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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## GUIDANCE FOR MEMBERS OF UPOV ~~ON ONGOING OBLIGATIONS~~ AND RELATED NOTIFICATIONS ~~AND ON THE PROVISION OF INFORMATION TO FACILITATE COOPERATION~~

*Document prepared by the Office of the Union*

*to be considered by the Administrative and Legal Committee  
at its seventieth session, to be held in Geneva on October 13, 2014*

*Disclaimer: this document does not represent UPOV policies or guidance*

### Note for Draft version

#### **PREAMBLE/PART I**

**Strikethrough (highlighted)** indicates deletion from the text of document UPOV/INF/15/2.

**Underlining (highlighted)** indicates insertion to the text of document UPOV/INF/15/2.

#### **PART II**

**Strikethrough (highlighted)** indicates deletion from the text of Module 1 “Plant Breeders’ Rights Office” and Module 2 “Administration of applications” of DL 305/DL 305 A.

**Underlining (highlighted)** indicates insertion to the text of Module 1 “Plant Breeders’ Rights Office” and Module 2 “Administration of applications” of DL 305/DL 305 A.

#### **GENERAL**

**Endnotes** provide background information when considering the draft version, not to be retained in the approved version of the document.

**Footnotes** to be retained in the published version of the document.

(This document should be read in conjunction with document CAJ/70/5 “Guidance for members of UPOV on ongoing obligations and related notifications and on the provision of information to facilitate cooperation (Revision)”) )

TABLE OF CONTENTS

PREAMBLE.....	3
PART I. RESPONSIBILITIES AS A UPOV MEMBER .....	4
Section 1. Notifications concerning the representatives and alternates to the Council.....	4
Initial notification of the representative .....	4
Subsequent notifications of any changes concerning the representative .....	4
Responsibilities of the representative.....	4
Section 2. Notifications concerning the legislation governing breeders' rights and, if appropriate, any extension of the application of the Convention to additional plant genera and species.....	5
Notifications concerning changes in the legislation governing breeders' rights.....	5
Notification of any extension of the application of the UPOV Convention to additional plant genera and species .....	6
Section 3. Financial obligations concerning the payment of contributions.....	7
Section 4. Information to facilitate cooperation.....	7
DUS Examination (GENIE database).....	7
Variety Denominations (PLUTO database) .....	8
Exchangeable Software .....	8
Plant Variety Protection Statistics.....	8
Other Developments in members of the Union .....	8
PART II. OPERATING THE UPOV PLANT VARIETY PROTECTION SYSTEM .....	9
Section 1. The Plant Breeders' Rights Office.....	9
Introduction .....	9
Table of Contents of the UPOV Collection .....	10
Establishment of a PBR Office .....	10
Functions and structure of a PBR Office.....	11
Flow diagram 1: Basic tasks within the PBR Office.....	11
Section 2. Administration of applications.....	12
Application for plant breeders' rights (see note (a) in the flow diagram in Section 1).....	12
Development of forms .....	12
Assigning filing date .....	15
Application duly filed (see note (b) in the flow diagram in Section 1).....	15
Publication (see note (c) in the flow diagram in Section 1).....	15
Examination of requirements (see note (d) in the flow diagram in Section 1).....	15
DUS examination (see note (e) in the flow diagram in Section 1) .....	16
Proposed decision (see note (f) in the flow diagram in Section 1).....	16
Objections (see note (g) in the flow diagram in Section 1) .....	17
Title grant (see note (h) in the flow diagram in Section 1) .....	17
Matters after the grant (see note (i) in the flow diagram in Section 1) .....	17

~~GUIDANCE FOR MEMBERS OF UPOV ON ONGOING OBLIGATIONS  
AND RELATED NOTIFICATIONS  
AND ON THE PROVISION OF INFORMATION TO FACILITATE COOPERATION~~

PREAMBLE

1. ~~The purpose of this document is to provide guidance for members of the International Union for the Protection of New Varieties of Plants (members of the Union) on ongoing obligations and related notifications and on the provision of information to facilitate cooperation. The purpose of this document is to provide members of UPOV with guidance on responsibilities of members of UPOV and to provide an introduction to the operation of the UPOV system of plant variety protection, with information on sources of further, detailed guidance.~~

2. ~~The UPOV Convention requires members of the Union to adopt all measures necessary for the implementation of the UPOV Convention. Members of the Union must be in a position, under their laws, to give effect to the provisions of the UPOV Convention.~~<sup>1</sup>

3. The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these guidance notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

4. While guidance notes in this document relate to certain provisions of the 1991 Act of the UPOV Convention, they are also relevant for the corresponding provisions of the 1978 Act of the UPOV Convention, unless indicated otherwise.

5. The structure of the document is as follows:

PART I. RESPONSIBILITIES AS A UPOV MEMBER

Section 1. Notifications concerning the representatives and alternates to the Council

Section 2. Notifications concerning the legislation governing breeders' rights and, if appropriate, any extension of the application of the convention to additional plant genera and species

Section 3. Financial obligations concerning the payment of contributions

Section 4. Information to facilitate cooperation

PART II. OPERATING THE UPOV PLANT VARIETY PROTECTION SYSTEM

Section 1. Plant breeders' rights office

Section 2. Administration of applications

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<sup>1</sup> See Article 30 of the 1991 Act of the UPOV Convention and of the 1978 Act of the UPOV Convention.

