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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES

Ginebra

CONSEJO**Trigésima segunda sesión extraordinaria
Ginebra, 27 de marzo de 2015****EXAMEN DE LA CONFORMIDAD DE LA "LEY DE 2003 DE REGISTRO DE VARIEDADES
VEGETALES Y CONTROL Y CERTIFICACIÓN DE SEMILLAS Y MATERIAL VEGETAL"
DE LA REPÚBLICA ISLÁMICA DEL IRÁN CON EL ACTA DE 1991
DEL CONVENIO DE LA UPOV***Documento preparado por la Oficina de la Unión**Descargo de responsabilidad: el presente documento no constituye
un documento de política u orientación de la UPOV*

1. En una carta fechada el 23 de febrero de 2015, dirigida al Secretario General de la UPOV, el Director General del Instituto de Certificación y Registro de Semillas y Plantas (SPCRI), Sr. Mohammad Hasan Assareh, solicitó el examen de la conformidad de "‘la Ley’ y ‘el Reglamento’ que atañen al ‘Código Civil de la República Islámica del Irán’" con el Acta de 1991 del Convenio de la UPOV ("Acta de 1991"). La carta figura en el Anexo I del presente documento.
2. La carta del Sr. Assareh contenía lo siguiente:
 - a) el texto del artículo 77 de la Constitución de la República Islámica del Irán, modificada el 28 de julio de 1989:

"Artículo 77: Los tratados, protocolos, contratos y convenios internacionales deben ser aprobados por la Asamblea Consultiva Islámica."
 - b) el texto del artículo 9 del Código Civil de la República Islámica del Irán, de 23 de mayo de 1928:

"Artículo 9: Las disposiciones de los tratados internacionales que se ratifiquen de conformidad con la Constitución, celebrados entre el Gobierno iraní y otros gobiernos, se considerarán parte del derecho."
 - c) la "Ley de 2003 de Registro de Variedades Vegetales y Control y Certificación de Semillas y Material Vegetal" de la República Islámica del Irán (la "Ley"). En el Anexo II figura una traducción de la Ley al inglés proporcionada por el SPCRI; y
 - d) el "Reglamento de Registro de Variedades Vegetales" ratificado por la Junta de Consejeros de la Organización de Investigación, Enseñanza y Extensión Agrícolas el 10 de octubre de 2009 (el "Reglamento"). En el Anexo III figura una copia en inglés del "Reglamento" proporcionada por el SPCRI.

BASE DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN LA REPÚBLICA ISLÁMICA DEL IRÁN DE CONFORMIDAD CON EL ACTA DE 1991

3. En el Artículo 34.3) del Acta de 1991 se dispone que “[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión”.

4. El Artículo 30.2) del Acta de 1991 prevé que, en el momento de la presentación de su instrumento de adhesión, “cada Estado u organización intergubernamental deberá estar en condiciones, de conformidad con su legislación, de dar efecto a las disposiciones del presente Convenio”.

5. El Artículo 30.2) y el Artículo 34.3) del Acta de 1991 exigen la conformidad de la “legislación” y, por lo tanto, las disposiciones del Reglamento no se examinan en el análisis proporcionado en el presente documento.

6. Para que el Gobierno de la República Islámica del Irán esté en condiciones de dar efecto a las disposiciones del Acta de 1991, se recomienda que la Ley incorpore las disposiciones y modificaciones adicionales propuestas en este documento. A continuación se analizan las disposiciones de la Ley con arreglo al orden en el que figuran las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

7. En la Ley no constan las definiciones de “obtentor” y “variedad”. Se recomienda incorporar a la Ley las definiciones de “obtentor” y “variedad” previstas en los puntos iv) y vi) del Artículo 1 del Acta de 1991.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

8. En el artículo 1 de la Ley se dispone lo siguiente:

“De conformidad con esta Ley y con miras a salvaguardar los intereses nacionales y organizar el proceso de control y certificación de semillas y material vegetal y a fin de proteger la propiedad intelectual de los obtentores, el Ministerio iraní de Agricultura será el responsable de identificar y registrar las nuevas obtenciones vegetales y de tomar medidas para controlar y supervisar las cuestiones relativas a las semillas y el material vegetal del país.”

