in Artikel 19 der Akte von 1991 entsprechen.

Artikel 20 der Akte von 1991: Sortenbezeichnung

25. Die Abschnitte 37 bis 40 des Gesetzentwurfs enthalten Bestimmungen über Sortenbezeichnungen, die den Bestimmungen in Artikel 20 der Akte von 1991 entsprechen.

Artikel 21 der Akte von 1991: Nichtigkeit des Züchterrechts

26. Abschnitt 36 Unterabschnitt 5 des Gesetzentwurfs enthält Bestimmungen über die Nichtigkeit des Züchterrechts, die den Bestimmungen in Artikel 21 der Akte von 1991 entsprechen.

Artikel 22 der Akte von 1991: Aufhebung des Züchterrechts

27. Abschnitt 35 Unterabschnitt 1 des Gesetzentwurfs enthält Bestimmungen über die Aufhebung des Züchterrechts, die den Bestimmungen von Artikel 22 der Akte von 1991 entsprechen.

Artikel 30 der Akte von 1991: Anwendung des Übereinkommens

28. Hinsichtlich der Verpflichtung „geeignete Rechtsmittel [vorzusehen], die eine wirksame Wahrung der Züchterrechte ermöglichen“ (Artikel 30 Absatz 1 Nummer i der Akte von 1991), enthalten die Abschnitte 52, 54 bis 56 des Gesetzentwurfs Bestimmungen über die verfügbaren Maßnahmen zur Wahrung der Züchterrechte.

29. Abschnitt 6 des Gesetzentwurfs bestimmt, dass die Behörde, die mit der Erteilung der Züchterrechte beauftragt ist, der Registerbeamte ist, wie in Artikel 30 Absatz 1 Nummer ii der Akte von 1991 vorgeschrieben.

30. Die Abschnitte 9 Unterabschnitt 2, 20 Unterabschnitt 2 und 38 Unterabschnitt 7 des Gesetzentwurfs entsprechen der Verpflichtung zur Veröffentlichung von Mitteilungen über Anträge auf und Erteilung von Züchterrechten sowie über die vorgeschlagenen und genehmigten Sortenbezeichnungen gemäß Artikel 30 Absatz 1 Nummer iii der Akte von 1991.

Allgemeine Schlussfolgerung

31. Nach Ansicht des Verbandsbüros enthält der Gesetzentwurf die wesentlichen Bestimmungen der Akte von 1991. Auf dieser Grundlage wird Jamaika in der Lage sein, den Bestimmungen der Akte von 1991 „Wirkung zu verleihen“, wie in deren Artikel 20 Absatz 2 vorgeschrieben wird, sobald der Gesetzentwurf ohne Änderungen angenommen wurde und das Gesetz in Kraft getreten ist.

32. *Der Rat wird ersucht,*

a) *die Analyse in diesem Dokument zur Kenntnis zu nehmen;*

b) *eine positive Entscheidung über die Vereinbarkeit des Gesetzes zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 von Jamaika mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen, die es Jamaika ermöglicht, seine Beitrittsurkunde zur Akte von 1991 zu hinterlegen, sobald der Gesetzentwurf ohne Änderungen angenommen wurde und das Gesetz in Kraft getreten ist; und*

c) *den Generalsekretär zu ermächtigen, die Regierung von Jamaika über diese Entscheidung zu unterrichten.*

[Anlagen folgen]



Jamaica Intellectual Property Office
(An agency of the Ministry of Industry, Investment and Commerce) 18
Trafalgar Road, Kingston 10
Jamaica

27. September 2021

Herr Daren Tang
Generalsekretär
Internationaler verband zum schutz von pflanzenzüchtungen (UPOV)
34, chemin des Colombettes
1211 Genf 20 Schweiz

Sehr geehrter Generalsekretär Tang,

Betrifft: Ersuchen um Überprüfung des Gesetzentwurfs durch den Rat der UPOV

Ich freue mich, Ihnen mitzuteilen, daß Jamaika im Begriff ist, sein Gesetz zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 zu verabschieden.

Jamaika beabsichtigt, dem Internationalen Übereinkommen zum Schutz von Pflanzenzüchtungen vom 2. Dezember 1961, revidiert in Genf am 10. November 1972, am 23. Oktober 1978 und am 19. März 1991 (UPOV-Übereinkommen), beizutreten.

Gemäß den Bestimmungen von Artikel 34 Absatz 3 des UPOV-Übereinkommens würde ich es sehr schätzen, wenn der Rat der UPOV die Vereinbarkeit des Gesetzes zum Schutz von Pflanzenzüchtungen (Züchterrechte) 2001 von Jamaika mit den Bestimmungen des UPOV-Übereinkommens prüfen würde.

Mit freundlichen Grüßen
Amt für geistiges Eigentum von Jamaika

(unterschrieben)
Frau Lilyclaire Bellamy
Geschäftsführende Direktorin

Anlage: Gesetzentwurfs von 2021 über den Schutz von Pflanzenzüchtungen (Züchterrechten)

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[Anlage II folgt]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II
[in English only / en anglais seulement / nur auf Englisch / solamente en inglés]

**A BILL
ENTITLED**

AN ACT to Provide for the grant and protection of breeders' rights
in new varieties of plants.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the
advice and consent of the Senate and House of Representatives of Jamaica, and
by the authority of the same, as follows:-

PART I. Preliminary

**Short title and
commencement.
Interpretation.**

1. This Act may be cited as the New Plant Varieties (Rights of Breeders) Act, 2021, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

2. In this Act, unless the context otherwise requires –

“appointed day” means the day appointed under section 1, for the coming into operation of this Act;

