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UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES

Genève

CONSEIL**Trente-deuxième session extraordinaire
Genève, 27 mars 2015****EXAMEN DE LA CONFORMITÉ DE LA "LOI SUR L'ENREGISTREMENT
DES OBTENTIONS VÉGÉTALES ET LE CONTRÔLE ET LA CERTIFICATION
DES SEMENCES ET DU MATÉRIEL VÉGÉTAL DE 2003"
DE LA RÉPUBLIQUE ISLAMIQUE D'IRAN AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV***Document établi par le Bureau de l'Union**Avertissement : le présent document ne représente pas les principes ou les orientations de l'UPOV*

1. Dans une lettre datée du 23 février 2015 adressée au secrétaire général de l'UPOV, M. Mohammad Hasan Assareh, directeur général du *Seed and Plant Certification and Registration Institute* (SPCRI), a demandé l'examen de la conformité de la "loi" et de "l'arrêté" pris en application du "Code civil iranien" avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre est reproduite à l'annexe I du présent document.

2. La lettre de M. Assareh contient les éléments suivants :

a) le texte de l'article 77 de la Constitution de la République islamique d'Iran tel que modifié le 28 juillet 1989 :

"Article 77 – Les traités, protocoles, contrats et arrangements internationaux doivent être approuvés par l'Assemblée consultative islamique";

b) le texte de l'article 9 du Code civil de la République islamique d'Iran du 23 mai 1928 :

"Article 9 – Les dispositions de traités qui ont été, conformément au droit constitutionnel, conclus entre le Gouvernement iranien et d'autres gouvernements ont force de loi";

c) la "loi sur l'enregistrement des obtentions végétales et le contrôle et la certification des semences et du matériel végétal de 2003 de la République islamique d'Iran" (ci-après dénommée la "loi"). L'annexe II contient une traduction en anglais de la loi, fournie par le SPCRI; et

d) "l'arrêté sur l'enregistrement des obtentions végétales", approuvé par le conseil d'administration de l'*Agricultural Research, Education and Extension Organization* le 10 octobre 2009 (ci-après dénommé "arrêté"). L'annexe III contient une traduction en anglais de l'arrêté, fournie par le SPCRI.

FONDEMENT DE LA PROTECTION DES OBTENTIONS VÉGÉTALES DANS LA RÉPUBLIQUE ISLAMIQUE D'IRAN CONFORMÉMENT À L'ACTE DE 1991

3. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du conseil sur la conformité de sa législation avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé".

4. L'article 30.2) de l'Acte de 1991 dispose que, au moment du dépôt de son instrument de ratification, "chaque État ou organisation intergouvernementale doit être en mesure, conformément à sa législation, de donner effet aux dispositions de la présente Convention".

5. Les articles 30.2) et 34.3) de l'Acte de 1991 exigent la conformité des "législations", par conséquent les dispositions de l'arrêté ne sont pas visées par l'analyse faite dans le présent document.

6. Afin de permettre au Gouvernement de la République islamique d'Iran d'être en mesure de donner effet aux dispositions de l'Acte de 1991, il est recommandé que la loi incorpore les dispositions supplémentaires et les modifications proposées dans le présent document. On trouvera ci-après une analyse de la loi, dans l'ordre des dispositions du droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

7. La loi ne contient pas de définition des termes "obtenteur" et "variété". Il est recommandé d'incorporer dans la loi les définitions des termes "obtenteur" et "variété" figurant aux alinéas iv) et vi) de l'article premier de l'Acte de 1991.

Article 2 de l'Acte de 1991 : Obligation fondamentale des parties contractantes

8. L'article premier de la loi est ainsi rédigé :

"Conformément à la présente loi, pour préserver les intérêts nationaux et organiser le contrôle et la certification des semences et des plantes et pour protéger les actifs intellectuels des obtenteurs, le Ministère du djihad et de l'agriculture est chargé d'identifier et d'enregistrer les obtentions végétales récentes et de prendre des mesures pour contrôler et gérer les questions relatives aux semences et aux plantes du pays".