9. Para prever el cumplimiento de la obligación fundamental, en virtud de la que “concederá derechos de obtentor y los protegerá” de conformidad con el Acta de 1991, se recomienda que la Ley incorpore las disposiciones y modificaciones adicionales propuestas en este documento.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

10. La Ley no establece disposiciones sobre “Género y especies que deben protegerse”. Se recomienda incorporar a la Ley las disposiciones sobre “Género y especies que deben protegerse” de conformidad con las disposiciones del Artículo 3.2) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

11. En los artículos 1, 3 (notas 3 y 4) y 4.c) de la Ley parece haber disposiciones que no son conformes a lo dispuesto en el Artículo 4 del Acta de 1991. Se recomienda modificar los artículos 1, 3 (notas 3 y 4) y 4.c) de la Ley de conformidad con las disposiciones del Artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, novedad, distinción, homogeneidad y estabilidad

12. En los artículos 3 y 4 de la Ley se establecen disposiciones relativas a las condiciones de protección que no parecen ser conformes a los artículos 5 a 9 y 18 del Acta de 1991. Se recomienda modificar la Ley de conformidad con los Artículos 5 y 18 del Acta de 1991 y:

a) incorporar a la Ley las disposiciones de “Novedad” de conformidad con las disposiciones del Artículo 6 del Acta de 1991;

b) modificar el artículo 3.a) de la Ley relativo a “Distinción” de conformidad con las disposiciones del Artículo 7 del Acta de 1991;

c) modificar el artículo 3.b) de la Ley relativo a “Uniformidad” de conformidad con las disposiciones del Artículo 8 del Acta de 1991; y

d) modificar el artículo 3.c) de la Ley relativo a “Estabilidad” de conformidad con las disposiciones del Artículo 9 del Acta de 1991.

Artículo 10 del Acta de 1991: Presentación de solicitudes

13. En el artículo 6.c) de la Ley parece haber disposiciones relativas a los costos de registro de las variedades.

14. En el artículo 3, nota 2 de la Ley se dispone lo siguiente:

“Los Reglamentos relativos a la introducción y la protección de variedades vegetales serán formulados por el Instituto y, tras la aprobación del Junta de Consejeros, estos Reglamentos son aplicables.”

15. Se recomienda incorporar las disposiciones relativas a la presentación de solicitudes de conformidad con las disposiciones del Artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

16. La Ley no establece disposiciones sobre el “Derecho de prioridad”. Se recomienda incorporar a la Ley disposiciones sobre el “Derecho de prioridad” de conformidad con las disposiciones del Artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

17. En los artículos 3 y 4 de la Ley parece haber disposiciones que no son conformes a lo dispuesto en el Artículo 12 del Acta de 1991. Se recomienda modificar la Ley de conformidad con las disposiciones del Artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

18. La Ley no establece disposiciones sobre “Protección provisional”. Se recomienda incorporar a la Ley disposiciones sobre “Protección provisional” de conformidad con las disposiciones del Artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

19. El artículo 5 de la Ley contiene disposiciones sobre el “alcance del derecho de obtentor”. Se recomienda modificar la Ley de conformidad con las disposiciones del Artículo 14 del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

20. La Ley no establece disposiciones sobre las excepciones al derecho de obtentor. Se recomienda incorporar a la Ley las excepciones al derecho de obtentor de conformidad con las disposiciones del Artículo 15 del Acta de 1991.

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

21. La Ley no establece disposiciones sobre el "Agotamiento del derecho de obtentor". Se recomienda incorporar a la Ley disposiciones sobre el "Agotamiento del derecho de obtentor" de conformidad con el Artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

22. La Ley no establece disposiciones sobre la "Limitación del ejercicio del derecho de obtentor". Se recomienda incorporar a la Ley disposiciones sobre la "Limitación del ejercicio del derecho de obtentor" de conformidad con el Artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

23. En la Ley, en concreto en sus artículos 3 a 6 y 9, parece haber disposiciones que no son conformes a lo dispuesto en el Artículo 18 del Acta de 1991. Se recomienda modificar la Ley de conformidad con las disposiciones del Artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

24. En el Artículo 5 de la ley se establecen disposiciones sobre la "Duración del derecho de obtentor". Se recomienda modificar el Artículo 5 la Ley de conformidad con las disposiciones del Artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

25. La Ley no establece disposiciones sobre "Denominación de la variedad". Se recomienda incorporar a la Ley disposiciones sobre "Denominación de la variedad" de conformidad con las disposiciones del Artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

26. La Ley no establece disposiciones sobre "Nulidad del derecho de obtentor". Se recomienda incorporar a la Ley disposiciones sobre "Nulidad del derecho de obtentor" de conformidad con las disposiciones del Artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

27. La Ley no establece disposiciones sobre "Caducidad del derecho de obtentor". Se recomienda incorporar a la Ley disposiciones sobre "Caducidad del derecho de obtentor" de conformidad con las disposiciones del Artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

28. En el Artículo 7 de la ley se establecen disposiciones sobre la defensa de los derechos de obtentor. Se recomienda modificar la Ley de conformidad con el Artículo 14 del Acta de 1991 y prever "los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor" como se estipula en el Artículo 30.1)i) del Acta de 1991.