“breeder”, in relation to a variety, means –

- (a) a person or group of persons who bred, or discovered and developed, a variety;
- (b) the employer of the person or persons referred to in paragraph (a), or the person who has commissioned the work of the person referred to in paragraph (a); or
- (c) the successor in title of the employer referred to in paragraph (b), or of the person who bred, or discovered and developed, a variety referred to in paragraph (a), as the case may be;

“breeder's right” means a breeder's right provided for in this Act;

“Contracting Party” means –

- (a) a State, other than Jamaica, or an intergovernmental organization which is a party to any of the Acts of the International Convention for the Protection of New Varieties of Plants; or
- (b) a State, other than Jamaica, which is a member of the World Trade Organization;

“Convention” means the International Convention for the Protection of New Varieties of Plants as last revised in 1991;

“Court” means the Supreme Court of Judicature of Jamaica;

“document” means, in addition to a document in writing, any thing in which information of any description is recorded or stored;

“essentially-derived” shall be construed in accordance with section 28;

“functions” include powers and duties;

“Intellectual Property Journal” means the Intellectual Property Journal published by the Office;

“interested person” means any person who has established to the satisfaction of the Registrar, sufficient interest in a matter;

“licence” means a licence granted under section 47;

“licensee” means a person who is granted a licence to exercise acts covered by a breeder's right;

“Member of UPOV” means a State or party to the UPOV Convention of 1961, the 1972 Act of the Convention, the 1978 Act of the Convention or a Contracting Party to the 1991 Act of the Convention;

“Minister” means the Minister with responsibility for industry;

“Office” means the Jamaica Intellectual Property Office;

“person”, for the avoidance of doubt, has the meaning assigned to it in section 2 of the Interpretation Act;

“protected variety” means any variety which is the subject of a breeder’s right;

“Register” means the register of breeders’ rights kept under section 8;

“Registrar” has the meaning assigned to it in section 7;

“territory”, in relation to a Contracting Party, means, if the Contracting Party is a State, the territory of that State, and if the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

“UPOV” means the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the 1972 Act of the Convention, the 1978 Act of the Convention and the 1991 Act of the Convention;

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

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

“variety denomination” shall be construed in accordance with Part VII.

Object of Act.

3. The object of this Act is to provide for the grant and protection of breeders’ rights for new varieties of plants.

Application of Act.

4. This Act applies to all plant genera and species.

National treatment.

5. – (1) Without prejudice to the rights specified in this Act, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party, shall, insofar as the grant and protection of breeders’ rights are concerned, enjoy within Jamaica, the same treatment as is accorded by this Act to the nationals of Jamaica.

(2) The nationals, natural persons and legal entities of a Contracting Party shall comply with the conditions and formalities imposed on the nationals of Jamaica.

(3) For the purposes of this section, “nationals” means, where the Contracting Party is –

- (a) a State, the nationals of that State; or
- (b) an intergovernmental organization, the nationals of the States which are members of that organization.

PART II. Administration

- Responsible authority.** 6. For the purposes of Article 30(1)(ii) of the UPOV Convention, the Registrar of Breeders' Rights is hereby designated as the authority responsible for the granting of breeders' rights.
- Registrar of Breeders' Rights. First Schedule.** 7. – (1) The person who is designated as the Registrar of Industrial Property under paragraph 3(2) of the First Schedule to the Jamaica Intellectual Property Office Act, shall be the Registrar of Breeders' Rights under this Act.
- (2) The Office may appoint a Deputy Registrar and such other officers, with the relevant qualification and experience, as may be required, to whom may be delegated any of the functions conferred upon the Registrar under this Act.
- Register of Breeders' Rights.** 8. – (1) The Registrar shall keep and maintain up to date, a register to be known as the Register of Breeders' Rights, in which shall be entered the particulars set out in subsection (2).
- Functions of the Registrar.** 9. – (1) **The Registrar shall, in accordance with this Act –**
- (a) **grant breeders' rights;**
 - (b) **maintain the Register and provide information on breeders' rights granted in Jamaica;**
 - (c) from time to time, make any necessary alteration in any of the particulars mentioned in section 8(2);
 - (d) correct or cause to be corrected any entry in the Register which was incorrectly made;
 - (e) cause all other matters which are required by this Act or the regulations to be entered in the Register;
 - (f) **collaborate with local and international bodies whose functions relate to breeders' rights matters; and**
 - (g) **perform such other functions as are necessary for the furtherance of this Act or any regulations made under this Act.**
- (2) The Registrar shall publish or cause to be published quarterly, in the Intellectual Property Journal, the following information –
- (a) the applications for plant breeders' rights;
 - (b) the withdrawals of applications for plant breeders' rights;
 - (c) the rejections of applications for plant breeder's rights;
 - (d) the grant of a plant breeder's right;
 - (e) the proposed and approved variety denominations;
 - (f) any change in the breeder or agent in respect of a plant variety;
 - (g) the lapses of plant breeder's rights;
 - (h) the invalidation, renunciation or revocation of a plant breeder's right;
 - (i) licences in relation to plant breeder's rights, where applicable; and
 - (j) any other matter which the Registrar considers appropriate.

PART III. Conditions for the Grant of Breeder's Right

- Conditions for grant of breeder's right.** 10. – (1) A breeder's right shall be granted where, pursuant to sections 11, 12, 13 and 14, the variety is –
- (a) new;
 - (b) distinct;
 - (c) uniform; and

(d) stable.

(2) The grant of a breeder's right shall not be subject to any further or different conditions than those specified in subsection (1), provided that –

(a) the variety is designated by a denomination in accordance with Part VII; and

(b) the applicant for the grant of the breeder's right complies with all the formalities prescribed by this Act and pays the prescribed fees.