PART I. RESPONSIBILITIES AS A UPOV MEMBER

Section 1. Notifications concerning the representatives and alternates to the Council

Relevant article<sup>2</sup>

**Article 26**  
**The Council**

**(1) [Composition] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.**

*Initial notification of the representative*

6. Members of the Union are required to notify the Office of the Union of the names, titles and contact details of the representative and alternate to the Council.

7. On becoming a UPOV member, that notification can be made either by a letter from the Minister for Foreign Affairs, a Note from the Ministry of Foreign Affairs, a letter from the Permanent Representative or a Note from the Permanent Mission in Geneva or from the competent authority(ies) for external relations of intergovernmental organizations (example text for the above notification is available upon request).

*Subsequent notifications of any changes concerning the representative*

8. Members of the Union are requested to communicate to the Office of the Union, as soon as possible, any changes concerning the representative.

9. After the initial notification, subsequent changes of the representative do not require a notification via the Ministry for Foreign Affairs. If the new representative holds the same title as the predecessor, a communication to the Office of the Union from the new representative or the supervisor will be sufficient. In exceptional cases (e.g. different communications from the same Government), the Office of the Union will request the Permanent Mission of the member of the Union concerned to coordinate the communication concerning the appointment of the new representative.

*Responsibilities of the representative*

10. One of the responsibilities of the representative to the Council is to appoint persons to the relevant UPOV bodies and to decide on persons to be given access to UPOV documents in the restricted area of the UPOV website (see Rules Governing Access to UPOV Documents: [http://www.upov.int/edocs/infdocs/en/upov\\_inf\\_20\\_1.pdf](http://www.upov.int/edocs/infdocs/en/upov_inf_20_1.pdf)).

11. Upon receipt of the notification, the Office of the Union will:

(a) communicate to the representative that has been officially appointed the User Id and password corresponding to that member of the Union. The User Id and password will enable access to the restricted area of the UPOV website in order to download documents (<http://www.upov.int/restrict/meetings/en/>);

(b) draw the attention to the UPOV structure diagram of the UPOV bodies (<http://www.upov.int/about/en/organigram.html>) and will ask the representative to provide the names and contact details of the "designated persons" to the Council, the Consultative Committee, the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs). The Office of the Union will, if appropriate, attach the existing list for the relevant member of the Union, for confirmation or updating. The designated persons by the representative will receive copies of the invitations to the sessions of the relevant UPOV bodies and the corresponding notifications of the posting of documents for those sessions;

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<sup>2</sup> The corresponding provision of the 1978 Act of the UPOV Convention can be found in Article 16(1).

(c) send a copy of the Rules Governing Access to UPOV Documents ([http://www.upov.int/edocs/infdocs/en/upov\\_inf\\_20\\_1.pdf](http://www.upov.int/edocs/infdocs/en/upov_inf_20_1.pdf)) to guide the representative in the distribution of the User Id and password. Any person from the member of the Union making a request to the Office of the Union for access to documents in the restricted area of the UPOV website will be invited to contact the representative; and

(d) request the representative to provide the contact details of the authority entrusted with the task of granting breeders' rights in accordance with Article 30(1)(ii) of the 1991 Act of the UPOV Convention, for publication under the section "Directory of PVP Offices" of the UPOV website ([http://www.upov.int/members/en/pvp\\_offices.html](http://www.upov.int/members/en/pvp_offices.html)).

12. Another important role of the representative is in relation to the approval by correspondence of UPOV policy and guidance. Members of the Union agreed that, unless otherwise agreed by the Council, documents which set out UPOV policies or guidance, once approved by the relevant UPOV Committees, as appropriate, must be adopted by the Council. In cases where a rapid presentation of a UPOV policy or guidance is required, such that adoption could not be achieved by presentation of a document to the Council, approval would be sought by correspondence from the representatives to the Council of the members of the Union (see document C/43/17 "Report", paragraph 13(i)).

13. The representative is also responsible of the notifications concerning changes in the legislation governing breeders' rights and, if appropriate, any extension of the application of the UPOV Convention to additional plant genera and species (see Part II Section 2, below of this document).

Section 2. Notifications concerning the legislation governing breeders' rights and, if appropriate, any extension of the application of the Convention to additional plant genera and species

*Notifications concerning changes in the legislation governing breeders' rights*

Relevant article<sup>3</sup>

#### Article 36

##### Communications Concerning Legislation and the Genera and Species Protected; Information to be Published

[...]

(2) [**Notification of changes**] Each Contracting Party shall promptly notify the Secretary-General of

(i) any changes in its legislation governing breeders' rights and

[...]

(3) [**Publication of the information**] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

(i) the legislation governing breeders' rights and any changes in that legislation, and

[...]

14. The adopted law governing breeders' rights giving effect to the provisions of the UPOV Convention is notified at the time of the deposit of the instrument of ratification or accession.<sup>4</sup> Any changes to that legislation governing breeders' rights shall be notified promptly to the Secretary-General in one of the UPOV languages (English, French, German or Spanish) and published accordingly. The English version of those changes in the legislation and/or the relevant consolidated text will also be published in the UPOV Gazette and Newsletter ([http://www.upov.int/news/en/gazette\\_newsletter.html](http://www.upov.int/news/en/gazette_newsletter.html)) and in UPOV Lex (<http://www.upov.int/upovlex/en/>) at the earliest opportunity.

