



C/30/14

ORIGINAL: English

DATE: October 15, 1996

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Thirtieth Ordinary Session**  
**Geneva, October 23, 1996**

EXAMINATION OF THE CONFORMITY OF A BILL OF PANAMA  
WITH THE UPOV CONVENTION

*Document prepared by the Office of the Union*

Introduction

1. By letter dated September 30, 1996 (which was received by the Office of the Union on October 10, 1996), Mr. Leonardo Kam, Ambassador and Permanent Representative of Panama to the Office of the United Nations and Other International Organizations in Geneva, requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of a Bill on the Norms for the Protection of New Plant Varieties in the Republic of Panama (hereinafter referred to as "the Bill") with the 1978 Act. The letter is reproduced in Annex I to this document.
2. In his letter, Mr. Kam also sought observations on the Bill, so that they could be taken into consideration by the authorities of his country. The Office of the Union has communicated such comments and, by letter of October 15, 1996, Mr. Carlos Ernesto González, Special Ambassador to WTO, announced that the observations would be included into the Bill. Annex II to this document contains a text of the Bill that incorporates the suggestions made by the Office of the Union.
3. Panama did not sign the 1978 Act. Under Article 32(1)(b) of that Act it must accordingly deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited

by Panama if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.

#### Legal Basis for the Protection of New Varieties in Panama

4. The protection of new plant varieties will be governed in Panama by the law which will be enacted by the Legislative Assembly on the basis of the Bill, and by its implementing regulations, for which the Bill already sets out the scope. An analysis of the Bill follows in the order of the substantive law provisions of the 1978 Act.

#### Article 1(1) of the 1978 Act: Purpose of the Convention

5. Article 1(1) of the 1978 Act provides that “the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right.” Article 1 of the Bill states that “the purpose of this Law is to recognize and ensure to the breeder of a plant variety a right, to be known as a ‘breeder’s right,’ under the conditions hereinafter defined.” The purpose of the Bill thus accords with the purpose of the Convention.

#### Article 2 of the 1978 Act: Forms of Protection

6. The Bill provides for the granting of a breeder’s right through the entry of the variety concerned in the Registry of Protected Varieties, i.e., of a “special title of protection” for the purposes of Article 2 of the 1978 Act.

7. According to Article 6 of the Bill, the breeder’s right is to be considered as an industrial property right subsidiarily governed by the provisions on industrial property, except where otherwise provided in the (future) Law. This provision has precedents in existing member States and enables the Law to be restricted to the special provisions required by the protection of new plant varieties.

8. Article 4 of the Law of May 10, 1996, Establishing Provisions on Industrial Property excludes among other things plant varieties from patentability.

9. The legislation of Panama will thus accord in all respects with Article 2 of the 1978 Act.

#### Article 3 of the 1978 Act: National Treatment; Reciprocity

10. Article 4 of the Bill provides for national treatment in terms of Article 3(1) and (2) of the 1978 Act. No special formalities are foreseen in relation to foreign applicants.

11. The legislation of Panama will thus accord in all respects with Article 3 of the 1978 Act.

#### Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

12. Article 3 of the Bill states that the Law will apply to the genera and species specified by Regulations. It thus provides the basis for compliance with Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

13. Article 8 of the Bill follows the pattern of Article 14(1)(a) of the 1991 Act (with additions based upon the third sentence of Article 5(1) and the second sentence of Article 5(3) of the 1978 Act) in that it provides that the authorization of the breeder will be required for the following acts done in respect of the reproductive or vegetative propagating material of the protected variety:

- (a) production,
- (b) offering for sale, selling or other marketing,
- (c) repeated use of the new variety for the commercial production of another variety,
- (d) use of ornamental plants or parts of such plants normally marketed for purposes other than propagation, when they are used commercially as propagating material for the production of ornamental or cut flowers.

14. Article 9 specifies, in effect, that propagating material is to be interpreted in its broadest sense; it also introduces a “farmer’s privilege.”

15. Article 10 sets out the “breeder’s exemption” in terms conforming to the first sentence Article 5(3) of the 1978 Act (the second sentence thereof being covered by Article 8.c) of the Bill).

16. To sum up, the Bill creates a scope of protection which conforms entirely with Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

17. The Bill sets out the conditions of distinctness, homogeneity and stability, and the requirement for a denomination, in terms that are drawn from the new UPOV Model Law based upon the 1991 Act (Articles 13 to 17). It is in full conformity with the 1978 Act in these respects.