Novelty.

11. – (1) A variety shall be considered new if, at the date of filing the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or the successor in title of the breeder, for purposes of the exploitation of the variety in –

(a) the territory of Jamaica earlier than one year before the date of filing of the application; and

(b) a territory other than that of Jamaica earlier than four years or, in the case of trees or of vines, earlier than six years before the date of filing of the application.

(2) A variety of recent creation shall be considered to satisfy the conditions of novelty, even where the sale or disposal to others of the variety took place in the territory of Jamaica within four years before the date of the filing of the application or, in the case of trees or vines, within six years before that date.

(3) Subsection (2), shall only apply to applications for a breeder's right filed within two years from the date of the Act coming into operation

Distinctness.

12. – (1) A variety shall be considered distinct, if at the time of filing the application, it is clearly distinguishable from any other variety whose existence is a matter of common knowledge.

(2) In particular, for the purposes of subsection (1), the filing of an application for the granting of a breeder's right, or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

(3) Common knowledge may also be established by the following –

(a) the exploitation of the variety is already in progress;

(b) the breeder's right in the variety has already been granted in any country;

(c) the variety is already entered in a catalogue of varieties which has been admitted to trade;

(d) the variety is already entered or included in a reference collection kept by a recognized professional association; or

(e) the variety is already registered in an official register of varieties.

Uniformity.

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

Stability.

14. A variety shall be considered 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 cycle.

PART IV. Application for Grant of Breeder's Right

Right to apply for grant of breeder's right.

15. – (1) Subject to Part III, the breeder of a variety or the successor in title to the breeder of a variety shall be entitled to apply for the grant of a breeder's right under this Act.

(2) The breeder or the successor in title may be a natural or legal person.

(3) Where two or more persons have bred, or discovered and developed, a variety jointly, the right to protection shall vest in all such persons equally, and, subject to any agreement to the contrary between the breeders, their shares in the property of the

breeder's right shall be equal.

Agents of applicant for breeder's right.

16. – (1) Every applicant for a breeder's right whose ordinary residence or principal place of business is outside of Jamaica, shall be represented by an agent who is ordinarily resident and has an office in Jamaica.

(2) An applicant under subsection (1) shall give an agent power to act on his behalf with the Registrar and in any other legal proceedings in Jamaica relating to the protection of new varieties of plants.

Application for grant of breeders' right.

17. – (1) An application for the grant of a breeder's right shall be filed with the Registrar in the prescribed form accompanied by the prescribed fee.

(2) An application under this section shall be accompanied by the technical questionnaire in the prescribed form, for the relevant genus or species.

(3) At the request of the Registrar, an applicant under this section shall, on the date and at the place fixed by the Registrar, submit the quantity of propagating material determined by the Registrar.

(4) Where an application under this section is made by a successor in title, proof of the successor's title shall be submitted to the Registrar with the application.

(5) Every application under this section received by the Registrar shall include –

- (a) the date of filing;
- (b) the name and address of the applicant and the person who bred, or discovered and developed the variety, if that person is different from the applicant;
- (c) the variety denomination proposed under section 38;
- (d) the main characteristics of the variety; and
- (e) such additional documents and material that may be required for the examination of the application.

(6) The relevant details, as determined by the Registrar, of every application under this section, shall be published in the Intellectual Property Journal, except where the applicant requests and the Registrar agrees that such details of the application shall be kept confidential.

Filing date.

18. The Registrar shall record, as the filing date of the application, the date of receipt of the application form accompanied by the prescribed fees and the technical questionnaire, duly filed as prescribed by this Act and any regulations made hereunder.

Examination of application for grant of breeder's right.

19. – (1) The Registrar shall examine or caused to be examined, every application for the grant of a breeder's right that is duly filed, including the technical questionnaire.

(2) Upon examination of an application under section 17, the Registrar shall determine whether the application complies with any formalities prescribed by this Act and whether it satisfies the requirements for the grant of a breeder's right, pursuant to sections 11, 12, 13, 14 and 15 of this Act.

(3) For the purposes of the examination of an application under section 17, the Registrar may –

- (a) grow, or cause the growing, of the variety, or conduct any other test, that the Registrar considers necessary; or
- (b) take into account the results of any growing test or other trials which have already been carried out.

(4) The Registrar may in writing –

- (a) notify an applicant under section 17 of the formalities that have not been satisfied; and
- (b) request such additional information from an applicant under section 17, documents or material, within the time specified in the notice, as the Registrar deems fit.

(5) Where examination of an application under section (17) reveals that the proposed denomination of the variety is not registrable, the Registrar shall request, in

writing, that the applicant submit another denomination within a period fixed by the Registrar, failing which, the Registrar shall refuse the application.

Grant of breeder's right.

20. – (1) Where the Registrar concludes that an application under section 17 satisfies the requirements of this Act, the Registrar shall grant a breeder's right to the breeder and enter the prescribed details of the breeder's right in the Register.

(2) The Registrar shall, on the payment of the prescribed publication fee, publish or cause to be published, the notice of grant of the breeder's right and the approved denomination.

(3) Where a right is granted under this section, the Registrar shall issue a certificate of registration to the breeder.

(4) Where the Registrar concludes that an application under section 17 does not satisfy the requirements of this Act, the Registrar shall refuse to grant a breeder's right.

(5) Where the Registrar refuses to grant a breeder's right under this Act, the Registrar shall inform the applicant in writing, stating the reasons therefor.

Assignment of application for grant of breeder's right.

21. – (1) An application for the grant of a breeder's right may be assigned.

(2) The assignment of an application for the grant of breeder's right shall be in writing and signed by the assignor.

