



# PLANT VARIETY PROTECTION GAZETTE AND NEWSLETTER

No. 107 – February 2015

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## **NEW MEMBER OF UPOV**

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### **AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)<sup>1</sup>**

On June 10, 2014, the African Intellectual Property Organization (OAPI) deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991.

The Convention entered into force for OAPI one month after the deposit of its instrument of accession, i.e. on July 10, 2014.

On that date, OAPI became the seventy-second member of the Union.

OAPI operates a plant variety rights system which covers the territory of its 17 member States (member States of OAPI: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo).

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<sup>1</sup> Pursuant to Article 34 (3) of the 1991 Act of the UPOV Convention, any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council of UPOV to advise it in respect of the conformity of its laws with the provisions of the UPOV Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited. The positive advice of the Council of UPOV concerning the legislation of the African Intellectual Property Organization (OAPI) is contained in paragraph 34 of document C(Extr.)/17/3 ([http://www.upov.int/edocs/mdocs/upov/en/c\\_extr\\_17/c\\_extr\\_17\\_3.pdf](http://www.upov.int/edocs/mdocs/upov/en/c_extr_17/c_extr_17_3.pdf)).

## NOTIFICATIONS CONCERNING GENERA AND SPECIES

### AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

On June 10, 2014, the Office of the Union received a notification that the legislation governing breeders' rights of OAPI applied to all genera and species since January 1, 2006.

### BRAZIL

On January 23, 2015, the Office of the Union received a notification that the legislation governing breeders' rights of Brazil applies to the following consolidated list of genera and species:

TAXA	UPOV Code	Common name (portuguese)	Group	Year of inclusion	Date of inclusion
<i>Gossypium hirsutum</i> L.	GOSSY_HIR	ALGODÃO	GRANDES CULTURAS	1997	07-11-97
<i>Oryza sativa</i> L.	ORYZA_SAT	ARROZ	GRANDES CULTURAS	1997	05-11-97
<i>Solanum tuberosum</i> L.	SOLAN_TUB	BATATA	GRANDES CULTURAS	1997	05-11-97
<i>Phaseolus vulgaris</i> L. (feijão comum)	PHASE_VUL	FEIJÃO COMUM	GRANDES CULTURAS	1997	05-11-97
<i>Zea mays</i> L.	ZEAAA_MAY	MILHO	GRANDES CULTURAS	1997	05-11-97
<i>Sorghum Moench</i>	SRGHM	SORGO	GRANDES CULTURAS	1997	07-11-97
<i>Triticum aestivum</i> L.	TRITI_AES	TRIGO	GRANDES CULTURAS	1997	05-11-97
<i>Sorghum sudanense</i> (Piper) Stapf	SRGHM_DRU	Capim sudão	FORRAGEIRAS	1997	07-11-97
<i>Saccharum</i> L.	SACCH	Cana-de-açúcar	GRANDES CULTURAS	1998	05-03-98
<i>Coffea arabica</i> L.	COFFE_ARA	CAFÉ	GRANDES CULTURAS	2000	21-11-00
<i>Coffea arabica</i> L. x <i>Coffea canephora</i> Pierre ex A. Froehner	COFFE_ACA	CAFÉ	GRANDES CULTURAS	2000	21-11-00
<i>Coffea canephora</i> Pierre ex A. Froehner	COFFE_CAN	CAFÉ	GRANDES CULTURAS	2000	21-11-00
<i>Malus</i> Mill.	MALUS	MAÇÃ (porta enxerto)	FRUTÍFERAS	2000	24-11-00
<i>Malus</i> Mill.	MALUS	Maçã frutífera	FRUTÍFERAS	2000	29-06-00
<i>Lactuca sativa</i> L.	LACTU_SAT	ALFACE	OLERÍCOLAS	2001	01-06-01
<i>Brachiaria brizantha</i> (Hochst. ex A. Rich.) Stapf	UROCH_BRI	<i>Brachiaria brizantha</i>	FORRAGEIRAS	2001	16-04-01
<i>Brachiaria humidicola</i> (Rendle) Schweick.	UROCH_HUM	<i>Brachiaria humidicola</i>	FORRAGEIRAS	2001	16-04-01
<i>Brachiaria ruziziensis</i> x <i>B. brizantha</i>	UROCH_RBR	<i>Brachiaria ruziziensis</i> x <i>B. brizantha</i>	FORRAGEIRAS	2001	16-04-01
<i>Brachiaria ruziziensis</i> x <i>B. decumbens</i> x <i>B. brizantha</i>	UROCH_RDB	<i>Brachiaria ruziziensis</i> x <i>B. decumbens</i> x <i>B. brizantha</i>	FORRAGEIRAS	2001	16-04-01
<i>Panicum maximum</i> Jacq.	PANIC_MAX	CAPIM COLONIAÃO	FORRAGEIRAS	2001	16-04-01
<i>Pennisetum purpureum</i> Schumach.	PENNI_PUR	CAPIM ELEFANTE	FORRAGEIRAS	2001	16-04-01
<i>Pennisetum purpureum</i> X <i>P. glaucum</i>	PENNI_PGL	CAPIM ELEFANTE	FORRAGEIRAS	2001	16-04-01
<i>Daucus carota</i> L.	DAUCU_CAR	CENOURA	OLERÍCOLAS	2001	27-07-01
<i>Vitis</i> L.	VITIS	Videira	FRUTÍFERAS	2001	03-05-01
<i>Avena brevis</i> Roth	AVENA_BRE	Aveia	GRANDES CULTURAS	2002	01-03-02
<i>Avena</i> L.	AVENA	Aveia	GRANDES CULTURAS	2002	01-03-02
<i>Avena sativa</i> L.	AVENA_SAT	Aveia	GRANDES CULTURAS	2002	01-03-02
<i>Avena strigosa</i> Schreb.	AVENA_STR	Aveia preta	FORRAGEIRAS	2002	01-03-02
<i>Hordeum vulgare</i> L.	HORDE_VUL	CEVADA	GRANDES CULTURAS	2002	21-02-02
<i>Eucalyptus</i> spp	EUCAL	EUCALIPTO	FLORESTAIS	2002	04-02-02
<i>Zoysia japonica</i> Steud	ZOYSI_JAP	GRAMA ESMERALDA	ORNAMENTAIS	2002	20-01-14

<b>TAXA</b>	<b>UPOV Code</b>	<b>Common name (portuguese)</b>	<b>Group</b>	<b>Year of inclusion</b>	<b>Date of inclusion</b>
Stenotaphrum secundatum (Walter) Kuntze	STENO_SEC	GRAMA SANTO AGOSTINHO	ORNAMENTAIS	2002	25-06-02
Cajanus cajan L. Millsp.	CAJAN_CAJ	GUANDU	FORRAGEIRAS	2002	30-08-02
Guzmania Ruiz et Pav.	GUZMA	GUZMANIA	ORNAMENTAIS	2002	27-12-02
Glycine max (L.) Merr.	GLYCI_MAX	SOJA	GRANDES CULTURAS	2002	03-05-02
xTriticosecale Wittm. ex A. Camus	TRITL	TRITICALE	GRANDES CULTURAS	2002	20-03-02
Mangifera indica L.	MANGI_IND	MANGA	FRUTÍFERAS	2002	23-09-02
Ananas comosus (L.) Merr.	ANANA_COM	ABACAXI	FRUTÍFERAS	2003	17-09-03
Hippeastrum Herb.	HIPPE	AMARILIS	ORNAMENTAIS	2003	16-12-03
Aster L.	ASTER	ASTER	ORNAMENTAIS	2003	17-09-03
Musa L.	MUSAA	BANANEIRA	FRUTÍFERAS	2003	17-01-03
Begonia x hiemalis Fotsch.	BEGON_HIE	BEGÔNIA ELATIOR	ORNAMENTAIS	2003	23-07-03
Kalanchoe Adans.	KALAN	CALANCOE	ORNAMENTAIS	2003	19-02-03
Kalanchoe blossfeldiana Poelln.	KALAN_BLO	CALANCOE	ORNAMENTAIS	2003	19-02-03
Dianthus L.	DIANT	CRAVO	ORNAMENTAIS	2003	18-12-03
Limonium sinuatum (L.) Mill. = Statice sinuata L.	LIMON_SIN	ESTATICE	ORNAMENTAIS	2003	18-09-03
Gerbera L.	GERBE	GÉRBERA	ORNAMENTAIS	2003	16-09-03
Hibiscus rosa-sinensis L.	HIBIS_ROS	HIBISCO	ORNAMENTAIS	2003	23-07-03
Hypericum L.	HYPER	HIPERICO	ORNAMENTAIS	2003	03-09-03
Hypericum x inodorum Mill.	HYPER_INO	HIPERICO	ORNAMENTAIS	2003	03-09-03
Lilium L.	LILIU	LÍRIO	ORNAMENTAIS	2003	16-12-03
Macrotyloma axillare (E. Mey) Verdc.	MACRT_AXI	MACROTYLOMA	FORRAGEIRAS	2003	19-12-03
Pennisetum glaucum (L.) R. Br.	PENNI_GLA	MILHETO	FORRAGEIRAS	2003	23-01-03
Fragaria L.	FRAGA	MORANGO	OLERÍCOLAS	2003	14-02-03
Pyrus communis L. (frutíferas)	PYRUS_COM	PERA FRUTÍFERA	FRUTÍFERAS	2003	07-01-03
Solidago virgaurea L.	SOLID_VIR	SOLIDAGO	ORNAMENTAIS	2003	23-07-03
Saintpaulia H. Wendl.	SAINT	VIOLETA AFRICANA	ORNAMENTAIS	2003	23-07-03
Cucurbita L.	CUCUR	ABÓBORA	OLERÍCOLAS	2004	28-04-04
Anthurium Schott	ANTHU	ANTÚRIO	ORNAMENTAIS	2004	09-02-04
Allium cepa L.	ALLIU_CEP	CEBOLA	OLERÍCOLAS	2004	09-03-04
Cymbidium Sw.	CYMBI	CIMBÍDIO	ORNAMENTAIS	2004	09-02-04
Gypsophila L.	GYPPO	GIPSOFILA	ORNAMENTAIS	2004	23-09-04
Euphorbia pulcherrima Willd. Ex Klotzsch	EUPHO_PUL	POINSETIA	ORNAMENTAIS	2004	01-10-04
Abelmoschus esculentus (L.) Moench	ABELM_ESC	QUIABO	OLERÍCOLAS	2004	03-02-04
Allium sativum L.	ALLIU_SAT	ALHO	OLERÍCOLAS	2005	13-12-05
Zantedeschia Spreng	ZANTE	COPO-DE-LEITE	ORNAMENTAIS	2005	14-11-05
Impatiens walleriana Hook f.	IMPAT_WAL	IMPATIENS	ORNAMENTAIS	2005	19-12-05
Impatiens X Nova guine	IMPAT_NGH	IMPATIENS NOVA GUINÉ	ORNAMENTAIS	2005	20-12-05
Solanum lycopersicum L.	SOLAN_LYC	TOMATE	OLERÍCOLAS	2005	01-12-05
Pisum sativum L.	PISUM_SAT	ERVILHA	OLERÍCOLAS	2006	13-12-06
Cynodon dactylon (L.) Pers	CYNOD_DAC	Grama bermuda	ORNAMENTAIS	2006	15-09-06
Cynodon dactylon (L.) Pers. x Cynodon transvaalensis Burttt Davy	CYNOD_MAG	Grama bermuda	ORNAMENTAIS	2006	15-09-06
Capsicum annuum L. var. annuum	CAPSI_ANN	Pimenta tipo jalapeno	OLERÍCOLAS	2006	27-03-06
Capsicum L.	CAPSI	PIMENTÃO/PIMENTA	OLERÍCOLAS	2006	27-03-06
Lolium L.	LOLIU	AZEVEM	FORRAGEIRAS	2007	31-12-07
Begonia rex (e híbridos)	BEGON_REX	BEGÔNIA	ORNAMENTAIS	2007	26-10-07

<b>TAXA</b>	<b>UPOV Code</b>	<b>Common name (portuguese)</b>	<b>Group</b>	<b>Year of inclusion</b>	<b>Date of inclusion</b>
<i>Dactylis glomerata</i> L.	DCTLS_GLO	CAPIM DOS POMARES	FORRAGEIRAS	2007	31-12-07
<i>Holcus lanatus</i> L.	HOLCU_LAN	CAPIM LANUDO	FORRAGEIRAS	2007	01-11-07
<i>Ficus benjamina</i> L.	FICUS_BNJ	FICUS	ORNAMENTAIS	2007	05-01-07
<i>Actinidia</i> Lindl.	ACTIN	KIWI	FRUTÍFERAS	2007	17-10-07
<i>Citrus</i> L. (Laranjas)	CITRU	LARANJA	FRUTÍFERAS	2007	21-12-07
<i>Bromus auleticus</i> Trin.	BROMU_AUL	BROMUS	FORRAGEIRAS	2008	04-03-08
<i>Bromus catharticus</i> Vahl	BROMU_CAT	BROMUS	FORRAGEIRAS	2008	04-03-08
<i>Bromus sitchensis</i> Trin.	BROMU_SIT	BROMUS	FORRAGEIRAS	2008	04-03-08
<i>Secale cereale</i> L.	SECAL_CER	CENTEIO	GRANDES CULTURAS	2008	22-09-08
<i>Acca sellowiana</i> (Berg) Burret	ACCAA_SEL	GOIABA SERRANA	FRUTÍFERAS	2008	12-11-08
<i>Lotus</i> L.	LOTUS	LOTUS	FORRAGEIRAS	2008	04-03-08
<i>Ricinus communis</i> L.	RICIN_COM	MAMONA	GRANDES CULTURAS	2008	01-08-08
<i>Manihot esculenta</i> Crantz	MANIH_ESC	Mandioca	GRANDES CULTURAS	2008	22-09-08
<i>Passiflora edulis</i> Sims	PASSI_EDU	MARACUJÁ	FRUTÍFERAS	2008	18-12-08
<i>Passiflora</i> L.	PASSI	MARACUJÁ	FRUTÍFERAS	2008	18-12-08
<i>Cucumis melo</i> L.	CUCUM_MEL	MELÃO	OLERÍCOLAS	2008	14-11-08
<i>Prunus Persica</i> (L.) Batsch	PRUNU_PER	NECTARINA	FRUTÍFERAS	2008	15-01-08
<i>Olea europaea</i> L.	OLEAA_EUR	OLIVEIRA	FRUTÍFERAS	2008	11-12-08
<i>Paspalum vaginatum</i> Sw.	PASPA_VAG	PASPALUM VAGINATUM	FORRAGEIRAS	2008	27-05-08
<i>Prunus</i> L.	PRUNU	<i>Prunus porta-enxerto</i>	FRUTÍFERAS	2008	10-10-08
<i>Nicotiana tabacum</i> L.	NICOT_TAB	TABACO	GRANDES CULTURAS	2008	01-08-08
<i>Trifolium repens</i> L.	TRFOL_REP	TREVO BRANCO	FORRAGEIRAS	2008	11-03-08
<i>Trifolium pratense</i> L.	TRFOL_PRA	TREVO VERMELHO	FORRAGEIRAS	2008	11-03-08
<i>Persea americana</i> Mill.	PERSE_AME	ABACATE	FRUTÍFERAS	2009	17-12-09
<i>Alstroemeria</i> L.	ALSTR	ALSTROEMERIA	ORNAMENTAIS	2009	03-09-09
<i>Prunus salicina</i> Lindl.	PRUNU_SAL	AMEIXA JAPONESA	FRUTÍFERAS	2009	06-04-09
<i>Chrysanthemum</i> × <i>morifolium</i> Ramat.	CHRYS_MOR	CRISANTEMO	ORNAMENTAIS	2009	20-07-09
<i>Chrysanthemum</i> L.	CHRYS	CRISÂNTEMO	ORNAMENTAIS	2009	20-07-09
<i>Stevia rebaudiana</i> (Bertoni) Bertoni	STEVI_REB	estevia	OLERÍCOLAS	2009	16-01-09
<i>Helianthus annuus</i> L.	HLNTS_ANN	GIRASSOL	GRANDES CULTURAS	2009	03-06-09
<i>Hydrangea</i> L.	HYDRN	HORTÊNSIA	ORNAMENTAIS	2009	05-11-09
<i>Citrullus lanatus</i> (Thunb.) Matsum. & Nakai	CTRLS_LAN	MELANCIA	OLERÍCOLAS	2009	30-06-09
<i>Rosa</i> L.	ROSAA	ROSEIRA	ORNAMENTAIS	2009	16-02-09
<i>Arachis hypogaea</i> L.	ARACH_HYP	AMENDOIM	GRANDES CULTURAS	2010	13-12-10
<i>Arachis pintoi</i> Krapov. & W. C. Greg.	ARACH_PIN	AMENDOIM FORRAGEIRO	FORRAGEIRAS	2010	10-11-10
<i>Eleusine Coracana</i> (L.) Gaertn.	ELEUS_COR	Capim pé-de-galinha	FORRAGEIRAS	2010	12-02-10
<i>Codiaeum variegatum</i> (L.) A. Juss	CODIA_VAR	CROTON	ORNAMENTAIS	2010	12-02-10
<i>Curcuma</i> L.	CURCU	Curcuma	ORNAMENTAIS	2010	15-12-10
<i>Vigna unguiculata</i> L.	VIGNA_UNG	FEIJÃO-CAUPI	GRANDES CULTURAS	2010	20-08-10
<i>Festuca arundinacea</i> Schreb	FESTU_ARU	FESTUCA	FORRAGEIRAS	2010	13-12-10
<i>Paullinia cupana</i> Kunth var. <i>sorbilis</i>	PAULL_CUP_SOR	GUARANÁ	FRUTÍFERAS	2010	31-12-10
<i>Vaccinium</i> L.	VACCI	mirtilo	FRUTÍFERAS	2010	02-08-10
<i>Poa pratensis</i> L.	POAAA_PRA	POA	FORRAGEIRAS	2010	31-12-10
<i>Hevea</i> Aubl.	HEVEA	SERINGUEIRA	FLORESTAIS	2010	31-12-10
<i>Diospyros kaki</i> L.	DIOSP_KAK	CAQUI	FRUTÍFERAS	2011	23-09-11
<i>Vicia sativa</i> L.	VICIA_SAT	Ervilhaca comum	FORRAGEIRAS	2011	09-12-11
<i>Vicia villosa</i> Roth	VICIA_VIL	Ervilhaca peluda	FORRAGEIRAS	2011	09-12-11

TAXA	UPOV Code	Common name (portuguese)	Group	Year of inclusion	Date of inclusion
Corymbia	CORYM	Eucalipto Gen. Corimbia	FLORESTAIS	2011	19-09-11
Spathiphyllum Schott.	SPTHP	Lírio-da-paz	ORNAMENTAIS	2011	21-03-11
Andropogon gayanys Kunth.	ANDRP_GAY	ANDROPOGON	FORRAGEIRAS	2012	03-12-12
Malus domestica Borkh	MALUS_DOM	Maçã frutífera	FRUTÍFERAS	2012	29-10-12
Neoregelia L.B. Sm.	NEORE	NEOREGELIA	ORNAMENTAIS	2012	15-02-12
xDoritaenopsis hort.	DORIT	Orquídea Doritaenopsis	ORNAMENTAIS	2012	24-05-12
Phalaenopsis Blume	PHALE	Orquídea Phalaenopsis	ORNAMENTAIS	2012	24-05-12
xZelenkocidium J.M.H. Shaw	ZELCI	Orquídea Zelenkocidium	ORNAMENTAIS	2012	12-04-13
xIonocidium Hort.	IONOC	Orquídea Ionocidium	ORNAMENTAIS	2012	12-04-13
xCitroncirus J. W. Ingram & H. E. Moore; Citrus x Poncirus	CITRO	Poncirus	FRUTÍFERAS	2012	22-03-12
Setaria sphacelata Stapf	SETAR_SPH	SETARIA	FORRAGEIRAS	2012	03-12-12
Citrus L. (Tangerinas)	CITRU	TANGERINA	FRUTÍFERAS	2012	06-03-12
Ananas macrodentes Morren e seus híbridos	ANANA_MAC	Abacaxi ornamental	ORNAMENTAIS	2013	03-01-13
Rubus subg. Eubatus sect. Moriferi et Ursini	RUBUS_EUB	Amora preta	FRUTÍFERAS	2013	19-03-13
Theobroma cação L.	THEOB_CAC	Cacau	FRUTÍFERAS	2013	06-05-13
Carthamus tinctorius L.	CARTH_TIN	CÁRTAMO	GRANDES CULTURAS	2013	03-01-13
Celosia L.	CELOS	Celosia	ORNAMENTAIS	2013	11-07-13
Dendrobium Sw.	DNDRB	Dendrobio	ORNAMENTAIS	2013	21-10-13
Rubus idaeus L.	RUBUS_IDA	Framboesa	FRUTÍFERAS	2013	26-03-13
xOncidesa Hort.	ONCIE	Orquídea Oncidesa	ORNAMENTAIS	2013	12-04-13
Oncidium Sw.	ONCID	Orquídea Oncidium	ORNAMENTAIS	2013	12-04-13
Punica granatum L.	PUNIC_GRA	Romã	FRUTÍFERAS	2013	14-05-13
Malpighia emarginata DC.	MALPI_EMA	Acerola	FRUTÍFERAS	2014	04-09-14
Brassica napus L.	BRASS_NAP	Canola	GRANDES CULTURAS	2014	17-04-14
Dahlia Cav	DAHLI	Dalia	ORNAMENTAIS	2014	13-02-14
Mandevilla sanderi (Hemsl.) Woodson	MANDE_SAN	Dipladênia	ORNAMENTAIS	2014	13-03-14
Mandevilla x amabilis (Backh. & Backh. f.) Dress.	MANDE_AMA	Dipladênia	ORNAMENTAIS	2014	13-03-14
Cynodon transvaalensis Burt Davy e seus híbridos	CYNOD_TRA	Grama bermuda	ORNAMENTAIS	2014	20-01-14
PASPALUM REGNELLII MEZ.	PASPA_REG	Paspalum regnellii	FORRAGEIRAS	2014	17-09-14
Petunia Juss.	PETUN	Petúnia	ORNAMENTAIS	2014	19-09-14
Carica papaya L.	CARIC_PAP	Mamoeiro	FRUTÍFERAS	2014	18-07-14

## BULGARIA

On January 1, 2015, the Office of the Union received a notification that the legislation governing breeders' rights of Bulgaria applied to all genera and species since January 5, 1997.

## SINGAPORE

On August 4, 2014, the Office of the Union received a notification that the legislation governing breeders' rights of Singapore applied to all genera and species since July 30, 2014.