9. Pour mettre en œuvre l'obligation fondamentale "d'octroyer des droits d'obtenteur et de les protéger" conformément à l'Acte de 1991, il est recommandé que la loi incorpore les dispositions supplémentaires et les modifications proposées dans le présent document.

Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

10. La loi ne contient pas de disposition sur les "genres et espèces devant être protégés". Il est recommandé d'incorporer dans la loi des dispositions sur les "genres et espèces devant être protégés" conformément aux dispositions de l'article 3.2) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

11. L'article premier et l'article 3 (notes 3) et 4) de l'alinéa C)) de la loi semblent contenir des dispositions qui ne correspondent pas à l'article 4 de l'Acte de 1991. Il est recommandé de modifier l'article premier et l'article 3 (notes 3) et 4) de l'alinéa C)) de la loi conformément aux dispositions de l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

12. Les articles 3 et 4 de la loi contiennent des dispositions relatives aux conditions de protection qui ne semblent pas correspondre aux articles 5 à 9 et 18 de l'Acte de 1991. Il est recommandé de modifier la loi conformément aux articles 5 et 18 de l'Acte de 1991, et :

- a) d'incorporer dans la loi des dispositions relatives à la "nouveau" conformément aux dispositions de l'article 6 de l'Acte de 1991;
- b) de modifier l'article 3.A) de la loi relatif à la "distinction" conformément aux dispositions de l'article 7 de l'Acte de 1991;
- c) de modifier l'article 3.B) de la loi relatif à l'"uniformité" conformément aux dispositions de l'article 8 de l'Acte de 1991; et
- d) de modifier l'article 3.C) de la loi relatif à la "stabilité" conformément aux dispositions de l'article 9 de l'Acte de 1991.

Article 10 de l'Acte de 1991 : Dépôt de demandes

- 13. L'article 6.C) de la loi semble contenir des dispositions sur le coût d'enregistrement des obtentions.
- 14. La note 2) de l'article 3 de la loi est ainsi rédigée :
"Les arrêtés relatifs à l'introduction et à la protection des obtentions végétales sont établis par l'institut et, après approbation du conseil d'administration, ont force exécutoire."
- 15. Il est recommandé d'incorporer des dispositions sur le dépôt de demandes conformément aux dispositions de l'article 10 de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

- 16. La loi ne contient pas de disposition sur le "droit de priorité". Il est recommandé d'incorporer dans la loi des dispositions sur le "droit de priorité" conformément aux dispositions de l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

- 17. Les articles 3 et 4 de la loi semblent contenir des dispositions qui ne correspondent pas à l'article 12 de l'Acte de 1991. Il est recommandé de modifier la loi conformément aux dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

- 18. La loi ne contient pas de disposition sur la "protection provisoire". Il est recommandé d'incorporer dans la loi des dispositions sur la "protection provisoire" conformément aux dispositions de l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

- 19. L'article 5 de la loi contient des dispositions sur l'"étendue du droit d'obtenteur". Il est recommandé de modifier la loi conformément aux dispositions de l'article 14 de l'Acte de 1991.

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

- 20. La loi ne contient pas de disposition sur les exceptions au droit d'obtenteur. Il est recommandé d'incorporer dans la loi des dispositions sur les "exceptions au droit d'obtenteur" conformément aux dispositions de l'article 15 de l'Acte de 1991.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

21. La loi ne contient pas de disposition sur l'“épuisement du droit d'obtenteur”. Il est recommandé d'incorporer dans la loi des dispositions sur l'“épuisement du droit d'obtenteur” conformément aux dispositions de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

22. La loi ne contient pas de disposition sur la “limitation de l'exercice du droit d'obtenteur”. Il est recommandé d'incorporer dans la loi des dispositions sur la “limitation de l'exercice du droit d'obtenteur” conformément aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