(3) Where there are two or more applicants for the grant of a breeder's right, in the absence of any agreement between the applicants, each applicant may separately assign that applicant's share.

Right of priority.

22. – (1) A breeder who has duly filed an application ("the first application") for the protection of a variety in a member of UPOV, shall, for the purpose of filing an application for the grant of a breeder's right for the same variety in Jamaica, enjoy a right of priority for a period of twelve months from the date of the filing of the first application.

(2) Where an applicant expressly claims the priority of the first application, the applicant shall, within three months from the filing date, furnish the Registrar with a copy of the first application, certified to be a true copy by the authority with which that application was filed, and with samples or other evidence as may be required by the Registrar, that the variety which is the subject matter of both applications, is the same.

(3) Where an applicant expressly claims the priority of the first application –

- (a) the applicant shall be allowed a period of two years after the expiration of the period of priority; or
- (b) if the first application is rejected or withdrawn, the applicant shall be allowed a period of one year after such rejection or withdrawal,

to furnish the Registrar with any necessary information, document or material required for the examination of the application.

(4) For the purposes of this section –

- (a) the day of filing shall not be included in the priority period; and
- (b) events that occur during the priority period, including the filing of another application, or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for refusing the subsequent application and shall not give rise to any third-party rights.

Opposition to grant of breeder's right.

23. – (1) An interested person may, within three months of the publication of a notice under section 20(2) and on payment of the prescribed fee, file with the Registrar, a written opposition to an application filed under section 17.

(2) The opposition shall be on any of the following grounds, that–

- (a) the applicant under section 17 is not entitled to file the application;
- (b) the applicant under section 17 is not the sole breeder of the variety and that the opponent under section 17 should be named as a joint breeder of the variety;
- (c) the variety is not new or distinct in accordance with sections 11 or 12, respectively;

- (d) the variety is not uniform or stable in accordance with sections 13 or 14, respectively; or
- (e) the proposed variety denomination is unregistrable in accordance with Part VII of this Act.

(3) The Registrar shall within two weeks of the filing of an opposition under subsection (1), notify the applicant under section 17, in writing, of the opposition and the time within which to respond, and include a copy of the notice of opposition.

(4) The Registrar shall review the opposition filed under subsection (1) and investigate or cause an investigation to be done.

(5) Where pursuant to subsection(2)(b), the Registrar determines that the opponent under subsection (1) is entitled to be named as joint breeder of the variety, the Registrar shall record the applicant under subsection (17) and opponent under subsection (1) as joint applicants.

(6) Where the Registrar concludes that an opposition under subsection (1) is based on a justifiable claim that the variety denomination is unregistrable, the Registrar shall request that the applicant under subsection (17) submit another denomination within a period to be determined by the Registrar, failing which, the Registrar shall refuse the application.

(7) Where the Registrar concludes that an opposition under subsection (1) is not justified, the Registrar shall dismiss the opposition and grant the breeder's right.

(8) Where the issue of compensation to an applicant under section 17 and an opponent under subsection (1) arises in relation to subsection (4), the Registrar may refer the matter to mediation or to the court for a determination.

(9) If no opposition is filed within the period specified in subsection (1), or if all oppositions filed within that period have been rejected, the Registrar shall grant the breeder's right.

Maintenance of propagating material.

24. – (1) The holder of a breeder's right shall, upon request from the Registrar, during the period for which the right is exercisable; provide the Registrar with –

- (a) propagating material capable of producing plants which correspond to the characteristics defined for the variety when the grant was made;
- (b) any additional information, documents or material for the purpose of ensuring that the holder is fulfilling the obligations under subsection (1), including access to facilities for inspection by the Registrar in furtherance of the measures taken for the maintenance of the variety.

Annual fees.

25. – (1) To maintain the grant of a breeder's right, the prescribed annual fee shall be paid in advance to the Registrar each year, starting one year after the date of the grant of the right.

(2) A grace period of six months shall be allowed for the late payment of the prescribed annual fee referred to in subsection (1).

(3) Where the prescribed annual fee is not paid in accordance with this section, the breeder's right shall be deemed to have been cancelled.

Authorisation of holder of breeder's right.

26. – (1) The holder of a breeder's right may grant an authorisation to another person to permit that person to carry out any or all of the acts specified in section 28 on a protected variety for which authorisation is required, and may include in such authorisation any conditions, limitations or restrictions.

(2) A reference to an authorisation under this section is an authorisation, in writing, which has been obtained from the holder of the breeder's right by the person referred to in subsection (1) prior to the carrying out any of the acts for which authorisation is required.

Provisional protection.

27. – (1) Where a breeder's right is granted, the holder thereof shall have provisional protection and be entitled to equitable remuneration for any act done during the relevant period, which, if that act was done after the grant of the breeder's right, would require the authorisation of the breeder as provided in section 26.

- (2) In this section, “relevant period”, in relation to the grant of a breeder’s right, means the period –
- (a) beginning with the day on which the details of the application for the grant of the right were published under section 17(6); and
 - (b) ending with the grant of the right under section 20(1).
- (3) Legal action in respect of provisional protection may only be initiated once the breeder’s right is granted.

PART V. *The Rights of the Breeder*

Scope of breeder’s right.