## SOUTH AFRICA

With the incorporation of the genera and species notified on August 27, 2014, the legislation governing breeders' rights of South Africa applied to the following consolidated list of genera and species:

<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">ABELI</a>	Abelia R. Br.	Abelia	
<a href="#">ABELM</a>	Abelmoschus		
<a href="#">ABUTI</a>	Abutilon Mill.	Abutilon	
<a href="#">ACACI_POD</a>	Acacia podalyriifolia A. Cunn. ex G. Don; Acacia podalyriifolia A. Cunn.	Pearl Acacia; Queensland Silverwattle	
<a href="#">ACMAD</a>	Acmadenia		
<a href="#">ACORU</a>	Acorus		
<a href="#">ACTIN</a>	Actinidia Lindl.	Actinidia	
<a href="#">ADENA</a>	Adenanthos		
<a href="#">AGAPA</a>	Agapanthus L'Hér.	African Lily; Agapanthus; Blue Lily	
<a href="#">AGATO</a>	Agathosma Willd.		
<a href="#">AGAVE</a>	Agave		Agave L.: except for Agave sisalana
<a href="#">AGERT</a>	Ageratina		
<a href="#">AGLAO</a>	Aglaonema Schott.; Aglaonema spp.	Chinese Evergreen	
<a href="#">AGROT</a>	×Agrotriticum; Agropyron × Triticum	Agrotriticum	
<a href="#">AJUGA</a>	Ajuga L.		
<a href="#">ALLIU</a>	Allium L.	Ornamental Allium	
<a href="#">ALOEE</a>	Aloe L.	Aloe	
<a href="#">ALSTR</a>	Alstroemeria L.	Alstroemeria; Herb Lily	
<a href="#">ALYOG_HUE</a>	Alyogyne huegelii (Endl.) Fryxell		
<a href="#">AMARA</a>	Amaranthus L.	Amaranth	
<a href="#">ANANA_COM</a>	Ananas comosus (L.) Merr.	Pineapple	
<a href="#">ANGLN</a>	Angelonia Bonpl.; Angelonia Humb. et Bonpl.		
<a href="#">ANISO</a>	Anisodonteia K.B. Presl; Anisodonteia K.B.	George Mallow; Hairy Mallow	
<a href="#">ANTHP_PUB</a>	Antheophora pubescens Nees	Bottle Brush Grass	
<a href="#">ANTHU</a>	Anthurium Schott	Anthurium; Tail Flower	
<a href="#">ANTIR</a>	Antirrhinum L.; Antirrhinum Tourn.	Snapdragon	
<a href="#">ARACH</a>	Arachis	Peanut	
<a href="#">ARCTT</a>	Arctotis L.	Arctotis	
<a href="#">ARGYR</a>	Argyranthemum Webb ex Schultz Bip.; Argyranthemum Webb	Daisy Bush	
<a href="#">ARTEM</a>	Artemisia L.	Mugwort	
<a href="#">ASPAL</a>	Aspalathus L.		
<a href="#">ASPAR_DEN</a>	Asparagus aethiopicus L.; Asparagus densiflorus (Kunth) Jessop; Asparagus sprengeri Regel	asparagus-fern; emerald-feather; emerald-fern; sprengeri-fern; Sprenger's-fern	
<a href="#">ASPAR_OFF</a>	Asparagus officinalis L.	Asparagus	
<a href="#">ASTER</a>	Aster L.	Aster; Michaelmas Daisy	
<a href="#">AULAX</a>	Aulax Berg	Aulax	
<a href="#">AVENA</a>	Avena L.	Oats	
<a href="#">BARLE</a>	Barleria L.	Barleria	
<a href="#">BAUHI</a>	Bauhinia L.		Excluding B. purpurea and B. variegata
<a href="#">BEGON</a>	Begonia L.; Begonia-Hybridae	Begonia	



<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">BERGE</a>	Bergenia Moench	Megasea	
<a href="#">BESCH</a>	Beschorneria Kunth		
<a href="#">BETAA VUL</a>	Beta vulgaris L.		
<a href="#">BOUGA</a>	Bougainvillea Comm. ex Juss.; Bougainvillea Comm.	Bougainvillea	
<a href="#">BOUVA</a>	Bouvardia Salisb.	Bouvardia	
<a href="#">BRASS JUN</a>	Brassica juncea (L.) Czern.; Brassica juncea (L.) Czern. et Coss. in Czern.	Brown mustard; India mustard; Indian mustard; Oriental mustard	
<a href="#">BRASS NAP</a>	Brassica napus L.		
<a href="#">BRASS OLE</a>	Brassica oleracea L.		
<a href="#">BRASS RAP</a>	Brassica rapa L.		
<a href="#">BRCHY</a>	Brachyscome Cass.; Brachycome	Swan River Daisy	
<a href="#">BROMU CAT</a>	Bromus catharticus Vahl; Bromus unioloides H.B.K.; Bromus unioloides Kunth; Bromus willdenowii Kunth	Rescue Grass	
<a href="#">BRUNF LAT</a>	Brunfelsia latifolia (Pohl) Benth.		
<a href="#">BRUNI</a>	Brunia Lam.; Brunia L.	Brunia	
<a href="#">BUDDL</a>	Buddleja L.	Buddleia; Butterfly-bush	
<a href="#">BULBI</a>	Bulbine Wolf		
<a href="#">CAJAN</a>	Cajanus Adans.		
<a href="#">CALIB</a>	Calibrachoa Llave & Lex.		
<a href="#">CALSM</a>	Callistemon R. Br.	Bottle-brush	
<a href="#">CANNA</a>	Canna L.	Canna	
<a href="#">CAPSI</a>	Capsicum L.	Sweet Pepper	
<a href="#">CAREX BRU</a>	Carex brunnea Thunb.		
<a href="#">CARIC PAP</a>	Carica papaya L.	Papaw; Papaya	
<a href="#">CARYA ILL</a>	Carya illinoensis (Wangenh.) C. Koch	Pecan Nut	
<a href="#">CEANO DEN</a>	Ceanothus dentatus Torr. & A. Gray	Cropleaf ceanothus	
<a href="#">CENCH CIL</a>	Cenchrus ciliaris L.; Pennisetum ciliare (L.) Link	Blue Buffalo Grass	
<a href="#">CHEIR</a>	Cheiranthus L.	Wallflower	
<a href="#">CHIRO</a>	Chironia L.	Christmas Berry; Wild Gentian	
<a href="#">CHLRP</a>	Chlorophytum Ker Gawl.		
<a href="#">CHMLC</a>	Chamelaucium Desf.	Chamelaucium; Geraldton Wax	
<a href="#">CHOIS DEW</a>	Choisya x dewitteana Geerinck		
<a href="#">CHRYS</a>	Chrysanthemum L.; Chrysanthemum dendranthema; Dendranthema (DC.) Desmoul.	Chrysanthemum; Daisies	
<a href="#">CICHO INT</a>	Cichorium intybus L.	Chicory	
<a href="#">CITHR</a>	Citharexylum Mill.	Fiddlewood	
<a href="#">CITRU</a>	Citrus L.	Citrus	
<a href="#">CLEMA</a>	Clematis L.	Clematis	
<a href="#">CLEOM</a>	Cleome L.	Spider Flower	
<a href="#">CLIVI</a>	Clivia Lindl.	Clivia; Kaffir-lily	
<a href="#">CMLIA</a>	Camellia L.	Camellia	
<a href="#">CMLIA SIN</a>	Camellia sinensis (L.) Kuntze; Thea sinensis L.	Tea	
<a href="#">COFFE ARA</a>	Coffea arabica L.	Coffee	
<a href="#">COLEN</a>	Coleonema		
<a href="#">COLEO</a>	Coleostephus		
<a href="#">COLOC</a>	Colocasia Schott	Taro	
<a href="#">COPRO</a>	Coprosma J.R. et G. Forst.	Coprosma; Mirror Plant	
<a href="#">CORCH</a>	Corchorus		

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<a href="#">CORDY</a>	Cordyline Comm. ex Juss.; Cordyline Comm. ex R. Br.	Cordyline	
<a href="#">COREO_LAN</a>	Coreopsis lanceolata L.	perennial coreopsis	
<a href="#">COREO_PUB</a>	Coreopsis pubescens Elliott		
<a href="#">COREO_ROS</a>	Coreopsis rosea Nutt.	Pink tickseed	
<a href="#">CORIA</a>	Coriandrum L.		
<a href="#">COSMO_ATR</a>	Cosmos atrosanguineus (Hook.) Voss	Black cosmos; Chocolate cosmos	
<a href="#">COTYL</a>	Cotyledon L.		
<a href="#">CRAMB_ABY</a>	Crambe abyssinica Hochst. ex R. E. Fr.; Crambe abessinica Hochst. ex Fries		
<a href="#">CRASS</a>	Crassula L.	Pigmyweed	
<a href="#">CRINU</a>	Crinum L.	Cape lily	
<a href="#">CROCO</a>	Crococsmia Planch.	Crococsmia	
<a href="#">CRYLS</a>	Corylus L.	Filbert; Hazelnut	
<a href="#">CUCUM</a>	Cucumis L.	Cucumber; Sweet Melon	
<a href="#">CUCUR</a>	Cucurbita L.	Pumpkin; Squash	
<a href="#">CUPHE_HYS</a>	Cuphea hyssopifolia Kunth	Mexican-heather	
<a href="#">CUPRC</a>	×Cupressocyparis Dallim.		
<a href="#">CUPRE</a>	Cupressus L.	Cypress	
<a href="#">CURCU</a>	Curcuma L.	Turmeric	
<a href="#">CYCLP</a>	Cyclopia Vent.	Honeybush Tea	
<a href="#">CYDON</a>	Cydonia Mill.; Cydonia	Flowering Quince; Quince	
<a href="#">CYNOD</a>	Cynodon		
<a href="#">CYPER</a>	Cyperus		
<a href="#">CYRTA</a>	Cyrtanthus Aiton; Cyrtanthus L. f.	Fire Lily; Ifafa Lily	
<a href="#">CYTHE</a>	Cyathea Sm.	Tree Fern	
<a href="#">DAHLI</a>	Dahlia Cav.	Dahlia	
<a href="#">DAPHN_TRA</a>	Daphne ×transatlantica C. D. Brickell & A. R. White; Daphne collina × Daphne caucasica		
<a href="#">DAUCU_CAR</a>	Daucus carota L.; Daucus carota L. ssp. sativus (Hoffm.) Schübl. et G. Martens; Daucus carota L. subsp. sativus (Hoffm.) Arcang. var. sativus Hoffm.	Carrot	
<a href="#">DCTLS_GLO</a>	Dactylis glomerata L.	Cocksfoot; Orchard Grass	
<a href="#">DELOS</a>	Delosperma N. E. Br.		
<a href="#">DESMD</a>	Desmodium		
<a href="#">DGTRA_ERI</a>	Digitaria eriantha Steud.; Digitaria decumbens Stent; Digitaria eriantha Steud. ssp. eriantha; Digitaria smutsii Stent	Common Finger Grass; Digit Grass; Pangola Grass; Smuts Digitaria; Woolly Finger Grass	
<a href="#">DIANE</a>	Dianella		
<a href="#">DIANT_ALL</a>	Dianthus ×allwoodii hort.		
<a href="#">DIANT_CAR</a>	Dianthus caryophyllus L.; Dianthus-Caryophyllus-Hybridae	Carnation	
<a href="#">DIASC</a>	Diascia Link & Otto	Twinspur	
<a href="#">DIEFF</a>	Dieffenbachia Schott	Dieffenbachia; Dumb Bane; Tuft Root	
<a href="#">DIERA</a>	Dierama K. Koch	wandflower	
<a href="#">DIETE</a>	Dietes Salisb. ex Klatt		
<a href="#">DIMOR</a>	Dimorphotheca Vaill. ex Moench; Dimorphotheca Moench	Bitou; Cape Marigold	
<a href="#">DRACA</a>	Dracaena Vand. ex L.	Dracena; Dragon Tree	
<a href="#">DURAN</a>	Duranta L.	Forget-me-not Tree	

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<a href="#">ERAGR_CUR</a>	Eragrostis curvula (Schrad.) Nees; Eragrostis robusta Stent	Boer love grass; Weeping love grass; Weeping Lovegrass	
<a href="#">ERAGR_TEF</a>	Eragrostis tef (Zuccagni) Trotter; Eragrostis tef (Zucc.) Trotter	Teff	
<a href="#">ERICA</a>	Erica L.	Heath	
<a href="#">ERICE</a>	Eriocephalus L.		
<a href="#">ERYNG</a>	Eryngium L.; Eryngium hybrida	Eryngo	
<a href="#">EUCAL</a>	Eucalyptus L'Hér.	Eucalyptus	
<a href="#">EUCOM</a>	Eucomis L'Her.		
<a href="#">EUONY</a>	Euonymus L.	Spindle Tree	
<a href="#">EUPAT</a>	Eupatorium L.	Boneset; Thorough-wort	
<a href="#">EUPHO_HYP</a>	Euphorbia hypericifolia L.; Chamaesyce hypericifolia (L.) Millsp.		
<a href="#">EUPHO_MRT</a>	Euphorbia martinii; Euphorbia x martinii		
<a href="#">EUPHO_PUL</a>	Euphorbia pulcherrima Willd. ex Klotzsch	Poinsettia	
<a href="#">EURYO</a>	Euryops (Cass.) Cass.; Euryops Cass.	Resin Bush	
<a href="#">FELIC</a>	Felicia Cass.	Felicia	
<a href="#">FERRA</a>	Ferraria Burm. ex Mill.		
<a href="#">FESTL</a>	xFestulolium Aschers. et Graebn.; xFestulolium; Festulolium	Festulolium	
<a href="#">FICUS</a>	Ficus L.	Fig Tree	
<a href="#">FOENI</a>	Foeniculum Mill.		
<a href="#">FORTU</a>	Fortunella Swingle	Kumquat	
<a href="#">FRAGA_ANA</a>	Fragaria xananassa Duch.; Fragaria grandiflora Ehrh. non (L.) Crantz	Strawberry	
<a href="#">FREES</a>	Freesia Eckl. ex Klatt; Freesia x hybrida hort.; Freesia-Hybridae	Freesia	
<a href="#">FUCHS</a>	Fuchsia L.; Fuchsia x hybrida	Fuchsia; Ladies' Eardrops	
<a href="#">GAILL_GRA</a>	Gaillardia xgrandiflora hort. ex Van Houtte; Gaillardia x grandiflora		
<a href="#">GARDE</a>	Gardenia Ellis	Gardenia	
<a href="#">GAURA</a>	Gaura L.	Gaura	
<a href="#">GAZAN</a>	Gazania Gaertn.	Gazania; Treasure Flower	
<a href="#">GELSE_SEM</a>	Gelsemium sempervirens (L.) J.St.-Hil	Carolina Jasmine; Evening Trumpet-flower; Gelsemium; Woodbine; Yellow-jessamine	
<a href="#">GERBE</a>	Gerbera L.	Gerbera	
<a href="#">GLADI</a>	Gladiolus L.; Gladanthera; Gladiolus xhybrid	Gladiolus	
<a href="#">GLAND</a>	Glandularia		
<a href="#">GLYCI_MAX</a>	Glycine max (L.) Merr.; Soja hispida Moench	Soya Bean; Soybean	
<a href="#">GONIO</a>	Goniolimon		
<a href="#">GOSSY_HIR</a>	Gossypium hirsutum L.	Cotton	
<a href="#">GREVI</a>	Grevillea R. Br. corr. R. Br.; Grevillea hybrid; Grevillea R. Br	Grevillea	
<a href="#">GSTRA</a>	Gasteria Duval		
<a href="#">GYPSO</a>	Gypsophila L.	Baby's Breath; Gyp; Gypsophila	
<a href="#">HAEMN</a>	Haemanthus L.	Blood Lily	

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<a href="#">HARDE</a>	Hardenbergia Benth.	Australian Lilac; Sarsaparilla	
<a href="#">HEBEE</a>	Hebe Comm. ex Juss.; Hebe; Hebe hybrid; Hebe veronica	Shrubby Speedwell	
<a href="#">HEDER</a>	Hedera L.	Ivy	
<a href="#">HEMER</a>	Hemerocallis L.	Day-lily	
<a href="#">HERMA</a>	Hermannia L.		
<a href="#">HEUCH</a>	Heuchera L.	Coral Flower	
<a href="#">HIBIS</a>	Hibiscus L.	Rose-mallow	
<a href="#">HIPPE</a>	Hippeastrum Herb.; Hippeastrum × hybridum hort.; Hippeastrum Hybrids; Hippeastrum x hortorum Maatsch; Hippeastrum-Hybridae	Amaryllis	
<a href="#">HLNTS_ANN</a>	Helianthus annuus L.	Common Sunflower	
<a href="#">HLNTS_TUB</a>	Helianthus tuberosus L.	Jerusalem Artichoke	
<a href="#">HLOPS_HEL</a>	Heliopsis helianthoides (L.) Sweet		
<a href="#">HORDE</a>	Hordeum L.	Barley	
<a href="#">HOSTA</a>	Hosta Tratt.	Funkia; Hosta; Plantain Lily	
<a href="#">HTRNT</a>	Heterantheris		
<a href="#">HUMUL_LUP</a>	Humulus lupulus L.	Hop	
<a href="#">HYDRN</a>	Hydrangea L.	Hydrangea	
<a href="#">HYPER</a>	Hypericum L.	Rose of Sharon; Saint John's Wort	
<a href="#">HYPOE</a>	Hypoestes Soland. ex R. Br.; Hypoestes Sol. ex R. Br.	Ribbon Bush	
<a href="#">HYPOX</a>	Hypoxis L.		
<a href="#">IBERI</a>	Iberis L.	Candytuft	
<a href="#">ILEXX_CRE</a>	Ilex crenata Thunb.	Box-leaf holly; Japanese holly	
<a href="#">ILEXX_DIM</a>	Ilex dimorphophylla Koidz.		
<a href="#">IMPAT</a>	Impatiens L.	Balsam; Busy Lizzie; Touch-me-not	
<a href="#">IPOMO_BAT</a>	Ipomoea batatas (L.) Lam.; Ipomoea batatas (L.) Poir.	Sweet Potato	
<a href="#">IRISS</a>	Iris L.	Iris	
<a href="#">ISOGL</a>	Isoglossa Oerst.		
<a href="#">ISOPO</a>	Isopogon R. Br.		
<a href="#">JAMES</a>	Jamesbrittenia O. Kuntze		
<a href="#">JUGLA</a>	Juglans L.	Walnut	
<a href="#">JUNIP</a>	Juniperus L.; Sabina Mill.	Juniper	
<a href="#">KALAN</a>	Kalanchoë Adans.; Kalanchoë x hybrida hort.	Kalanchoë	
<a href="#">KNIPH</a>	Kniphofia Moench	Torch-lily	
<a href="#">KOELE</a>	Koeleria Pers.	Hairgrass	
<a href="#">KUNZE</a>	Kunzea Reichb.		
<a href="#">LACHE</a>	Lachenalia Jacq. f. ex Murr.; Lachenalia spp.	Cape Cowslip; Lachenalia	
<a href="#">LACTU_SAT</a>	Lactuca sativa L.	Lettuce	
<a href="#">LAGER_IND</a>	Lagerstroemia indica L.; Lagerstroemia indica prostrata	Crape Myrtle	
<a href="#">LAMIU_MAC</a>	Lamium maculatum L.	Spotted Deadnettle	
<a href="#">LAMPR</a>	Lampranthus N. E. Br.		
<a href="#">LANTA_MON</a>	Lantana montevidensis (Spreng.) Briq.; Lantana sellowiana Link & Otto	Creeping Lantana; Purple Lantana; Small Lantana; Trailing Lantana; Weeping Lantana	

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<a href="#">LATHY TIN</a>	Lathyrus tingitanus L.	Gypsy Sweet Pea; Tangier Scarlet Pea; Tangier Sweet Pea	
<a href="#">LAVAN</a>	Lavandula L.	Lavender	
<a href="#">LEDEB</a>	Ledebouria Roth; Drimiopsis Lindl. & Paxton; Resnova Van der Merwe		
<a href="#">LESPE CUN</a>	Lespedeza cuneata (Dum. Cours.) G. Don	Chinese bush-clover; Chinese lespedeza; Perennial lespedeza; Sericea le; Silky bush-clover	
<a href="#">LESPE STR</a>	Lespedeza striata (Thunb.) Hook. & Arn.; Kummerowia striata (Thunb.) Schindl.		
<a href="#">LEUCA</a>	Leucanthemum; Leucanthemum Mill.		
<a href="#">LEUCD</a>	Leucadendron R. Br.	Conebush; Protea; Yellowbush	
<a href="#">LEUCS</a>	Leucospermum R. Br.	Pincushion; Protea	
<a href="#">LIBER IXI</a>	Libertia ixioides (G. Forst.) Spreng.		
<a href="#">LILIU</a>	Lilium L.	Lily	
<a href="#">LIMON</a>	Limonium Mill.	Sea Lavender; Statice	
<a href="#">LIRIP MUS</a>	Liriope muscari (Decne.) L. H. Bailey; Liriope platyphylla F. T. Wang & T. Tang; Liriope platyphylla Wang et Tang		
<a href="#">LITCH CHI</a>	Litchi chinensis Sonn.	Litchi	
<a href="#">LOBEL ERI</a>	Lobelia erinus L.	edging lobelia, garden lobelia, trailing lobelia; lobelia	
<a href="#">LOLIU</a>	Lolium L.	Ryegrass	
<a href="#">LOMAN</a>	Lomandra Labill		
<a href="#">LONIC</a>	Lonicera L.	Honeysuckle; Lonicera	
<a href="#">LOTUS COR</a>	Lotus corniculatus L.	Bird's Foot Trefoil	
<a href="#">LPTOS</a>	Leptospermum J.R. et G. Forst.	Tea Tree	
<a href="#">LUPIN</a>	Lupinus L.	Lupin	
<a href="#">LYCIA RAN</a>	Lycianthes rantonnei (Carrière) Bitter; Solanum rantonnetii Carr ex. Lescuy	Blue Potato Bush	
<a href="#">LYCIU</a>	Lycium		
<a href="#">LYSIM</a>	Lysimachia L.	Loosestrife; Moneywort	
<a href="#">MACAD</a>	Macadamia F. Muell.	Macadamia; Queensland Nut	
<a href="#">MALUS</a>	Malus Mill.	Apple	
<a href="#">MALVA</a>	Malva L.	Mallow	
<a href="#">MANDE</a>	Mandevilla Lindl.; Dipladenia A. DC.	Mandevilla	
<a href="#">MANGI IND</a>	Mangifera indica L.	Mango	
<a href="#">MEDIC</a>	Medicago L.	Alfalfa; Lucerne	
<a href="#">MELIA AZE</a>	Melia azedarach L.	Bead Tree; Persian Lilac	
<a href="#">MERWI</a>	Merwillia Speta		
<a href="#">MIMET</a>	Mimetes Salisb.	Cape Bottlebrush	
<a href="#">MISCA GIG</a>	Miscanthus x giganteus J. M. Greef & Deuter ex Hodk. & Renvoize		
<a href="#">MONAR</a>	Monarda L.	Bee Balm; Bergamot; Horsemint	
<a href="#">MONOP</a>	Monopsis Salisb.	Wild Violet	
<a href="#">MORAE</a>	Moraea Mill.; Homeria Vent.		
<a href="#">MORIN</a>	Moringa		

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<a href="#">MURRA PAN</a>	Murraya paniculata (L.) Jack		
<a href="#">MUSAA ACU</a>	Musa acuminata Colla; Musa cavendishii Lamb.	Banana; Cavendish banana; Chinese banana; Dwarf banana	
<a href="#">NANDI</a>	Nandina		
<a href="#">NARCI</a>	Narcissus L.	Daffodil; Jonquil; Narcissus	
<a href="#">NEMES</a>	Nemesia Vent.	Nemesia	
<a href="#">NEONO WIG</a>	Neonotonia wightii (Wight & Arn.) J. A. Lackey; Glycine javanica auct., non L.; Glycine wightii grahan ex a rnot ver		
<a href="#">NEPHR</a>	Nephrolepis Schott	Ladder Fern; Sword-fern	
<a href="#">NERIN</a>	Nerine Herb.	Nerine	
<a href="#">NERIU</a>	Nerium L.	Oleander; Rose Bay	
<a href="#">NICOT TAB</a>	Nicotiana tabacum L.	Tobacco (common)	
<a href="#">OCIMU BAS</a>	Ocimum basilicum L.	Basil	
<a href="#">OLEAA</a>	Olea; Olea L.	Olive	
<a href="#">OPHIO</a>	Ophiopogon Ker -Gawl.; Ophiopogon Ker Gawl.; Ophiopogon Ker-Gawl.	Lilyturf; Mondo; Snake's Beard	
<a href="#">ORNTG</a>	Ornithogalum L.	Chinkerinchee; Star of Bethlehem	
<a href="#">ORNTP COM</a>	Ornithopus compressus L.		
<a href="#">ORNTP SAT</a>	Ornithopus sativus Brot.; Ornithopus intybus L.	Serradella	
<a href="#">OROTH</a>	Orothamnus Pappe ex Hook.	Marsh Rose	
<a href="#">ORYZA SAT</a>	Oryza sativa L.	Rice	
<a href="#">OSTEO</a>	Osteospermum L.	Osteospermum	
<a href="#">PANDO</a>	Pandorea (Endl.) Spach.	Pandorea	
<a href="#">PANDO JAS</a>	Pandorea jasminoides (Lindl.) K. Schum.	Bowerplant	
<a href="#">PANIC</a>	Panicum L.	Panicum	
<a href="#">PARAH CAT</a>	Parahebe catarractae (G. Forst.) W. R. B. Oliv.		
<a href="#">PARAN</a>	Paranomus Salisb.	Paranomus	
<a href="#">PASPA</a>	Paspalum		
<a href="#">PASPA DIL</a>	Paspalum dilatatum Poir.	Dallisgrass	
<a href="#">PASSI</a>	Passiflora L.		Excluding P. caerulea, P. tripartita var. mollissima, P. suberosa and P. subpeltata
<a href="#">PASTI SAT</a>	Pastinaca sativa L.	Parsnip	
<a href="#">PELAR</a>	Pelargonium L'Hér. ex Ait.; Pelargonium hederifolium Salisb.; Pelargonium L'Hérit. ex Ait.	Geranium; Pelargonium	
<a href="#">PENNI CLA</a>	Pennisetum clandestinum Hochst. ex Chiov.		
<a href="#">PENNI GLA</a>	Pennisetum glaucum (L.) R. Br.; Pennisetum americanum (L.) Leeke; Pennisetum glaucum (L.) R. Br. emend. Stuntz; Pennisetum typhoides (Burm. f.) Stapf & C. E. Hubb.; Pennisetum typhoides (Burm. f.) Stapf et C.E. Hubb.	Pearl Millet	
<a href="#">PENNI SET</a>	Pennisetum setaceum (Forssk.) Chiov.		Only sterile hybrids
<a href="#">PENNI SQU</a>	Pennisetum squamulatum Fresen.		
<a href="#">PENTA</a>	Pentas Benth.	Pentas	
<a href="#">PERIC</a>	Pericallis D. Don		
<a href="#">PERSE AME</a>	Persea americana Mill.	Avocado	