29. En relación con la obligación prevista en el artículo 30.1)ii) del Acta de 1991, en el artículo 2 de la Ley se dispone lo siguiente:

“Artículo 2

“En aras de la aplicación de las disposiciones de esta Ley, se creará el Instituto de Investigaciones sobre Certificación y Registro de Semillas y Material Vegetal, en adelante denominado el “Instituto”, en el seno de la Organización de Investigación y Enseñanza Agrícolas, que tendrá la facultad de beneficiarse de las instalaciones y el personal disponibles en el Ministerio iraní de Agricultura y contará con los auspicios de la Junta de Consejeros de la Organización de Investigación y Enseñanza Agrícolas. El Instituto tendrá la potestad exclusiva de llevar a cabo todas las actividades nacionales relativas a la identificación y el registro de variedades vegetales y el control y la certificación de semillas y material vegetal.

“Nota 1) La Junta de Consejeros de la Organización de Investigación y Enseñanza Agrícolas estará integrada por:

“- el Ministro iraní de Agricultura;

“- el Ministro de Ciencia, Investigación y Tecnología;

“- el Director de la Organización de Gestión y Administración nacional;

“- el Director de la Organización de Protección Ambiental,

“el Viceministro y Director de la Organización de Investigación y Enseñanza Agrícolas y uno de los administrativos adjuntos propuestos por el Ministro iraní de Agricultura;

“- Dos miembros destacados del consejo científico de las universidades

“propuestos por el Ministro de Ciencia, Investigación y Tecnología;

“- Tres investigadores distinguidos del Ministerio iraní de Agricultura elegidos por el Ministro afectado

“Nota 2) el Director de la Organización de Investigación y Enseñanza Agrícolas se desempeñará como secretario de la Junta de Consejeros.

“Nota 3) En un plazo máximo de tres meses tras la ratificación de esta Ley, el Ministro iraní de Agricultura elaborará el organigrama del Instituto, que se remitirá a la Junta de Consejeros. El organigrama tendrá efecto una vez ratificado por la Organización de Gestión y Planificación iraní.

“Nota 4) Todas las unidades e instituciones paralelas al Instituto antes mencionado existentes en el Ministerio iraní de Agricultura se disolverán en la misma fecha de ratificación del organigrama y sus instalaciones y tareas se transferirán al Instituto.

“Nota 5) El Director del Instituto será nombrado a propuesta del Viceministro y Director de la Organización de Investigación y Enseñanza Agrícolas y mediante un decreto formal del Ministro iraní de Agricultura.

“Nota 6) Las actividades fiscales, administrativas y organizativas del Instituto estarán sujetas a la jurisdicción y los reglamentos de la Organización de Investigación y Enseñanza Agrícolas”.

30. Se recomienda incorporar a la Ley disposiciones en las que se estipule la obligación de publicar la información relativa a las solicitudes de concesión de derechos de obtentor y las denominaciones propuestas y aprobadas, tal como se estipula en el Artículo 30.1)iii) del Acta de 1991.

Conclusión general

31. En el artículo 12 de la Ley se dispone lo siguiente:

“Con la finalidad de lograr la modernización tecnológica y sacar partido a las posibilidades del ámbito internacional, además de intercambiar información y allanar el camino a las actividades de investigación, se autoriza al Instituto a procurar la adhesión a las siguientes organizaciones, observando sus respectivos reglamentos:

La Asociación Internacional para el Ensayo de Semillas (ISTA), la Asociación de Semillas de Asia y el Pacífico (APSA), el Sistema de Semillas de la Organización Internacional de Cooperación y Desarrollo Económicos, la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV), las Redes de Semillas de Asia Occidental y el Norte de África (WANA).”

32. A partir del análisis del presente documento, se recomienda que, a fin de que la República Islámica del Irán esté en condiciones de dar efecto a las disposiciones del Acta de 1991, tal como se estipula en su artículo 30.2), la Ley incorpore las disposiciones y modificaciones adicionales propuestas en este documento.