28. – (1) Subject to sections 29 and 30, the authorisation of the holder of a breeder’s right shall be required for the following acts, in respect of the propagating material of a protected variety –
- (a) production, reproduction or multiplication;
 - (b) conditioning for the purpose of propagation;
 - (c) offering for sale;
 - (d) selling or marketing;
 - (e) importing;
 - (f) exporting; or
 - (g) stocking for any of the purposes in paragraphs (a) to (f).
- (2) A breeder may give the authorisation referred to in subsection (1), subject to conditions and limitations.
- (3) Subject to sections 29 and 30, the acts referred to in subsection (1)(a) to (g) in respect of harvested material, including entire plants or parts of plants obtained through the unauthorised use of the propagating material of the protected variety, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to that propagating material.
- (4) Subsections (1), (2) and (3) shall apply in relation to varieties –
- (a) which are essentially-derived, in accordance with subsection (5), from the protected variety, where that variety is not itself an essentially-derived variety;
 - (b) which are not clearly distinguishable from the protected variety; and
 - (c) whose production requires the repeated use of the protected variety.
- (5) For the purposes of subsection (4)(a), a variety is essentially-derived from another variety (“the initial variety”) if –
- (a) it is predominantly derived from the initial variety or a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotypes or a combination of genotypes of the initial variety;
 - (b) it is clearly distinguishable from the initial variety; and
 - (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.
- (6) Essentially-derived varieties can be obtained for example by –
- (a) the selection of a natural or induced mutant;
 - (b) a somaclonal variant; or
 - (c) the selection of a variant individual from plants of the initial variety, backcrossing, transformation by genetic engineering or any other similar means.

Exceptions to breeder's right.

29. – (1) A breeder's right shall not extend to –
- (a) any act done privately and for non-commercial purposes;
 - (b) acts done for experimental purposes;
 - (c) acts done for the purpose of breeding other varieties and except where the provisions of section 28 (4) and (5) apply, acts referred to in section 28(1), (2) and (3) in respect of such other varieties.
- (2) In relation to varieties belonging to agricultural genera and species in the prescribed list, the breeder's right shall not be infringed by small farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by sections 28(4)(a) or (b).
- (3) The varieties of ornamentals and forest plants are excluded from the exception under subsection (2).
- (4) The conditions for the implementation of the provisions under subsection (2), including the list of agricultural genera and species, shall be stipulated in regulations under this Act.

Exhaustion of breeder's right.

30. – (1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of section 28(4) and (5), which has been sold or otherwise marketed by the breeder or with the consent of the breeder, in Jamaica, or any material derived from the said material unless such acts involve –
- (a) further propagation of the variety;
 - (b) export of material of the variety, which enables the propagation of the variety into a country which does not protect varieties of the plant genera or species to which the variety belongs, except where the material is exported for final consumption purposes.
- (2) In this section, "material" includes –
- (a) propagating material of any kind;
 - (b) harvested material, including entire plants and parts of plants; and
 - (c) any product made directly from the harvested material.

Restriction on the exercise of the breeder's right.

31. – (1) Except where expressly provided in this Act, the free exercise of a breeder's right shall not be restricted for reasons other than those of a public interest.
- (2) Where any restriction referred to in subsection (1) results in the Minister authorising a third party to perform any act for which the breeder's authorisation is required, the breeder shall receive equitable remuneration.

Measures regulating commerce.

32. – (1) Subject to the provisions of this Act, a breeder's right is independent of –
- (a) any measure to regulate the production, certification and marketing of material of varieties; and
 - (b) the importing or exporting of material of varieties.
- (2) In any case, the measures referred to in subsection (1) shall not affect the application of the provisions of this Act.

Duration of breeder's right.

33. – (1) A breeder's right in respect of trees and vines, shall expire twenty five years after the grant thereof.
- (2) A breeder's right for other genera or species not specified in subsection (1) shall expire twenty years after the grant thereof.

**PART VI. Cancellation, Termination and Nullity
of Breeder's Right**

- Termination.** 34. – (1) A holder of a breeder's right may terminate that right, by written declaration submitted to the Registrar, before the term of the grant expires.
- (2) The date of termination of a breeder's right shall be the date specified in the written declaration or if no date is specified, the date on which the declaration is received by the Registrar.
- Cancellation.** 35. – (1) Subject to Part III of this Act, proceedings for cancellation of a breeder's right may be initiated by the Registrar or any interested person where –
- (a) it is established that the conditions laid down in sections 13 or 14 are no longer fulfilled; or
 - (b) after being requested to do so and within the prescribed period –
 - (i) the breeder does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;
 - (ii) the breeder fails to pay such fees as may be payable to keep the breeder's right in force; or
 - (iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
- (2) Where an application for cancellation is filed by an interested person, the Registrar shall investigate or cause an investigation to be done.
- (3) The Registrar shall, at least ten days before the cancellation of a breeder's right, afford the holder of the breeder's right which is the subject of the cancellation, a hearing.
- (4) Where the Registrar concludes after a hearing under subsection (3) that there is no reason to declare the breeder's right cancelled, the Registrar shall terminate proceedings and inform the holder accordingly.
- (5) Where the Registrar declares a breeder's right cancelled, the Registrar shall inform the holder, in writing, stating the date of the cancellation and giving reasons therefor.
- (6) A licence agreement made hereunder shall become ineffective if the breeder's right under which it was granted is cancelled.
- (7) Where a breeder's right is cancelled, there shall be a reimbursement of royalty which was due before the date of the cancellation.
- Procedure for request of nullity of breeder's right.** 36. – (1) An interested person may file with the Registrar, an application for the nullity of a breeder's right.
- (2) An application under subsection (1) shall be in the prescribed form and accompanied by the payment of the prescribed fee.
- (3) An application under subsection (1) shall not be filed during the period within which an appeal is made against the grant of the breeder's right, or while proceedings on the appeal are still pending before the Court.
- (4) Where an application under subsection (1) is accepted, the Registrar shall investigate, obtain any other evidence, and conduct the hearing.
- (5) The Registrar shall declare the nullity of a breeder's right when it is established that –
- (a) the conditions laid down in sections 11 or 12 were not complied with at the time of the grant of the breeder's right;
 - (b) the grant of the breeder's right is essentially based upon information and documents furnished by the breeder and the conditions laid down in sections 13 or 14 were not complied with at the time of the grant of the breeder's right; or
 - (c) the breeder's right has been granted to a person who is not entitled to the

breeder's right, unless it is transferred to the person who is so entitled.