<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">PETRO_CRI</a>	Petroselinum crispum (Mill.) Nyman ex A. W. Hill; Petroselinum hortense auct.; Petroselinum sativum Hoffm.	Parsley	
<a href="#">PETUN</a>	Petunia Juss.	Petunia	
<a href="#">PHALR_AQU</a>	Phalaris aquatica L.; Phalaris stenoptera Hack.; Phalaris tuberosa L.	Harding's Grass	
<a href="#">PHALR_ARU</a>	Phalaris arundinacea L.	Reed Canary Grass	
<a href="#">PHASE_COC</a>	Phaseolus coccineus L.	Kidney Bean; Runner Bean	
<a href="#">PHASE_VUL</a>	Phaseolus vulgaris L.	French Bean	
<a href="#">PHILO</a>	Philodendron Schott corr. Schott	Philodendron	
<a href="#">PHLOX</a>	Phlox L.	Phlox	
<a href="#">PHOEN_DAC</a>	Phoenix dactylifera L.	Date; Date Palm	
<a href="#">PHORM</a>	Phormium J.R. et G. Forst.; Phormium Forst. et G. Forst.	New Zealand Flax	
<a href="#">PHOTI</a>	Photinia Lindl.	Christmas Berry; Photinia	
<a href="#">PHYSC</a>	Physocarpus (Cambess.) Maxim.		
<a href="#">PHYSS_VIR</a>	Physostegia virginiana (L.) Benth.	Obedient Plant	
<a href="#">PIMEL</a>	Pimelea Banks ex Soland.	Riceflower	
<a href="#">PINUS</a>	Pinus L.	Pine	
<a href="#">PISTA</a>	Pistacia L.	Pistachio	
<a href="#">PISUM</a>	Pisum L.	Pea	
<a href="#">PITTO_TEN</a>	Pittosporum tenuifolium Gaertn.	Kohuhu; Tawhiwhi	
<a href="#">PLECT</a>	Plectranthus L'Hér.; Coleus Lour.; Plectranthus L'Herit.	Spurflower	
<a href="#">PLUMB</a>	Plumbago L.	Leadwort	
<a href="#">PLYGL</a>	Polygala L.		
<a href="#">POLYP</a>	Polypodium L.	Polypody	
<a href="#">PORTR_AFR</a>	Portulacaria afra (L.) Jacq.	elephant-bush	
<a href="#">POTEN</a>	Potentilla L.	Cinquefoil	
<a href="#">PROTE</a>	Protea L.	Protea; Sugarbush	
<a href="#">PRUNU_ARM</a>	Prunus armeniaca L.; Armeniaca vulgaris Lam.	Apricot	
<a href="#">PRUNU_AVI</a>	Prunus avium (L.) L.; Cerasus avium (L.) Moench	Sweet Cherry	
<a href="#">PRUNU_CSS</a>	Prunus cerasus L.	dwarf cherry; Maraschino cherry; morello cherry; pie cherry; sour cherry; tart cherry	
<a href="#">PRUNU_DOM</a>	Prunus domestica L.; Prunus L. subg. Prunus; Prunus subg. Prunus	Plum	
<a href="#">PRUNU_DUL</a>	Prunus dulcis (Mill.) D. A. Webb; Amygdalus communis L.; Prunus amygdalus Bartock; Prunus communis (L.) Arcang.; Prunus L. subg. Amygdalus	Almond; Sweet Almond	
<a href="#">PRUNU_LAU</a>	Prunus laurocerasus L.; Laurocerasus officinalis M. Roem.	Cherry-laurel	
<a href="#">PRUNU_PER</a>	Prunus persica (L.) Batsch; Persica vulgaris Mill.; Prunus L. subg. Persica	Peach	
<a href="#">PRUNU_SAL</a>	Prunus salicina Lindl.	Japanese Plum; Plum	
<a href="#">PSIDI_GUA</a>	Psidium guajava L.	Guava	
<a href="#">PSYLL</a>	Psylliostachys		
<a href="#">PUNIC_GRA</a>	Punica granatum L.	Pomegranate	

<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">PYRUS</a>	Pyrus L.	Pear	
<a href="#">RAPHA SAT</a>	Raphanus sativus L.	Daikon; Japanese radish; Radish	
<a href="#">RHODD</a>	Rhododendron L.; Azalea	Azalea; Azaleodendron; Rhododendron	
<a href="#">RHODH</a>	Rhodohypoxis		
<a href="#">RIBES</a>	Ribes L.	Currants; Gooseberry; Ornamental Currant	
<a href="#">RICIN COM</a>	Ricinus communis L.	Castorbean; Palmi-christi	
<a href="#">ROSAA</a>	Rosa L.	Rose	
<a href="#">ROSMA</a>	Rosmarinus; Rosmarinus L.	Rosemary	
<a href="#">RUBUS</a>	Rubus L.	Blackberry; Bramble; Ornamental Bramble; Raspberry	
<a href="#">RUSCU ACU</a>	Ruscus aculeatus L.	Box-holly; Butcher's Broom	
<a href="#">SACCH OFF</a>	Saccharum officinarum L.	Sugar Cane	
<a href="#">SAINT ION</a>	Saintpaulia ionantha H. Wendl.	African Violet	
<a href="#">SALVI</a>	Salvia L.	Sage	
<a href="#">SAMBU</a>	Sambucus L.	Elder	
<a href="#">SARCO</a>	Sarcococca Lindl.		
<a href="#">SCABI</a>	Scabiosa L.	Scabious	
<a href="#">SCADO</a>	Scadoxus Raf.		
<a href="#">SCAEV</a>	Scaevola L.	Scaevola	
<a href="#">SCHLU</a>	Schlumbergera Lem.; Zygocactus K. Schum.	Christmas Cactus; Crab Cactus	
<a href="#">SCHZP</a>	Schizocarpus Van der Merwe		
<a href="#">SCILL</a>	Scilla		
<a href="#">SCLER BIR CAF</a>	Sclerocarya birrea (A. Rich.) Hochst. ssp. caffra (Sond.) Kokwaro	Maroola-plum; Marula	
<a href="#">SEARS</a>	Searsia F. A. Barkley		
<a href="#">SECAL CER</a>	Secale cereale L.	Rye	
<a href="#">SELGO</a>	Selago L.		
<a href="#">SENEC BRA</a>	Senecio brachypodus DC.		
<a href="#">SERRU</a>	Serruria Salisb.	Blushing Bude; Spider Bush	
<a href="#">SETAR NIG</a>	Setaria nigrirostris (Nees) Dur. et Schinz	Black-seed Bristle Grass	
<a href="#">SETAR SPH</a>	Setaria sphacelata (Schumach.) Stapf & C. E. Hubb.; Setaria sphacelata (Schum.) Stapf et C.E. Hubb.	Common Setaria; Congo Grass	
<a href="#">SIDER INE</a>	Sideroxylon inerme L.		
<a href="#">SINAP ALB</a>	Sinapis alba L.	White Mustard	
<a href="#">SKIMM</a>	Skimmia Thunb.	Skimmia	
<a href="#">SMPHC ALB</a>	Symphoricarpos albus (L.) S. F. Blake	common snowberry; snowberry; waxberry	
<a href="#">SOLAN LYC</a>	Solanum lycopersicum L.; Lycopersicon esculentum Mill.	cherry tomato; Tomato; tomato	
<a href="#">SOLAN MEL</a>	Solanum melongena L.	Aubergine; Aubergine, Eggplant; Eggplant	
<a href="#">SOLAN TUB</a>	Solanum tuberosum L.	Potato	
<a href="#">SOLID</a>	Solidago L.	Golden Rod	
<a href="#">SPIRA</a>	Spiraea L.	Spirea	
<a href="#">SPORO FIM</a>	Sporobolus fimbriatus (Trin.) Nees	Rush grass	



<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">SPTHP</a>	Spathiphyllum Schott	Spathe Flower; Spathiphyllum; White Sails	
<a href="#">SRGHM</a>	Sorghum Moench	Sorghum	
<a href="#">STCHT</a>	Stachytarpheta		
<a href="#">STENO_SEC</a>	Stenotaphrum secundatum (Walter) Kuntze	Buffalo Grass; Shore Grass; St. Augustine Grass	
<a href="#">STREL</a>	Strelitzia Ait.	Bird of Paradise Flower	
<a href="#">STYLO_HAM</a>	Stylosanthes hamata (L.) Taub.		
<a href="#">SUTER</a>	Sutera Roth; Sutera L.	Sutera	
<a href="#">SYZYG</a>	Syzygium Gaertn.	Syzygium; Water-wood Tree; Waterwood Tree	
<a href="#">TAGET</a>	Tagetes L.	Marigold	
<a href="#">TAMRX_APH</a>	Tamarix aphylla (L.) H. Karst.		All Tamarix species except T. ramosissima Ledeb. and T. chinensis Lour.
<a href="#">TAMRX_TET</a>	Tamarix tetrandra Pall. ex M. Bieb.		All Tamarix species except T. ramosissima Ledeb. and T. chinensis Lour.
<a href="#">TANAC</a>	Tanacetum L.		
<a href="#">THUJA_OCC</a>	Thuja occidentalis L.	Thuya; White-cedar	
<a href="#">TIBOU</a>	Tibouchina Aubl.	Glory Bush Tree; Tibouchina	
<a href="#">TRFOL</a>	Trifolium L.	Clover	
<a href="#">TRITI</a>	Triticum L.	Wheat	
<a href="#">TRITL</a>	×Triticosecale Wittm. ex A. Camus; ×Triticale; ×Triticosecale Wittmack	Triticale	
<a href="#">TROPA</a>	Tropaeolum L.	Nasturtium	
<a href="#">TULBA</a>	Tulbaghia L.; Tulbaghia L. corr Giseke	Society Garlic; Wild Garlic	
<a href="#">UROCH_BRI</a>	Urochloa brizantha (Hochst. ex A. Rich.) R. D. Webster; Brachiaria brizantha (Hochst. ex A. Rich.) Stapf; Panicum brizanthum Hochst. ex A. Rich.	Bread Grass; Palisade grass; Palisade signal grass; Signal grass	
<a href="#">VACCI</a>	Vaccinium L.	Bilberry; Cowberry; Cranberry; Ornamental Vaccinium; Whortleberry	
<a href="#">VELTH</a>	Veltheimia Gled.		
<a href="#">VERBA</a>	Verbascum L.	Mullein	
<a href="#">VERBE</a>	Verbena L.	Vervain	
<a href="#">VERON</a>	Veronica L.	Speedwell	
<a href="#">VICIA_FAB_MAJ</a>	Vicia faba L. var. major Harz	Broad Bean; Horse Bean	
<a href="#">VICIA_SAT</a>	Vicia sativa L.	Common Vetch	
<a href="#">VICIA_VIL</a>	Vicia villosa Roth; Vicia dasycarpa; Vicia dasycarpa Ten.	Hairy Vetch	
<a href="#">VIGNA_SUB</a>	Vigna subterranea (L.) Verdc.; Voandzeia subterranea (L.) Thouars ex DC.		
<a href="#">VIGNA_UNG</a>	Vigna unguiculata (L.) Walp.	Cowpea	
<a href="#">VINCA</a>	Vinca L.	Periwinkle	
<a href="#">VIOLA</a>	Viola L.	Pansy; Violet	
<a href="#">VITIS</a>	Vitis L.	Grapevine	
<a href="#">WATSO</a>	Watsonia		

<b>UPOV Code</b>	<b>Botanical Names</b>	<b>English</b>	<b>Notes</b>
<a href="#">WEINM</a>	Weinmannia		
<a href="#">XEROC</a>	Xerochrysum Tzvelev; Bracteantha Anderb. & Haegi		
<a href="#">XNTHO</a>	Xanthosoma Schott		
<a href="#">YUCCA FIL</a>	Yucca filamentosa L.	Adam's-needle; bear-grass; needle-palm; silk-grass; spoon-leaf yucca	
<a href="#">ZANTE</a>	Zantedeschia Spreng.	Arum-lily; Calla	
<a href="#">ZEAAA MAY</a>	Zea mays L.	Corn; Maize	
<a href="#">ZIZIP JUJ</a>	Ziziphus jujuba Mill.	Chinese jujube; Chinese-date; Common jujube; Jujube	

## LEGISLATION

### AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

#### Agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization\* (Bangui (Central African Republic), February 24, 1999)

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The Government of the Republic of Benin,  
 The Government of Burkina Faso,  
 The Government of the Republic of Cameroon,  
 The Government of the Central African Republic,  
 The Government of the Republic of Chad,  
 The Government of the Republic of the Congo,  
 The Government of the Republic of Côte d'Ivoire,  
 The Government of the Gabonese Republic,  
 The Government of the Republic of Guinea,  
 The Government of the Republic of Guinea-Bissau,  
 The Government of the Republic of Mali,  
 The Government of the Islamic Republic of Mauritania,  
 The Government of the Republic of the Niger,  
 The Government of the Republic of Senegal,  
 The Government of the Togolese Republic,

*Moved* by the desire to promote the effective contribution of intellectual property to the development of their States on the one hand, and concerned on the other hand to protect intellectual property rights on their territories in as effective and uniform a manner as possible;

*Undertake*, for that purpose, to accede to

- (i) the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Stockholm on July 14, 1967,
- (ii) the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as last revised at Paris on July 24, 1971, and/or the Universal Copyright Convention as revised at Paris on July 24, 1971,
- (iii) the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at The Hague on November 28, 1960, and at Stockholm on July 14, 1967,
- (iv) the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967,
- (v) the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967,
- (vi) the Patent Cooperation Treaty, done at Washington on June 19, 1970,
- (vii) the Nairobi Treaty on the Protection of the Olympic Symbol of 1981,
- (viii) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977,
- (ix) the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991,
- (x) the Marrakesh Agreement Establishing the World Trade Organization, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, of April 15, 1994,
- (xi) the Trademark Registration Treaty, done at Vienna on June 12, 1973,
- (xii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961.

*Having considered* Article 4(iv) of the aforementioned Convention Establishing the World Intellectual Property Organization, which provides that the Organization "... shall encourage

the conclusion of international agreements designed to promote the protection of intellectual property”;

*Having considered* Article 19 of the Paris Convention for the Protection of Industrial Property, which provides that “... the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention,” and Article 4A(2), which provides that “Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority”;

*Having considered* Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, which provides that “The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention”;

*Having considered* Article 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961;

*Having considered* Article XIX of the Universal Copyright Convention, as revised at Paris on July 24, 1971, which provides that “This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States”;

*Having considered* Article 14 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which provides that “Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union”;

*Having considered* Article 3(l) of the Patent Cooperation Treaty, which provides that “Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty,” Article 45(l), which provides that “Any treaty providing for the grant of regional patents (‘regional patent treaty’), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents”;

*Having considered* Article 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement ...”;

*Having considered* Article 69 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights ...”;

*Having considered* Article 1 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, which provides that “The States party to this Treaty (hereinafter called ‘the Contracting States’) constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure”;

*Having considered* Article 36(1) of the Bangui Agreement of March 2, 1977, Relating to the Creation of an African Intellectual Property Organization, which provides that “The present Agreement may be revised from time to time, in particular, with a view to introducing amendments liable to improve the services rendered by the Organization”;

*Considering* the advantages of establishing a uniform system for the protection of literary and artistic property and industrial property and, particularly in the latter field, a system for the single deposit of applications for patents, registration of utility models, trademarks, service marks, industrial designs, trade names, geographical indications, integrated circuits, plant

varieties and microorganisms on the one hand, and a common system of protection against unfair competition on the other hand, in order to facilitate recognition of the rights provided for in the legislation of their countries;

*Considering* the role played by intellectual property in the achievement of the aims of technological development;

*Considering* the advantages of creating a body responsible for applying common administrative procedures deriving from a uniform system for the protection of intellectual property;

*Have resolved* to revise the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization, and have designated for that purpose plenipotentiaries, who have agreed on the following provisions:

*Article 1*  
*Definitions*

The following terms have the meanings specified:

“Bangui Agreement” means the Agreement Relating to the Creation of an African Intellectual Property Organization, done at Bangui on March 2, 1977, and all the Annexes to it;

“Organization” means the African Intellectual Property Organization;

“High Commission of Appeal” means the High Commission of Appeal of the Organization;

“Chairman” means the Chairman of the Administrative Council of the Organization;

“Director General” means the Director General of the Organization;

“Member States” means the States members of the Organization;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, concluded at Paris on March 20, 1883, as subsequently amended;

“Patent Cooperation Treaty” means the Treaty done at Washington on June 19, 1970, as subsequently amended;

“National administration” means the Ministry of each member State that is in charge of industrial property matters;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works, concluded at Berne on September 9, 1886, as subsequently amended;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome in 1961.

TITLE I  
GENERAL PROVISIONS

**Section I**  
**Fundamental Principles**

*Article 2*  
*Creation and Responsibilities*

(1) The African Intellectual Property Organization created by the Bangui Agreement of March 2, 1977, is responsible for

(a) implementing and applying the common administrative procedures deriving from a uniform system for the protection of industrial property, as well as the provisions of international agreements in this field to which the member States of the Organization have acceded, and providing services related to industrial property;

(b) contributing to the promotion of the protection of literary and artistic property as an expression of cultural and social values;



(c) encouraging the creation of associations of national authors in those member States where such bodies do not exist;

(d) centralizing, coordinating and disseminating information of all kinds relating to the protection of literary and artistic property and communicating that information to any State party to this Agreement that requests it;

(e) promoting the economic development of member States, notably by means of effective protection of intellectual property and related rights;

(f) providing intellectual property training;

(g) undertaking any other assignment connected with its objective that might be entrusted to it by the member States.

(2) For each of the member States, the Organization shall serve both as the national industrial property service within the meaning of Article 12 of the aforementioned Paris Convention and as the central patent documentation and information body.

(3) For each of the member States also party to the Patent Cooperation Treaty, the Organization shall serve as the "national Office," the "designated Office," the "elected Office" or the "receiving Office" within the meaning of Article 2(xii), (xiii), (xiv) and (xv) of the said Treaty.

(4) For each of the member States also party to the Trademark Registration Treaty, the Organization shall serve as the "national Office" within the meaning of Article 2(xiii) and as the "designated Office" within the meaning of Article 2(xv) of the said Treaty.

### *Article 3 Nature of the Rights*

(1) Rights relating to the fields of intellectual property, as provided for in the Annexes to this Agreement, shall be independent national rights subject to the legislation of each of the member States in which they have effect.

(2) Nationals may claim application for their benefit of the provisions of the Paris Convention for the Protection of Industrial Property (1967 Act), the Berne Convention for the Protection of Literary and Artistic Works (1971 Act), the Universal Copyright Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and also the agreements, additional acts and closing protocols that have amended or will amend those Conventions or that Agreement, in all cases where such provisions are more favorable than those of this Agreement and its Annexes in protecting the rights deriving from intellectual property.

### *Article 4 Annexes*

(1) The Annexes to this Agreement contain, respectively, the provisions to be applied in each member State concerning

- patents (Annex I);
- utility models (Annex II);
- trademarks and service marks (Annex III);
- industrial designs (Annex IV);
- trade names (Annex V);
- geographical indications (Annex VI);
- literary and artistic property (Annex VII);
- protection against unfair competition (Annex VIII);
- layout-designs (topographies) of integrated circuits (Annex IX);
- plant variety protection (Annex X).

(2) The Agreement and its Annexes shall be applicable in their entirety to every State that ratifies or accedes to the said Agreement.

(3) Annexes I to X inclusive form an integral part of this Agreement.

*Article 5*  
*Implementation of International Treaties*

On a decision by the Administrative Council referred to in Article 27 and subsequent Articles of this Agreement, the Organization may take all measures necessary for the application of the administrative procedures arising from implementation of the international treaties concerning intellectual property to which the member States have acceded.

**Section II**  
**Operating Procedures and Rules**

*Article 6*  
*Filing of Applications*

(1) Patent applications, applications for the registration of utility models, trademarks or service marks, industrial designs, trade names, geographical indications or layout-designs (topographies) of integrated circuits and applications for plant variety certificates shall be filed direct with the Organization.

(2) Notwithstanding paragraph (1), any member State may demand that the application be filed with the national administration of that State where the applicant is domiciled on its territory. A record shall be taken, and a copy thereof issued to the applicant, by the national administration which shall attest every filing and specify the date and time of the filing of the documents. The national administration shall convey the application to the Organization within a period of five (5) working days from filing.

(3) Applicants domiciled outside the territory of the member States shall file through an agent selected in one of those member States. The exercise of the profession of agent accredited to the Organization shall be governed by special rules adopted by the Administrative Council.

(4) Applications filed with the Organization or the national administration may be conveyed by postal or any other legal means of communication.

(5)(a) The Organization shall act as receiving Office within the meaning of the Patent Cooperation Treaty with respect to international applications filed by residents and nationals of member States, except where an agreement within the meaning of subparagraph (b) below has been concluded.

(b) The Organization may, under the relevant provision of the Regulations Under the Patent Cooperation Treaty, agree with another Contracting State of the Patent Cooperation Treaty or with any other intergovernmental organization that the national Office of that State or that intergovernmental organization shall act in place of the Organization as receiving Office for applicants who are residents or nationals of a member State.

*Article 7*  
*Filing and Registration of National and International Applications*

(1) Subject to the provisions of paragraphs (2) to (4) below, any filing effected with the administration of one of the member States in accordance with the provisions of this Agreement, or with the Organization, shall be equivalent to a national filing in each member State.

(2) Any filing of an international patent application that includes the designation of at least one member State shall be equivalent to a national filing in each member State that is also party to the Patent Cooperation Treaty.

(3) Any international trademark registration effected under the provisions of the Trademark Registration Treaty and including the designation of at least one member State shall have the effect of a national filing in each member State that is also party to the said Treaty.

(4) Any international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs shall have the effect of a national deposit in each member State that is also party to the said Agreement.

*Article 8*  
*Grant, Publication and Maintenance of Patents, Registration of*  
*Utility Models, and the Effects Thereof*

- (1) The Organization shall undertake the examination of patent and utility model applications according to the common procedure provided for in this Agreement and its Annexes I and II.
- (2) It shall grant patents and register utility models and ensure their publication.
- (3) The procedure before the Organization with regard to international applications filed in accordance with the rules of the Patent Cooperation Treaty shall be subject to the provisions of the said Treaty, complemented by those of this Agreement and its Annex I.
- (4) In each member State, utility models and, subject to the provisions of paragraph (5) below, patents shall produce the effects provided for in this Agreement and its Annexes.
- (5) Patents granted in response to international applications filed in accordance with the provisions of the Patent Cooperation Treaty shall produce their effects in those member States that are also party to the said Treaty.