33. *Se invita al Consejo a:*

a) *tomar nota del análisis expuesto en el presente documento;*

b) *se recomienda que la República Islámica del Irán incorpore las disposiciones adicionales y enmiendas a la "Ley de 2003 de Registro de Variedades Vegetales y Control y Certificación de Semillas y Material Vegetal", que se enuncian en este documento, y una vez incorporadas a dicha Ley las disposiciones y enmiendas adicionales necesarias, se someta la Ley modificada a examen del Consejo, de conformidad con el artículo 34.3) del Acta de 1991;*

c) *pedir a la Oficina de la Unión que ofrezca asistencia, en cuanto sea posible, al Gobierno de la República Islámica del Irán para redactar las disposiciones adicionales y enmiendas que han de introducirse en la Ley; y*

d) *autorizar al Secretario General a que informe de dicha decisión al Gobierno de la República Islámica del Irán.*

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 23 de febrero de 2015]

Enviada por: Sr. Mohammad H. Assareh
Director General
Instituto de Certificación y Registro de Semillas y Plantas (SPCRI)
Ministerio de Agricultura

Destinatario: Sr. Francis Gurry
Secretario General
Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

[Ref.:] No: 10828/253

Estimado Secretario General:

Tengo el agrado de informarle de que la República Islámica del Irán ha establecido su régimen jurídico nacional para la protección de los derechos de los obtentores teniendo en cuenta las siguientes normas y reglamentos:

1. La Ley de registro de variedades vegetales y control y certificación de semillas y plantas (la Ley), que fue promulgada por la Asamblea Consultiva Islámica en 2003.
2. El Reglamento de registro de variedades vegetales (el Reglamento), que ha sido ratificado de conformidad con la nota 2 del Artículo 3 de "la Ley", por la correspondiente Junta de Consejeros en 2007 con la modificación más reciente de 2009.
3. El Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales (Convenio de la UPOV) cuya entrada en vigor ha sido debidamente autorizada, de conformidad con el Artículo 12 de "la Ley" y el Artículo 9 del "Código Civil de Irán", a partir de la adhesión oficial de la República Islámica del Irán al Convenio de la UPOV.

El Gobierno de la República Islámica del Irán tiene previsto adherirse al Convenio Internacional para la Protección de las Obtenciones Vegetales de 2 de diciembre de 1961, revisado en Ginebra el 10 de noviembre de 1972, el 23 de octubre de 1978 y el 19 de marzo de 1991 (Convenio de la UPOV).

De conformidad con las disposiciones del Artículo 34.3) del Convenio de la UPOV, le agradecería que el Consejo de la UPOV examinara la conformidad de "la Ley" y del "Reglamento" respecto del "Código Civil del Irán" con las disposiciones del Convenio de la UPOV.

Aprovecho la oportunidad para expresarle el testimonio de mi más alta y distinguida consideración.

(Firmada)

- Anexos: – Apéndice No. 1: Artículo 77 de la Constitución de la República Islámica del Irán.
– Apéndice No. 2: Artículo 9 del Código Civil de la República Islámica del Irán.
– Apéndice No. 3: La Ley.
– Apéndice No. 4: el Reglamento.

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

*[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]*

Act of Plant Varieties Registration, Control
And Certification of Seeds and Plant Materials
(Islamic Republic of Iran)

Article 1

According to this Act and for the purpose of safeguarding national interests and organizing the process of controlling and certifying seeds and plant materials and for protection of breeders' intellectual properties, the Ministry of Jihad-e-Agriculture shall be responsible to identify and register the newly produced plant varieties and take actions to control and monitor the affairs related to the country's seed and plant material.

Article 2

For the implementation of the provisions of this Act, the *Seed and Plant Material Registration & Certification Research Institute* hereinafter referred as "Institute" shall be established within the Agricultural Research & Education Organization and is entitled to benefit from physical facilities and staff available in the Ministry of Jihad-e-Agriculture and under auspices of the Trustee Board of the Agricultural Research & Education Organization. The institute shall exclusively carry out all nations wide activities related to the identification and registration of plant varieties and control and certification of seeds and plant materials.

Note 1) The Trustee Board of the Agricultural Research & Education Organization will be comprised of:

- Minister of Jihad-e-Agriculture;
 - Minister of Science, Research & Technology;
 - Head of the country's Management & Planning Organization;
 - Head of the Environment Protection Organization,
- Deputy Minister and Head of the Agricultural Research & Education Organization and one of the administrative deputies introduced by the Minister of Jihad-e-Agriculture;
- Two outstanding members of scientific board of the universities
- Introduced by the Minister of the Science, Research & Technology;
- Three distinguished researchers of the Ministry of Jihad-e Agriculture selected by the concerned Minister

Note 2) Head of Agricultural Research and Education Organization shall act as the secretary of the trustee board.

Note 3) Within maximum three months after the ratification of this Act, the organizational chart of the institute shall be prepared by the Ministry of Jihad-e-Agriculture and forwarded to the trustee board. The organizational chart shall take effect after being ratified by the country's Management and Planning Organization.

Note 4) All parallel units and establishments to the above mentioned institute within the Ministry of Jihad-e-Agriculture shall be dissolved at the very date of ratification of the organizational chart and their facilities and their tasks shall be transferred to the institute.