15. Members of the Union are invited to contact the Office of the Union if they require assistance in the translation into English of the changes in their legislation governing breeders' rights.

<sup>3</sup> See Article 35(2)(d)(e)(f) and (g) of the 1978 Act of the UPOV Convention.

<sup>4</sup> Document UPOV/INF/13 provides "Guidance on How to Become a Member of UPOV" and document UPOV/INF/14 provides "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

*Notification of any extension of the application of the UPOV Convention to additional plant genera and species*

Relevant articles<sup>5</sup>

#### Article 36

#### Communications Concerning Legislation and the Genera and Species Protected; Information to be Published

[...]

(2) **[Notification of changes]** Each Contracting Party shall promptly notify the Secretary-General of

[...]

(ii) any extension of the application of this Convention to additional plant genera and species.

(3) **[Publication of the information]** The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

[...]

(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

#### Article 3

#### Genera and Species to be Protected

(1) **[States already members of the Union]** Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

(2) **[New members of the Union]** Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

16. Where the State or Intergovernmental Organization concerned does not, in the first instance, apply the UPOV Convention to all plant genera and species, any extension of the application of the UPOV Convention to additional plant genera and species shall be notified to the Secretary-General.<sup>6</sup> That notification shall be made promptly to the Office of the Union and should include the relevant legal source for such an extension (Regulations, decision of the Minister, etc.). The notification will then be published in the UPOV Gazette and Newsletter ([http://www.upov.int/news/en/gazette\\_newsletter.html](http://www.upov.int/news/en/gazette_newsletter.html)) and in UPOV Lex (<http://www.upov.int/upovlex/en/>) at the earliest opportunity.

17. In the preparation of the notification concerning the extension of the application of the UPOV Convention to additional plant genera and species, members of the Union are invited to consult the

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<sup>5</sup> See Article 35(2)(a)(b) and (c) of the 1978 Act of the UPOV Convention.

<sup>6</sup> Document [UPOV/INF/13](#) provides "Guidance on How to Become a Member of UPOV" and document [UPOV/INF/14](#) provides "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

“Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention” (document [UPOV/EXN/GEN/1](#)) and the GENIE database (<http://www.upov.int/genie/en/>).

18. The above notifications, on changes in the legislation governing breeders' rights and on any extension of the application of the UPOV Convention to additional plant genera and species should be made by the representative.

### Section 3. Financial obligations concerning the payment of contributions

19. In accordance with the UPOV Convention,<sup>7</sup> the Secretary-General shall communicate, each year, to the members of the Union the amount of their annual contributions for the forthcoming year on the basis of the applicable number of contribution units. The amount corresponding to the annual contribution is due in January (document [UPOV/INF/4](#) “Financial Regulations and Rules of UPOV”). The communication by the Secretary-General is addressed to the Ministry of Foreign Affairs with copy to the authority entrusted with the task of granting breeders' rights, in accordance with Article 30(1)(i) of the 1991 Act of the UPOV Convention (see information provided by the representative under paragraph 9(d) above), and the Permanent Mission in Geneva.

20. More information on financial matters can be found in document [UPOV/INF/13](#) “Guidance on How to Become a Member of UPOV” and in document [UPOV/INF/14](#) “Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention”.

### Section 4. Information to facilitate cooperation

21. Cooperation between members of the Union is an important benefit of the UPOV system and supports an efficient system covering all plant genera and species. Such efficiency is an important means of ensuring that the UPOV system is accessible and affordable for all types of breeders. Information about developments in members of the Union is also an important means of sharing experience within UPOV. This Part explains the information that is provided by members of the Union and the procedures by which that information is collected.

#### *DUS Examination (GENIE database)*

22. The cooperation within UPOV relies to a major extent on the input of members of the Union. In particular, cooperation in the examination of Distinctness, Uniformity and Stability (“DUS”) relies on experts from members of the Union in the development of Test Guidelines ([http://www.upov.int/test\\_guidelines/en/](http://www.upov.int/test_guidelines/en/)) and on the willingness of members of the Union to share their practical experience with particular plant genera and species and to cooperate in DUS examination. Information on this cooperation is provided in the GENIE database (<http://www.upov.int/genie/en/>).

23. The procedures for members of the Union to provide the information that is included in the GENIE database are as follows:

(a) *Genera and Species for which Authorities have Practical Experience in the DUS Examination*

*Members of the Union receive a Technical Committee (TC) circular inviting them to provide information for the updating of document TC/[session]/4 “List of Genera and Species for which Authorities have Practical Experience in the Examination of Distinctness, Uniformity and Stability”. The information provided is used to update the GENIE database.*

(b) *Cooperation in DUS Examination*

*Members of the Union receive a Council circular inviting them to provide information for the updating of document C/[session]/5 “Cooperation in Examination”. Information is invited on agreements between members of the Union for cooperation in DUS examination and on the*

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<sup>7</sup> See Article 29 of the 1991 Act of the UPOV Convention and Article 26 of the 1978 Act of the UPOV Convention.

*utilization of existing DUS reports. The information provided is used to update the GENIE database.*

#### *Variety Denominations (PLUTO database)*

24. The contribution of data by members of the Union to the [PLUTO Plant Variety Database](#) provides support in particular for the examination of variety denominations.