*Article 9*  
*Registration and Publication of Trademarks and Service Marks, and the Effects Thereof*

- (1) The Organization shall undertake the examination, registration and publication of trademarks and service marks according to the common procedure provided for in this Agreement and its Annex III.
- (2) In each of the member States, registered and published marks shall produce their effects in accordance with the provisions of this Agreement and its Annex III subject to the provisions of paragraph (3) below.
- (3) The international registration of a mark effected under the provisions of the Trademark Registration Treaty and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Trademark Registration Treaty as if the trademark had been registered with the Organization.

*Article 10*  
*Registration, Maintenance and Publication of Industrial Designs,*  
*and the Effects Thereof*

- (1) The Organization shall undertake the examination, registration and maintenance and the publication of industrial designs according to the common procedure provided for in this Agreement and its Annex IV.
- (2) In each of the member States, registered and published industrial designs shall produce their effects in accordance with the provisions of this Agreement and its Annex IV, subject to the provisions of paragraph (3) below.
- (3) The international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Hague Agreement as if the industrial design had been deposited with the Organization.

*Article 11*  
*Registration and Publication of Trade Names, and the Effects Thereof*

- (1) The Organization shall undertake the examination, registration and publication of trade names according to the common procedure provided for in this Agreement and its Annex V.

(2) In each of the member States, registered and published trade names shall produce their effects in accordance with this Agreement and its Annex V.

#### *Article 12*

##### *Registration and Publication of Geographical Indications, and the Effects Thereof*

(1) The Organization shall undertake the examination, registration and publication of geographical indications according to the common procedure provided for in this Agreement and its Annex VI.

(2) In each of the member States, registered and published geographical indications shall produce their effects in accordance with the provisions of this Agreement and its Annex VI, subject to the provisions of paragraph (3) below.

(3) The international registration of a geographical indication effected under the provisions of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Lisbon Agreement as if the geographical indication had been registered with the Organization.

#### *Article 13*

##### *Registration, Maintenance and Publication of Layout-Designs (Topographies) of Integrated Circuits, and the Effects Thereof*

(1) The Organization shall undertake the examination and registration and provide for the maintenance and publicity of layout-designs (topographies) of integrated circuits according to the common procedure provided for in this Agreement and its Annex IX.

(2) In each of the member States, registered and published layout-designs (topographies) of integrated circuits shall produce their effects in accordance with the provisions of this Agreement and its Annex IX.

#### *Article 14*

##### *Registration, Maintenance and Publication of New Plant Varieties*

(1) The Organization shall undertake the examination and provide for the registration, maintenance and publicity of new plant varieties according to the common procedure provided for in this Agreement and its Annex X.

(2) In each of the member States, registered and published new plant varieties shall produce their effects in accordance with the provisions of this Agreement and its Annex X.

#### *Article 15*

##### *Publications of the Organization*

Any publication of the Organization shall be addressed to the administration of each of the member States responsible for industrial property, literary and artistic property or new plant varieties, as the case may be.

#### *Article 16*

##### *Special Registers*

(1) The Organization shall maintain, for all the member States, a Special Register of Patents, a Special Register of Utility Models, a Special Register of Trademarks and Service Marks, a Special Register of Industrial Designs, a Special Register of Trade Names, a Special Register of Geographical Indications, a Special Register of New Plant Varieties and a Special Register of Layout-Designs (Topographies) of Integrated Circuits, in which the entries specified by this Agreement shall be made.

(2) Any person may consult the Registers and obtain extracts therefrom on the terms specified in the Implementing Regulations.

*Article 17*  
*Divergent Provisions*

In the case of discrepancies between the provisions of this Agreement or its Annexes and those of the international conventions to which the member States are party, the latter shall prevail.

*Article 18*  
*Scope of Legal Decisions*

Final legal decisions relating to the validity of titles and rendered in one member State under the provisions of Annexes I to X of this Agreement shall be binding on all other member States, with the exception of decisions based on public policy and morality.

*Article 19*  
*Appeals*

Decisions taken by the Organization on cases of rejection or opposition provided for in Article 33(2) below shall be subject to appeal to the High Commission of Appeal of the said Organization.

*Article 20*  
*Other Action*

Any other action relating to the application of the laws of intellectual property may be entrusted to the Organization by unanimous decision of the Administrative Council.

TITLE II  
MEMBER STATES

**Section I**  
**Membership**

*Article 21*  
*Membership*

(1) Membership of the Organization shall be determined by the principle of the sovereign equality of States.

(2) In addition to its members, the Organization may have associated States. Associated States are not member States.

*Article 22*  
*Member States*

(1) African States party to the Bangui Agreement of March 2, 1977, are members of the Organization ex officio.

(2) Any African State that is not party to the Bangui Agreement but is party to the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and/or the Universal Copyright Convention, and the Patent Cooperation Treaty may accede to this Agreement.

To that end, an application for accession shall be submitted to the Administrative Council, which shall rule by a majority vote of its members. Notwithstanding Article 32 of this Agreement, equally divided votes shall constitute rejection.

(3) Instruments of ratification of or accession to this Agreement shall be deposited with the Director General of the Organization.

(4) Accession shall take effect two months after the deposit referred to in paragraph (3) above, except where a later date has been specified in the instrument of accession.

*Article 23*  
*Associated States*

(1) Any African State not party to this Agreement may acquire the status of associated State by filing an application to that end with the Administrative Council.

(2) The Administrative Council shall rule on that application in the same way as provided in Article 22(2) above.

**Section II**  
**Rights and Obligations of Member States**

*Article 24*  
*Rights of Member States*

In addition to exercising the responsibilities provided for in Article 2 above, the Organization shall offer member States all the required services connected with its aims, in accordance with the guidelines of the Administrative Council.

*Article 25*  
*Rights of Associated States*

An associated State has the right, to the exclusion of any other right, to avail itself of the services offered by the Organization in connection with intellectual property documentation and information.

*Article 26*  
*Obligations*

(1) An initial financial contribution shall be required of any State that becomes a member of the Organization or acquires the status of associated State.

The amount and methods of payment of that initial contribution shall be determined by the Administrative Council of the Organization.

Nevertheless, States recognized as ex-officio members of the Organization under Article 22(1) above shall be exempted from this initial contribution.

(2) Where required to balance the budget, an exceptional contribution shall be made to the Organization by member States and possibly also by associated States.

That contribution shall be entered in the budget of the Organization and distributed equally among the member States and the associated States where applicable.

TITLE III  
ORGANS OF THE ORGANIZATION

*Article 27*  
*Organs of the Organization*

Under this Agreement, the Organization shall have the following organs at its disposal for the conduct of its action:

- the Administrative Council;
- the High Commission of Appeal;
- the Directorate General.

**Section I**  
**Administrative Council**

*Article 28*  
*Membership*

- (1) The Administrative Council of the Organization shall be composed of representatives of the member States on the basis of one representative per State.
- (2) Any member State may, where necessary, entrust its representation on the Council to the representative of another member State. No member of the Council may represent more than two States.
- (3) Associated States shall not be members of the Administrative Council.

*Article 29*  
*Functions and Powers of the Administrative Council*

The Administrative Council is the highest authority of the Organization. In addition to performing the functions arising from other provisions of this Agreement, it shall determine the general policy of the Organization and regulate and control the latter's activities, and in particular shall

- (a) draw up the regulations necessary for the application of this Agreement and its Annexes;
- (b) establish the financial regulations and the regulations relating to the fees and to the High Commission of Appeal, the general staff regulations and the regulations on professional representatives;
- (c) supervise the implementation of the regulations referred to in (a) and (b) above;
- (d) approve the program and annually vote the budget and, where necessary, any amended or additional budgets, and control their implementation;
- (e) examine and approve the Organization's annual accounts and inventory;
- (f) approve the annual report on the activities of the Organization;
- (g) appoint the holders of unclassified posts and designate the auditor of the Organization;
- (h) rule on applications for admission as members or as associated States of the Organization;
- (i) set the amount of any contribution to be made by member States or by associated States;
- (j) decide where necessary on the creation of ad hoc committees on specific issues;
- (k) determine the working language or languages of the Organization.

*Article 30*  
*Special Functions*

In addition to the functions provided for in Article 29 of this Agreement and, where appropriate, according to the provisions of Article 28 above, the members of the Administrative Council representing States party to this Agreement and to the Patent

Cooperation Treaty, the Trademark Registration Treaty, the Hague Agreement Concerning the International Deposit of Industrial Designs, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, the International Convention for the Protection of New Varieties of Plants or the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure shall, where necessary, draw up the appropriate regulations deriving from the implementation of the said six Treaties or Agreements with a view to their application on their respective national territories.

#### *Article 31*

##### *Sessions of the Administrative Council*

- (1) The Administrative Council shall meet in one annual ordinary session.
- (2) Extraordinary sessions may be convened where necessary by the Chairman at the request of one-third of the membership, or at the request of the Director General.

#### *Article 32*

##### *Decisions of the Administrative Council*

- (1) For any decision of the Administrative Council, the representative of each member State shall have one vote.
- (2) Subject to the provisions of Article 22 above, decisions of the Administrative Council shall be taken by a simple majority of members present or represented.
- (3) Subject to the provisions of Article 22(2) above, in the event of equally divided votes, the Chairman shall have a casting vote.

### **Section II**

#### **High Commission of Appeal**

##### *Article 33*

##### *Name, Functions, Composition*

- (1) The High Commission of Appeal shall be composed of three members selected by the drawing of lots from a list of representatives designated by the member States, each State having designated one representative.
- (2) The High Commission of Appeal shall be responsible for ruling on appeals following
  - (a) rejection of applications for titles of industrial property protection;
  - (b) rejection of requests for the maintenance or extension of terms of protection;
  - (c) rejection of requests for reinstatement;
  - (d) decisions on oppositions.
- (3) The sessions of the High Commission of Appeal and the appeal procedure before it shall be governed by rules adopted by the Administrative Council.

### **Section III**

#### **Directorate General**

##### *Article 34*

##### *Functions of the Directorate General*

The Directorate General shall be placed under the authority of a Director General and responsible for the executive work of the Organization. It shall take care of the day-to-day management and continuity thereof. It shall implement the instructions of the Administrative Council and carry out the tasks deriving from the provisions of this Agreement and its Annexes, and shall report to the Administrative Council.



*Article 35*  
*Director General*

- (1) The Director General shall be appointed for a five-year term which may be renewed once.
- (2) The Director General is the highest official of the Organization.
  - (a) He shall represent the Organization in all acts governed by civil law.
  - (b) He shall be answerable for the management of the Organization to the Administrative Council, to which he shall report and with whose instructions he shall comply in matters concerning the internal and external affairs of the Organization.
- (3) The Director General shall produce drafts for the budget, program and balance sheet and also periodical activity reports which he shall convey to the member States.
- (4) The Director General shall take part, without the right to vote, in all sessions of the Administrative Council. He shall be secretary of those sessions *ex officio*.
- (5) The Director General shall recruit, appoint, and dismiss or otherwise terminate the appointments of the staff of the Organization, with the exception of unclassified staff, in accordance with conditions laid down in the general staff regulations.

TITLE IV  
FINANCIAL RESOURCES OF THE ORGANIZATION

*Article 36*  
*Resources*

- (1) The resources of the Organization shall consist of
  - (a) the proceeds from the fees provided for in the regulations of the Organization and in the laws of member States;
  - (b) the proceeds from remuneration for services rendered;
  - (c) any other receipts, notably revenue from property owned by the Organization;
  - (d) donations and bequests approved by the Administrative Council.
- (2) Where the balancing of the budget dictates, an exceptional contribution shall be made to the Organization by the member States and possibly also by associated States. That contribution shall be recorded in the budget of the Organization and shared equally among the member States and, where applicable, the associated States.

*Article 37*  
*Income and Fees*

The Administrative Council shall lay down the fees and the income necessary for the running of the Organization and shall fix the amounts and methods of payment thereof.

*Article 38*  
*Budgetary Surpluses*

- (1) On a decision by the Administrative Council, the Organization shall, where appropriate, pay to each member State the share of any budgetary surplus accruing to it, after deduction, where necessary, of its special contribution.
- (2) Budgetary surpluses shall be fixed after provision has been made for reserve funds and special funds established by the financial regulations.
- (3) Surpluses shall be shared equally among the member States.

TITLE V  
MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

*Article 39*

*Legal Personality, Privileges and Immunities of the Organization*

(1) The Organization shall have legal personality. In each of the member States, it shall enjoy the broadest legal capacity accorded to legal entities by national legislation.

(2) The immunities and privileges generally accorded to international organizations shall be accorded to the Organization on the territories of the member States in order to facilitate the conduct of its action.

In particular, the member States grant the Organization the benefit of the following privileges and immunities:

(a) its officials, wherever they may be, shall enjoy immunity from prosecution except in so far as the Organization expressly waives it, either in a specific procedure or by contract. Officials of the Organization means the staff permanently working for it, experts for the duration of their assignments and the representatives of member States and their substitutes for the duration of the sessions of the Administrative Council;

(b) the property and assets of the Organization shall be exempt from search, requisitioning, confiscation, expropriation, sequestration or any other form of seizure ordered by the executive, legislative or judicial authorities of member States;

(c) the Organization may hold funds in local currency and open bank accounts in any currency, transfer its funds or currency and convert all currencies held by it into any other currency in accordance with the rules applicable thereto;

(d) the Organization, its assets, property and income and also its operations and transactions shall be exempt from all taxes, charges and customs duties in accordance with the headquarters agreement in the host State and the privileges accorded to international organizations in the other member States;

(e) the premises of the Organization shall be inviolable, and its property and assets unattachable;

(f) the archives of the Organization shall be inviolable subject to the rights of investigation and communication conferred on the judicial authorities;

(g) no import or export restriction may be imposed on it with respect to materials intended for the official and exclusive use of the Organization's services. Those materials may not be disposed of for local consumption otherwise than in accordance with provisions in force.

*Article 40*

*Headquarters of the Organization*

The headquarters of the Organization shall be at Yaoundé (Republic of Cameroon). The Organization shall be placed under the protection of the Government of the Republic of Cameroon.

*Article 41*

*Duration of the Organization*

The Organization shall be of unlimited duration.

*Article 42*

*Signature and Ratification*

Any State party to the Bangui Agreement of March 2, 1977, shall sign and ratify this Act and the instruments of ratification shall be deposited with the Director General of the Organization.

*Article 43*  
*Entry into Force and Effects*

This Act of the Bangui Agreement shall enter into force two months after the deposit of instruments of ratification by at least two-thirds of the States party to the Bangui Agreement of March 2, 1977.

The date of entry into force of the Annexes to this Act of the Agreement shall be determined by decision of the Administrative Council.

- (1) The Director General of the Organization shall notify signatory or acceding States of
  - (a) the deposit of instruments of ratification;
  - (b) the deposit of instruments of accession, and of the dates on which those accessions come into effect;
  - (c) the date on which this Act of the Agreement enters into force by virtue of the first paragraph of this Article;
  - (d) denunciations as referred to in Article 48, and the date on which they come into effect.

*Article 44*  
*Transitional Provisions*

- (1) After the date of entry into force of this Act of the Bangui Agreement, no country may accede to previous Acts of the said Agreement.
- (2) This Act shall replace previous Acts of the Bangui Agreement in the relations between States party to it in so far as it is applicable.
- (3) States party to earlier Acts of the Bangui Agreement shall take the necessary steps to become party to this Agreement within a period of two years from February 24, 1999.
- (4) Applications for titles of protection filed prior to the entry into force of this Act of the Agreement shall remain subject to the provisions applicable to them on their filing date. However, the exercise of the rights deriving from the titles of protection granted as a result of those applications shall be subject to the provisions of the Annexes to this Agreement as from the date of entry into force of the said Agreement, subject to acquired rights, which shall remain reserved.

*Article 45*  
*Titles Granted in a State Prior to its Accession*

- (1) Titles in force in a State prior to its accession to this Agreement shall continue to have effect in that State in accordance with the legislation in force when they were applied for.
- (2) The owners of those titles who wish to extend the protection under them to the whole of the territory of the Organization prior to their expiry shall file a request for extension with the Organization according to the procedure laid down in the Implementing Regulations.

*Article 46*  
*Titles in Force within OAPI Prior to the Accession of a State*

The owners of titles in force within the Organization prior to the accession of a State who wish to extend protection to that State shall file a request for such extension with the Organization according to the procedure laid down in the Implementing Regulations.

*Article 47*  
*Revision*

This Agreement may be revised from time to time, notably with a view to introducing amendments intended to improve the services rendered by the Organization, on the initiative of and according to the procedure laid down by the Administrative Council.

*Article 48*  
*Denunciation*

- (1) Any State party to this Agreement may denounce it by written notification addressed to the Director General of the Organization.
- (2) The denunciation shall take effect on December 31 of the second year following that in which the Director General of the Organization received the notification.
- (3) Industrial property titles in force in the State concerned shall be governed by national legislation after the denunciation.

In witness whereof, the undersigned Plenipotentiaries, having presented their full powers, recognized as being in good and due form, have signed this Agreement.

Done at Bangui on February 24, 1999, in a single copy in French which shall be deposited with the Director General of the Organization. The latter shall send a certified true copy by diplomatic channels to the Government of each signatory or acceding State.

For the Government of the Republic of Benin  
John IGUE  
Minister for Industry and Smaller Businesses

For the Government of Burkina Faso  
Idrissa ZAMPALEGRE  
Minister for Trade, Industry and Handicraft

For the Government of the Republic of Cameroon  
Maïgari BELLO BOUBA  
Minister of State for Industrial and Commercial Development

For the Government of the Central African Republic  
Germain NADJIBE  
Minister for Commerce, Industry and Tourism

For the Government of the Republic of Chad  
DJITAINGAR DJIBANGAR  
Minister for Industrial, Commercial and Handicraft Development

For the Government of the Republic of the Congo  
Alphonse MBAMA  
Minister for Industrial Development  
in Charge of Promotion of the National Private Sector

For the Government of Republic of Côte d'Ivoire  
SORO Nagolo  
Director of the Industrial Property Office

For the Government of the Gabonese Republic  
Ms. Ursule EKIE  
Secretary of State for Commerce and Industrial Development

For the Government of the Republic of Guinea  
Mohamed SAMPIL  
Ambassador Extraordinary and Plenipotentiary  
of the Republic of Guinea in Gabon

For the Government of the Republic of Guinea-Bissau  
Souleimane DJASSI  
Secretary of State for Commerce, Industry, Tourism and Handicraft

For the Government of the Republic of Mali  
Harouna NIANG  
Secretary General of the Ministry of Industry, Commerce and Handicraft

For the Government of the Islamic Republic of Mauritania  
Ishac Ould RAJEL  
Minister for Mines and Industry

For the Government of the Republic of the Niger  
Jérôme Oumarou TRAPSIDA  
Director of Industrial Development at the Ministry of Commerce and Industry

For the Government of the Republic of Senegal  
S.E. Ibrahima CABA  
Ambassador Extraordinary and Plenipotentiary of the Republic of Senegal in Gabon

For the Government of the Togolese Republic  
KWAME MEYISSO  
Minister for Industry, Commerce and Development of the Free Zone

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\* French title: Accord portant révision de l'Accord de Bangui du 02 mars 1977 instituant une Organisation Africaine de la Propriété Intellectuelle.  
Entry into force: See Article 43 of the Agreement.  
Source: Communication from the African Intellectual Property Organization (OAPI).  
Note: Translation by the International Bureau of WIPO.

\*\* Added by the International Bureau of WIPO.

[...]

## **ANNEX X PLANT VARIETY PROTECTION**

### TITLE I GENERAL PROVISIONS

#### *Article 1 Definitions*

For the purposes of this Annex:

- (a) "plant variety certificate" means a title issued to protect a new plant variety;
- (b) "plant variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety certificate are fully met, can be:
  - (i) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
  - (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
  - (iii) considered as a unit with regard to its suitability for being propagated unchanged;
- (c) "botanical taxon" means the unit of the botanical classification, particularly the genus and the species;
- (d) "protected variety" means a variety that is the subject of a plant variety certificate;
- (e) "essentially derived variety" means a variety which:
  - (i) is predominantly derived from another variety, "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;
  - (ii) is clearly distinguishable from the initial variety; and
  - (iii) except for the differences which result from the act of derivation, 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. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or other somaclonal variant, the selection of a variant individual from plants of the initial variety, back-crossing, or transformation by genetic engineering;
- (f) "breeder" means the person who has discovered and developed a variety. The term does not include a person who has redeveloped or rediscovered a variety whose existence is publicly known or is a matter of common knowledge;
- (g) "variety-related material" means:
  - (i) reproductive or propagating material in any form whatsoever;
  - (ii) harvested material, including entire plants and parts of plants;
  - (iii) products made directly from harvested material.

#### *Article 2 Plant Variety Certificates*

- (1) The breeding of a new plant variety shall give the breeder the right to a title of protection known as a "plant variety certificate".
- (2) Plant variety protection shall be obtained by registration.
- (3) A plant variety certificate shall be granted for one variety only.

#### *Article 3 Botanical Taxa Eligible for Protection*

All botanical taxa shall be protected by this Annex, except for wild species, that is to say species that have been neither planted nor improved by man.

TITLE II  
CONDITIONS FOR THE ISSUE OF A PLANT VARIETY CERTIFICATE

*Article 4*  
*Criteria for the Protection of a Plant Variety*

In order to enjoy the protection afforded by this Annex, a variety shall be:

- (a) new;
- (b) distinct;
- (c) uniform;
- (d) stable;
- (e) the subject of a denomination established in accordance with the provisions of Article 23.

*Article 5*  
*Novelty*

(1) A variety shall be deemed to be new if, at the date of filing of the application or, where applicable, at the date of priority, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or of his successor in title or assignee, for the purposes of exploitation of the variety:

- (a) on the territories of the member States of the Organization earlier than one year before that date;
- (b) on the territories of non-member States, earlier than:
  - (i) six years, in the case of trees and vine;
  - (ii) four years, in the case of other species.

(2) Novelty shall not be lost by sale or disposal to others:

- (a) where it results from an abuse committed to the detriment of the breeder or of his successor in title or assignee;
- (b) where it forms part of an agreement for the transfer of the rights in the variety;
- (c) where it forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder or his successor in title or assignee, on condition that the multiplied material reverts to the breeder or his successor in title or assignee and on condition that the multiplied material is not used for the production of another variety;
- (d) where it forms part of an agreement under which a person undertakes field tests or laboratory trials or small-scale processing trials in order to evaluate the variety;
- (e) where it forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade; or
- (f) where it involves harvested material being a by-product or a surplus product of the creation of the variety or of the activities referred to in subparagraphs (c) to (e) of this paragraph, on condition that the material is sold or otherwise disposed of without variety identification for the purposes of consumption.

(3) Where the production of a variety demands repeated use of one or more other varieties, the sale or disposal to others of propagating material or of harvested material of such variety shall constitute relevant facts for the novelty of the other variety or varieties.

*Article 6*  
*Distinctness*

(1) A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or, where appropriate, at the priority date.

(2) The filing, in any country, of an application for a plant variety certificate or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety being the subject of the application a matter of common knowledge as from the date of the application, provided that the application leads to the issue of a plant variety certificate or to entry in the catalogue, as the case may be.

(3) The fact that the existence of another variety is a matter of common knowledge may be established by various factors such as:

- (a) exploitation of the variety already in progress;
- (b) entry of the variety in a variety register kept by a recognized professional association;
- (c) the inclusion of the variety in a reference collection.

#### *Article 7 Uniformity*

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

#### *Article 8 Stability*

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

#### *Article 9 Right to a Plant Variety Certificate*

- (1) The right to a plant variety certificate shall belong to the breeder.
- (2) If two or more persons have bred a variety jointly, the right to a plant variety certificate shall belong to them jointly.
- (3) The right to a plant variety certificate may be assigned or transferred by succession.
- (4) The breeder shall be mentioned as such on the plant variety certificate.
- (5)(a) The applicant shall be deemed, unless proven otherwise, to be the person entitled to a plant variety certificate.  
(b) Where a person not entitled to a plant variety certificate has filed an application, the entitled person may institute proceedings for transfer of the application or of the plant variety certificate if already issued. Proceedings for transfer shall be prescribed five years after the publication date of the issue of the plant variety certificate. No time limit shall apply to proceedings directed against a defendant acting in bad faith.