Note 5) Head of the institute will be appointed upon the proposal of the Deputy Minister and Head of Agricultural Research and Education Organization and through the formal decree of Minister of Jihad-e-Agriculture.

Note 6) The fiscal, administrative and organizational activities of the institute shall fall under jurisdiction and regulations of Agricultural Research and Education Organization.

Article 3

In case the new plant varieties fully comply with the following conditions and requirements are eligible to be registered:

- A) The new cultivars should have distinct genetic characteristics and features as compared to previously registered or identified cultivars. The transgenic varieties shall be subject to the provisions of this Clause.
- B) The new varieties shall be identical from genetic, and morphological aspects or both.
- C) The specification of the variety, whether a hybrid or non-hybrid one shall remain unchanged during the years of production and propagation.

- Note 1) Non-improved and wild plant genetic resources shall be considered as national genetic resources and by any means, the private sector is not allowed to register them. Pursuant to the request of public sector, such resources can be registered in the name of the government of Islamic Republic of Iran.
- Note 2) The by-Acts pertaining to the introduction and protection of plant varieties shall be formulated by the institute and following approval of the trustee board, these by-Acts are enforceable.
- Note 3) In case of the reception of proposals from universities, research institutes or legal and natural persons, the institute shall register the prevalent varieties, pure and promising lines as well as male sterile and inbred lines which possess key and fundamental role in production of varieties.
- Note 4) The institute shall give priority to registration of the country's prevalent varieties.

Article 4

For the purpose of attaining reliance on the specification of seeds and plant materials and their full compliance with the characteristics of the original seeds at the time of registration and to ensure that the expected specification will remain unchanged and healthy while bearing the needed standards during propagation, cleaning and distribution, the institute shall monitor the following measures so as to control and certifies the seeds and plant materials:

- A) Determination of genetic authenticity of reproduced Seeds and Plant materials;
- B) Health and sanitation of produced seeds and plant materials;
- C) Compliance with national and international standards, which are officially or legally accepted by the Islamic Republic of Iran and is being applied for production of seeds and plant materials; The level for national standards will be set higher than international levels.

Article 5

By receiving the breeders' right for the improved plant varieties, the breeder (legal entity or individual) is entitled to intellectual property rights and shall be the sole commercial beneficiary of the variety for a period of maximum 18 years. Any commercial use of the registered variety by any person other than the breeder is subject to the written consent of the breeder.

Note) The breeder who has already registered a variety in his/ her name may assign his/ her exclusive economic and commercial privilege to any other individual or legal entity person.

Article 6

The institute is authorized:

- A) To issue permit for the competent units and legal entity or individual persons to perform monitoring controlling and certifying seeds and plant materials at all stages of production and processing under the supervision and obtaining the permit of the institute.
- B) To give production permit to competent units and legal entity or individual persons for the production of Seeds and Plant materials under supervision of related bodies.
- C) To collect part of the costs of identifying and registering plant varieties and all costs of controlling and certifying the seeds and plant materials in order to render technical services, identify the varieties, control seeds and plant materials quality, accomplish the designated task as well as to promote scientific and research capabilities of the institute. For this purpose, the board shall determine the tariffs as well as to open a specified account at Treasury in which the received charges shall be deposited and the equivalence will be determined as annual budget of the institute.

Note) Registration of non-improved genetic resources in the name of the Islamic Republic of Iran shall be done free of charge.

- D) To specify the standard seed's category (super elite, elite, breeder, certified and hybrid seeds and so forth) and announce to the public after the approval of the board of trustees.

Article 7

The following cases will be considered as violations and infringements of the Act and the violators will be treated in accordance with the prevailing Acts and regulations,

- I) Fraudulent patent and introduction of other varieties belonging to other legal entity or individual patentees;
- II) Non-observance of technical principles announced by the institute pertaining to propagation of Seeds and plant materials, and consequent loss and damage to the legal and beneficiaries;
- III) Non-compliance with the Phytosanitary regulations of the country
- IV) Utilization of the registered patented varieties without obtaining the respective legal permits from the legal or persons in the name of who the varieties have already been registered.
- V) Production and propagation of seeds and plant materials to be supplied to the market without obtaining a certificate from the institute;

Note 1) By virtue of expert evidence of the institute (provision of expert evidence is only within the jurisdiction ambit of the institute) and legal action made by the institute or any beneficiary, the judiciary shall pursue the case and if any breach of Act is proved, the violator, by operation of Act, shall pay cash penalty equivalent to three times of loss and damage and also compensate for the loss and damage incurred to the plaintiff and based on the prevailing rates of the time of legal verdict.

Article 8

For prevention of genetic disorders, the institute shall identify and introduce the regions suitable for the production of quality seeds and plant materials of various varieties.