18. The condition of novelty is defined, in terms drawn from both the 1978 and 1991 Act, in Article 14. The second paragraph of that Article constitutes the legal basis for provisions of the kind included in Article 6(2) of the UPOV Model Law or Article 9 of Decision No. 345 of the Commission of the Cartagena Agreement.

19. In conclusion, the Bill fully conforms with Article 6 of the 1978 Act.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

20. Article 28 *et seq.* of the Bill provide for an examination of the application and of the variety in terms which will enable Panama to satisfy the requirements set in Article 7(1) and (2) of the 1978 Act.

21. Under the 1978 Act, provisional protection is optional. The Bill makes no provision on this subject.

Article 8 of the 1978 Act: Period of Protection

22. Article 19 of the Bill specifies that the period of protection shall be 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and 20 years in the case of other species, calculated from the date of grant. These periods conform with Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

23. Article 20 of the Bill contains provisions on the granting of compulsory licenses for reasons of public interest in terms which conform to Article 9 of the 1978 Act.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

24. Subject to the comment made in the following paragraph, Articles 41 and 42 of the Bill deal with the nullity and forfeiture of the rights protected in terms which conform with Article 10 of the 1978 Act.

25. Article 42 also includes, as reasons for nullity, the case where the right has been granted to a non-entitled person and the case where the grant has been essentially based upon information and documents furnished by the applicant, and the variety was not homogeneous or stable at the application or priority date (Article 21(1)(ii) and (iii) of the 1991 Act). In accordance with previous decisions taken by the Council, these reasons for nullity are to be deemed as compatible with the 1978 Act.

26. In conclusion, the Bill substantially conforms to Article 10 of the 1978 Act.

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

27. There are no provisions in the Bill which would prevent a breeder from choosing the member State of the Union in which he wishes to file his first application, or from applying for protection in other member States until a breeder's right is issued in Panama. There are no provisions that would make protection in Panama dependent upon the protection granted (or

not granted) in another country. The Bill accordingly conforms with Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

28. Article 27 of the Bill provides for priority in accordance with Article 12 of the 1978 Act, except that it does not refer to the possibility of a deferred examination set out in paragraph (3) of the said Article. That possibility can be introduced through the Regulations..

Article 13 of the 1978 Act: Variety Denomination

29. Provisions relating to variety denominations are to be found in Chapter III of the Bill (Articles 35 *et seq.*). These provisions are based on the new UPOV Model Law and reproduce the substance of Article 13 of the 1978 Act.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

30. The first sentence of Article 21 of the Bill reproduces the substance of the first sentence of Article 18 of the 1991 Act, and thus states that protection is independent of marketing regulations. Moreover, Article 11 states that the National Seed Committee must take protection into consideration in relation to the requirements for marketing of seed. In addition, Article 25 makes it clear that the Registry held by the National Seed Committee does not confer any rights to the breeders, who would have to make an application under the future law based on the Bill to obtain such rights.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

*Legal Remedies*

31. Articles 43 and 44 of the Bill provide for civil law and penal law remedies which will enable an effective defense of the rights granted to the breeder, as provided in Article 30(1)(a) of the 1978 Act.

*Authority*

32. The protection system will be administered by the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI), which will be responsible for the administrative aspects of the system, and the Institute of Agricultural Research of Panama (IDIAP), which will be responsible for the technical aspects, in particular the examination of the varieties.

33. Article 46 also provides for the setting up of a Council for the Protection of New Plant Varieties whose members will be drawn from the various interested circles, both public and private, and which will advise the Minister for Agricultural Development on the general aspects of the implementation of the law.

34. The requirement set out in Article 30(1)(b) of the 1978 Act is thus met.

#### *Publication*

35. Article 23 of the Bill contemplates the publication, in the Official Gazette of the Industrial Property Registry, of the information that is usually communicated to the public in member States. The minimum requirement set out in Article 30(1)(c) of the 1978 Act will thus be met once the protection system is operational.

#### General Conclusion

36. In the opinion of the Office of the Union, the Bill of Panama conforms with the 1978 Act in all its main features.

37. On the basis of the foregoing, and of precedents, the Office of the Union would suggest that the Council may wish:

(a) to take a positive decision on the conformity of the Bill of Panama with the provisions of the 1978 Act;

(b) to advise the Government of Panama that after the enactment into law of the Bill, without substantial changes, it may deposit an instrument of accession to the 1978 Act (provided that the Act remains open to accession at the date of the proposed deposit);

(c) to authorize the Secretary-General to inform the Government of Panama of the above decision and advice.