#### *Article 10 Plant Varieties Bred by Employees*

- (1) Subject to the statutory provisions governing contracts of service or of employment and except where otherwise agreed by contract, the right to a plant variety certificate for a variety bred in execution of such contract shall belong to the commissioner or the employer.
- (2) The same provision shall apply where an employee is not required by his employment contract to carry out inventive activities, but has bred the variety using the information or facilities available to him in his employment.
- (3) In the case referred to in the preceding paragraph (2), an employee who has bred a variety shall be entitled to remuneration taking into account the importance of the variety and



which, failing agreement between the parties, shall be laid down by the court. In the case referred to in the preceding paragraph (1), the aforesaid employee shall have the same right if the invention is of very exceptional importance.

(4) The provisions of this Article shall also apply to servants of the State, of the local authorities and of any public law legal person, except where otherwise provided by special provision.

(5) If the employer expressly waives his right to the plant variety certificate, the right shall belong to the employee-breeder.

(6) The provisions of the preceding paragraph (3) shall be a matter of public policy.

*Article 11*  
*National Treatment*

Foreigners may also obtain plant variety certificates in accordance with the conditions laid down by this Annex.

TITLE III  
ISSUANCE PROCEDURE FOR PLANT VARIETY CERTIFICATES

*Article 12*  
*Filing the Application*

(1)(a) Where an application for a plant variety certificate is filed with the Ministry responsible for industrial property, a record, of which one copy shall be handed to the applicant, shall be drawn up by the competent official of that Ministry recording the filing and the date and time on which the documents were submitted. The Ministry shall transmit the application to the Organization within five working days of the filing date.

(b) Where an application is filed directly with the Organization, the competent official shall draw up the record referred to in the preceding subparagraph.

(2) The application shall contain:

(a) the name and other required information relating to the applicant, the breeder and, where appropriate, the representative;

(b) identification of the botanical taxon (Latin name and common name);

(c) the denomination proposed for the variety or a provisional designation; and

(d) a succinct technical description of the variety.

(3) Proof of payment of the required fees shall be attached to the application.

(4) The above mentioned documents shall be in one of the working languages of the Organization.

(5) The applicant may withdraw his application at any time prior to a determination that the application satisfies the necessary conditions leading to the issue of a plant variety certificate.

*Article 13*  
*Claiming Priority*

(1) Any person wishing to claim the priority of an earlier filing under Article 11 of the International Convention for the Protection of New Varieties of Plants shall be required to attach to his application for a plant variety certificate or submit to the Organization within four months of the date of his application:

(a) a written statement containing the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified copy of the earlier application;

(c) if he is not the person making the application, written authorization from the applicant or his successor in title empowering him to assert the priority concerned.

(2) In the event of more than one earlier application, priority may be based only on the earliest application.

(3) Priority may be claimed only within a period of 12 months as from the filing date of the first application.

(4)(a) Priority shall have the effect that the application shall be deemed to have been filed on the filing date of the first application with regard to the conditions for the protection enjoyed by the variety.

(b) Furthermore, the applicant shall have the faculty of requesting that the examination of the variety be deferred for up to two years as from the expiry date of the priority term or three years as from the filing date of the first application. However, if the first application is rejected or withdrawn, examination of the variety may be commenced before the date given by the applicant; in such case, the applicant will be afforded a reasonable period in order to furnish the information, documents or material required for examination.

(5) Failure to submit in good time any of the aforementioned items shall imply ex-officio loss of enjoyment of the priority right claimed. Any item that reaches the Organization more than four months after the filing of the application for a plant variety certificate shall be declared inadmissible.

*Article 14*  
*Inadmissibility for Lack of Payment*

No application shall be admissible if not accompanied by a document proving payment of the prescribed fees.

*Article 15*  
*Filing Date*

(1)(a) The Organization shall allocate as the filing date, the date of receipt of the application at the Ministry responsible for industrial property or at the Organization on condition that at the time of receipt, the application contains at least the items referred to in Article 12(2).

(b) If the Organization determines at the time of receiving the application that the items referred to in Article 12(2) have not all been furnished, it shall invite the applicant to make the necessary corrections and shall allocate, as the filing date, the date of receipt of the required corrections; if the correction is not carried out within the prescribed time limit, the application shall be deemed not to have been filed.

(2) If the application contains defects other than those referred to in the preceding paragraph, the Organization shall invite the applicant to regularize them; if the application is not regularized within the prescribed time limit, it shall be deemed not to have been filed.

*Article 16*  
*Publication of the Application*

The Organization shall publish a notice of filing of the application containing, as a minimum, the items referred to in Article 12(2)(a) to (c).

*Article 17*  
*Objection to the Issue of a Plant Variety Certificate*

(1) Once the application is published, any person may file with the Organization, within the prescribed time limit and in the prescribed form, written and reasoned objections to the issue of a plant variety certificate. The filing of an objection shall be subject to payment of a fee.

(2) Objections may be filed exclusively on the grounds that the variety is not new, not distinct, not uniform or not stable or that the applicant is not entitled to protection.

- (3) The Organization shall send a copy of the notice of objection to the applicant, who may make a reasoned reply to that notice within a period of three months, renewable once. If his reply does not reach the Organization within the prescribed time limit, the applicant shall be deemed to have withdrawn his application for registration.
- (4) Before deciding on the objection, the Organization shall hear the parties or one of the parties, or their representatives, if a request is made.
- (5) The decision of the Organization concerning the objection may be appealed from to the High Commission of Appeal within a period of thirty days as from notification of the decision to the parties concerned.

#### *Article 18*

#### *Examination of the Application for a Plant Variety Certificate and Technical Examination of the Variety*

- (1) The Organization shall examine the application as to form and as to substance in order to check, on the basis of the information supplied:
  - (a) that a filing date may be allocated in accordance with Article 15;
  - (b) that the documents in the application are complete and satisfy the requirements of the provisions of Articles 12 and 13;
  - (c) that the application is not excluded under the provisions of Article 3;
  - (d) that the variety applied for is new.
- (2) If the items of the application are incomplete or do not comply, the Organization shall invite the applicant to regularize the application within a period of sixty days as from the date of receipt of the notification. Any application not regularized within the prescribed time limit shall be deemed not to have been filed.
- (3) A technical examination shall also be carried out on the basis of growing trials and other required tests to establish:
  - (a) that the variety belongs to the stated taxon;
  - (b) the variety is distinct, uniform and stable; and
  - (c) where it is determined that the variety satisfies the above conditions, to establish the official description of that variety.
- (4) The technical examination shall be conducted by an appropriate institution, approved by the Organization.
- (5) Where the growing trials and other required tests have been carried out by the official body of a Contracting Party to the International Convention for the Protection of New Varieties of Plants, or are being carried out by such service, and the results may be obtained by the Director General, the examination shall be based on such results.
- (6) The Organization shall determine the practical conditions for the technical examination.

#### *Article 19*

#### *Information, Documents and Material Required for Examination; Examination Fee*

- (1) The applicant shall be required to provide all information, documents or material required by the Organization for the technical examination; failure to supply shall result, unless the applicant is able to give good grounds, in rejection of the application.
- (2) The creator of a new plant variety may be required to submit additional information and documents to support his variety, together with the plant material required for the technical examination.
- (3) The cost of the technical examination shall be borne by the applicant and shall be paid directly to the Organization. The latter shall establish a schedule of fees for the principal botanical taxa.

*Article 20*  
*Confidentiality of Applications*

Applications for plant variety certificates shall be kept secret by the Organization, the administrations and institutions involved in the procedures. Access to information concerning applications shall be regulated. No information relating to applications may be disclosed without the consent of the breeder, except in special cases determined by the Organization.

*Article 21*  
*Grounds for Rejection of Applications*

- (1) An application shall be rejected prior to registration if it is established that:
- (a) the applicant is not entitled to file an application;
  - (b) the applicant has not replied within the prescribed time limit to the regularization notifications issued by the Organization, particularly where:
    - (i) the information given was erroneous or incomplete;
    - (ii) the application contained a material irregularity;
  - (c) the variety to which the application refers:
    - (i) does not satisfy the requirements of Articles 4 to 8;
    - (ii) belongs to a botanical taxon that is excluded under Article 3;
  - (d) the applicant refuses or is unable to propose an acceptable denomination.
- (2) The Organization shall notify its decision to the applicant, shall record it and publish a notice of rejection. The rejection decision may be appealed from to the High Commission of Appeal.

*Article 22*  
*Issue of Plant Variety Certificate and Publication*

- (1) Where the Organization determines as a result of the technical examination of the variety that the variety satisfies the conditions set out in Article 4 and that the applicant satisfies the other conditions set out in this Annex, it shall issue a plant variety certificate.
- (2) The Organization:
- (a) shall publish a notice of issue of a plant variety certificate;
  - (b) shall issue to the applicant a plant variety certificate containing a description of the variety;
  - (c) shall register the certificate; and
  - (d) shall make copies of the variety description available to the public, on payment of the prescribed fee.

TITLE IV  
VARIETY DENOMINATION

*Article 23*  
*Subject of the Denomination and Signs Admissible as a Denomination*

- (1) The denomination shall constitute the genetic designation of the variety.
- (2) A denomination may consist of any word, combination of words and figures and combinations of letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified.
- (3) Where a denomination has already been used for the variety in a member State or in a Contracting Party to the International Convention for the Protection of New Varieties of Plants, or proposed or registered in a member State or a Contracting Party, only such denomination may be used for the purposes of the procedure before the Organization, unless there is a ground for refusal under Article 24. Any synonyms shall be recorded in the register of applications and in the register of grants.

(4)(a) For as long as the variety is exploited, it shall be prohibited to use, on the territory of the member State, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. The prohibition shall remain in force after the variety has ceased to be exploited if the denomination has acquired particular significance in relation to the variety.

(b) The above prohibition shall also apply to denominations registered in the Contracting Parties to the International Convention for the Protection of New Variety of Plants.

(5) Any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be required to use the denomination of that variety. This obligation shall also apply to the varieties referred to in Article 29(4).

(6) The obligation to use a denomination shall not end with the plant variety certificate that gave rise to it.

(7) Prior rights of others shall not be affected.

(8) Where a variety is offered for sale or otherwise marketed, it shall be permissible to use a trademark or service mark, a trade name or similar indication in association with the registered variety denomination, subject to the denomination remaining easily recognisable.

#### *Article 24*

##### *Grounds for Refusal of a Denomination*

(1) Notwithstanding the provisions of the Convention and the rules adopted by the International Union for the Protection of New Varieties of Plants, a designation shall be refused registration as a denomination if:

(a) it does not comply with the provisions of Article 23;

(b) it is not suitable for identifying the variety, particularly due to lack of distinctiveness or for linguistic unsuitability;

(c) it is contrary to public policy or morality;

(d) it is composed exclusively of signs or indications that may serve, in the plant variety and seed sector, to designate the type, quality, quantity, intended purpose, value, geographical origin or time of production;

(e) it is liable to mislead or cause confusion as to the characteristics, value or geographical origin of the variety, or as to the links between the variety and persons such as the breeder or the applicant; or

(f) it is identical with or confusingly similar to a denomination that designates, on the territory of one of the member States, or of a Contracting Party to the International Convention for the Protection of New Varieties of Plants, an existing variety of the same or a closely related species, unless such existing variety is no longer exploited and its denomination has not acquired any particular significance.

(1)(a) Notwithstanding the provisions of the Convention and of the rules adopted by the International Union for the Protection of New Varieties of Plants, registration as a variety denomination shall also be refused for a designation comprising an element which hampers or is liable to hamper the free use of the denomination with respect to the variety, in particular any element whose registration as a trademark for products bearing some relation to the variety could be refused under trademark law.

(b) Such designations shall be refused registration if the holder of the rights in the element concerned has lodged with the Organization a written objection to the proposed denomination.

#### *Article 25*

##### *Denomination Registration Procedure*

(1)(a) The denomination proposed for a variety for which protection is sought shall be filed at the same time as the application.

(b) On payment of a special fee and the proposal of a provisional designation in the application, the applicant may defer the denomination registration procedure. In such case,

the applicant shall be required to submit the proposal for a denomination within the time limit laid down by the Organization. If no proposal is submitted within the prescribed time limit, the application shall be rejected.

(2) The Organization shall publish the proposed denomination, unless it determines the existence of grounds for refusal under Article 24(1) or has knowledge of grounds for refusal under Article 24(2)(a). The proposal shall also be communicated to the official services of the Contracting Parties to the International Convention for the Protection of New Varieties of Plants.

(3) The denomination shall be registered at the time the plant variety certificate is issued.

#### *Article 26*

##### *Opposition to Registration of a Denomination*

(1) Any concerned person may, within the prescribed time limit, file opposition to the registration of a denomination based on any of the grounds for refusal set out in Article 24. The official services of the Contracting Parties may submit observations.

(2) Oppositions and observations shall be communicated to the applicant to enable him to respond to them or, where appropriate, to submit a new proposal.

(3) Where the proposal for a denomination does not comply with the provisions of Article 3, the Organization shall invite the applicant to submit a new proposal for a denomination. If the proposal is not submitted within the prescribed time limit, the application shall be rejected.

(4)(a) The new proposal shall be subject to the examination and publication procedure set out in this Article.

(b) Where the new proposal does not comply with the provisions of Article 23, the Organization may give the applicant formal notice to propose a denomination that complies. If the applicant fails to do so, the application shall be rejected.

(5) The Organization's decision on the opposition may be appealed from to the High Commission of Appeal during a period of three months as from receipt of notification of the decision to the persons concerned.

#### *Article 27*

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

(1) The Organization shall cancel a registered denomination:

(a) if it is established that the denomination was registered despite the existence of grounds for rejection under Article 21(1);

(b) if the holder so requests and proves a legitimate interest; or

(c) if a third party produces a court decision prohibiting the use of that denomination with respect to the variety.

(2) The Organization shall advise the holder of the proposal for cancellation and shall invite him to submit a proposal for a new denomination within a prescribed time limit. If the variety is no longer protected, the proposal may be made by the Organization.

(3) The proposal for a new denomination shall be subject to the examination and publication procedure laid down in Article 25. The new denomination shall be registered and published once it has been approved; the former denomination shall be cancelled at the same time.

TITLE V  
RIGHTS CONFERRED BY A PLANT VARIETY CERTIFICATE

*Article 28*  
*General*

- (1) Under the conditions and within the limits set out by this Annex, a plant variety certificate shall confer on its holder the exclusive right to exploit the variety that is the subject of the certificate.
- (2) Under the conditions and within the limits laid down by this Annex, a plant variety certificate shall also confer upon its holder the right to prohibit any person from exploiting the variety that is the subject of the certificate.
- (3) The holder of a plant variety certificate shall also have the right to assign or transfer the certificate by succession and to conclude licensing contracts.
- (4) Subject to Article 36, the holder of a plant variety certificate shall have the right, in addition to all other rights, remedies and actions at his disposal, to institute legal proceedings against any person who infringes the rights conferred to him by the plant variety certificate through the performing, without his consent, of any of the acts referred to in Article 29(1) or against any person who carries out acts making it likely that an infringement will be committed.
- (5) The holder of a plant variety certificate shall also have the right, in addition to all other rights, remedies or actions at his disposal, to institute legal proceedings against any person who uses a designation in violation of Article 23(4) or who omits to use a variety denomination in violation of Article 23(5).

*Article 29*  
*Scope of Rights Conferred by a Plant Variety Certificate*

- (1) Subject to Articles 30 and 31, "exploitation" means, for the purposes of this Title, any of the following acts carried out with respect to propagating material of a protected variety:
  - (a) production or reproduction (multiplication);
  - (b) conditioning for the purpose of propagation;
  - (c) offering for sale;
  - (d) selling or other marketing;
  - (e) exporting;
  - (f) importing;
  - (g) stocking for any of the purposes mentioned in (a) to (f) above.
- (2) Subject to Articles 30 and 31, "exploitation" also means, for the purposes of this Title, the acts referred to in (a) to (g) of paragraph (1) carried out in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the holder has had reasonable opportunity to exercise his rights in relation to such propagating material.
- (3) Subject to Articles 30 and 31, "exploitation" also means, for the purposes of this Title, the acts referred to in (a) to (g) of paragraph (1) carried out in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of such harvested material, unless the holder has had reasonable opportunity to exercise his rights in relation to such harvested material.
- (4) The provisions of paragraphs (1) to (3) shall also apply:
  - (a) to varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
  - (b) to varieties which are not clearly distinguishable in accordance with Article 6 from the protected variety; and
  - (c) to varieties whose production requires the repeated use of the protected variety.

*Article 30**Exceptions to the Rights Conferred by a Plant Variety Certificate*

The rights conferred by a plant variety certificate shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental or research purposes;
- (c) acts done for the purpose of breeding other varieties and, except where the provisions of Article 29(4) apply, acts referred to in Article 29(1) to (3) in respect of such other varieties;
- (d) use by a farmer on his own holding for propagating purposes of harvested material he has obtained by planting on his own holding a protected variety or a variety covered by Article 29(4)(a) or (b); this exception shall not apply to fruit, forestry or ornamental plants; and
- (e) acts carried out by any third party in good faith prior to the filing of the application for a plant variety certificate.

*Article 31**Exhaustion of Rights Conferred by a Plant Variety Certificate*

The rights conferred by a plant variety certificate shall not extend to acts concerning material of the protected variety or a variety covered by Article 29(4) which has been sold or otherwise marketed on the territory of a member State by the holder or with his consent or any material derived from such material, unless such acts:

- (a) involve further propagation of the variety in question; or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

*Article 32**Measures Regulating Commerce*

The rights conferred by a plant variety certificate shall be independent of measures adopted by the member States in order to regulate on their territory the production, certification and marketing of variety material or the importing or exporting of such material.

*Article 33**Term of a Plant Variety Certificate; Maintenance of Rights*

- (1) Subject to the provisions of paragraph (2) below, a plant variety certificate shall lapse 25 years after its date of issue.
- (2) In order to maintain a plant variety certificate, an annual fee shall be paid to the Organization each year in advance, with the first fee due one year after the date of issue of the certificate. A period of grace of six months shall be afforded for payment of the annual fee after the due date, on payment of the prescribed additional fee. If an annual fee is not paid in accordance with the provisions of this paragraph, the holder of the plant variety certificate shall forfeit his rights.

*Article 34**Provisional Protection*

An applicant shall enjoy all the rights provided for by this Title as of the filing of his application, with the proviso that proceedings for damages may not be instituted for damages occasioned by the fault of the defendant after publication of the application until the plant variety certificate has been issued.



*Article 35*  
*Restoral of Rights*

- (1) Notwithstanding the provisions of Article 33(2) above, if the protection conferred by a plant variety certificate has not been renewed for reasons beyond the control of the holder, he may, on payment of the required annual fee and of a restoral fee, request that it be restored within a period of six months as from the date on which such circumstances ceased to exist and, at the latest, within a period of two years as from the date on which renewal was due.
- (2) The request for restoral of a plant variety certificate, accompanied by evidence of payment of the fees referred to in the preceding paragraph, shall be filed with the Organization and shall set out the reasons which, for the holder or his successor in title, justify restoral.
- (3) The Organization shall examine the above mentioned reasons and shall restore the plant variety certificate or shall reject the request if it does not consider the reasons justified.
- (4) Restoral shall not imply prolongation of the term of the plant variety certificate. Any third parties who have begun to exploit the variety prior to restoral of the certificate shall be entitled to complete such exploitation.
- (5) Restored plant variety certificates shall be published by the Organization in the manner prescribed by the Implementing Rules.
- (6) The decisions of the Organization with respect to restoral may be appealed from to the High Commission of Appeal within a period of thirty days as from the date of receipt of their notification.

*Article 36*  
*Exploitation by the Public Authorities or by a Third Party*  
*Authorized by Them*

- (1)(a) The Government may decide that a variety shall be exploited without the consent of the holder of the plant variety certificate by a State service or by a third party designated by the Government where:
    - (i) the public interest, particularly the food supplies of the member State concerned or public health, so demand; or
    - (ii) a judicial or administrative body has decided that the manner in which the holder of the plant variety certificate or his licensee exploits the variety is anti-competitive and the Government is convinced that exploitation of the variety pursuant to this Article will enable such practice to be remedied.
  - (b) Exploitation of a variety pursuant to this Article shall be subject to payment of equitable remuneration to the holder of the plant variety certificate.
  - (c) The Government shall only take such decision if the following conditions have been satisfied:
    - (i) the holder of the plant variety certificate has been given formal notice to remedy the situation and has not taken the necessary steps within the prescribed time limit;
    - (ii) the State service or the designated third party is in a position to exploit the variety in a competent and efficient manner;
    - (iii) three years have elapsed between the date of issue of the plant variety certificate and the date of the decision.
  - (d) When taking the above mentioned decision, the Government shall define the conditions for exploiting the variety by the State service or the designated third party, particularly the authorized acts of exploitation, the duration of exploitation and the amount and method of payment of the remuneration due to the holder of the plant variety certificate.
- (2) The Government may require the holder of the plant variety certificate to make available to the State service or to the designated third party, against payment of suitable remuneration, the quantity of propagating material required for reasonable use to be made of the exploitation authorization.

(3)(a) The Government may, at the request of the holder of the plant variety certificate, of the State service or of the designated third party, modify the conditions of the authorization to exploit the variety to the extent that a change in the circumstances justifies such modification.

(b) The Government shall terminate the authorization to exploit the variety pre-maturely, at the request of the holder of the plant variety certificate, if the State service or the designated third party fails to comply with the conditions set out by the Government or does not exploit the variety in a competent and efficient manner.

(c) The Government may extend the authorization to exploit the variety, after having heard the parties, if it is convinced, on the basis of a new examination, that the circumstances that led it to take the initial decision still apply.

(4) An authorization to exploit a variety given to a third party may not be transferred except with the enterprise or business of such person or with that part of the enterprise or business in which the variety is exploited.

(5) An authorization shall not exclude:

(a) exploitation of the variety by the holder of the plant variety certificate; or

(b) the conclusion of licensing contracts by the holder.

(6) Exploitation of the variety by the State service or the designated third party shall concern exclusively supply to the domestic market of the member State.

(7) The parties shall be heard before any decision is taken pursuant to this Article. Such decision may be appealed from to the competent administrative court.

## TITLE VI OBLIGATIONS OF THE HOLDER OF A PLANT VARIETY CERTIFICATE

### *Article 37 Maintenance of the Variety*

(1) The holder of a plant variety certificate shall be required to maintain at his own expense the protected variety or, where appropriate, its hereditary components during the whole validity of the certificate.

(2) At the request of the Organization, he shall be required to furnish to any authority designated by the Organization, within the prescribed time limit and at his own expense, the information, documents or material deemed necessary for verifying the maintenance of the variety.

### *Article 38 Furnishing of Samples*

(1) The holder of a plant variety certificate shall be required to furnish at his own expense to any authority designated by the Director General, within the prescribed time limit, reasonable samples of the protected variety or, where appropriate, of its hereditary components for the purposes of:

(a) establishing or renewing the official sample of the variety;

(b) carrying out the comparative examination of varieties for the purposes of protection.

(2) The holder of a plant variety certificate may be required to himself maintain or preserve the official sample.

TITLE VII  
CHANGE OF OWNERSHIP, NULLITY, CANCELLATION

*Article 39*  
*Change and Division of Ownership*

- (1)(a) A plant variety certificate may be assigned or transmitted by succession.  
(b) Any change of ownership shall be recorded in writing. It shall also be registered by the Organization and shall not be invocable against third parties unless it is recorded in the special register; the Organization shall publish a notice of the change of ownership.
- (2)(a) The holder of a plant variety certificate may grant exclusive or non-exclusive licenses.  
(b) All licenses shall be recorded in writing and shall be registered by the Organization; they shall not be invocable against third parties unless registered in the special register; the Organization shall publish a notice thereof.

*Article 40*  
*Nullity of a Plant Variety Certificate*

- (1) Any person having a legitimate interest may file a request for annulment with the Director General.
- (2) The court shall declare a plant variety certificate null and void if it is established:  
(a) that the variety was not new or distinct on the filing date of the application or, where appropriate, on the priority date;  
(b) that, where the issue of a plant variety certificate was essentially based on information and documents submitted by the applicant, the variety was not uniform or stable at the aforesaid date; or  
(c) that the plant variety certificate was issued to a person not entitled thereto and the entitled person did not institute or has renounced instituting proceedings for judicial assignment in accordance with Article 9(5)(b).
- (3) A plant variety certificate declared null and void shall be deemed invalid as of its date of issue.
- (4) Annulment shall be registered by the Director General, who shall publish a notice thereof.