23. La loi, et en particulier les articles 3 à 6 et l'article 9, semblent contenir des dispositions qui ne correspondent pas aux dispositions de l'article 18 de l'Acte de 1991. Il est recommandé de modifier la loi conformément aux dispositions de l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

24. L'article 5 de la loi contient des dispositions sur la “durée du droit d'obtenteur”. Il est recommandé de modifier l'article 5 conformément aux dispositions de l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

25. La loi ne contient pas de disposition sur la “dénomination de la variété”. Il est recommandé d'incorporer dans la loi des dispositions sur la “dénomination de la variété” conformément aux dispositions de l'article 20 de l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

26. La loi ne contient pas de disposition sur la “nullité du droit d'obtenteur”. Il est recommandé d'incorporer dans la loi des dispositions sur la “nullité du droit d'obtenteur” conformément aux dispositions de l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

27. La loi ne contient pas de dispositions sur la “déchéance de l'obtenteur”. Il est recommandé d'incorporer dans la loi des dispositions sur la “déchéance de l'obtenteur” conformément aux dispositions de l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

28. L'article 7 de la loi contient des dispositions sur la défense des droits d'obtenteur. Il est recommandé de modifier la loi conformément aux dispositions de l'article 14 de l'Acte de 1991 et de “prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur” comme le prévoit l'article 30.1)i) de l'Acte de 1991.

29. S'agissant de l'obligation visée à l'article 30.1)ii) de l'Acte de 1991, l'article 2 de la loi prévoit ce qui suit :

“Article 2

“Aux fins de la mise en œuvre des dispositions de la présente loi, le *Seed and Plant Material Registration and Certification Research Institute*, ci-après dénommé “institut”, est créé au sein de l'*Agricultural Research and Education Organization* et peut utiliser les installations matérielles disponibles au Ministère du djihad et de l'agriculture et faire appel à son personnel, sous l'autorité du conseil d'administration de

Agricultural Research and Education Organization. L'institut a pour mission de conduire exclusivement toutes les activités d'identification et d'enregistrement des obtentions végétales et de contrôle et de certification des semences et des plantes à l'échelle nationale.

"Note 1) Le conseil d'administration de l'*Agricultural Research and Education Organization* comprend les membres suivants :

- "– le ministre du djihad et de l'agriculture;
- "– le ministre de la science, de la recherche et de la technologie;
- "– le directeur de l'organisme de gestion et de planification du pays;
- "– le directeur du service de protection de l'environnement;
- "– le vice-ministre, directeur de l'*Agricultural Research and Education Organization*, et l'un des délégués présentés par le ministre du djihad et de l'agriculture;
- "– deux brillants membres de comités scientifiques universitaires présentés par le ministre de la science, de la recherche et de la technologie;
- "– trois éminents chercheurs du ministère du djihad et de l'agriculture choisis par le ministre concerné.

"Note 2) Le directeur de l'*Agricultural Research and Education Organization* assure le secrétariat du conseil d'administration.

"Note 3) L'organigramme de l'institut est établi par le ministre du djihad et de l'agriculture et adressé au conseil d'administration dans un délai maximal de trois mois suivant la ratification de la présente loi. Il entre en vigueur après ratification par l'organisme de gestion et de planification du pays.

"Note 4) Tous les services et établissements accomplissant des tâches similaires à celles de l'institut susmentionné au sein du Ministère du djihad et de l'agriculture sont dissous immédiatement après ratification de l'organigramme; leurs installations et leurs missions sont transférées à l'institut.

"Note 5) Le directeur de l'institut est nommé sur proposition du vice-ministre, directeur de l'*Agricultural Research and Education Organization*, dans un décret officiel du ministre du djihad et de l'agriculture.

"Note 6) Les activités de l'institut dans le domaine fiscal, administratif et de l'organisation relèvent de la compétence et de la réglementation de l'*Agricultural Research and Education Organization*."