25. Members of the Union are ~~invited to contribute data for each new update of the PLUTO Plant Variety Database [currently 6 updates per annum], encouraged to provide data as soon as practical after it is published by the authority(ies) concerned. The PLUTO database will be updated with new data as quickly as possible after receipt, in accordance with the uploading procedure. The PLUTO database can, as necessary, be updated with corrected data, in accordance with the uploading procedure.~~

#### *Exchangeable Software*

26. The sharing of software applications by members of the Union provides an important means of support for the examination of varieties. Information on the sharing of software is provided in document [UPOV/INF/16](#) "Exchangeable Software".

27. Software proposed for inclusion in document UPOV/INF/16 by members of the Union is, in the first instance, presented for review by the Technical Working Party on Automation and Computer Programs (TWC). On the basis of such presentations and the experience of members of the Union, the TWC makes a recommendation to the TC on whether to include that software in document UPOV/INF/16. In the case of a positive recommendation by the TC and by the CAJ, the software will be listed in a draft of document UPOV/INF/16, to be adopted by the Council.

28. A TC circular is issued to members of the Union on an annual basis, inviting them to provide information on their use of the software included in document UPOV/INF/16.

[Document UPOV/INF/22/1 Draft 1" Software and Equipment Used by Members of the Union" will be considered by the Council in October 2014. It is proposed to update this section with a reference to document UPOV/INF/22/1 once adopted by the Council]

#### *Plant Variety Protection Statistics*

29. Members of the Union are requested to provide annual statistics on:

- (a) plant variety protection applications by origin;
- (b) plant variety protection titles granted by origin; and
- (c) plant variety protection titles in force.

30. Members of the Union receive a Council circular inviting them to provide information for the updating of document C/[session]/7 "Statistics on Plant Variety Protection for the period [5-year period]".

#### *Other Developments in members of the Union*

31. Members of the Union are invited, by means of a Council circular, to report on any other relevant developments in a Council document "Reports by representatives of members and observers".

## PART II. OPERATING THE UPOV PLANT VARIETY PROTECTION SYSTEM

32. Part II of this document provides an overview of the structure and functions of a Plant Breeders' Rights Office (PBR Office) and explains key issues concerning the administration of applications. Part II has two Sections: Section 1 "The Plant Breeders' Rights Office" and Section 2 "Administration of Applications".

### Section 1. The Plant Breeders' Rights Office

#### *Introduction*

33. Applications for plant breeders' rights (PBR) are subject to examination by the authority in the territory of the UPOV member concerned. According to Article 30 of the 1991 Act and Article 7 of the 1978 Act of the UPOV Convention, UPOV members shall maintain an authority entrusted with the task of granting PBR, also referred to as the "PBR Office" in this document. UPOV members should also ensure that the public is informed about applications and grants of breeders' rights, as well as proposed and approved denominations.

**"Article 30 Implementation of the Convention** (1) Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall: [...] (ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party; (iii) ensure that the public is informed through the regular publication of information concerning applications for and grants of breeders' rights, and proposed and approved denominations."

34. The PBR Office will vary in size and structure according to how each UPOV member provides for the implementation of the UPOV Convention and the examination of applications for PBR, in particular.

35. The examination of applications for PBR is required in Article 12 of the 1991 Act and in Article 7 of the 1978 Act of the UPOV Convention. Any decision to grant a breeder's right shall require an examination for compliance with the conditions for protection, as set out in Articles 5 to 9 of the 1991 Act and Article 6 of the 1978 Act of the UPOV Convention, namely the requirements of Novelty, Distinctness, Uniformity and Stability (DUS), a suitable denomination and the applicable formalities.

**"Article 12 Examination of the Application** Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Article 5 to Article 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material."

36. PBR Offices need to take appropriate steps to safeguard the legitimate interests of the breeder with regard to documents, information and material provided as part of the application.

As stated in Article 12, for the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material. In that regard, authorities should give consideration to appropriate measures concerning confidentiality, for example in relation to pedigree information.<sup>a</sup>

37. UPOV has developed the "UPOV Collection" of guidance and information materials concerning plant variety protection under the UPOV Convention. However, it should be recalled that the only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and the materials must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

38. A current list of the contents and status of materials in the UPOV Collection is provided in the [Table of Contents](#) published on the UPOV website and illustrated below<sup>8</sup>. Members of the Union (two sets per member of the Union) and observer States and organizations (one set per State/organization) are provided with a set of binders to contain the “UPOV Collection”. In the first instance, printed versions of all the documents in the “UPOV Collection”, except for Test Guidelines, are provided with the folders. After the initial supply of the set of “UPOV Collection” folders with a printed set of documents, no further printed documents are provided by the Office of the Union. All designated persons in UPOV bodies receive an electronic notification each time the UPOV Collection is updated. For persons provided with a set of folders, that notification is the trigger for them to print the new versions and replace any previous versions of the documents concerned. Other users can [register](#) to receive an electronic notification each time the UPOV Collection is updated.