(6) Where a breeder's right was granted to a person who is not entitled to the breeder's right, the person entitled may request the Registrar to transfer the breeder's right to the person entitled to the breeder's right and the Registrar may transfer same.

PART VII. Variety Denomination

Designation of varieties by denomination.

37. – (1) A variety shall be designated by a denomination which shall be its generic designation.

(2) Subject to section 40, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

Application for variety denomination.

38. – (1) The applicant for a breeder's right shall, within three months of the filing of the application, propose a variety denomination in accordance with subsection (2).

(2) A variety denomination may consist of –

- (a) one word;
- (b) a combination of words and figures;
- (c) words and letters; or
- (d) letters and figures.

(3) A variety denomination shall not consist wholly of figures, except where this is an established practice for designating varieties.

(4) A person shall not use a variety denomination which –

- (a) does not enable the variety to be identified;
- (b) is misleading or likely to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder;
- (c) is identical to, or can be confused with, a variety denomination which designates in Jamaica or in another member of UPOV of an existing variety of the same plant species or of a closely related species;
- (d) is identical to, or can be confused with, a prior trade mark right or other intellectual property right in which the breeder or a third party already enjoys a right, which would prohibit the use of the designation as a variety denomination in accordance with section 40;
- (e) is contrary to public policy or morality;
- (f) refers solely to attributes which are also common names used in other varieties of the species concerned;
- (g) consists of a botanical or common name of a genus or species, or includes a name, which is likely to mislead or cause confusion;
- (h) suggests that the variety is derived from or related to another variety; or
- (i) includes words such as "variety", "cultivar", "form", "hybrid", "cross" or a translation of the words or is, for reasons other than those mentioned in this subsection, not suitable as a generic designation of the variety.

(5) Where a variety is already protected by a member of UPOV or where an application for the protection of the same variety is filed with a member of UPOV, only the variety denomination which has been submitted with that other UPOV member, may be submitted by the applicant in Jamaica.

(6) Upon receipt of the application, the Registrar shall, unless the Registrar considers the denomination unsuitable in accordance with the provisions of sub-sections (1),(2),(3) and (4) and Section 40, register the denomination submitted or require the applicant to submit another denomination.

(7) The Registrar shall publish in the Intellectual Property Journal, the variety

denominations which have been proposed, registered or cancelled.

(8) Any person who offers for sale or markets propagating material of a variety protected within Jamaica is obligated to use the denomination of that variety, even after the expiration of the breeder's right in the variety, except, where in accordance with the provisions of section 40, prior rights prevent such use.

Registration of the denomination.

39. The denomination of a variety shall be registered by the Registrar at the same time of the granting of the breeder's right.

Prior rights of third parties.

40. – (1) Prior rights of third parties in the denomination of a variety shall not be affected by this Act.

(2) 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 section 38(8), is obligated to use it, the Registrar shall require the breeder to submit another denomination for the variety.

(3) For the purposes of this Act, "prior rights" include –

- (a) plant breeder's rights;
- (b) trademark rights;
- (c) any other intellectual property rights; and
- (d) trade names, names of persons, names and abbreviations of intergovernmental organizations, appellations of origin, geographical indications and geographic names.

Indications used in association with denominations.

41. – (1) A variety that is offered for sale or marketed, may have a trademark, trade name or other similar indication with the registered variety denomination.

(2) Where an indication is associated with a registered variety denomination in accordance with subsection (1), the denomination shall be easily recognizable.

Observation and objection to registrability of a variety denomination.

42. – (1) Any interested person may submit to the Registrar, in writing, an observation or objection on the registrability of a variety denomination.

(2) Any relevant objections and observations under subsection (1) shall be communicated to the applicant for, or holder of, the breeder's right, who shall be given the opportunity to reply.

(3) If the Registrar determines that an objection or observation under subsection (1) is valid, and the denomination is unsuitable in accordance with section 38 and section 40 within its territory, the Registrar shall require the breeder to submit another denomination within a specified time.

(4) Failure to submit another denomination, in accordance with subsection (3), within the specified time, may result in the rejection of the application by the Registrar.

Cancellation of registered variety denomination.

43. – (1) Subject to the provisions of this Act, the Registrar may cancel a registered variety denomination –

- (a) at the request of the holder of the breeder's right, an interested person or on the Registrar's own initiative, if –
 - (i) the denomination should not have been registered; or
 - (ii) subsequent to registration, facts become known which would have justified the rejection of the denomination;
- (b) pursuant to an order or decision of the court; or
- (c) at the request of a person who is obligated to use the variety denomination under subsection 38(8) but is prohibited from using that denomination by a final court decision.

(2) In making a decision under subsection (1), the Registrar shall consider whether the holder of the breeder's right participated in, or was given an opportunity to participate in any proceedings challenging the registered variety denomination.

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

variety denomination.

**Objection to
cancellation of
denomination.**

44. – (1) The holder of the breeder's right may object in the prescribed form to the Registrar, to the cancellation of the registration of a variety denomination.

(2) The Registrar shall within thirty days, notify the holder of the breeder's right, of an objection under subsection (1).

(3) the holder of the breeder's right under subsection (2) shall, within thirty days of being notified, reply, in writing, to the Registrar.

**Proceedings before
the Office.**

45. – (1) The Registrar may, in any proceedings under this Act, conduct an oral hearing.