*38. The Council is invited to take note of the information given above and to take decisions on the basis of the proposal set out in the preceding paragraph.*

[Two Annexes follow]

C/30/14

ANNEX I

LETTER, DATED SEPTEMBER 30, 1996, FROM MR. LEONARDO KAM,  
AMBASSADOR AND PERMANENT REPRESENTATIVE OF PANAMA  
IN GENEVA, TO THE DIRECTOR GENERAL OF WIPO

I have the honor to inform you, upon instructions from my Government, that the Republic of Panama intends to adhere to the International Union for the Protection of New Varieties of Plants (UPOV), pursuant to the provisions of Article 32(3) of the 1978 Act.

For this purpose, I am formally submitting the Bill on the “Norms for the Protection of New Plant Varieties in the Republic of Panama,” which is currently being approved by our national authorities. It would be highly appreciated if a copy of that document could be submitted to the Council of UPOV and if the intention of the Republic of Panama could be announced at the session which the said body will hold on October 23, 1996.

At the same time, we would highly appreciate it, if you could transmit us any observations on the Bill, so that our authorities can take them into consideration.

[Annex II follows]

C/30/14

ANNEX II

**BILL**

**ON THE NORMS FOR THE PROTECTION OF NEW PLANT VARIETIES  
IN THE REPUBLIC OF PANAMA**

PART I

CHAPTER I

PURPOSE AND SCOPE OF THE LAW

Article 1

Purpose of the Law

The purpose of this Law is to recognize and to ensure to the breeder of a new plant variety a right, to be known as a “breeder’s right,” under the conditions hereinafter defined.

Article 2

Definitions

The following terms and definitions shall be adopted for the purposes of this Law:

*National Seed Committee:* The Committee created at national level by Decree No. 3 of April 5, 1978, which consists of representatives of State entities and the private sector. The objectives of the Committee are in particular the control of the quality of the seed and propagating material used in the country, the certification and registration of seed and the supervision of compliance with the applicable legal provisions. It has a Technical Secretariat which includes the Seed Reproduction Unit, the Official Seed Laboratory and the Certification and Registration Unit.

*Council for the Protection of New Plant Varieties:* The consultative body comprising the various circles and bodies interested in the protection of new plant varieties and presided over by the Minister for Agricultural Development.

*International Convention for the Protection of New Varieties of Plants (CIPOV), of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978:* The International Convention to which States may adhere, whose objective is the protection of plant varieties by an intellectual property right and which is the legal basis for the International Union for the Protection of New Varieties of Plants (UPOV).



*Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI):* The State entity where the industrial property registers of the Republic of Panama are held. For the purposes of this Law, it shall have the task of holding the Register of Protected Varieties and granting the breeder's right.

*Institute of Agricultural Research of Panama (IDIAP):* The State entity which has its own legal personality and estate, and enjoys administrative, economic and technical autonomy, and whose task is to regulate the research activities and to formulate and apply the scientific and technological policies of the public sector in the field of agriculture and livestock. For the purposes of this Law, it shall be the entity entrusted with the technical analyses required to check whether a variety satisfies the conditions set out in this Law for its registration and the granting of breeders' rights in respect of it.

*Breeder:* The natural or legal person who has created or discovered a new plant variety, either through natural means or genetic manipulation.

*Recognized Priority:* The anteriority for the granting of a breeder's right, based upon the filing abroad of an application relating, in total or in part, to the same subject matter as the one which is the subject of a later application filed in the Republic of Panama.

*Register:* The Register of Protected Varieties held at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries.

*Claim:* A petition for the protection of an essential characteristic of a new plant variety, made in a precise and specific way in the application for registration and granted, where relevant, in the corresponding title.

*International Union for the Protection of New Varieties of Plants (UPOV):* The intergovernmental organization having its seat in Geneva (Switzerland), based upon the International Convention for the Protection of New Varieties of Plants, and whose members are the signatories of the Convention.

*Reference specimen:* The smallest sample used by the breeder to maintain his variety, from which the representative sample is taken for the purposes of the registration of the variety.

*Reproductive or vegetative propagating material:* Seeds, fruits, plants or titles of plants which are used for the reproduction of plants. It includes whole plants.

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

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

*Protected Variety*: A variety entered in the Register of Protected Varieties of the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, which is the subject of a breeder's right.

### Article 3

#### Scope of the Law

This Law shall apply to the plant genera and species specified in the Regulations.