*Table of Contents of the UPOV Collection*

- (a) UPOV Convention
- (b) UPOV/INF document series
- (c) Explanatory notes on the UPOV Convention
- (d) General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants
- (e) TGP documents
- (f) Test Guidelines
- (g) UPOV Collection of Laws and Treaties (UPOV Lex)
- (h) List of UPOV members
- (i) Directory of Plant Variety Protection Offices
- (j) UPOV Organigram
- (k) Databases and information
  - List of the Taxa Protected by the Members of the Union
  - Cooperation in Examination
  - List of genera and species for which authorities have practical experience in the examination of distinctness, uniformity and stability
- (l) Plant Variety Database
- (m) Genie Database

39. References to the materials in the UPOV Collection will be made throughout this document in order to obtain further information on relevant topics.

*Establishment of a PBR Office*

40. The PBR Office is often established under the ministry responsible for agriculture or the ministry responsible for intellectual property. Ministries responsible for agriculture typically have experience in plant variety related schemes, such as seed certification and the national listing of varieties. However, the PBR Office can, for example, be established under a ministry that is responsible for intellectual property.

41. A UPOV member may also choose to entrust the task of granting breeders’ rights to a PBR Office maintained by another UPOV member, such as a regional or a supranational intergovernmental organization.

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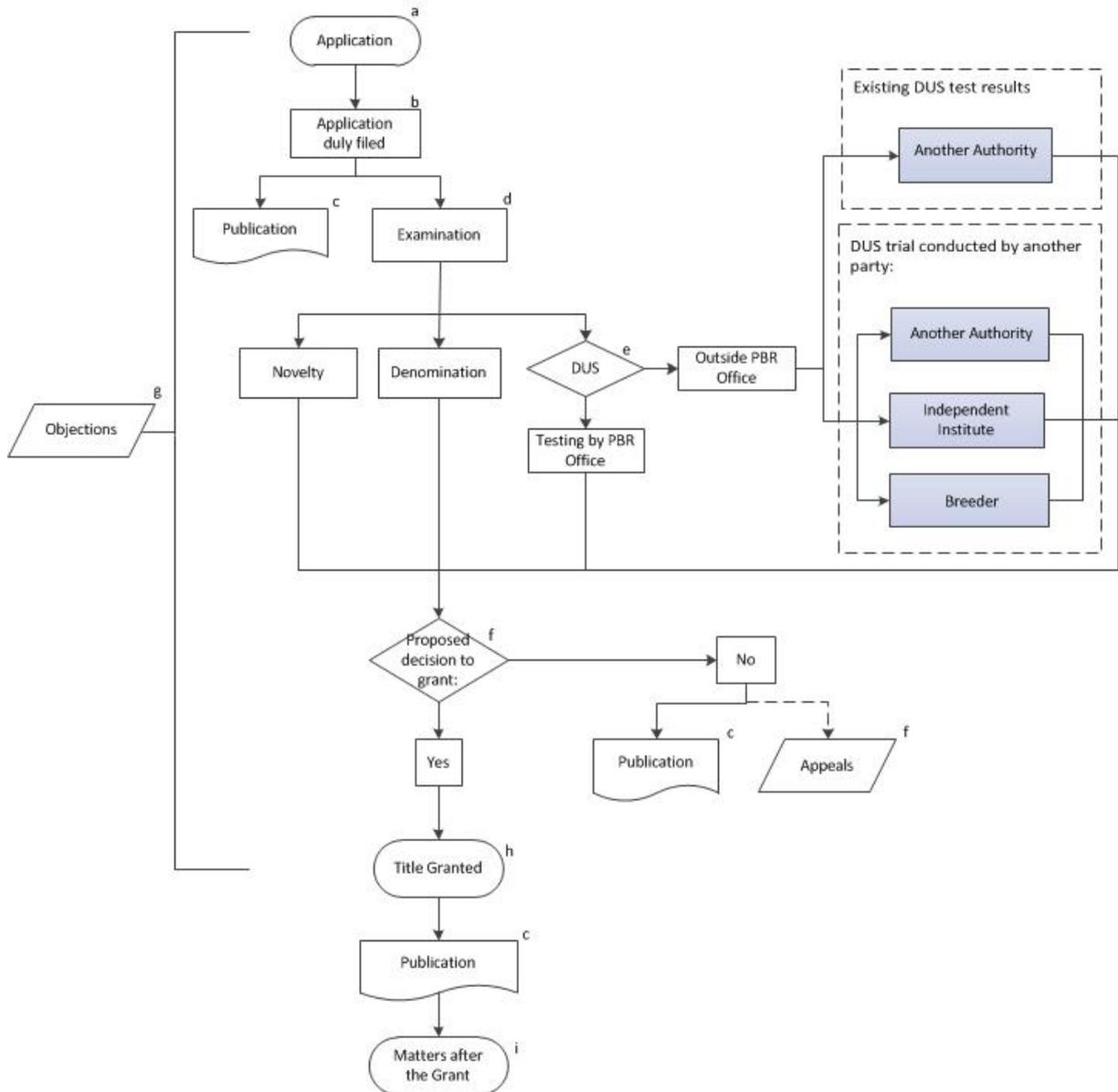
<sup>8</sup> Please note that this table is provided for illustrative purposes and may be out of date at the time of reading: the link to the current table of contents is provided in the text above.

*Functions and structure of a PBR Office*

42. The UPOV Convention establishes the activities to be undertaken by the PBR Office, but does not define a particular model. Therefore, UPOV members may organize the PBR Office according to their own situation.

43. The following flow diagram illustrates the basic flow of tasks within a typical PBR Office. Section 2: "Administration of Applications" provides further information on the tasks included in the flow diagram.