*Article 41*  
*Cancellation*

- (1) The Organization shall cancel a plant variety certificate if it is established that the holder has failed to comply with his obligation under Article 37(1) and that the variety is no longer uniform or stable.
- (2)(a) Furthermore, the Organization shall cancel a plant variety certificate:  
(i) if the holder does not reply to a request by the Director General under Article 37(2) with regard to verification of maintenance of the variety; or  
(ii) if the Organization intends to cancel the variety denomination and the holder does not propose a suitable denomination within the prescribed time limit.
- (b) A certificate may only be cancelled after the holder has been given formal notice of his obligation and allowed a reasonable period, notified to him, to comply therewith.
- (3) Cancellation shall take effect as of the date of its registration; the Organization shall publish a notice thereof.

TITLE VIII  
PROCEDURAL TIME LIMITS

*Article 42*  
*Extension of Time Limits*

Where the Organization deems it justified by the circumstances it may, on a written request addressed to it, extend, under the conditions it shall lay down, the time limit prescribed for performing an act or satisfying a requirement in accordance with provisions of this Annex or of the Implementing Rules, by notifying its decision to the parties concerned. Extension may be granted even if the time limit concerned has expired.

TITLE IX  
INFRINGEMENT AND OTHER UNLAWFUL ACTS

*Article 43*  
*Infringement*

(1) Subject to Articles 30, 31 and 36, any of the acts referred to in Article 29 carried out on the territory of a member State by a person other than the holder of the plant variety certificate and without his consent shall constitute an infringement.

(2)(a) At the request of the holder of a plant variety certificate, or of the licensee where the latter has invited the holder to institute legal proceedings and the holder has refused or omitted to do so, the court may give an injunction for cessation of the infringement or prevention of an imminent infringement or the committing of an act of unfair competition referred to in Annex VIII, and may award damages and order any other remedy provided by domestic legislation.

(b) At the request of a competent authority or of any other person, of any association or any union concerned, particularly of breeders, seed producers or farmers, the court may award the same remedies as in the case of an act of unfair competition as referred to in Annex VIII.

(3) Any person who knowingly commits an infringing act under paragraph (1) or an act of unfair competition under Annex VIII shall be guilty of an offense and liable to a fine of between 1,000,000 and 3,000,000 CFA francs or imprisonment of between one month and six months or both such penalties, without prejudice to civil damages.

*Article 44*  
*Infringement Seizure*

(1) Holders of plant variety certificates or of exclusive exploitation rights may, under an order from the presiding judge of the civil court within whose jurisdiction the action is to be taken, cause bailiffs or public or judicial officers, including customs officers, if necessary with the aid of an expert, to make an inventory and detailed description, with or without seizure, of allegedly infringing objects.

(2) The order shall be given on a simple request and on presentation of the plant variety certificate and proof that it has not been cancelled and has not lapsed.

(3) In the event of seizure, the order may require the petitioner to deposit security before the operation is carried out. The security shall be sufficient but not such as would discourage recourse to the procedure.

(4) Security shall be required in all cases where a foreigner requests seizure.

(5) A copy of the order shall be handed to the holder of the objects that have been described or seized and, where appropriate, of the act recording the deposit of a security, in each case on pain of nullity and damages against the bailiffs or public or judicial officers, including customs officers.

*Article 45**Time Limit for Instituting Substantive Proceedings*

(1) If the petitioner fails to institute proceedings, whether civil or criminal, within a period of ten working days as from seizure or description, the seizure or description shall automatically become null and void, without prejudice to any damages that may be claimed, where appropriate.

*Article 46**Other Sanctions*

(1) The judge may order those items concerned by the infringement and which are held by the infringer to be confiscated and, where appropriate, destroyed or handed to the holder of the plant variety certificate where, in view of the circumstances, such is necessary:

- (a) to provide a dissuasive effect against infringements;
- (b) to safeguard third party interests.

(2) The judge may also order the confiscation of the devices or means specially intended for carrying out the infringement and order the publishing of the sentence.

(3) The infringing items and the devices or means that have been confiscated may be sold by public auction for the benefit of the State.

*Article 47**Usurpation*

Any person who falsely lays claim to be the holder of a certificate or of an application for a plant variety certificate shall be liable to a fine of between 1,000,000 and 3,000,000 CFA francs. In the event of a repeated offense, the fine shall be doubled.

*Article 48**Extenuating Circumstances*

The provisions of the domestic laws of the member States with respect to extenuating circumstances shall apply to the offenses referred to in this Annex.

*Article 49**Conditions for Institution of Criminal Proceedings*

Criminal proceedings for the application of the above penalties may be pursued by the public prosecutor only on a complaint from the injured party.

*Article 50**Exceptional Jurisdiction of the Criminal Court*

The criminal court hearing infringement proceedings shall pronounce on the objections made by the accused person, either as to the nullity or the lapse of the plant variety certificate or on matters relating to ownership of the certificate.

*Article 51**Fraud in Relation to Variety Denominations*

Any person who knowingly uses a designation contrary to Article 23(4) or who omits to use a variety denomination contrary to Article 23(5) shall be liable to a fine of between 400,000 and 1,000,000 CFA francs.

TITLE X  
TRANSITIONAL AND FINAL PROVISIONS

*Article 52*  
*Protection of Known Varieties*

(1) Notwithstanding Article 5, a plant variety certificate may also be issued for a variety that is no longer new on the date of entry into force of this Annex, subject to the following conditions:

(a) the application shall be filed within the year following the above mentioned date; and

(b) the variety must:

(i) have been entered in the national catalogue of varieties admitted to trade of a member State or of a Contracting Party to the International Convention for the Protection of New Varieties of Plants or in a variety register kept by a professional association and accepted, for the purposes of this Article, by the Organization;

(ii) have been the subject of a plant variety certificate in a Contracting Party, or have been the subject of an application for a plant variety certificate in a Contracting Party, on condition that such application subsequently leads to the issue of a certificate; or

(iii) have been the subject of proof acceptable to the Organization concerning the date on which the variety ceased to be new under the provisions of Article 5.

(2) If protection is granted, its term shall be reduced by the number of years that have elapsed since the time at which the variety was offered for sale or distributed for the first time and that at which the application was submitted.

(3) Where a plant variety certificate is issued under this Article, the holder may not prohibit exploitation by any third party who exploited the variety in good faith prior to the filing of the application.

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## AUSTRALIA

### Plant Breeder's Rights Act 1994 (consolidated text of 2013 with amendments up to 2012)

No. 110, 1994 as amended

Compilation start date: 15 April 2013

Includes amendments up to: Act No. 35, 2012

### An Act to provide for the granting of proprietary rights to breeders of certain new varieties of plants and fungi, to repeal the *Plant Variety Rights Act 1987*, and for related purposes

#### Part 1—Preliminary

##### 1 Short title

This Act may be cited as the *Plant Breeder's Rights Act 1994*.

##### 2 Commencement

(1) Subject to subsection (2), the provisions of this Act commence on a day to be fixed by Proclamation.

(2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

##### 3 Definitions

(1) In this Act, unless the contrary intention appears:

**AAT** means the Administrative Appeals Tribunal.

**AAT Act** means the *Administrative Appeals Tribunal Act 1975*.

**Advisory Committee** means the Plant Breeder's Rights Advisory Committee established by section 63.

**applicant**, in relation to an application, means the person currently shown in the application as the person making the application.

**application** means an application under section 24 for PBR in a plant variety to which this Act extends.

**approved form** means a form approved by the Secretary for the purposes of the provision in which the expression appears.

**breeder**, in relation to a new plant variety, means:

(a) subject to paragraph (c), if the variety was bred by one person only—the person; or

(b) subject to paragraph (c), if the variety was bred by 2 or more persons (whether jointly or independently and whether at the same time or different times)—each of those persons; or

(c) if the variety was bred:

(i) by a person in the course of performing duties or functions as a member or employee of a body (whether incorporate or unincorporate); or

(ii) by 2 or more persons in the course of performing duties as a member or employee of such a body;

the body of which that person or each of those persons is a member or employee;

and includes any person or body that is the successor in title to the person referred to in paragraph (a), to any of the persons referred to in paragraph (b) or the body referred to in paragraph (c).

**conditioning**, in relation to propagating material of a plant variety, means:

- (a) cleaning, coating, sorting, packaging or grading of the material; or
- (b) any other similar treatment;

undertaken for the purpose of preparing the material for propagation or sale.

**contracting party** means a State, or an intergovernmental organisation, that is a party to the Convention.

**Convention** means the International Convention for the Protection of New Varieties of Plants, done at Geneva on 23 October 1978, as that treaty is in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1989 No. 2 ([1989] ATS 2). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**Court** means the Federal Court of Australia.

**dependent plant variety**, in relation to another plant variety in which a person holds PBR in Australia, means a plant variety over which PBR in the other plant variety extends under section 13.

**essential characteristics**, in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal features, performance or value of the variety.

**genetic resource centre** means a place that the Secretary declares to be a genetic resource centre under subsection 70(1).

**grantee**:

(a) in relation to PBR in a plant variety—means the person currently entered on the Register as the holder of that right in that variety; and

(b) in relation to PBR in a plant variety declared to be an essentially derived variety of another plant variety—includes the person currently entered on the Register as the holder of that right in relation to that other plant variety.

**herbarium** means the organisation that the Secretary declares to be the herbarium under section 71.

**hybrid** means a plant that is a combination of 2 or more genotypes of the same or different taxa but excluding a combination comprising a scion grafted on to a root stock.

**indigenous** means:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of the indigenous inhabitants of the Torres Strait Islands.

**member** means a member of the Advisory Committee and includes the Registrar.

**PBR**, in a plant variety, means the plant breeder's right specified in section 11.

**PBR**, in respect of a plant variety registered in another contracting party, means a plant breeder's right corresponding to the right specified in section 11 conferred under the law of that contracting party.



**PBR office** means place of work of the Registrar or a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

**PBR sub-office** means place of work in a single State of the Registrar or a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

**plant** includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages.

**plant class**, for the purpose of variety denomination, means a class consisting of all plants:

- (a) that belong to a single botanical genus; or
- (b) that belong to a group of closely related genera;

that is specified from time to time as a plant class in the Registrar's List of Plant Classes maintained under subsection 61(1A).

**plant variety** means a plant grouping (including a hybrid):

- (a) that is contained within a single botanical taxon of the lowest known rank; and
- (b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that plant grouping; and
- (c) that can be distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (d) that can be considered as a functional unit because of its suitability for being propagated unchanged.

Note: Plant groupings for the purposes of this definition include genetically modified plant groupings. See section 6.

**process**, in relation to the reproduction of propagating material, of a plant variety does not include:

- (a) the development of a cell or tissue or a plant part into a plant of that variety; or
- (b) the growth of a plant into a larger plant of that variety.

**propagating material**, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced.

**propagation**, in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component, whether by sexual or asexual means.

**Register** means the Register of Plant Varieties kept under section 61.

**Registrar** means the Registrar of Plant Breeder's Rights.

**reproduction**, in relation to propagating material of a plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent plants is multiplied.

**Secretary** means the Secretary of the Department.

**sell** includes letting on hire and exchanging by way of barter.

**successor** means:

(a) in relation to a breeder of a plant variety—a person to whom the right of the breeder to make application for PBR in that variety has been assigned, or transmitted by will or by operation of law; and

(b) in relation to a grantee of PBR—a person to whom that right has been assigned, or transmitted by will or by operation of law.

**synonym**, in relation to the name of a plant variety, means a name that:

(a) is included in an application in addition to the name of the variety; and

(b) is a name by which the variety will be known or sold in Australia.

**test growing** includes a comparative test growing.

**Union** means the Union for the Protection of New Varieties of Plants as defined in Article 1 of the Convention.

**will** includes a codicil.

(2) If a provision of this Act requires or authorises the Secretary or the Registrar to give written notice of any matter to a particular person and does not specify the means of giving that notice, that provision is to be taken, for the purposes of section 29 of the *Acts Interpretation Act 1901* to authorise or require the Secretary or Registrar to serve the notice on the person personally or by post.

#### **4 Definition of essentially derived varieties**

A plant variety is taken to be an essentially derived variety of another plant variety if:

(a) it is predominantly derived from that other plant variety; and

(b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and

(c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

#### **5 Definition of breeding**

(1) A reference in this Act to breeding, in relation to a new plant variety, includes a reference to the discovery of a plant together with its use in selective propagation so as to enable the development of the new plant variety.

(2) If a plant is discovered by one person but used in selective propagation by another so as to enable the development of a new plant variety, those persons are together taken to be the joint breeders of the new plant variety.

#### **6 Genetic modification**

For the purposes of this Act, an organism may be treated as constituting a plant grouping within a single botanical taxon despite the fact that the genome of the plants in that plant grouping has been altered by the introduction of genetic material that is not from plants.

#### **8 Approved persons**

(1) In this Act, a reference to an approved person is a reference to a person who, on the basis of the person's qualifications and experience, the Secretary has designated, by instrument in writing, to be such a person in relation to one of more species of plant.

(2) The Registrar must, from time to time, cause lists of all persons who are approved persons in relation to particular species of plant to be published in the *Plant Varieties Journal*.

#### **9 Act to bind Crown**

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) Nothing in this Act renders the Crown, in any of its capacities, liable to be prosecuted for an offence.

## 9A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 10 Extent of Act

Nothing in this Act requires or permits the granting of PBR in a plant variety unless:

(a) if Australia is a party to the Convention—the grant is appropriate to give effect to the obligations of Australia under the Convention; or

(b) the breeding of the plant variety constitutes an invention for the purpose of paragraph 51(xviii) of the Constitution.

## Part 2—Plant breeder's right

### 11 General nature of PBR

Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is the exclusive right, subject to this Act, to do, or to license another person to do, the following acts in relation to propagating material of the variety:

(a) produce or reproduce the material;

(b) condition the material for the purpose of propagation;

(c) offer the material for sale;

(d) sell the material;

(e) import the material;

(f) export the material;

(g) stock the material for the purposes described in paragraph (a), (b), (c), (d), (e) or (f).

Note: In certain circumstances, the right conferred by this section extends to essentially derived varieties (see section 12), certain dependent plant varieties (see section 13), harvested material (see section 14) and products obtained from harvested material (see section 15).

### 12 Extension of PBR to cover essentially derived varieties

Subject to section 23, if:

(a) PBR is granted to a person in a plant variety (the *initial variety*); and

(b) PBR is granted to another person in another plant variety; and

(c) the Secretary makes a declaration, on application by the first-mentioned person, that the other plant variety is an essentially derived variety from the initial variety;

the right granted in the initial variety extends, with effect from the date of the declaration, to that other plant variety.

### 13 Extension of PBR to cover certain dependent plant varieties

Subject to section 23, if PBR is granted in a plant variety (the *initial variety*), the right extends to:

(a) any other plant variety that:

(i) is not clearly distinguishable from the initial variety; and

(ii) is clearly distinguishable from any plant variety that was a matter of common knowledge at the time of the grant of PBR in the initial variety; and

(b) any other plant variety that cannot be reproduced except by the repeated use of the initial variety or of a variety referred to in paragraph (a);

whether or not that other plant variety was in existence at the time PBR was granted in the initial variety.

#### **14 Extension of PBR to harvested material in certain circumstances**

(1) If:

(a) propagating material of a plant variety covered by PBR is produced or reproduced without the authorisation of the grantee; and

(b) the grantee does not have a reasonable opportunity to exercise the grantee's right in relation to the propagating material; and

(c) material is harvested from the propagating material;

section 11 operates as if the harvested material were propagating material.

(2) Subsection (1) applies to so much of the material harvested by a farmer from propagating material conditioned and reproduced in the circumstances set out in subsection 17(1) as is not itself required by the farmer, for the farmer's own use, for reproductive purposes.

#### **15 Extension of PBR to products obtained from harvested material in certain circumstances**

If:

(a) propagating material of a plant variety covered by PBR is produced or reproduced without authorisation of the grantee; and

(b) the grantee does not have a reasonable opportunity to exercise the grantee's rights in relation to the propagating material; and

(c) material is harvested from plants grown from the propagating material but the grantee does not have, in the circumstances set out in section 14, a reasonable opportunity of exercising the grantee's rights in the harvested material; and

(d) products are made from the harvested material;

section 11 operates as if those products were propagating material.

#### **16 Certain acts done for private, experimental or breeding purposes do not infringe PBR**

Any act done in relation to a plant variety covered by PBR that is done:

(a) privately and for non-commercial purposes; or

(b) for experimental purposes; or

(c) for the purpose of breeding other plant varieties;

does not infringe the PBR.

#### **17 Conditioning and use of farm saved seed does not infringe PBR**

(1) If:

(a) a person engaged in farming activities legitimately obtains propagating material of a plant variety covered by PBR either by purchase or by previous operation of this section, for use in such activities; and

(b) the plant variety is not included within a taxon declared under subsection (2) to be a taxon to which this subsection does not apply; and

(c) the person subsequently harvests further propagating material from plants grown from that first-mentioned propagating material;

the PBR is not infringed by:

(d) the conditioning of so much of that further propagating material as is required for the person's use for reproductive purposes; or

(e) the reproduction of that further propagating material.

(2) The regulations may declare a particular taxon to be a taxon to which subsection (1) does not apply.

### **18 Restriction on grantee's rights in certain circumstances**

(1) If:

(a) a person is authorised by or under a law of the Commonwealth or of a State or Territory to do an act referred to in a paragraph of section 11 in relation to propagating material of a plant variety; and

(b) the act is one which (apart from this provision) would require authorisation from the grantee of PBR in the plant variety; and

(c) before the person does the act, the person either pays equitable remuneration to the grantee in respect of the act or arranges for the payment of such remuneration; and

(d) the person does the act;

then the grantee is not entitled to exercise PBR in the plant variety against the person in respect of that act.

(2) To avoid doubt, subsection (1) does not limit the operation of section 17 in relation to the conditioning or reproduction of propagating material in the circumstances referred to in that section.

(3) In this section:

***equitable remuneration***, in relation to an act done in relation to propagating material of a plant variety, means an amount:

(a) that is agreed between the person proposing to undertake the act and the grantee of PBR in the plant variety; or

(b) if agreement cannot be reached under paragraph (a)—determined by a court of competent jurisdiction to constitute equitable remuneration in relation to the act.

### **19 Reasonable public access to plant varieties covered by PBR**

(1) Subject to subsection (11), the grantee of PBR in a plant variety must take all reasonable steps to ensure reasonable public access to that plant variety.

(2) Reasonable public access to a plant variety covered by PBR is taken to be satisfied if propagating material of reasonable quality is available to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand.

(3) For the purpose of ensuring reasonable public access to a plant variety covered by PBR, the Secretary may, on behalf of the grantee, in accordance with subsections (4) to (10), license a person whom the Secretary considers appropriate:

(a) to sell propagating material of plants of that variety; or

(b) to produce propagating material of plants of that variety for sale;

during such period as the Secretary considers appropriate and on such terms and conditions (including the provision of reasonable remuneration to the grantee) as the Secretary considers would be granted by the grantee in the normal course of business.

(4) If, at any time more than 2 years after the grant of PBR in a plant variety, a person considers:

(a) that the grantee is failing to comply with subsection (1) in relation to the variety; and

(b) that the failure affects the person's interests;

the person may make a written request to the Secretary to exercise a power under subsection (3) in relation to the variety.

(5) A request must:

(a) set out the reasons why the person considers that the grantee is failing to comply with subsection (1); and

(b) give particulars of the way in which the person considers that the failure affects the person's interests; and

(c) give an address of the person for the purposes of notifications under this section.

(6) The Secretary must give the grantee:

(a) a copy of the request; and

(b) a written invitation to give the Secretary, within 30 days after giving the request, a written statement of the reasons the Secretary should be satisfied that the grantee:

(i) is complying with subsection (1) in relation to the variety; or

(ii) will so comply within a reasonable time.

(7) The Secretary must, after considering the request and any statement given by the grantee in response to the invitation under paragraph (6)(b):

(a) decide whether or not to exercise the power concerned; and

(b) within 30 days after so deciding, give written notice of the decision to the grantee and to the person making the request.

Note: A decision under this subsection is reviewable by the AAT under section 77.

(8) If the Secretary proposes to exercise a power under subsection (3) in relation to a plant variety, the Secretary must give public notice:

(a) identifying the variety; and

(b) setting out particulars of any licence the Secretary proposes to grant; and

(c) inviting persons to apply in writing to the Secretary, within 30 days of the publication of the notice, to be granted that licence.

(9) The Secretary must not grant any such licence unless:

(a) the Secretary has considered all applications made in response to the invitation; and

(b) at least one month before granting any such licence, the Secretary has:

(i) given written notice to each such applicant of the name of the proposed licensee; and

(ii) given public notice of the name of the proposed licensee.

(10) If the Secretary:

(a) has granted a person a licence to produce propagating material of plants of a particular variety; and

(b) is satisfied that the person will be unable to obtain such propagating material at a reasonable price or without charge;

the Secretary may, on behalf of the grantee, make that propagating material available to the person from material stored at a genetic resource centre.

Note: A decision under this subsection to make propagating material available is reviewable by the AAT under section 77.

(11) This section does not apply in relation to a plant variety in respect of which the Secretary certifies, in writing, at the time of the grant of PBR, that he or she is satisfied that plants of that variety have no direct use as a consumer product.

Note: A decision under this subsection is reviewable by the AAT under section 77.

## 20 PBR is personal property

(1) PBR is personal property and, subject to any conditions imposed under section 49, is capable of assignment, or of transmission by will or by operation of law.

(2) An assignment of PBR (otherwise than because of the order of a court) does not have effect unless it is in writing signed by, or on behalf of, the assignor and assignee.

(3) If a grantee of PBR in a plant variety gives another person a licence in that right, the licence binds every successor in title to the interest of that grantee to the same extent as it was binding on that grantee of the PBR.

Note 1: The *Personal Property Securities Act 2009* applies to PBR, and any licence in PBR, as **intellectual property** (see paragraph (d) of the definition of that phrase in section 10 of that Act). That Act deals with security interests in personal property, including intellectual property and intellectual property licences.

Note 2: Section 106 of the *Personal Property Securities Act 2009* corresponds to subsection 20(3) of this section. Section 106 of that Act provides for security agreements in relation to intellectual property licences (or sub-licences) to be binding on successors in title to the licences (or sub-licences).

## 21 Registrar must be notified of an assignment of PBR

(1) If a person (the **claimant**) claims that PBR was assigned or transmitted to the claimant, the claimant must inform the Registrar in writing that the claimant has acquired that right, giving particulars of the manner in which that right was acquired, within 30 days after acquiring that right.

(2) If the Registrar is satisfied that the right has been so assigned or transmitted, the Registrar must amend the Register by entering the name of the claimant as the holder of that right.

(3) If the Registrar enters the name of the claimant on the Register as the holder of PBR, the Registrar must, within 30 days after entering the name, give written notice to the claimant and to the person who was the holder before the entry was made, stating that the entry has been made.

(4) If the Registrar is not satisfied that PBR has been assigned or transmitted to the claimant, the Registrar must, as soon as possible:

(a) give written notice to the claimant:

(i) telling the claimant that the Registrar is not so satisfied; and

(ii) setting out the reasons why the Registrar is not so satisfied; and

(b) give written notice to the person entered on the Register as the holder of the right:

(i) setting out particulars of the information given by the claimant; and

(ii) telling the claimant that the Registrar is not so satisfied; and

(iii) setting out the reasons why the Registrar is not so satisfied.

(5) A claimant must include, in the notice to the Registrar informing of the assignment or transmission, an address in Australia for the service of documents in accordance with this Act.

Note: A decision under this section to amend or to refuse to amend the Register is reviewable by the AAT under section 77.

## 22 Duration of PBR

(1) Subject to subsections (4) and (5), PBR in a plant variety begins on the day that the grant of PBR in the variety is made.

(2) Subject to subsections (3), (4) and (5), PBR in a plant variety lasts for:

(a) in the case of trees and vines—25 years; and

(b) for any other variety—20 years.

(3) The regulations may provide that PBR in a plant variety included within a specified taxon lasts for a longer period than is specified in subsection (2).