### Article 4

#### National Treatment and Reciprocity

The following shall be the beneficiaries of the right conferred by this Law:

- (a) the nationals of the Republic of Panama and all persons having their place of residence or registered office in Panama;
- (b) the nationals of the member States of the International Union for the Protection of New Varieties of Plants (UPOV), and all persons having their place of residence or registered office on their territory;
- (c) the nationals of any State which, without being a member of UPOV, grants effective protection to the nationals of the Republic of Panama. The Executive shall determine, for the purposes of this paragraph, whether the protection granted by another State is effective and may be reciprocated.

## PART II

### CHAPTER I

#### SUBSTANTIVE LAW

### Article 5

#### Nature of the Breeder's Right

The "breeder's right" shall be treated in all respects as an industrial property right, to which the legal provisions in force with respect to that property shall subsidiarily apply, except where otherwise provided in this Law.

### Article 6

### Entitlement

Entitlement to the breeder's right shall vest in the breeder or his successor in title.

Where two or more persons have created or discovered a variety jointly, entitlement to protection shall vest in them jointly. Subject to any agreement to the contrary between the joint breeders, their shares shall be equal.

Where the breeder is an employee, entitlement to the breeder's right shall be determined by the employment relationship in the context of which the variety was bred or discovered, in accordance with the law applicable to the relationship.

### Article 7

#### Features of the Right

The breeder's right may be assigned or transferred by contract or succession. The assignee or successor may use the right, derive benefits therefrom and dispose of it during its period of validity in the same way and under the same conditions as his predecessor.

The holder of the right may grant licenses of exploitation for the use of the protected variety to third parties.

The Executive shall regulate this matter further.

### Article 8

#### Scope of the Breeder's Right

The authorization of the breeder to whom a breeder's right has been granted shall be required for the following acts, in respect of reproductive or vegetative propagating material of the protected variety:

- (a) production;
- (b) offering for sale, sale or other marketing;
- (c) repeated use of the new variety for the commercial production of another variety;
- (d) use of ornamental plants or parts thereof normally marketed for purposes other than propagation, when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

The breeder may make the authorization granted in accordance with the preceding paragraphs subject to such conditions and limitations as he may specify.

Article 9

The breeder's right shall extend to all botanical species and genera, and shall apply in general to the whole plant, including any type of flowers, fruits and seeds and any other part thereof which may be used as reproductive or vegetative propagating material.

The use, by a farmer on his own holding, of the harvest produced from material acquired beforehand in an adequate manner shall not be deemed to be an infringement of the breeder's right. However, the said material may under no circumstances be marketed, sold or disposed of lawfully as seed or propagating material.

Article 10

Authorization by the breeder shall not be required either for the utilization of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties.

Article 11

Seed Marketing Authorization

With respect to the requirements for the sale of seed, the National Seed Committee shall take the provisions of this Law into account.

Article 12

Judicial Assignment of the Breeder's Right

Where an application for a breeder's right has been filed by a person not entitled to protection, the holder of the better right or entitled person may bring an action for the assignment to him of the application or, if already granted, of the breeder's right.

The action for assignment shall be barred after five years from the date of publication of the grant of the breeder's right. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.

Where the action succeeds, any right granted to third parties in the meantime, on the basis of the breeder's right, shall lapse.

However, the holder of any exploitation right acquired in good faith who has taken genuine and effective measures with a view to exercising his right before the date of the notification of the action or, failing such notification, of the decision, may perform or continue

to perform the act of exploitation resulting from the measures taken, subject to payment of equitable remuneration to the entitled person.

## CHAPTER II

### CONDITIONS FOR THE GRANT OF A BREEDER'S RIGHT

#### Article 13

##### Conditions for Protection

The breeder's right shall be granted where the variety meets the following characteristics:

- (a) it is new,
- (b) it is distinct,
- (c) it is uniform,
- (d) it is stable,
- (e) it is the subject of a denomination in accordance with the provisions of Articles 35 *et seq.*

The grant of the breeder's right may only be subject to the afore-mentioned conditions, and the right shall be issued provided that the applicant has complied with the formalities established by this Law and paid the required fees.

#### Article 14

##### Novelty

The variety shall be deemed to be new if, at the date of filing of the application or, where relevant, at the priority date, reproductive or vegetative propagating material or harvested material of the variety has not been offered for sale or marketed, by or with the consent of the breeder or his successor in title,

- (a) in the territory of the Republic of Panama for longer than one year and,
- (b) in the territory of any other State for longer than four years or, in the case of trees and grapevine, for longer than six years.

The Executive shall specify in the Regulations the cases in which a sale or another form of disposal to others will not affect the novelty of the variety.