*Flow diagram 1<sup>9</sup>: Basic tasks within the PBR Office*



<sup>9</sup> The notes in the above diagram relate to the administration of examination and are explained in Module 2 Section 2 "Administration of Applications".

## Section 2. Administration of applications

44. Section 2 explains the basic tasks of the PBR Office in the administration of applications for plant breeders' rights as presented in the flow diagram in Section 1 "The Plant Breeders' Rights Office".

*Application for plant breeders' rights (see note (a) in the flow diagram in Section 1)*

### Introduction

45. Prior to receiving applications for plant breeders' rights, the PBR Office needs to develop relevant forms and be ready to assign a filing date and time.

In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders' rights (see [http://www.upov.int/members/en/pvp\\_offices.html](http://www.upov.int/members/en/pvp_offices.html)).

The possibility to file applications at any time facilitates the use of plant variety protection by breeders. However, authorities may require the provision of samples of plant material during particular periods in order to facilitate the planting of material at the appropriate time for the DUS examination.

46. Legal provisions in some UPOV members allow for the filing of applications in paper only. The use of electronic application forms to substitute or to complement paper applications, facilitates the use of databases and information management. In order to accept applications in electronic format, UPOV members may need to have auxiliary systems in place, such as for the recognition of digital signatures, electronic payment and security matters.

[Further text may be developed in future in accordance with the project for the development of a UPOV electronic application form.]

The obligation to ensure that the public is informed through the regular publication of information concerning applications for and grants of breeders' rights, and proposed and approved denominations, relies on the publication of official gazettes (see document UPOV/INF/5 "UPOV Model Plant Breeder's Rights Gazette" available at [http://www.upov.int/information\\_documents/en/](http://www.upov.int/information_documents/en/)), or other means of publication, such as electronic publication and searchable databases. Information on the official publications of individual UPOV members is provided on the UPOV website at [http://www.upov.int/members/en/pvp\\_offices.html](http://www.upov.int/members/en/pvp_offices.html).<sup>b</sup>

In relation to electronic publication and searchable databases, the completeness and correctness of the information is of particular importance. In particular, it is important to include information concerning applications for and grants of breeders' rights, and proposed and approved denominations.

47. Applications for protection need to be managed by the PBR Office and their administration may involve the use of specific software applications. The sharing of software applications by UPOV members provides an important means of support for the administration of applications and examination of varieties. Information on the sharing of software by UPOV members is provided in document UPOV/INF/16 "Exchangeable Software" (available at [http://www.upov.int/information\\_documents/en/](http://www.upov.int/information_documents/en/))

### *Development of forms*

48. In order to facilitate the implementation of procedures for filing applications for plant variety protection UPOV has developed model forms that can be used by individual PBR Offices within their national or regional contexts.

UPOV Model Application Form

49. Document TGP/5 “Experience and Cooperation in DUS Testing” contains the “UPOV Model Form for the Application for Plant Breeders’ Rights” (TGP/5, Section 2). The UPOV Model Form has the layout shown in the extract on the following page (available at: <http://www.upov.int/tgp/en/>).

50. When converting the UPOV Model Form into the form of a PBR Office and when drafting explanations for completing that form, the contents and the terminology of the applicable law of the UPOV member need to be taken into account. To ensure that the UPOV Model Form fulfills its function, it is important that the general structure, the contents and the numbering of the individual parts be maintained in the PBR Office’s own forms.

51. A standard UPOV reference has been provided for each field in the UPOV Model Form. For example, for item 1.(a) “Applicant(s) Name(s)”, the standard UPOV reference is “UPOV A1: 1(a)(i)”. To facilitate harmonization and to assist applicants, a PBR Office may include that standard UPOV reference in the corresponding field of the PBR Office’s own form. It is a matter for each PBR Office to decide if the field in the PBR Office’s own form corresponds sufficiently precisely to the field in the UPOV Model Application Form for the standard UPOV reference to be included.

52. Document TGP/5, Section 2 provides further information on the individual items of the UPOV Model Form.

UPOV MODEL FORM FOR THE APPLICATION FOR PLANT BREEDERS' RIGHTS

(Authority where application is filed)

NOTE: First consult the instructions

(file mark)  
(Date of receipt)