Article 9

The Ministry of Jihad-e-Agriculture is responsible for the providing of necessary facilities for development, encouragement, and support of private sector and investment in the areas of improvement, propagation, distribution and export of seeds and plant materials.

Article 10

Export of seeds and plant materials in commercial quantities shall be subject to the obtainment of certificate from the institute and full compliance with phytosanitary quarantine regulations.

Article 11

From the approved date of the present Act, any commercial import of seeds and plant materials shall be subject to obtainment of permit from the Ministry of Jihad-e-Agriculture and observance of the quarantine and phytosanitary regulations and seed and plant material standards as well.

Note) The entry of exotic plant varieties sample for research purposes and study of their adaptability in both governmental or non-governmental research institutes and centers is exempted from the present Act.

Article 12

In order to achieve modern technology and utilize the scientific potentialities at international level as well as to exchange information and pave the necessary ground for research activities, the institute is authorized to attain the membership of the following organizations through the observance of the respective regulations: International Seed Testing Association (ISTA), Asian Pacific Seed Association (APSA), International Organization for Economic Cooperation and Development, Seed Scheme International Union for Protection of Plant New Varieties (UPOV), West Asia and North Africa Seed Networks (WANA)

Article 13

The Ministry of Jihad-e-Agriculture shall prepare annual performance reports which are subject of this Act and submit them to the government and the commission for agriculture, Water and Natural Resources of the Islamic Consultative Assembly.

Article 14

The executive by-Acts pertaining to the present Act shall be formulated by the Ministry of Jihad-e-Agriculture and shall be forwarded to the Cabinet minister for ratification within maximum three months after this Act has come into force.

This Act which is comprised of fourteen articles and fourteen notes has been ratified by the Islamic Consultative Assembly and endorsed and certified by the Council of Guardians on Sunday 30, July 2003.

[Annex III follows
L'annexe III suit
Anlage III folgt
Sigue el Anexo III]

*[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]*

By-law on Registration of Plant Varieties

In enforcement of note (2) of article (3) of Plant Varieties Registration and Seed and Plant Control and Certification Act which enacted on July 20, 2003, by Parliament, the By-law on Registration of Plant Varieties is approved as follows:

Article 1- Definitions:

Act: Means Act of Plant Varieties Registration, and Seed and Plant Control and Certification enacted on July 20, 2003;

Trustees Board: Means the Trustees Board which is established under note (1) of Article (2) of Act;

Institute: Means Seed and Plant Registration and Certification Institute which is established under article (2) of act

Breeder: Means legal entity or natural person who "bred", or "discovered and developed", a plant variety for the first time.

Right holder: Means legal entity or natural person who subject to article (5) of Act has obtained the protection on the registered variety

Variety: Means a plant grouping within a single botanical taxon of the lowest known rank, distinguished from any other plant grouping by the expression of uniform and stable characteristics.

Protected Variety: Means a variety that is registered under article (3) of the Act and this By-law.

Propagating Materials: Means seed and any other propagating parts of plants,

Application: Means application related to registration of new plant variety for protection which is submitted to the Institute. The date of application is the date on which it has formally been submitted to the Institute.

Article 2- Variety Registration for Protection:

A Variety may be registered under article (3) of Act, when it provides the following features:

1- Novelty: The variety shall be deemed to be new if, at the date of the application, propagating or harvested material of the variety has not been sold by or with the consent of the applicant,

(a) In the territory of the Country in which the application has been filed, earlier than one year before the application date and

(b) In a territory other than of the Country in which the application has been filed earlier than four years or, in the case of fruit or non fruit trees, earlier than six years before the application date.

Note 1: Novelty shall not be erased, if sale of new variety has been done under following circumstances:

(a) Without authorization of applicant,

(b) Multiplying of a variety initial nucleuses with a view to evaluating it in field, greenhouse or laboratory by legal entities or natural persons who have taken written authorization from applicant,

(c) Extension and Promoting activities or exploratory multiplying of a variety.

2- Distinctness: The New variety shall be distinguishable from any other existing variety by at least one or more physiologic or morphologic characteristic at the application date.

3- Uniformity: The New variety shall be sufficiently uniform in the expression of the relevant characteristics.

4- Stability: The variety shall be deemed to be stable if its relevant characteristics remain unchanged at the end of each or several cycles of propagation.

Article 3- New variety denomination:

The applicant shall propose the denomination of the variety at the filing of the application. The Institute will accept the denomination, if the denomination does satisfy the following requirements:

1- It must enable the variety to be identified.

2- It may not consist solely of figures.

3- It may not to cause confusion with the denomination of existing varieties of the same plant species or of a closely related species.

4- It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.