(2) Any such hearing concerning the application for a breeder's right or the invalidation or cancellation of such right, shall be public, unless the legitimate interests of any person may be prejudiced or the Registrar, after consultation with the parties who appear in person or are represented at the hearing, directs otherwise.

(3) In any hearing in proceedings under this Act before the Registrar, evidence may be obtained from –

- (a) any of the parties to the proceedings;
- (b) experts;
- (c) other witnesses; or
- (d) any other person, as requested by the Registrar.

(4) The Registrar may also obtain evidence by –

- (a) requesting the submission of documents by, or in the possession of –
 - (i) a party to the proceedings;
 - (ii) a government or non-governmental authority; or
 - (iii) an expert in a particular area;
- (b) inspecting the installations of any party to the proceedings, with the consent of that party;
- (c) requesting the submission of a sworn statement in writing by any party to the proceedings or by any witness or expert.

(5) A decision of the Registrar shall be based on facts or evidence to which a party to the proceedings, whose right is affected by that decision, has submitted.

(6) Facts or evidence which are not submitted within the prescribed time by a party to the proceedings, may be disregarded by the Registrar.

(7) Unless stated to the contrary, the Registrar may commence the investigations on the Registrar's own volition and the Registrar shall not be restricted to the facts or evidence provided by any party to the proceedings.

(8) An interested person may submit observations or suggestions to the Registrar and the relevant parties to the proceedings pending before the Registrar, however, the interested person is not entitled to become a party to the proceedings merely by the fact of the submission.

(9) The Registrar shall confirm the receipt of the observations or suggestions, in writing, but need not inform the person having submitted them, of any steps taken or any opinion on the observations or suggestions submitted.

PART VIII. Assignment and Licences of Breeder's Rights

**Assignment of
breeder's right.**

46. – (1) A breeder's right may be assigned.

(2) The assignment of a breeder's right shall be in writing and signed by the assignor.

(3) Where there are two or more holders of a breeder's right, and in the absence of an agreement between the parties, each holder may –

- (a) assign that holder's share separately;
- (b) exploit the variety; or
- (c) exclude others from exploiting the variety.

Procedure for granting of licence.

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

(2) A licence pursuant to subsection (1) shall be in writing and registered by the Registrar.

(3) A licence pursuant to subsection (1) shall have no effect against a third party until it is registered.

(4) The registration of an exclusive licence, pursuant to subsection (1) shall be published by the Registrar.

Right of licensor to grant further licences or to exploit the variety.

48. In the absence of any agreement to the contrary, the grant of a licence shall not prevent the licensor from granting further licences to third parties or from exploiting the variety.

Non-assignability of licences.

49. In the absence of any agreement to the contrary, rights granted under a licence shall not be assigned to a third party by the licensee.

Certain provisions in contract void.

50. A provision in a licence or relating to a licence for breeder's rights shall be void so far as it imposes upon the licensee, restrictions outside the rights conferred by the breeder's right or are unnecessary for the safeguarding of the right.

Compulsory licences.

51. – (1) At any time after the date of the grant of a breeder's right under this Act, an interested person may apply to the Court for the grant of a compulsory licence in respect of the breeder's right on the ground that it is necessary to safeguard the public interest in Jamaica.

(2) Subject to this section, where the Court is satisfied that the ground referred to in subsection (1) is established, the Court may make an order for the grant of a compulsory licence on such terms as the Court thinks fit.

(3) A licence granted under this section shall confer on the licensee, the non-exclusive right to reasonably perform any activity referred to in section 28 for the supply of the national market.

(4) A person to whom a licence is granted under this section shall pay to the licensor, the equitable remuneration agreed upon, or, in default of an agreement, such remuneration as is determined by the Court on the application of either party.

(5) The Court may require the holder of a breeder's right to hold available, for a compulsory licensee, the propagating material necessary for making reasonable use of the compulsory licence against payment of equitable remuneration to the holder of the breeder's right.

(6) A compulsory licence shall not be granted, unless –

- (a) the applicant for the licence is financially able, and otherwise in a position, to exploit the breeder's right in a competent and business-like manner;
- (b) the holder of the breeder's right has refused to permit the applicant for the licence to produce or market propagating material of the protected variety in a manner sufficient for the public's interest, or is not prepared to give such permission under reasonable terms;
- (c) there are no existing conditions under which the holder of the breeder's right can be expected to permit the use of the variety in the manner requested; and
- (d) the applicant for the compulsory licence has paid the equitable remuneration for the grant of the licence.

(7) The duration of the licence shall be fixed by the Court and shall not, except under extraordinary circumstances, be –

- (a) less than two, or more than four, years; or
- (b) extended, unless the Court is satisfied, on the basis of a new application, that the conditions for granting a compulsory

licence continue to exist after the expiration of the first period.

(8) Before granting a compulsory licence, the Court may hear and consider the opinion of any national or non-governmental organization in the field of plant breeding and the seed trade on the matter.

(9) Where the Court is satisfied that the grounds of public interest on which any licence granted under this section have ceased to exist or that the licensee has failed to comply with the conditions under which it was granted, the Court may, on the application of any interested party, terminate the licence.

PART IX. Appeals and Enforcement Proceedings

Legal proceedings by licensee.

52. – (1) A licensee under a contractual or compulsory licence or a licensee of right may request the licensor to institute legal action necessary to obtain civil remedies or criminal penalties in respect of any infringement of the breeder's right indicated by the licensee.

(2) Where the licensor refuses or neglects to institute legal action under subsection (1) within three months after the request has been made, the licensee may institute the action in the name of the licensee, without prejudice to the right of the licensor to intervene in such action.

Appeals.