<p>1.(a) Applicant(s)<sup>1</sup></p> <p>Name(s) _____ <i>UPOV-A1: 1(a)(i)*</i></p> <p>Address(es) _____ <i>UPOV-A1: 1(a)(ii)</i></p> <p>_____</p> <p>Telephone No.(s) _____ <i>UPOV-A1: 1(a)(iii)</i></p> <p>Fax No.(s) _____ <i>UPOV-A1: 1(a)(iv)</i></p> <p>E-mail address(es) _____ <i>UPOV-A1: 1(a)(v)</i></p> <p>(b) nationality(ies): _____ <i>UPOV-A1: 1(b)</i></p> <p>(c) residence (State): _____ <i>UPOV-A1: 1(c)</i></p> <p>(d) registered offices for legal entities (State): _____ <i>UPOV-A1: 1(d)</i></p> <p>(e) A procedural representative/agent/proxy will be used: Yes <input type="checkbox"/> No <input type="checkbox"/> <i>UPOV-A1: 1(e)(i) UPOV-A1: 1(e)(ii)</i></p>	<p>2.(a) Name and address to which correspondence is to be sent (if different from 1.(a)):</p> <p>Name _____ <i>UPOV-A1: 2(a)(i)</i></p> <p>Address _____ <i>UPOV-A1: 2(a)(ii)</i></p> <p>_____</p> <p>Telephone No.(s) _____ <i>UPOV-A1: 2(a)(iii)</i></p> <p>Fax No.(s) _____ <i>UPOV-A1: 2(a)(iv)</i></p> <p>E-mail address(es) _____ <i>UPOV-A1: 2(a)(v)</i></p> <p>(b) This is the name and the address:</p> <p><input type="checkbox"/> of one of the applicants <i>UPOV-A1: 2(b)(i)</i></p> <p><input type="checkbox"/> of the procedural representative/ /agent/proxy <i>UPOV-A1: 2(b)(ii)</i></p>
<p>3. (a) Botanical name: _____ <i>UPOV-A1: 3(a)</i></p> <p>(b) Common name: _____ <i>UPOV-A1: 3(b)</i></p>	
<p>4. (a) Proposed denomination (in block letters): _____ <i>UPOV-A1: 4(a)</i></p> <p>(b) Breeder's reference: _____ <i>UPOV-A1: 4(b)</i></p>	
<p>5. (a) The person(s)<sup>2</sup> who bred, or discovered and developed, the variety is (are)</p> <p><input type="checkbox"/> the (all) applicant(s)      <input type="checkbox"/> the following person(s): _____ <i>UPOV-A1: 5(a)(i) UPOV-A1: 5(a)(ii) UPOV-A1: 5(a)(iii)</i></p> <p>(b) To the best of my/our knowledge there is no other person who bred, or discovered and developed the variety. <i>UPOV-A1: 5(b)</i></p> <p>(c) The variety was transferred by the person(s)<sup>2</sup> who bred, or discovered and developed, the variety to the applicant(s) by:</p> <p><input type="checkbox"/> contract _____ <i>UPOV-A1: 5(c)(i)</i></p> <p><input type="checkbox"/> succession _____ <i>UPOV-A1: 5(c)(ii)</i></p> <p><input type="checkbox"/> other (specify) _____ <i>UPOV-A1: 5(c)(iii) UPOV-A1: 5(c)(iv)</i></p> <p>(d) The variety was bred in (State(s)): _____ <i>UPOV-A1: 5(d)</i></p>	

FOR  
OFFICIAL  
USE ONLY

Technical Questionnaire

53. To help in the process of examining varieties, certain information is requested from the breeder, usually through a Technical Questionnaire to be submitted with the application. The Technical Questionnaire seeks information on specific characteristics of importance for distinguishing varieties, information on the breeding scheme of the variety and any other information which may help to distinguish the variety. It also requests the breeder to identify similar varieties and characteristics by which the candidate may be distinguished from these similar varieties. Where UPOV has developed "Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability," or "Test Guidelines", for individual species or other variety groupings (see [http://www.upov.int/test\\_guidelines/en/](http://www.upov.int/test_guidelines/en/)), the Test Guidelines provide a model Technical Questionnaire in Chapter 10.

### Sample of the Variety

54. Document TGP/5 “Experience and Cooperation in DUS Testing”, Section 4 “UPOV Model Form for the Designation of the Sample of the Variety” provides a model to be used in conjunction with the plant material submitted for the examination of candidate varieties.

#### *Assigning filing date*

55. Applications received by the PBR Office need to be assigned a date of filing. This step is relevant for the examination of novelty (see Module 4 “Examining Novelty”) and distinctness (see Module 9 “Examining Distinctness”).

56. The UPOV Convention provides for a right of priority of 12 months, based upon an earlier application for the protection of the same variety with another UPOV member, whereby a subsequent application is treated as if it were filed on the filing date of the first application. The right of priority has effects for the examination of the novelty and distinctness conditions and proposed denominations (see online distance learning course DL-205 “Plant Breeders’ Rights under the UPOV Convention”, Module 4: “Applying for a Plant Breeder’s Right”, and document UPOV/EXN/PRI “Explanatory notes on the right of priority under the UPOV Convention” available at: [http://www.upov.int/explanatory\\_notes/en/](http://www.upov.int/explanatory_notes/en/)).

#### *Application duly filed (see note (b) in the flow diagram in Section 1)*

57. Applications need to be checked for compliance with the applicable formalities and fee requirements in order to be considered as a duly filed application. In order for an application to be duly filed it must be submitted by a person that is entitled to a breeder’s right (see Module 3 “Entitlement to a breeder’s right”).

58. Duly filed applications need to be prepared for publication by the case officer or person in charge of the initial processing of the application forms. Information should also be provided for other concerned officers within the PBR Office to prepare for the subsequent steps of the examination.

#### *Publication (see note (c) in the flow diagram in Section 1)*

See [UPOV/INF/5](#) “UPOV Model Plant Breeders’ Rights Gazette”.

#### *Examination of requirements (see note (d) in the flow diagram in Section 1)*

59. The examination of novelty, proposed denomination and DUS should be conducted in parallel in order to avoid a delay in the grant of the breeders’ rights. In particular, the UPOV Convention requires that the denomination shall be registered by the PBR Office at the same time as the breeder’s right is granted (Article 20(3) of the 1991 Act and Article 13(3) of the 1978 Act). There are different options for administration of the examination. For example, one person may be designated to act as a “case officer” responsible for the administration of all the aspects of the above mentioned examination, or there may be specialized professionals for individual parts of the work.