(4) PBR in a plant variety that is a dependent plant variety of another plant variety begins on:

- (a) the day that the grant of PBR in the other plant variety is made; or
- (b) the day that dependent variety comes into existence;

whichever occurs last, and ends when PBR in the other variety ceases.

(5) If:

(a) PBR is held in a plant variety (the **initial variety**); and

(b) another plant variety is declared under section 40 to be an essentially derived variety of the initial variety;

PBR in the initial variety extends to the essentially derived variety from the day on which that declaration is made until the day on which PBR in the initial variety ends.

### 23 Exhaustion of PBR

(1) PBR granted in a plant variety does not extend to any act referred to in section 11:

(a) in relation to propagating material of the variety; or

(b) in relation to propagating material of any essentially derived variety or dependent plant variety;

that takes place after the propagating material has been sold by the grantee or with the grantee's consent unless that act:

(c) involves further production or reproduction of the material; or

(d) involves the export of the material:

(i) to a country that does not provide PBR in relation to the variety; and

(ii) for a purpose other than final consumption.

(2) If:

(a) a plant variety is declared to be an essentially derived variety of another plant variety (the **initial variety**); and

(b) PBR in the essentially derived variety is held both by the grantee of PBR in the essentially derived variety and by the grantee of PBR in the initial variety;

the reference in subsection (1) to propagating material sold by the grantee or with the grantee's consent is a reference to propagating material sold by, or with the consent of, both of the grantees referred to in paragraph (b).

(3) If, under subsection 18(1), equitable remuneration is paid, or arranged to be paid, to the grantee of PBR in a plant variety in respect of an act (the **first act**) in relation to propagating material of that variety before the person does the act, PBR in that variety does not extend to any later act (the **later act**) referred to in section 11 in relation to that propagating material unless the later act:

(a) involves the further production or reproduction of that propagating material; or

(b) involves the export of the material:

(i) to a country that does not provide PBR in relation to the variety; and

(ii) for a purpose other than final consumption.



(4) To avoid doubt, nothing in subsection (1) or (3) prevents the exercise of the rights of the grantee of PBR in a plant variety in relation to any propagating material of that variety that is obtained by reproduction of the propagating material to which that subsection applies.

### **Part 3—Application for plant breeder’s right**

#### **Division 1—The making of the application**

##### **24 Right to apply for PBR**

(1) A breeder of a plant variety may make application to the Secretary for the grant of a PBR in the variety.

(2) The breeder can make the application whether or not:

- (a) the breeder is an Australian citizen; and
- (b) the breeder is resident in Australia; and
- (c) the variety was bred in Australia.

(3) Subject to subsection (4), if 2 or more persons bred a plant variety jointly, those persons or some of them may make a joint application for that right.

(4) If 2 or more persons bred a plant variety jointly, one of those persons is not entitled to apply for PBR in the variety otherwise than jointly with, or with the consent in writing of, each other of those persons.

##### **25 Right to apply for PBR is personal property**

(1) The right of a breeder of a plant variety to apply for PBR is personal property and is capable of assignment and of transmission by will or by operation of law.

(2) An assignment of a right to apply for PBR must be in writing signed by or on behalf of the assignor.

Note: The *Personal Property Securities Act 2009* deals with security interests in personal property, including a right to apply for PBR.

##### **26 Form of application for PBR**

(1) An application for PBR in a plant variety must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged in a manner set out in the approved form.

(2) The application must contain:

- (a) the name and address of the applicant; and
- (b) if the applicant is using an agent to make the application on the applicant’s behalf—the name and address of the agent; and
- (c) if the applicant is the breeder of the variety—a statement of that effect; and
- (d) if the applicant is not the breeder of the variety—the name and address of the breeder and particulars of the assignment, or transmission by will or by operation of law, of the right to make the application; and
- (e) a brief description, or a brief description and photograph, of a plant of the variety sufficient to establish a *prima facie* case that the variety is distinct from other varieties of common knowledge; and
- (f) the name of the variety, having regard to the requirements of section 27, and any proposed synonym for that name; and
- (g) the name of the location at which the variety was bred; and

(ga) the name of each variety (the **parent variety**) used in the breeding program including, in respect of each parent variety:

(i) particulars of the names (including synonyms) by which the parent variety is known or sold in Australia; and

(ii) particulars of any PBR granted in Australia or in any other contracting party; and

(gb) a brief description of the manner in which the variety was bred; and

(h) particulars of any application for, or grant of, rights of any kind in the variety in any other country; and

(i) the name of an approved person who:

(i) will verify the particulars in the application; and

(ii) will supervise any test growing or further test growing of the variety required under section 37; and

(iii) will verify a detailed description of the variety when such a description is supplied to the Secretary;

(j) such other particulars (if any) as are required by the approved form.

Note: The information given under paragraph (ga) is not available to the public under section 36.

(3) If an applicant is resident overseas, the applicant must, unless the applicant has appointed an agent resident in Australia to act on the applicant's behalf in the application, specify, in addition to any address overseas, a postal address in Australia for the service of notices on the applicant.

(4) An applicant must, before, or at the time of, lodging an application under this section, pay to the Commonwealth such application fee (if any) as is prescribed.

## **27 Names of new plant varieties**

(1) If PBR has not been granted in another contracting party in a plant variety before an application for that right in that variety is made in Australia, the name set out in the application must comply with subsections (4), (5), (6) and (7).

(2) If, before making an application in Australia for PBR in a plant variety, PBR has been granted in that variety in another contracting party:

(a) the name of the variety set out in the Australian application must be the name under which PBR was first granted in another contracting party; but

(b) there may, and, if the name referred to in paragraph (a) does not comply with subsections (4), (5), (6) and (7) there must, also be included in the application a synonym, additional to the name of the variety.

(3) The synonym must be a name determined in accordance with subsections (4), (5), (6) and (7) as if the variety had not been the subject of a grant of PBR in another contracting party.

(3A) If, before making an application in Australia for PBR in a plant variety, PBR has not been granted in that variety in another contracting party, a synonym may also be included in the application.

(4) A name (including a synonym), in respect of a plant variety, must be a word or words (whether invented or not) with or without the addition of either or both of the following:

(a) a letter or letters that do not constitute a word;

(b) a figure or figures.

(5) A name (including a synonym), in respect of a plant variety must not:

(a) be likely to deceive or cause confusion, including confusion with the name of another plant variety of the same plant class; or

(b) be contrary to law; or

(c) contain scandalous or offensive matter; or

(d) be prohibited by regulations in force at the time of the application; or

(e) be or include a trade mark that is registered, or whose registration is being sought, under the *Trade Marks Act 1995*, in respect of live plants, plant cells and plant tissues.

(6) A name (including a synonym), in respect of a plant variety must comply with the International Code of Botanical Nomenclature and subsidiary codes.

(7) A name (including a synonym), in respect of a plant variety must not consist of, or include:

(a) the name of a natural person living at the time of the application unless the person has given written consent to the name of the variety; or

(b) the name of a natural person who died within the period of 10 years before the application unless the legal personal representative of the person has given written consent to the name of the variety; or

(c) the name of a corporation or other organisation, unless the corporation or other organisation has given its written consent to the name of the variety.

## **28 Applications to be given priority dates**

(1) The Secretary must ensure that each application for PBR is given a priority date.

(2) The priority date is, unless section 29 applies in relation to the application, the date on which the application was lodged with the Secretary or, if another date is determined under the regulations for the application, the date determined.

(3) If 2 or more applications are made for PBR in the same plant variety, the Secretary must first consider the application having the earlier priority date.

## **29 Priority dates arising from foreign application**

(1) If:

(a) a person has lodged an application for PBR in a plant variety in one or more contracting parties other than Australia; and

(b) within a period of 12 months after the date that the earliest of those applications (the **foreign application**) was lodged, the person lodges an application in Australia (the **local application**) for PBR in the variety; and

(c) the local application is accompanied with a claim to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application; and

(d) the local application is accepted;

the person is entitled to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application, subject to subsections (3) and (4).

(3) The entitlement of the person to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application is conditional on the person lodging with the Secretary, within 3 months of making the local application, a copy of the documents that constituted the foreign application, certified by the Authority that received the foreign application to be a true copy of the documents.

(4) The entitlement of the person to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application is conditional on the person providing to the Secretary, within a period of 3 years after the making of the

foreign application, such further particulars in relation to the plant variety as are required to complete the consideration of the local application.

### **30 Acceptance or rejection of applications**

(1) The Secretary must, as soon as practicable after an application for PBR is lodged in a plant variety, decide whether to accept or reject the application.

(2) If the Secretary is satisfied that:

(a) no other application has, or, if the application were to meet the requirements of paragraphs (b) and (c), would have, an earlier priority date in the variety; and

(b) the application complies with the requirements of section 26; and

(c) the application establishes a *prima facie* case for treating the plant variety as distinct from other varieties;

the Secretary must accept the application.

(3) If the Secretary is not satisfied of all of the matters referred to in subsection (2), the Secretary must reject the application.

(4) If the Secretary decides to accept the application, the Secretary must:

(a) give written notice to the applicant telling the applicant that the application has been accepted; and

(b) as soon as possible after notifying the applicant—give public notice of the acceptance of the application.

(5) If the Secretary decides to reject an application, the Secretary must:

(a) give written notice to the applicant telling the applicant of the rejection and setting out the reasons for the rejection; and

(b) as soon as possible after notifying the applicant—give public notice of the rejection of the application.

Note: A decision under this section to accept or reject an application is reviewable by the AAT under section 77.

### **31 Requests for variation of application**

(1) If:

(a) after an application for PBR in a plant variety has been accepted; but

(b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the right of the applicant to apply for PBR in a particular plant variety is assigned to, or has been transmitted by will or operation of law to, another person, that other person may request the Secretary, in writing, to vary the application so that that other person is shown as the applicant.

(2) If the Secretary is satisfied that the right to apply for PBR in a particular plant variety has been assigned to, or has been transmitted by will or operation of law to, to a particular person, the Secretary must vary the application so that that person is shown as the applicant.

(3) A request by a person under subsection (1) must give an address in Australia for the service of notices on the person for the purposes of this Act.

(4) If the Secretary complies with a request under subsection (1) and the address for the service of notices that is given in connection with that request is different from the address contained in the application as the address for service of documents on the applicant, the Secretary must vary the application so that the address so given is shown as the address for service of documents on the applicant.

(5) If:

(a) after an application for PBR in a plant variety has been accepted; but

(b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the applicant requests the Secretary, in writing, to vary the application in any other respect other than that referred to in subsection (1), the Secretary may, in his or her discretion, vary the application in accordance with the request.

(6) Despite the previous provisions of this section, the Secretary is not obliged or permitted to vary an application in response to a request under this section unless the person making the application for the variation has paid to the Commonwealth the application variation fee that is prescribed for the purposes of this section.

Note: A decision under this section to vary or to refuse to vary an application is reviewable by the AAT under section 77.

### **32 Notification of decisions on requests to vary application**

(1) If the Secretary varies an application in accordance with a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request telling the person that the application has been so varied.

(2) If the Secretary rejects a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request:

(a) telling the person that the request has been rejected; and

(b) setting out the reasons for the rejection.

(3) If the Secretary rejects a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice to the applicant:

(a) setting out particulars of the request; and

(b) telling the applicant that the request has been rejected; and

(c) setting out the reasons for the rejection.

(4) If the Secretary varies an application in accordance with a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice of particulars of the variation to the person who was the applicant before the variation was made.

(5) If an application:

(a) is varied because of a request under subsection 31(1); or

(b) is varied because of a request under subsection 31(5) in a significant respect;

the Secretary must, as soon as practicable, give public notice of particulars of the variation.

### **33 Withdrawal of application**

(1) An application may be withdrawn by the applicant at any time.

(2) If an application is withdrawn after public notice of acceptance of the application is given, the Secretary must, as soon as practicable, give public notice of the withdrawal.

Division 2—Dealing with the application after its acceptance

### **34 Detailed description in support of application to be given to Secretary**

(1) As soon as practicable after, but not later than 12 months after, an application has been accepted, or within such further period as the Secretary allows for the purpose, the applicant must, if the applicant has not already done so, give the Secretary a detailed description of the plant variety to which the application relates.

Note: A decision under this subsection to refuse to extend the 12 months period is reviewable by the AAT under section 77.

(2) If the applicant fails to give the Secretary the detailed description required under this section within the required period, the application is taken to have been withdrawn.

(3) The detailed description must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged with the Secretary in a manner set out in the approved form.

(4) The detailed description must contain:

(a) particulars of the characteristics that distinguish the variety from other plant varieties the existence of which is a matter of common knowledge; and

(b) particulars of:

(i) any test growing carried out, including a test growing carried out as required under section 37, to establish that the variety is distinct, uniform and stable; and

(ii) any test growing carried out as required under section 41; and

(c) if the variety was bred outside Australia—particulars of any test growing outside Australia that tend to establish that the variety will, if grown in Australia, be distinct, uniform and stable; and

(d) such other particulars (if any) as are required by the approved form;

and must be accompanied by a certificate, in the approved form, verifying the particulars of the detailed description, completed by the approved person nominated in the application as the approved person in relation to that application.

(5) The Secretary must, as soon as practicable after receiving a detailed description of a plant variety to which an application for PBR relates, give public notice of that description.

(6) The applicant must:

(a) unless paragraph (b) applies—within 12 months after the application has been accepted; and

(b) if the detailed description has been given to the Secretary before the end of that period—at the time when the description was given;

pay to the Commonwealth such examination fee as is prescribed.

(7) Subsection (6) does not apply to an applicant if the plant variety to which the application relates is in quarantine under the *Quarantine Act 1908* when the examination fee becomes payable. Instead, the applicant must pay the prescribed examination fee within 12 months after the plant variety is released from quarantine.

### **35 Objection to application for PBR**

(1) Any person who considers, in relation to an application for PBR in a plant variety that has been accepted:

(a) that his or her commercial interests would be affected by the grant of that PBR to the applicant; and

(b) that the Secretary cannot be satisfied, in relation to that application, of a matter referred to in a paragraph of subsection 26(2) or in subparagraph 44(1)(b)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii);

may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.

(2) An objection must set out:

(a) particulars of the manner in which the person considers his or her commercial interests would be affected; and

(b) the reasons why the person considers that the Secretary cannot be satisfied of a matter referred to in paragraph (1)(b).

(2A) An objection is of no effect unless it is accompanied by the prescribed fee.

(3) The Registrar must give a copy of the objection to the applicant.

### **36 Inspection of applications and objections**

(1) A person may, at any reasonable time, inspect an application for PBR in a plant variety (including any detailed description of the plant variety given in support of the application) or an objection lodged in respect of that application (including that detailed description).

(2) A person is entitled, on payment of such fee as is prescribed, to be given a copy of an application for PBR in a plant variety, of an objection to such an application, or of a detailed description of the plant variety.

(3) However, this section does not entitle a person to inspect the part of the application that contains the information referred to in paragraph 26(2)(ga) or to have a copy of the part of the application containing that information, unless the person is:

(a) the applicant; or

(b) the applicant's authorised agent; or

(c) the Minister; or

(d) the Secretary; or

(e) a person who is required to inspect the part of the application in the course of performing his or her duties in accordance with this Act; or

(f) a person prescribed for the purposes of this subsection.

### **37 Test growing of plant varieties**

(1) If, in dealing with:

(a) an application for PBR that has been accepted; or

(b) an objection to such an application for PBR; or

(c) a request for revocation of PBR;

the Secretary decides that there should be a test growing or a further test growing of the variety to which the application, objection or request relates, the Secretary:

(d) must give written notice of that decision:

(i) to the person who made the application, objection or request; and

(ii) in the case of an objection to an application for PBR—also to the applicant; and

(iii) in the case of a request for revocation of PBR—also to the grantee; and

(e) may also give written notice of that decision to any other person whom the Secretary considers appropriate if the test growing or further test growing is a comparative test growing.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

(2) The notice, in addition to telling the person of the Secretary's decision:

(a) must specify the purpose of the test growing; and

(b) may require the person:

(i) to supply the Secretary with sufficient plants or sufficient propagating material of plants of the variety, and with any necessary information, to enable the Secretary to arrange a test growing; or

(ii) to make arrangements for an approved person to supervise the test growing, to supply the approved person with sufficient plants or propagating material to enable the test growing, to give the Secretary a copy of the records of observations made during the test growing and to certify the records of observations so provided;

whichever the Secretary considers appropriate.

(2A) A person to whom a notice is sent under this section must comply with the requirements of the notice:

(a) in the case of trees and vines, or propagating materials of trees and vines—within 2 years from the date of service of the notice; and

(b) in the case of other species of plant or propagating materials of other species of plant—within 12 months from that date.

(2B) If a person, without reasonable excuse, fails to comply with the requirements of a notice issued under this section, the Secretary may:

(a) if the person is the grantee—revoke PBR, in the plant variety to which the notice relates, under section 50; or

(b) if the person made an application, objection or request—decide not to further proceed with the application, objection or request for revocation.

Note: A decision not to further proceed with the application, objection or request for revocation is reviewable by the AAT under section 77.

(3) If a notice under this section contains the requirement referred to in subparagraph (2)(b)(i) and the applicant complies with the request, the Secretary must arrange to have the variety concerned test grown.

(4) After completion of a test growing arranged by the Secretary, any propagating material of the variety used in, or resulting from, the test growing, that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purposes of the test growing.

(5) All of the costs associated with a test growing must be paid:

(a) if it is conducted to deal with an application for PBR—by the applicant for PBR; or

(b) if it is conducted to deal with an objection to an application for PBR:

(i) by the applicant for PBR, where the test growing shows that there are valid reasons for the objection; or

(ii) by the objector, in any other case; or

(c) if it is conducted to deal with a request for revocation of PBR:

(i) by the grantee, where the test growing shows that there are valid reasons for the request; or

(ii) by the person making the request, in any other case.

(6) If a contracting party, or a national or an organisation of a contracting party, requests the Secretary to conduct in Australia a test growing of a plant variety, the Secretary may decide to conduct the test growing as so requested.

(7) If the Secretary decides to conduct a test growing under subsection (6), subsections (1), (2), (3), (4) and (5) apply to such test growing as if:

(a) the person or organisation requesting the test growing under subsection (6) was an applicant for PBR; and

(b) the test growing had been decided on in relation to that application.

### **38 Characteristics of plant varieties bred or test grown outside Australia**

(1) If:



(a) a plant variety (the **subject variety**):

(i) was bred outside Australia; or

(ii) was bred in Australia but, before an application for PBR was made in Australia, an application for PBR was made in a contracting party other than Australia; and

(b) an application under this Act for PBR in the variety has been accepted;

the variety is not to be taken to have a particular characteristic unless subsection (2), (3), (4) or (5) applies to the variety.

(2) This subsection applies to the subject variety if a test growing in Australia has demonstrated that the variety has the particular characteristic.

(3) This subsection applies to the subject variety if:

(a) a test growing of the variety has been carried out outside Australia; and

(b) that test growing has demonstrated that the variety has the particular characteristic; and

(c) under an agreement between Australia and the country in which the test growing was carried out, Australia is required to accept that the variety has that particular characteristic.

(4) This subsection applies to the subject variety if the Secretary is satisfied that:

(a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

(b) that test growing of the variety is equivalent to a test growing of the variety in Australia.

(5) This subsection applies to the subject variety if the Secretary is satisfied that:

(a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

(b) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and

(c) if a test growing of the variety in Australia sufficient to demonstrate whether the variety has that characteristic were to be carried out, it would take longer than 2 years.

Note: A decision to the effect that the Secretary is, or is not, satisfied of the matters referred to in subsection (4) or (5) is reviewable by the AAT under section 77.

Division 3—Provisional protection

### 39 Provisional protection

(1) When an application for PBR in a plant variety is accepted, the applicant is taken to be the grantee of that right for the purposes of Part 5 from the day the application is accepted until:

(a) the application is disposed of; or

(b) if the Secretary gives the applicant a notice under subsection (2)—the notice is disposed of;

whichever occurs first.

(2) If the Secretary is satisfied in relation to an application for PBR in a plant variety, that:

(a) PBR will not be granted or is unlikely to be granted to the applicant; or

(aa) a decision has been taken under paragraph 37(2B)(b) not to proceed with the application; or

(ab) the application has been withdrawn; or

(b) the applicant has given an undertaking to a person (whether or not for consideration) not to commence proceedings for infringement of the right of which the applicant is deemed to be the grantee; or

(c) at least 12 months have elapsed since the publication of the detailed description that was given to the Secretary under subsection 34(1);

the Secretary may notify the applicant, in writing, that this section will cease to apply to that variety on a day specified in the notice unless, before that time the applicant has made a submission to the Secretary providing reasons why this section should not cease to apply.

Note: A decision under this subsection to notify an applicant is reviewable by the AAT under section 77.

(3) For the purposes of paragraph (1)(b) a notice referred to in that paragraph is not taken to be disposed of until:

(a) the end of the period within which application may be made to the AAT for a review of the giving of the notice; or

(b) if such an application is made to the AAT—the application is withdrawn or finally determined, whether by the AAT or a court.

(4) As soon as practicable after a person ceases to be taken to be the grantee of PBR under this section, the Secretary must give public notice that the person has ceased to be so taken.

(5) Nothing in this section affects the powers of the Federal Court under subsection 44A(2) of the AAT Act where an appeal is begun in that Court from a decision of the AAT.

(6) A person who is taken to be the grantee of PBR in a plant variety is not entitled to begin an action or proceeding for an infringement of that right occurring during the period when the person is so taken unless and until that right is finally granted to the person under section 44.

#### **Division 4—Essential derivation**

#### **40 Applications for declarations of essential derivation**

(1) If:

(a) a person is the grantee of PBR in a particular plant variety—(the **initial variety**); and

(b) another person is the grantee of, or has applied for, PBR in another plant variety (the **second variety**); and

(c) the grantee of PBR in the initial variety is satisfied that the second variety is, within the meaning of section 4, an essentially derived variety of the initial variety; and

(d) the initial variety has not itself been declared to be an essentially derived variety of another variety in which PBR has been granted;

the grantee of PBR in the initial variety may make written application to the Secretary for a declaration that the second variety is so derived.

(2) Nothing in this section implies that a person who is the grantee of PBR in the initial variety may not, in relation to an application by another person for PBR in the second variety that has been accepted but not finally determined:

(a) make an objection, under section 35, to the granting of PBR in the second variety; and

(b) in the alternative, if PBR is granted to another person in the second variety—apply under subsection (1) for a declaration that the second variety is essentially derived from the initial variety.

(3) If the second variety:

- (a) is the subject of an application for PBR; and
- (b) is also the subject of an application for a declaration of essential derivation;

then, unless and until the Secretary decides to grant the application for PBR:

- (c) the Secretary must not make the declaration of essential derivation; but
- (d) the Secretary may, in his or her discretion:

(i) examine both the application for PBR and the application for a declaration of essential derivation at the same time; and

(ii) for the purpose only of examining the application for a declaration of essential derivation—treat the applicant for PBR as the grantee of PBR in the variety.

(4) An application for a declaration of essential derivation must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged with the Secretary in a manner set out in the approved form; and
- (d) be accompanied by the prescribed fee in respect of the application.

(5) An application must contain such information relevant to establishing a *prima facie* case that the second variety is an essentially derived variety of the initial variety as is required by the form.

(6) If the initial variety has itself been declared to be essentially derived from another variety, the Secretary must refuse to declare the second variety essentially derived from:

(a) the initial variety; and

(b) inform the applicant for the declaration in writing, to that effect, and give the applicant reasons for the decision.

(7) If the initial variety has not been so declared, the Secretary must determine, on the basis of the application, whether the Secretary is satisfied that there is a *prima facie* case that the second variety is an essentially derived variety of the initial variety.

(8) If the Secretary is satisfied of that *prima facie* case, the Secretary must:

(a) inform the applicant and the grantee of PBR in the second variety that the Secretary is so satisfied; and

(b) inform the grantee of PBR in the second variety that, unless the grantee establishes, within 30 days after being so informed or such longer period as the Secretary allows, that the second variety is not an essentially derived variety of the initial variety, the Secretary will, at the end of that period, declare the second variety to be such an essentially derived variety.

Note: A decision under this subsection to refuse to extend the period of 30 days is reviewable by the AAT under section 77.