#### Article 15

##### Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

The filing, in any country, of an application for a breeder's right or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety being the subject of the application a matter of common knowledge from the date of the application, provided that the latter leads to the grant of the breeder's right or the entry in the catalogue, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors such as: exploitation of the variety already in progress, entry of the variety in the register of varieties kept by a recognized professional association, or inclusion of the variety in a reference collection.

#### Article 16

##### Uniformity

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

#### Article 17

##### Stability

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

### CHAPTER III

#### CREATION, DURATION, LIMITATION

Article 18

Creation of the Right

The breeder's right shall be created through the Register kept at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, under the terms and conditions set out in this Law.

Article 19

Duration of the Right

The right shall be granted to the breeder for a period of 20 years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection shall be 25 years. The breeder's right shall only remain in force as long as the fees arising from registration and maintenance of the right in accordance with the provisions of this Law are paid.

Article 20

Restrictions on the Exercise of the Protected Rights

The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest. In such cases, the granting of compulsory licenses for the exploitation of registered varieties may be authorized. When granting a compulsory licence, the competent authority shall fix the equitable remuneration to be paid by the holder of the compulsory licence to the breeder.

The Executive shall regulate this matter further.

Article 21

Measures Regulating Commerce

The breeder's right shall be independent of any measure taken by the Republic of Panama to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. The right shall be deemed to be akin to the rights resulting from industrial property, and the provisions applying to such property in respect of competition law shall also be applicable to it.

PART III

REGISTER AND APPLICATION

CHAPTER I

## REGISTER

### Article 22

#### Register of New Plant Varieties

The Register of New Plant Varieties shall be held at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI).

DIGERPI shall maintain for that purpose a Register of New Plant Varieties in which the applications filed and rights granted shall be recorded. DIGERPI shall distinguish between the Register of Applications and the Register of Rights. The Registers shall be open to public inspection.

Any person having a legitimate interest may

- (a) inspect the documents relating to applications,
- (b) inspect the documents relating to a breeder's right already granted, and
- (c) visit the growing tests and examine the other necessary tests relating to the technical examination.

In the case of varieties the production of which requires repeated use of other varieties (components), the applicant may, when making his application, request that the documents and tests relating to the components be withheld from public inspection.

DIGERPI shall preserve the originals or copies of the documents in the files until five years after the withdrawal or rejection of the application, or the lapse of the breeder's right, as the case may be.

### Article 23

#### Gazette

DIGERPI shall publish at regular intervals in the Official Gazette of the Industrial Property Registry the registrations of and applications for new plant varieties, with the following chapters:

- (a) applications for the grant of breeders' rights;
- (b) applications for variety denominations;
- (c) registrations of new denominations for protected varieties;
- (d) withdrawals of applications for the grant of breeders' rights;



- (e) rejections of applications for the grant of breeders' rights;
- (f) grants of breeders' rights;
- (g) changes in the persons (applicants, holders and procedural representatives);
- (h) lapses of breeders' rights;
- (i) licenses;
- (j) official announcements.

#### Article 24

##### Fees

The administrative acts of DIGERPI shall give rise to the payment of fees, for services rendered. For the purposes of this Law, the fees and the amounts provided in the Industrial Property Law (Law No. 35 of May 10, 1996) for the registration of patents and industrial designs shall be applicable.

#### Article 25

##### Registration with the National Seed Committee

The registrations made with the National Seed Committee of Panama shall be valid for the purposes set out in the corresponding legislation, but shall not confer any breeder's right, nor may they be claimed on the territory of any other member State of UPOV. Producers who wish to hold breeders' rights in their new varieties shall comply with the registration provisions set out in this Law.

## CHAPTER II

### APPLICATIONS

#### Article 26

##### Form and Content of the Application

Any person wishing to have a variety protected shall file an application with DIGERPI and pay the corresponding fee.

The application, to be valid, shall contain at least the following elements:

- (a) the name and address of the applicant and, where relevant, his procedural representative;
- (b) the name and address of the breeder, if he is not the applicant;
- (c) the identification of the botanical taxon (Latin and common name);
- (d) the denomination proposed for the variety, or a provisional designation;
- (e) where the priority of an earlier application is claimed, the member State of UPOV with which the said application was filed and the filing date;
- (f) a technical description of the variety;
- (g) proof of payment of the application fee.

The Executive shall regulate this matter further.

#### Article 27

##### Priority

The applicant may avail himself of a right of priority based upon an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the Authority of a member State of UPOV.

Where the application filed with DIGERPI is preceded by several such applications, priority may be based only on the earliest application.