60. For the examination of the denomination see “Explanatory Notes on Variety Denominations under the UPOV Convention” (document [UPOV/INF/12](#)). For the examination of novelty see “Explanatory Notes on Novelty under the UPOV Convention” (document [UPOV/EXN/NOV](#)).

61. Guidance on the examination of distinctness, uniformity and stability (DUS) can be found in the following documents:

- Document [TG/1/3](#) “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (“General Introduction”);
- Document TGP/4 “Constitution and Maintenance of Variety Collections
- Document TGP/9 “Examining Distinctness”

- Document [TGP/10](#) "Examining Uniformity"
- Document [TGP/11](#) "Examining Stability"

*DUS examination (see note (e) in the flow diagram in Section 1)*

62. The size and structure of PBR Offices is influenced by the arrangements for DUS testing. A PBR Office may, for example, use one or more of the following arrangements:

- The PBR Office conducts growing trials, or other tests, itself (testing by PBR Office)
- The PBR Office arranges for another party / other parties to conduct the growing trials or other tests (outside PBR Office). In such an arrangement, another party could include, for example, another PBR Office, an independent institute or the breeder.
- The PBR Office takes into account the results of growing tests or other trials which have already been carried out (outside PBR Office).

Authorities that arrange for other parties to conduct growing trials or other tests on behalf of the authorities, should take appropriate measures to: (a) ensure that the conduct of growing trials or other tests are undertaken in an independent manner; and (b) safeguard the legitimate interests of the breeder. In particular, in the case of such parties having, or having links to, breeding activities, those measures should include measures to ensure objectivity and provisions for relevant information and material provided by the breeder to be treated in a confidential manner.

63. Document TGP5 "Experience and Cooperation in DUS Testing", Section 1 "Experience and Cooperation in DUS Testing" provides useful information with a model administrative agreement for international cooperation in the testing of varieties.

64. Article 4 of document TGP5, Section 1, states the following:

"(1) The Authorities shall take all necessary steps to safeguard the rights of the applicant.

"(2) Except with the specific authorization of the Receiving Authority and the applicant, the Executing Authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.

"(3) Access to the documents and the test plots shall be given only to:

"(i) the Receiving Authority, the applicant and any duly authorized person;

"(ii) the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of hybrid varieties only if it is strictly necessary and if the applicant does not object.

"This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

"(4) If another authority is a Receiving Authority under a similar agreement, access may be granted in accordance with the rules applicable under that agreement."

65. UPOV members may have informal arrangements for the purchasing of DUS test reports (for instance exchange of letters).

*Proposed decision (see note (f) in the flow diagram in Section 1)*

66. On the basis of the results of novelty, denomination and DUS examination a decision can be proposed with regard to the grant of protection. Such a decision may be proposed to the authority responsible for the grant of the breeders' rights (PBR Office) by an official or by a group of professionals, such as a board or a

panel of experts. If the decision is negative, the rejection of the application shall be published (see UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette”). The applicant may make an appeal against a proposed negative decision by the PBR Office.

*Objections (see note (g) in the flow diagram in Section 1)*

67. The PBR Office needs to have procedures in place to handle objections received as a result of the publication of information. Objections received from the public may bring relevant data for the examination of applications and denominations. The applicant may also provide further relevant information when appealing against a decision of the PBR Office.

*Title grant (see note (h) in the flow diagram in Section 1)*

68. If the decision with regard to the grant of protection is positive, the title shall be granted. The title shall be transmitted to the holder of the breeder’s right. Grants of breeders’ rights and approved denominations shall be registered and published at the same time by the PBR Office (see UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette”).

*Matters after the grant (see note (i) in the flow diagram in Section 1)*

69. The tasks of the PBR Office after the grant of the PBR include the obligation to maintain up-to-date relevant information in the registry and databases, the management of the payment of fees (if applicable) by the breeder to keep the PBR in force, and the publication of relevant information after the grant, for example, the termination of the PBR and changes concerning the holder of the PBR and denominations (see UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette”). The PBR Office may also choose to take measures to verify the maintenance of the variety.

[End of document]

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<sup>a</sup> In relation to pedigree information included in the application for a breeder’s right, see guidance in document TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Section 4 “Information on the breeding scheme and propagation of the variety” and its footnote (see [http://www.upov.int/edocs/tgpdocs/en/tgp\\_7.pdf](http://www.upov.int/edocs/tgpdocs/en/tgp_7.pdf)) (Section 4 is reproduced below).

#4. Information on the breeding scheme and propagation of the variety
4.1 Breeding scheme
{ <b>ASW 15</b> (Chapter 10: TQ 4.1) – information on breeding scheme }
4.2 Method of propagating the variety
{ <b>GN 31</b> (Chapter 10: TQ 4.2) – information on method of propagating the variety }
{ <b>GN 32</b> (Chapter 10: TQ 4.2) – information on method of propagation of hybrid varieties }
# Authorities may allow certain of this information to be provided in a confidential section of the Technical Questionnaire.

<sup>b</sup> Extract from Module 4 “Information to be published” of DL-305 and DI-305 A.