5- The Denomination of a variety shall not affect the prior rights of third persons or its use be hampered by other rights.

6- It may not cause a breach of public discipline and morality.

Note 1- New varieties related to the research institutes of Agricultural Research, Education and Extension Organization (AREEO), before conducting the institute tests, will be selected and denominated via the variety selection and denomination committee of the organization. The Mentioned research institutes shall insert the approved denomination by the variety selection and denomination committee of the organization in the registration application form when the application of the new variety is filed.

Note 2- If the Institute refuses the proposed variety denomination, the applicant is obliged to submit another denomination for the variety, during the 30 days from the date of the written refusal. If the last day coincides with a legal holiday, the first working day will be the last day.

Note 3- The Registered variety must be used just with the approved denomination. All persons who use that variety are obliged to use the denomination of the variety, even after the expiration of the breeder's right of that variety.

Article 4- A registered variety may be offered for sale or marketing in association with a trade name or trademark, provided that the right holder has given his authorization.

Article 5- Application procedure:

1- The procedures of plant variety registration begin from the date of submitting application to institute.

2- Application for registration shall be fulfilled in Persian and shall include following information:

(a) Name, Occupation, nationality and place of residence of applicant,

(b) Name, Occupation, nationality and place of residence of successor in title, if application submit by successor in title,

- (c) Genera and species name,
- (d) Denomination proposal of the variety,
- (e) Technical description of the variety,
- (f) Formal characterization of the variety (including distinguishable characteristics of variety)

3- In order to perform the technical examination, the applicant shall submit documents and material to institute at the time of submitting the application.

4- An Application for every variety shall be fulfilled separately.

5- The Reception of the application is subject to pay the application fees.

6- Application or Registration fees will be received in accordance with the tariffs which will be approved by trustee's board. The Institute is obliged to issue fee payment instructions as approved by the trustee's board.

7- If one or more legal entities or natural persons fulfill the application jointly, the percentage of them shall be identified expressly.

8- The Application notice will be published in the Official Gazette and the Institute Magazine on applicant's cost.

9- Any objection in relation to the application notice will be examined during six months from the date of application notice mentioned at paragraph (8).

10- In relation to technical examinations, the objector shall submit information, documents and material to the institute during the deadline included in paragraph (9).

11- If different (legal) persons file the same application, the first valid application to the institute, takes precedence for registration.

12- If the applicant has already filed an application in one of the countries, including UPOV members, which have concluded an agreement on protection of plant varieties with the Islamic Republic of Iran it may enjoy a right of priority for a period of 12 months from the day after the date of filing of that first application.

Article 6- Technical examination of the variety:

1- The Institute will examine the accuracy of information included in the application to ensure if it fulfills the following requirements:

- (a): The conditions as laid down in Article (2) of this by-law,
- (b): Confirmation of the variety characterization as claimed by the applicant,

Note: The Institute is obliged to provide and publish the DUS testing instructions of different species.

2- The Institute is authorized to entrust technical examinations as included in article 2(2), (3) and (4) and article 6(1) of this by-law to qualified legal entities and qualified natural persons.

3- The Applicant is obliged to submit plant material, information and complementary documents which may be needed to perform technical examinations by the institute.

4- If the applicant won't submit the material as mentioned in paragraph (3) during one month from the date of application to the institute, the institute will refuse the application unless applicant adduces the acceptable evidences.

Note: The Institute is authorized in the case of necessity and in any phase of the technical examination, to constitute technical committees which will include related experts to use their consultative viewpoints.

5- The Acceptance or refusal of the application in any phase of the technical examination is under responsibility of the technical committee. This committee will include:

- The Institute deputy on variety registration, and
- Four senior experts which will be chosen by the Head of the Institute according to the kind of crop for 2 years,

The Committee may invite other qualified senior experts in case of necessity. Reselection of committee members is accepted.

6- The Technical committee is authorized to base its decision to register a variety on different methods such as "direct test", "observing in the field", and examination information and documents which are available in UPOV member countries or in countries which have concluded a Plant Variety Protection Agreement with the Islamic Republic of Iran.

Article 7- Variety registration and grant of breeder's right:

1- The Institute will register the variety and grant breeder's right, if it attains that the variety meets the criteria as specified in articles 2, 5 and 6 of these by-laws.

2- The Institute shall inform the applicant on the result of acceptance or rejection of the application, during at most one month after ending the variety technical examination which is established under article (6) of this by-law.

Article 8- Assignment of breeder's rights:

1- Plant breeder's rights shall be assignable like other kinds of proprietary rights.

2- Any assignment of plant breeder's rights shall be certified by the Notary Public Offices and the institute shall be informed in writing.