The right of priority shall be expressly claimed in the application filed with DIGERPI. It may only be claimed within a period of twelve months from the date of filing of the earliest application. The day of filing shall not be included in the said period.

In order to avail himself of the right of priority, the applicant shall submit to DIGERPI, within three months from the filing date, in accordance with the provisions of this Law, a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed.

DIGERPI may request that a translation of the first application, or of some documents that constitute the first application, be produced within three months from the date of receipt of the request.

The effect of priority shall be that, with respect to the conditions of protection attaching to the variety, the application shall be deemed to have been filed at the date of filing of the first application.

Article 28

Examination of the Application as to Formal Requirements; Filing Date

The application must satisfy the requirements of form and substance.

Where the application is clearly unacceptable by reason of the botanical taxon to which the variety belongs, the documents constituting the application shall be returned to the applicant, and the application fee shall be refunded.

Where the application is incomplete or incorrect, DIGERPI shall request the applicant to correct it within thirty days from the date of receipt of the request. Any application that is not corrected within the prescribed period shall be deemed not to have been filed.

Any application that is complete and correct shall be given a filing date and shall be recorded in the Register. The date on which the information requested under this Law is received by DIGERPI shall be taken to be the filing date.

Article 29

Examination of the Application as to Substance

DIGERPI shall examine the application as to substance in order to verify, on the basis of the information given in the application, that the variety satisfies the requirements and that the applicant is entitled in accordance with the provisions of this Law.

Where the examination reveals an obstacle to the grant of the breeder's right, the application shall be rejected.

The examination as to substance shall be ordered by DIGERPI and undertaken by the entities qualified thereto, that is, the Institute of Agricultural Research of Panama (IDIAP) or any other designated entity.

Article 30

Technical Examination of the Variety

The variety shall undergo a technical examination the purpose of which shall be

- (a) to verify that the variety belongs to the stated botanical taxon,
- (b) to establish that the variety is distinct, uniform and stable, and
- (c) where the variety is found to meet the aforesaid requirements, to establish an official description of the variety.

In principle, the examination shall be carried out by or under the supervision of the Institute of Agricultural Research of Panama (IDIAP). The examination may be carried out by private entities insofar as they have been officially accredited for that purpose. The accreditation of such entities shall comply with the applicable provisions in force in the Republic of Panama.

IDIAP shall determine the practical details of the examination. The cost of the technical examination shall be paid by the applicant directly to the institution which carries it out. The said cost shall be determined by the material used and the effectiveness of the service. The cost of the examination shall be reasonable. The Executive shall regulate this matter further.

The official description referred to in paragraph (c) may be subsequently extended or amended on the basis of developments in agrobotanical knowledge without the subject matter of protection being affected thereby.

### Article 31

#### Information, Documents and Material Required for the Examination

The applicant shall submit all the information, documents or material requested for the purposes of the technical examination.

Failure to submit the requested elements shall cause the application to be rejected, unless the applicant adduces a reason of *force majeure* for his omission.

### Article 32

#### Publication of the Application

The applications shall be published in the Official Gazette of the Industrial Property Registry of the Ministry of Commerce and Industries and the announcements shall include, as a minimum, the elements mentioned in paragraphs (a) to (e) of Article 26.

### Article 33

#### Objections to the Grant of the Breeder's Right

As from the publication of the application any person may file objections to the grant of a breeder's right.

The objections may only be based upon the allegation that the variety is not new, distinct, uniform or stable, or that the applicant is not entitled to protection.

The Executive shall regulate this matter further, due account being taken, however, of the provisions of Law No. 35 of 1996 on the objections to the grant of a patent.

Article 34

Grant of the Breeder's Right; Rejection of the Application

Where it is satisfied as a result of the examination undertaken by IDIAP that the variety fulfills the requirements set out in paragraphs (a) to (e) of Article 13 and that the applicant has fulfilled the other requirements set out in this Law, DIGERPI shall grant the breeder's right.

Where it is not so satisfied, DIGERPI shall reject the application.

The grant of the breeder's right, or the rejection of the application, shall be recorded in the Register of New Plant Varieties and published in the Gazette.

The grant of the breeder's right shall also be recorded in the said Register. The description of the variety may be included in the Register by reference to the technical files of DIGERPI and the examinations provided by IDIAP.

CHAPTER III

DENOMINATION

Article 35

Denomination

The denomination of a protected variety shall be its generic designation.

The denomination may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must differ from every denomination which designates in any member State of UPOV, an existing variety of the same botanical species or of a closely related species.