30. Il est recommandé d'incorporer dans la loi des dispositions correspondant à l'obligation de publier des informations concernant les demandes de droits d'obtenteur et les droits d'obtenteur délivrés et les dénominations proposées et approuvées, comme le prévoit l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

31. L'article 12 de la loi est ainsi rédigé :

"Afin de mettre en œuvre la technologie moderne et d'exploiter les possibilités offertes par la science au niveau international, d'échanger des informations et de préparer le terrain pour les activités de recherche, l'institut est autorisé à prendre contact avec les membres des organisations ci-après selon leurs règlements respectifs :

Association internationale d'essais de semences (ISTA), Association Asie-Pacifique pour les semences (APSA), systèmes de semences de l'Organisation de coopération et de développement économiques, Union internationale pour la protection des obtentions végétales (UPOV), réseaux de semenciers d'Asie occidentale et d'Afrique du Nord (WANA)."

32. Compte tenu de l'analyse faite dans le présent document, pour que la République islamique d'Iran soit en mesure de donner effet aux dispositions de l'Acte de 1991, comme le prévoit l'article 30.2) de ce dernier, il est recommandé d'incorporer dans la loi les dispositions supplémentaires et les modifications proposées dans le présent document.

33. *Le Conseil est invité à:*

a) *prendre note de l'analyse faite dans le présent document;*

b) *recommander à la République islamique d'Iran d'incorporer les dispositions supplémentaires et les modifications signalées dans le présent document dans la "loi sur l'enregistrement des obtentions végétales et le contrôle et la certification des semences et du matériel végétal de 2003" et à recommander que, dès que ces dispositions supplémentaires et ces modifications auront été incorporées dans la loi, la loi ainsi modifiée soit soumise au Conseil pour examen, conformément à l'article 34.3) de l'Acte de 1991;*

c) *demander au Bureau de l'Union d'offrir son concours au Gouvernement de la République islamique d'Iran, à la première occasion, pour la rédaction des dispositions supplémentaires et des modifications nécessaires; et*

d) *autoriser le secrétaire général à informer le Gouvernement de la République islamique d'Iran de cette décision.*

[Les annexes suivent]

ANNEXE I

Traduction d'une lettre datée du 23 février 2015 (référence n° 10828/253)

adressée par : M. Mohammad H. Assareh
Ministère du djihad et de l'agriculture
Seed and Plant Certification and Registration Institute (SPCRI) –
République islamique d'Iran

à : M. Francis Gurry
Secrétaire général
Union internationale pour la protection des obtentions végétales (UPOV)

Monsieur,

J'ai le plaisir de vous informer que la République islamique d'Iran a mis en place son système juridique national pour la protection des droits des obtenteurs sur la base des règles et réglementations suivantes :

1. la loi sur l'enregistrement des obtentions végétales et le contrôle et la certification des semences et du matériel végétal (la "loi"), adoptée par l'Assemblée consultative islamique en 2003;
2. l'arrêté sur l'enregistrement des obtentions végétales (l'"arrêté"), qui a été ratifié conformément à la note 2 de l'article 3 de la "loi" par le conseil compétent en 2007 et dont la dernière modification date de 2009;
3. l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales (Convention UPOV), dont l'application a été dûment autorisée, en vertu de l'article 12 de la "loi" et de l'article 9 du Code civil iranien, depuis l'adhésion officielle de la République islamique d'Iran à la Convention UPOV.

Le Gouvernement de la République islamique d'Iran souhaite adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV d'examiner la conformité de la "loi" et de l'"arrêté" dans le cadre du Code civil iranien avec les dispositions de la Convention UPOV.

Je vous prie d'accepter, Monsieur, l'assurance de ma plus haute considération.

(Signé :)
Mohammad H. Assareh
Directeur général du SPCRI

Pièces jointes :

1. article 77 de la Constitution de la République islamique d'Iran
2. article 9 du Code civil de la République islamique d'Iran
3. la "loi"
4. l'"arrêté"

[L'annexe II suit]

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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