Article 9- Conditions for the grant of the plant breeder's rights:

1- Breeder's rights shall be granted to the applicant or his successor in title.

2- Where two or more legal entities or natural persons have bred, or discovered and developed a variety jointly, entitlement to grant shall vest in them jointly in their shares subject to article 5(7) of this bylaw.

3- If plant breeder's rights granted as a result of breeding, or discovery and development of plant variety in the execution of a commission or of an employment contract, it shall belong to the commissioner or employer unless in the case of contractual provisions to the contrary.

Article 10- Variety Protection:

1- In regard to paragraphs (3) and (4) of this article the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (a) Production or reproduction (multiplication),
- (b) Conditioning for the purpose of propagation,
- (c) Offering for sale or marketing,

- (d) Exporting of propagating materials,
- (e) Importing of propagating materials,
- (f) Stocking for any of the purposes mentioned in (a) to (e), above.

2- The breeder may make his authorization subject to conditions and limitations. In the case there is no breeder's authorization, using the production which is directly or indirectly derived from plants or harvested materials of plants, is unauthorized.

3-The provisions of paragraphs (1) and (2) of this article shall also apply in relation to following varieties:

- (a) Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (b) Varieties which are not clearly distinguishable from the protected variety, in accordance with Article 2(2);
- (c) Varieties whose production requires the repeated use of the protected variety;

Note: a variety shall be deemed to be essentially derived from another variety when:

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

4- The protection period of breeder's right is granted according to article (5) of act.

5- Exceptions to the Breeder's Right:

The breeder's right shall not extend to

- (a) Acts done for non-commercial purposes,
- (b) Acts done for breeding new varieties
- (c) Small farmers' save seed of the protected variety,

Note: The Institute will identify the scope of small farmers according to kind of crop, kind of cultivation and geographical region.

6- Exhaustion of the Breeder's Right: The breeder's right shall not extend to material of the protected variety, or harvested material of a protected variety or any material derived from the said materials, provided that protected variety has been sold or marketed under the authorization of the breeder.

7- Monitoring of Protected Variety:

- (a) The Institute is authorized to monitor production and propagation of a protected variety across the country in agreement with the breeder's right holder and according to a contract.
- (b) The holder of a breeder's right shall, throughout the period for which the right is exercisable, be under an obligation to make available, at the request of the Registrar, reasonable samples of the protected variety

capable of producing plants which correspond to the characteristics defined for the variety when the right was granted.

(c) The holder of a breeder's right, during the term which the breeder's right is in force, is obliged to provide the institute all such information and documents as may be requested for the purpose of ensuring that the holder of the breeder's right is fulfilling his obligations.

Article 11- Information:

1- The information under article 5(2) of these by-laws shall be kept under the management of the institute.

2- Any legitimate person having the rights to access the documents in accordance with the Act may inspect:

(a) The documents relating to applications under these by-laws;

(b) The documents relating to granted plant breeder's rights;

(c) The documents relating to farm, laboratory and greenhouse test of a variety.

3- The Institute shall preserve the originals or copies of the documents in the files until ten years after the withdrawal or rejection of the application, or the lapse of the plant breeder's rights, as the case may be.

Article 12- Gazette:

The Institute is obliged to publish the following information in official gazette and institute magazine on applicant's cost:

(a) Applications for registration (applications for the grant of plant breeder's right),

(b) Withdrawals of applications,

(c) Rejections of applications,

(d) Grant of breeder's right,

(e) Assignments and licenses,

(f) Changes in the persons (applicants, holders and procedural representatives)

(g) Lapses of breeder's right,

(h) Any other official announcement relating to plant breeder's rights as it may be determined from time to time by the Institute.

Article 13- Cancellation of the Breeder's Right:

The Breeder's right shall be canceled for the following reasons:

1- If the protected variety has lost the requirements laid down in article 2(3) or 2(4).

2- If, after being requested to do so and within six months,

(a) The breeder does not provide the information, documents or material deemed necessary for verifying the maintenance of the variety,

(b) The breeder fails to pay such fees as may be payable to keep his right in force, or

(c) The breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

Article 14- Nullity of breeder's right:

For the following reasons the breeder's right shall be subject to nullity:

- 1- The variety did not meet the conditions as laid down in Article 2(1), (2) of these by-laws at the time of the grant of the breeder's right,
- 2- The breeder's right has been granted to a person who is not entitled to it, unless it is transferred to a person who is so entitled.

Article 15- Registration and protection tariffs, and fees will be in accordance with independent instructions which will be suggested by the institute and will be approved by the trustees' board.

Article 16- This by-law consists of 16 articles approved by the Trustees Board of Agricultural Research, Education & Extension Organization on October 10, 2009.

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