For as long as the variety is exploited, it shall be prohibited to use, in the territory of the Republic of Panama, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. This prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety.

Any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be obliged to use the denomination of that variety.

The obligation to use a denomination shall not end with the breeder's right that gave rise to it.

When a variety is offered for sale or otherwise marketed, the use of a trademark, trade name or other similar indication in association with the registered variety denomination shall be permitted, subject to the denomination remaining easily recognizable.

### Article 36

#### Grounds for Refusal

Without prejudice to the provisions of the CIPOV and the rules established by UPOV, registration as the denomination of a variety shall be denied to a designation that

- (a) does not conform to the provisions of the preceding Article,
- (b) is not suitable for the identification of the variety, in particular owing to lack of distinctiveness or linguistic unsuitability,
- (c) is contrary to public policy or morality,
- (d) consists exclusively of signs or indications that may serve, in the plant varieties and seeds sector, to designate kind, quality, quantity, intended purpose, value, geographical origin or time of production,
- (e) is liable to mislead or to cause confusion as to the characteristics, value or geographical origin of the variety, or the links between the variety and certain persons, in particular the breeder or the applicant, or
- (f) is identical with, or confusingly similar to a denomination that designates, in the territory of Panama, an existing variety of the same or a closely related species, unless the existing variety is no longer exploited and its denomination has not acquired any particular significance.

The registration of such designations shall be refused on the basis of opposition, filed by the holder of the rights in the element concerned, with due regard to the applicable provisions of Law No. 35 of 1996. The details shall be specified in the Regulations.

### Article 37

#### Registration Procedure

The denomination proposed for the variety whose protection is sought shall be submitted together with the application.

Subject to payment of a special fee and the indication of a provisional designation for the variety in the application, the applicant may have the procedure for the registration of the denomination deferred. In such a case, the applicant shall submit the proposed denomination

within thirty days from the date of receipt of the request. If the applicant fails to submit a proposal within the prescribed period, the application shall be rejected.

The proposed denomination shall be published in the Gazette, unless the competent authority has found or knows of a ground for refusal in accordance with the provisions of this Law.

Any interested person may file an objection to the registration of the denomination based upon any one of the grounds for refusal set out in this Law.

The objections and observations shall be communicated to the applicant, who shall have the opportunity to reply.

The applicant may, on the basis of the objections and observations, submit a new proposal.

For the examination of the suitability of the denomination, DIGERPI shall submit the proposal to IDIAP for consideration, which shall be the competent authority for determining whether a denomination may be registered or not. DIGERPI shall abide by the conclusions of IDIAP's report.

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

The Executive shall specify the details in the Regulations.

### Article 38

#### Cancellation of a Denomination and Registration of a New Denomination

DIGERPI shall cancel a registered denomination

- (a) when it is established that the denomination has been registered despite the existence of a ground for refusal,
- (b) when the holder so requests and demonstrates a legitimate interest, or
- (c) when a third person produces a judicial decision prohibiting the use of the denomination in connection with the variety.

The holder shall be informed of the intended cancellation and requested to propose a new denomination. The proposed new denomination shall be subject to the examination and publication procedure set out in this Law. The new denomination shall be registered and published once approved; the former denomination shall be cancelled at the same time.

## CHAPTER IV

### MAINTENANCE OF THE VARIETY

#### Article 39

##### Maintenance of the Variety

The holder shall be under an obligation to maintain the protected variety or, where relevant, its hereditary components for the whole duration of the breeder's right.

At the request of DIGERPI, the holder shall provide it or an authority designated by it, within the prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety.

## CHAPTER V

### PAYMENT FOR AND LAPSE OF THE BREEDER'S RIGHT

#### Article 40

##### Annual Fee

The breeder shall pay a fee every five years for the whole period of protection.

The first payment shall be made with the filing of the application, and the subsequent ones every five years, computed from the date of filing of the application. The payment may be made at any time before the end of the five-year period concerned. If the payment is not made at the end of a period of six months after the date on which the payment of a particular fee became due, the holder will be deemed to have abandoned his breeder's right and the latter shall automatically lapse.

#### Article 41

##### Lapse of the Breeder's Right: Cancellation

The breeder's right and its registration shall lapse, with the corresponding rights becoming public property, where

- (a) the period of protection set out in this Law comes to an end,
- (b) the holder surrenders his right in a written declaration addressed to DIGERPI,



- (c) a fee that has become due is not paid,
- (d) the holder is not in a position to provide the competent authority with reproductive or vegetative propagating material capable of producing the variety with its characteristics as defined when the protection was granted, or
- (e) the holder, after being requested to do so and within a prescribed period, does not provide the documents and the information deemed necessary for checking the variety, or does not allow inspection of the measures which have been taken for the maintenance of the variety.