53. – (1) Any person aggrieved by a decision of the Registrar under this Act may appeal against that decision to the Court.

(2) The appeal shall be filed not more than three months after the Registrar has notified the appellant of the decision.

Infringement of breeder's rights.

54. – (1) The carrying out by a person, of any act mentioned in section 28(1) without the breeder's authorization, shall constitute an infringement of the breeder's rights.

(2) A holder of a breeder's right may serve a notice on the person referred to in subsection (1) which shall be in the prescribed form and manner, and without prejudice to the generality of the foregoing, shall –

- (a) state the denomination and species of the plant variety so offered for sale and the name and address of the holder;
- (b) specify the material of the plant variety to which the notice relates;
- (c) require the person to whom it is addressed to provide –
 - (i) the name and address of the producer, the supplier of the material of the plant variety and any prior holder or holders of the material of the plant variety so offered for sale; and
 - (ii) information concerning the quantity of the material of the plant variety so offered for sale that was produced, ordered and delivered to that person; and

- (d) require the person to whom it is addressed to furnish the information to the holder of the breeder's right within twenty-one days of the service of such notice.

(3) Where notice of an infringement of a breeder's right has been served in accordance with this section and the person on whom the notice is served fails to adequately furnish the information so requested, it shall be deemed to be a failure to supply information unless there are reasonable grounds and evidence that–

- (a) the material was not material of the protected variety; or
- (b) the holder of the breeder's right has already exercised the breeder's right in

relation to the material.

(4) A holder of a breeder's right shall not use any information furnished pursuant to a notice for any purpose other than –

- (a) to establish that there has been an infringement of breeder's rights of the protected variety referred to in the notice; or
- (b) in the proceedings for the infringement of plant breeder's rights of the protected variety referred to in the notice.

(5) A notice shall be addressed to the person concerned and served on or given to such person in one of the following ways –

- (a) by addressing it to the person by name and delivering it to that person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on any trade or business or, the address for service that is furnished to the Office; or
- (c) by sending it by registered post to the person at the address at which that person ordinarily resides or carries on any trade or business or at the address for service furnished to the Office.

Civil proceedings.

55. – (1) Subject to this Act, an infringement of a breeder's right shall be actionable in the Court by the holder of that breeder's right.

(2) In any proceedings for an infringement of a breeder's right, the claimant in the proceedings for the infringement shall be entitled to relief by way of –

- (a) an injunction to prohibit the infringement or to prohibit the continuation of the infringement;
- (b) damages for the infringement;
- (c) an order for the defendant to deliver up or destroy any product in relation to which the breeder's right is infringed or any article in which that product is inextricably comprised;
- (d) an account of the profits derived by the defendant from the infringement; or
- (e) a declaration that the breeder's right is valid and has been infringed by the defendant.

(3) Where a person is alleged to have infringed a breeder's right, but did not know or could not reasonably be expected to know that he was engaged in an activity that infringed a breeder's right, the Court may limit damages to the profits attributable to the infringement.

(4) The Court shall not, in respect of the same infringement of a breeder's right, award the holder of a breeder's right, damages, and an account of profits.

Criminal liability.

56. – (1) A person who wilfully offers for sale or markets propagating material of a variety protected in Jamaica, without using the registered variety denomination, commits an offence and is liable, on summary conviction, to a fine not exceeding one million dollars.

(2) A person who wilfully makes use of –

- (a) the registered variety denomination, of a variety protected in Jamaica for another variety;
- (b) a denomination likely to cause confusion with the registered variety denomination for another variety of the same botanical or related species protected in Jamaica; or
- (c) the registered variety denomination for another variety of the same botanical or related species,

commits an offence and is liable, on summary conviction, to a fine not exceeding one million dollars.

(3) A person commits an offence if that person –

- (a) makes, or causes to be made, a false entry in the Register;

- (b) makes, or causes to be made, a false copy, purporting to be a copy of an entry in the Register; or
 - (c) produces or tenders, or causes to be produced or tendered in evidence, anything referred to in paragraph (b),
- and is liable, on summary conviction, to a fine not exceeding one million dollars.

(4) A person who –

- (a) wilfully and falsely represents that a plant variety is a protected variety; or
 - (b) makes a false representation as to the propagating material of a protected variety,
- commits an offence and is liable, on summary conviction, to a fine not exceeding one million dollars.

PART X. Miscellaneous

Regulations.

57. The Minister may make regulations for any matter required to be prescribed by this Act, and for giving effect to the purposes of this Act, including regulations relating to the following –

- (a) the procedure of the Office in respect of –
 - (i) the conduct of the examination of varieties and of variety denominations;
 - (ii) the handling of oppositions to applications for breeder's rights;
 - (iii) the handling of objections and observations on the registrability of variety denominations;
 - (iv) the grant of breeder's rights, and the refusal of applications for breeder's right;
- (b) the cancellation or assignment of breeder's rights and the cancellation of variety denominations;
- (c) the establishment of breeder's right;
- (d) the maintenance and conservation of samples, the cooperation with gene banks or other institutions for the conservation of genetic material;
- (e) the establishment and maintenance of a variety register, and the receiving and filing of any documents concerning breeders' rights;
- (f) the amount, and the collection of all fees provided for by this Act;
- (g) denominations and the regulation of the relationship between variety denominations and trademarks;
- (h) the exception for small farmers under section 29(2); and
 - (i) the prescribed list of agricultural genera and species under section 29(2).

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the granting of proprietary rights to breeders of certain new varieties of plants and to give effect to Article 27.3(b) of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) and the International Convention for the Protection of New Varieties of Plants (UPOV).

Audley Shaw
Minister of Industry, Investment
and Commerce

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