#### Article 42

##### Nullity of the Breeder's Right

The breeder's shall be declared null and void when it is established

- (a) that the variety was not new or distinct at the date of filing of the application or, where relevant, at the date of priority,
- (b) that, where the grant of the breeder's right has been essentially based upon information and documents submitted by the applicant, the variety was not uniform or stable at the said date, or
- (c) that the breeder's right has been granted to a person who is not entitled to it and the entitled person has not brought an action for judicial assignment, in accordance with Article 12, or has renounced the right to bring such an action.

Subject to any provision to the contrary in this Law, the breeder's right that has been declared null and void shall be deemed never to have been granted.

Any person having a legitimate interest may file a request for annulment.

#### PART IV

##### REMEDIES AND SANCTIONS

#### Article 43

##### Civil Remedies

Any person who, without being entitled to do so, performs acts that require the authorization of the holder, uses a designation or fails to use a variety denomination in contravention of the provisions of this Law, may be sued by the breeder or by the holder of an

exclusive licence and shall be subject to the provisions relating to civil procedure set out for the rights resulting from industrial property in Law No. 35 of May 10, 1996.

Subject to the provisions of this Law, the provisions applicable to the exercise of the rights conferred in relation to inventions and utility models, as set out in the provisions on industrial property of the Republic of Panama, shall apply *mutatis mutandis* to the exercise of the rights under a breeder's right.

#### Article 44

##### Criminal Penalties

Any act which entails the undue use of a breeder's right and any infringement committed with full knowledge of the infringement shall constitute an offense punishable for the purposes of this Law. The provisions, procedures and sanctions provided by the Law on Industrial Property of the Republic of Panama in respect of inventions shall be applicable.

#### Article 45

##### Offenses in Relation to Variety Denominations

Any person who, in full knowledge of the facts, uses a designation or fails to use a variety denomination in contravention of the provisions of this Law, shall be liable to a fine of one thousand balboas (B/1,000) to ten thousand balboas (B/10,000). In the case of a second or subsequent offense, the fine shall be doubled.

### PART V

#### OFFICIAL BODIES

#### Article 46

##### Council for the Protection of New Plant Varieties

There shall be created a Council for the Protection of New Plant Varieties, presided over by the Minister for Agricultural Development and comprising representatives of the various circles interested in the protection of new plant varieties, in particular, but not exclusively, the Institute of Agricultural Research of Panama, the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, the Faculty of Agricultural Sciences of the University of Panama, and the members and the Executive Secretary of the National Seed Committee.

The details for the nomination of the members of the Council and for its functioning shall be specified in the Regulations.

The task of the Council shall be to advise the Minister for Agricultural Development and make proposals to him, as a consultative body for the implementation of this Law, in accordance with the other provisions applying to new plant varieties and seeds in the Republic of Panama.

## PART VI

### MISCELLANEOUS PROVISIONS

#### Article 47

##### Regulations

The Executive shall issue Regulations to this Law.

#### Article 48

##### Cooperation in Examination

IDIAP shall be entitled to conclude administrative agreements for cooperation in the examination of varieties and the verification of the maintenance of varieties with the competent authorities of the member States of UPOV.

#### Article 49

##### Coordination

The Institute of Agricultural Research of Panama shall coordinate with the Directorate General of the Industrial Property Register of the Ministry of Commerce and Industries with respect to the substantive examination of the application as regards the botanical taxon, the examination as to form of the application, the technical examination, the maintenance of the variety, the suitability of the denomination, the publications in the Official Gazette of the Industrial Property Registry, and any other activity that is necessary for the effective protection and registration of new plant varieties as industrial property rights in the Republic of Panama.

#### Article 50

##### Transitional Provision Relating to Registrations

Any breeder having a variety registered with the National Seed Committee of the Republic of Panama may have his registration validated with DIGERPI for the granting of a breeder's right. The applicant shall satisfy the requirements of form and substance for the application, but shall be exempted from the provisions regarding the technical examination and the maintenance of the variety. He shall be subject to the legal provisions relating to the variety denomination.

Article 51

Derogations

This Law shall not be affected by any provision that would be incompatible with it, and Article 15 of the Law No. 35 of 1996 shall be amended accordingly.

Article 52

Entry into Force

This Law shall enter into force upon its promulgation.

[End of document]