(9) If the Secretary is not satisfied of that *prima facie* case, the Secretary must inform the applicant, in writing, to that effect, and give the applicant reasons for the decision.

(10) If, after considering:

(a) the information presented by the grantee of PBR in the second variety; and

(b) any information obtained from a test growing conducted in accordance with section 41; and

(c) any other relevant information obtained by the Secretary;

the Secretary is not satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:

(d) declare, in writing, that the second variety is an essentially derived variety of the initial variety; and

(e) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee of the declaration; and

(f) by notice in writing given to the grantee of PBR in the second variety, tell that grantee of the declaration and set out the reasons for not being satisfied that the *prima facie* case has been rebutted.

(11) If, after considering the information referred to in paragraph (10)(a), (b) or (c), the Secretary is satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:

(a) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee that he or she is so satisfied and set out the reasons for being so satisfied; and

(b) by notice in writing given to the grantee of PBR in the second variety, tell that grantee that he or she is so satisfied.

(12) While a declaration that the second variety is essentially derived from the initial variety remains in force, section 19 applies in relation to the second variety as if:

(a) the references in that section to the grantee, in relation to that variety were references both to the person holding PBR in that variety and to the person holding PBR in the initial variety; and

(b) the reference in subsection 19(4) to 2 years after the grant of PBR were a reference to 2 years after the grant of PBR in the second variety whether or not the declaration of essential derivation was made at the same time or a later time; and

(c) a failure by the other person holding PBR in the initial variety or the person holding PBR in the second variety to co-operate in making the second variety available to the public in accordance with the requirements of subsection 19(1) was a failure of the grantee to comply with the requirements of that subsection.

Note: A decision under this section to declare, or not to declare, a plant variety essentially derived is reviewable by the AAT under section 77.

#### **41 Test growing associated with applications for declarations of essential derivation**

(1) If:

(a) the grantee of PBR in a plant variety (the ***initial variety***) applies for a declaration that another variety (the ***second variety***) is an essentially derived variety of the initial variety; and

(b) in the course of that application the grantee of PBR in the initial variety establishes a *prima facie* case that the second variety is essentially derived; and

(c) on the basis of information supplied by the grantees of PBR in the initial variety and in the second variety, the Secretary comes to the view that a test growing or further test growing is necessary to determine whether the *prima facie* case has been rebutted;

the Secretary must give notice of that decision both to the grantee of PBR in the initial variety and in the second variety.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

(2) The notice must require:

(a) the grantee of PBR in the initial variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that variety and with any necessary information; and

(b) the grantee of PBR in the second variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that second variety and with any necessary information;

to enable the Secretary to arrange a test growing.

(3) After completion of the test growing, any propagating material of a variety used in, or resulting from, the test growing that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purpose of the test growing.

(4) All costs associated with the test growing must be paid by the person who, without the test growing, failed to rebut the *prima facie* case of essential derivation, whether or not the test growing led to rebuttal of that case.

(5) If the Secretary requires a test growing or further test growing, subsection 40(8) has effect as if the reference in that subsection to 30 days after being so informed were a reference to 30 days after being informed of the results of the test growing.

#### Part 4—The grant and revocation of Plant Breeder's Right

##### Division 1—Grant of Plant Breeder's Right

### **42 PBR not to be granted in excluded varieties**

(1) PBR must not be granted in any variety of plant in a taxon that the regulations declare to be a taxon to which this Act does not apply.

(2) The Governor-General must not make a regulation for the purposes of subsection (1) unless the Governor-General has been informed by the Minister that the Minister has considered advice given by the Advisory Committee in relation to the desirability of making the regulation.

(3) If:

(a) a plant variety is a hybrid; and

(b) each of the plant varieties from which it is derived is a plant variety included in a taxon to which this Act does not apply;

PBR must not be granted in the hybrid.

### **43 Registrable plant varieties**

(1) For the purposes of this Act, a plant variety in which an application for PBR is made is registrable if:

(a) the variety has a breeder; and

(b) the variety is distinct; and

(c) the variety is uniform; and

(d) the variety is stable; and

(e) the variety has not been exploited or has been only recently exploited.

(2) For the purposes of this section, a plant variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge.

(3) For the purposes of this section, a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is uniform in its relevant characteristics on propagation.

(4) For the purposes of this section, a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation.

(5) For the purposes of this section, a plant variety is taken not to have been exploited if, at the date of lodging the application for PBR in the variety, plant material of the variety has not been sold to another person by, or with the consent of, the breeder.

(6) For the purposes of this section, a plant variety is taken to have been only recently exploited if, at the date of lodging the application for PBR in the variety, plant material of the variety has not been sold to another person by, or with the consent of, the breeder, either:

- (a) in Australia—more than one year before that date; or
- (b) in the territory of another contracting party:
  - (i) in the case of trees or vines—more than 6 years before that date; or
  - (ii) in any other case—more than 4 years before that date.

Note: For the definition of **sell** see subsection 3(1).

(7) Subsection (6) does not apply to a sale by the breeder of a plant variety of plant material of the variety to another person if that sale is a part of, or related to, another transaction under which the right of the breeder to make application for PBR in that plant variety is sold to that other person.

(7A) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if:

- (a) the sole purpose of the sale is for the person to multiply plant material of that plant variety on behalf of the breeder; and
- (b) under the agreement for the sale, immediately after the plant material is multiplied, property in the new plant material vests in the breeder.

(7B) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if the sale is part of an agreement under which the person agrees to use plant material of that variety for the sole purpose of evaluating the variety in one or more of the following tests or trials:

- (a) field tests;
- (b) laboratory trials;
- (c) small-scale processing trials;
- (d) tests or trials prescribed for the purposes of this subsection.

(7C) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if:

- (a) the sale only involves plant material that is a by-product or surplus product of one or more of the following:
  - (i) the creation of the variety;
  - (ii) a multiplication of the variety;
  - (iii) tests or trials covered by subsection (7B); and
- (b) the plant material is sold:
  - (i) without identification of the plant variety of the plant material; and
  - (ii) for the sole purpose of final consumption.

(8) In addition to any other reason for treating a plant variety as a variety of common knowledge, a variety is to be treated as a variety of common knowledge if:

- (a) an application for PBR in the variety has been lodged in a contracting party; and
- (b) the application is proceeding, or has led, to the grant of PBR.

(9) A plant variety that is to be treated as a variety of common knowledge under subsection (8) because of an application for PBR in the variety is to be so treated from the time of the application.

- (10) In this section:

**authority** has the same meaning as in the Convention.

**plant material**, in relation to a plant variety, means one or more of the following:

- (a) propagating material of the plant variety;
- (b) harvested material of the plant variety;
- (c) products obtained from harvested material of the plant variety.

**territory** has the same meaning as in the Convention.

**variety** has the same meaning as in the Convention.

#### **44 Grant of PBR**

(1) If:

- (a) an application for PBR in a plant variety is accepted; and
- (b) after examining the application (including the subsequent detailed description) and any objection to the application, the Secretary is, or continues to be, satisfied that:
  - (i) there is such a variety; and
  - (ii) the variety is a registrable plant variety within the meaning of section 43; and
  - (iii) the applicant is entitled to make the application; and
  - (iv) the grant of that right is not prohibited by this Act; and
  - (v) that right has not been granted to another person; and
  - (vi) the name of the variety complies with section 27; and
  - (vii) propagating material of that variety has been deposited for storage, at the expense of the applicant, in a genetic resource centre approved by the Secretary; and
  - (viii) if the Secretary so requires, a satisfactory specimen plant of the variety has been supplied to the herbarium; and
  - (ix) all fees payable under this Act in respect of the application, examination and grant have been paid;

the Secretary must grant that right to the applicant.

(2) If:

- (a) an application for PBR in a plant variety is accepted; and
- (b) the plant variety is a variety of a species indigenous to Australia;

the Secretary must require supply of a satisfactory specimen plant of the variety to the herbarium.

(3) If:

- (a) an application for PBR in a plant variety is accepted; and
- (b) the Secretary is not satisfied of all of the matters referred to in paragraph (1)(b);

the Secretary must refuse to grant that right to the applicant.

(4) The Secretary must not grant or refuse to grant PBR in a plant variety until at least 6 months after the giving of public notice of the detailed description of the variety.

(5) If:

- (a) an application for PBR in a plant variety has been varied under section 31; and
- (b) the variation relates to the detailed description of the variety that has been given to the Secretary; and
- (c) the Secretary has given public notice of the variation;

the Secretary must not grant, or refuse to grant, PBR in the variety until 6 months after giving public notice of the variation or of the last such variation.

(6) If an objection to an application for PBR is made under section 35, the Secretary must give the applicant 30 days, starting when a copy of the objection is given to the applicant, or such longer period as the Secretary considers to be reasonable in the circumstances, to provide an answer to the objection.

(7) A quantity of propagating material of a plant variety that is lodged with a genetic resource centre must be sufficient to enable that variety to be kept in existence if there were no other propagating material of plants of that variety.

(8) The delivery and storage of propagating material of a plant variety does not affect the ownership of the material but the material must not be dealt with otherwise than for the purposes of this Act.

(9) The propagating material of a plant stored at a genetic resource centre may be used by the Secretary for the purposes of this Act, including the purposes of section 19.

(10) PBR is granted to a person by the issue to that person by the Secretary of a certificate in an approved form, signed by the Secretary or the Registrar, containing such particulars of the plant variety concerned as the Secretary considers appropriate.

(11) If the PBR is granted to persons who make a joint application for the right, the right is to be granted to those persons jointly.

(12) If the Secretary refuses to grant PBR in a plant variety, the Secretary must, within 30 days of so refusing, give written notice to the applicant:

- (a) telling the applicant of the refusal; and
- (b) setting out the reasons for the refusal.

Note: A decision under this section to grant, or refuse to grant, PBR in a plant variety is reviewable by the AAT under section 77.

#### **45 Grant of PBR to be exclusive**

(1) Subject to subsections (2) and (3), only one grant of PBR may be made under this Act in relation to a plant variety.

(2) If 2 breeders lodge a joint application for PBR, the Registrar may grant PBR to them jointly.

(3) If:

- (a) a person is the grantee of PBR in a plant variety (the *initial variety*); and
- (b) another person is the grantee of PBR in another plant variety; and

(c) the Secretary declares the other variety to be an essentially derived variety of the initial variety;

subsection (1) does not prevent PBR in the initial variety extending to the other variety.

#### **46 Grant of PBR to be entered on Register**

(1) When the Secretary grants PBR in a plant variety, the Registrar must enter in the Register:

- (a) a description, or description and photograph, of a plant of that variety; and
- (b) the name of the variety and any proposed synonym; and
- (c) the name of the grantee; and
- (d) the name and address of the breeder; and

(e) the address for the service of documents on the grantee for the purposes of this Act as shown on the application for the right; and



(f) the day on which the right is granted; and

(g) such other particulars relating to the granting as the Registrar considers appropriate.

(2) When the Secretary makes a declaration that a variety (the **derived variety**) is essentially derived from another variety (the **initial variety**), the Registrar must enter in the Register both in respect of the derived variety and the initial variety:

(a) the fact that the declaration has been made; and

(b) the day on which the declaration was made.

#### **47 Notice of grant of PBR**

(1) The Secretary must, as soon as possible after granting PBR to a person, give public notice of the grant in the *Plant Varieties Journal*.

(2) The Secretary must, as soon as possible after the making of a declaration that a plant variety is an essentially derived variety of another plant variety, give public notice of the making of the declaration in the *Plant Varieties Journal*.

#### **48 Effect of grant of PBR**

(1) If a person is granted PBR in a plant variety:

(a) any other person who was entitled to make, but had not made, application for the right in the variety:

(i) ceases to be entitled to make such application; and

(ii) is not entitled to any interest in the right; and

(b) any other person who had made application for the right in the variety:

(i) ceases to be entitled to have his or her application considered or further considered; and

(ii) is not entitled to any interest in the right.

(2) Subsection (1) does not prevent a person:

(a) from applying for a revocation of the rights under section 50; or

(b) from instituting proceedings before a court or the AAT in relation to the right; or

(c) from requesting the Secretary to make a declaration under section 40 that the plant variety in which the right was granted is essentially derived from another plant variety in which the person holds PBR.

(3) If:

(a) PBR in a particular plant variety is granted to a person; and

(b) another person (the **eligible person**) was entitled, at law or equity, to an assignment of the right to make an application for the PBR;

the eligible person is entitled to an assignment of the PBR.

#### **49 PBR may be subject to conditions**

(1) The Minister may, if the Minister thinks it necessary, in the public interest, refer to the Plant Breeder's Rights Advisory Committee the question whether a grant of PBR, whether proposed or made, should be subject to conditions.

(2) The Minister may, having regard to the views of the Plant Breeder's Rights Advisory Committee on a matter referred under subsection (1), impose such conditions on PBR that is to be granted or that has been granted as the Minister considers appropriate.

(3) If the Minister imposes conditions on PBR:

- (a) the Secretary must give public notice of those conditions and give the grantee a copy of the instrument setting them out; and
- (b) the Registrar must enter details of those conditions in the Register.

Note: A decision under this section by the Minister to make a grant subject to conditions is reviewable by the AAT under section 77.

Division 2—Revocation of Plant Breeder’s Right or declaration of essential derivation

## 50 Revocation of PBR

(1) The Secretary must revoke PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety if:

- (a) the Secretary becomes satisfied that facts existed that, if known before the grant of that right or the making of that declaration, would have resulted in the refusal to grant that right or make that declaration; or
- (b) the grantee has failed to pay a fee payable in respect of that right or of that declaration within 30 days after having been given notice that the fee has become payable.

(2) The Secretary may revoke PBR in a plant variety if:

- (a) the Secretary is satisfied that a person to whom that right has been assigned or transmitted has failed to comply with section 21; or
  - (aa) the Secretary is satisfied that the grantee, without reasonable excuse, has failed to comply with the requirements of a notice under section 37; or
  - (b) the Secretary is satisfied that the grantee has failed to comply with a condition imposed under section 49.

(3) If the Secretary revokes PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety, the Secretary must, within 7 days after the decision to revoke was taken, by notice given to the grantee of the right that has been revoked or of the right that is affected by the giving of the declaration of essential derivation, tell that grantee of the decision and set out the reasons for the revocation.

(4) The Secretary must not revoke PBR under this section unless:

- (a) the Secretary has given the grantee, or any person to whom the Secretary believes that right has been assigned or transmitted, particulars of the grounds of the proposed revocation; and
- (b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

(5) The Secretary must not under this section, revoke a declaration that a plant variety is essentially derived from another plant variety (the **initial variety**) unless:

- (a) the Secretary has given the grantee of PBR in the initial variety, or any person to whom the Secretary believes that that PBR has been assigned or transmitted, particulars of the grounds of the proposed revocation of that declaration of essential derivation; and
- (b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

(6) The revocation of PBR in a plant variety or of a declaration that a plant variety is essentially derived from another plant variety takes effect:

- (a) if no application for review of the revocation is made to the AAT—at the end of the period within which such an application might be made; or
- (b) if such an application is made—at the time when the application is withdrawn, or finally determined, whether by the Tribunal or by a court.

(7) Nothing in this section affects the power of the Court under subsection 44A(2) of the AAT Act.

(8) A person whose interests are affected by the grant of PBR in a plant variety may apply to the Secretary, in writing, for the revocation of the right.

(9) A person whose interests are affected by the making of a declaration that a plant variety is essentially derived from another plant variety may apply to the Secretary, in writing, for a revocation of that declaration.

(9A) An application under subsection (8) or (9) is of no effect unless it is accompanied by the prescribed fee.

(10) If the Secretary decides not to revoke PBR in a plant variety in accordance with an application under subsection (8) or not to revoke a declaration of essential derivation in accordance with subsection (9), the Secretary must, within 7 days of making that decision, by notice in writing to the person who applied for the revocation, tell the person of the decision and set out the reasons for the decision.

Note: A decision under this section to revoke, or refuse to revoke, PBR or a declaration of essential derivation is reviewable by the AAT under section 77.

### **51 Entry of particulars of revocation**

(1) If:

(a) PBR in a plant variety is revoked in accordance with section 50; or

(b) the Secretary is served with a copy of an order of a court given under subsection 54(3) revoking that right;

the Secretary must:

(c) enter particulars of the revocation in the Register; and

(d) give public notice of the revocation.

(2) If the holder of PBR in a plant variety fails to pay the prescribed annual fee for the renewal of the right by the last day for payment of that fee, the holder is taken to have surrendered the right.

(3) The Secretary must:

(a) enter particulars of the surrender in the Register; and

(b) give public notice of the surrender.

### **52 Surrender of PBR**

The holder of PBR in a plant variety may, at any time, by written notice to the Secretary, offer to surrender that right.

#### Part 5—Enforcement of Plant Breeder's Right

### **53 Infringement of PBR**

(1) Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is infringed by:

(a) a person doing, without, or otherwise than in accordance with, authorisation from the grantee of the right, an act referred to in a paragraph of section 11 in respect of the variety or of a dependent variety; or

(b) a person claiming, without, or otherwise than in accordance with, authorisation from the grantee of that right, the right to do an act referred to in a paragraph of section 11 in respect of that variety or of a dependent variety; or

(c) a person using a name of the variety that is entered in the Register in relation to:

(i) any other plant variety of the same plant class; or

(ii) a plant of any other variety of the same plant class.

(1A) To avoid doubt, an infringement of PBR in a plant variety under paragraph (1)(c) can include using a synonym in relation to the name of a plant variety, if that synonym is entered in the Register under paragraph 46(1)(b).

(2) If a plant variety (the **derived variety**) has been declared to be an essentially derived variety of another plant variety (the **initial variety**), the reference in paragraphs (1)(a) and (b) to authorisation from the grantee of the right means, in relation to the derived variety, authorisation from both the grantee of PBR in the derived variety and from the grantee of PBR in the initial variety.

(3) In this section, a reference to the grantee of PBR in a plant variety includes a reference to a person who has, by assignment or transmission, become the holder of that right.

#### **54 Actions for infringement**

(1) An action for infringement of PBR in a plant variety may be begun in the Court only by the grantee.

(2) A defendant in an action for infringement of PBR in a plant variety may apply, by way of counterclaim, for revocation of that right on the ground that:

(a) the variety was not a new plant variety; or

(b) facts exist that would have resulted in the refusal of the grant of that right if they had been known to the Secretary before the grant of that right.

(3) If, in an action for infringement of PBR in a plant variety:

(a) the defendant applies, by way of counterclaim, for the revocation of that right; and

(b) the Court is satisfied that a ground for revocation of that right exists;

the Court may make an order revoking that right.

(4) If the Court revoked PBR in a plant variety on the counterclaim of a defendant, the Court may order the defendant to serve on the Registrar a copy of the order revoking that right.

#### **55 Declarations as to non-infringement**

(1) A person who proposes to perform an act described in a paragraph of section 11 in relation to the propagating material of a plant variety may, by an action in the Court against the grantee of PBR in a plant variety, apply for a declaration that the performance of that act would not constitute an infringement of that right.

(2) A person may apply for a declaration whether or not there has been an assertion of an infringement of PBR by the grantee of that right.

(3) The Court must not make such a declaration unless:

(a) the person proposing to perform the act:

(i) has applied in writing to the grantee of the PBR concerned for an admission that the proposed performance of the act would not infringe that right; and

(ii) has given the grantee full written particulars of the propagating material concerned; and

(iii) has undertaken to repay all expenses reasonably incurred by the grantee in obtaining advice in the declaration; and

(b) the grantee has refused or failed to make such an admission.

(4) The costs of all parties in proceedings for a declaration under this section are to be paid by the person seeking the declaration unless the Court otherwise orders.

(5) The validity of a grant of PBR in a plant variety is not to be called in question in proceedings for a declaration under this section.

(6) The making of, or the refusal to make, a declaration under this section does not imply that a grant of PBR in a plant variety is, or is not, valid.

## **56 Jurisdiction of Court**

(1) The Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Court.

(2) That jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

(3) The relief that the Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(4) The regulations may make provision in relation to the practice and procedure of the Court in actions under this Act, including provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time.

(5) Subsection (4) does not limit the power of the Judges of the Court or a majority of them to make rules of Court under section 59 of the *Federal Court of Australia Act 1976* that are consistent with the regulations referred to in that subsection.

## **57 Innocent infringement**

(1) The Court may refuse to award damages, or to make an order for an account of profits, against a person in an action for infringement of PBR in a plant variety, if the person satisfies the Court that, at the time of the infringement, the person was not aware of, and had no reasonable grounds for suspecting, the existence of that right.

(2) If the propagating material of plants of the plant variety, labelled so as to indicate that PBR is held in the variety in Australia, has been sold to a substantial extent before the date of the infringement, the person against whom the action for infringement is brought is taken to have been aware of the existence of PBR in the variety, unless the contrary is established.

## **Part 6—Administration**

### **58 Registrar of Plant Breeder's Rights**

(1) There is established by this section a Registrar of Plant Breeder's Rights.

(2) The office of the Registrar of Plant Breeder's Rights is an office in the Department.

(3) The Registrar has the functions and powers:

(a) that are conferred on the Registrar by this Act or by the regulations; or

(b) that are delegated to the Registrar by the Secretary under section 59.

### **59 Delegation**

#### Delegation of Minister's statutory powers and functions

(1) The Minister may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Minister under this Act or the regulations.

#### Delegation of Secretary's statutory powers and functions

(2) The Secretary may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Secretary under this Act or the regulations.

#### Delegation of Registrar's statutory powers and functions

(3) The Registrar may, by signed instrument, delegate to a prescribed employee, or employees in a prescribed class, any of the powers or functions of the Registrar under this Act or the regulations.

### Subdelegation of delegated powers and functions

(4) A person to whom a power or function under this Act or the regulations has been delegated by the Minister or the Secretary under subsection (1) or (2) may, by signed instrument, delegate the power or function to a prescribed employee, or employees in a prescribed class.

(5) A power or function that is exercised or performed by an employee under a delegation under subsection (4) is taken, for the purposes of this Act and the regulations, to have been exercised or performed by the person who originally delegated the corresponding power or function under subsection (1) or (2).

### Requirement to act under direction or supervision

(6) If required by an instrument under subsection (3) or (4) delegating a power or function to an employee, the employee must exercise the power or perform the function under the direction or supervision of:

- (a) the person who delegated the power or function to the employee; or
- (b) another employee specified in the instrument.

This subsection applies whether the instrument identifies the employee specifically or by reference to a class.

### Definition

(7) In subsections (3), (4), (5) and (6):

**employee** means a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

## 60 Certain persons not to acquire PBR

(1) A person must not apply for, or otherwise acquire, except than by will or by operation of law, PBR in a plant variety or an interest in such right if the person has during the 12 months before the application, held, or performed the duties of:

- (a) the office of Secretary; or
- (b) the office of Registrar of Plant Breeder's Rights; or
- (c) an office in the Department the duties of which involve providing assistance to the Registrar.

Penalty: 60 penalty units.

(2) A grant of PBR applied for in contravention of subsection (1) or an acquisition of PBR in contravention of that subsection is void.

## 61 Register of Plant Varieties

(1) The Registrar must keep a register, to be known as the Register of Plant Varieties, at a place approved by the Secretary.

(1A) The Registrar must maintain, for the purposes of this Act, a list of all plant classes to be known as the Registrar's List of Plant Classes.

(1B) In maintaining that list the Registrar must, for so long as the Union maintains the document presently known as the List of Classes for Variety Denomination Purposes, have regard to that list and to any variations to that list as so maintained.

(1C) The list maintained by the Registrar must be kept as a part of the Register.

(2) In order to foster public access to the information contained in the Register, the Registrar may disseminate that information on the internet or in such other manner as the Registrar considers most likely to enhance its accessibility.

## 62 Inspection of Register

- (1) A person may inspect the Register at any reasonable time.
- (2) A person is entitled, on payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.
- (3) For the purposes of subsection (2), a reference to an entry in the Register does not include a reference to the Registrar's List of Plant Classes or to any part of that list.

## **Part 7—Plant Breeder's Rights Advisory Committee**

### **63 Establishment of Advisory Committee**

- (1) There is established by this section a Committee by the name of the Plant Breeder's Rights Advisory Committee.
- (2) The functions of the Advisory Committee are:
  - (a) at the request of the Minister, to advise the Minister on the desirability of declaring:
    - (i) in regulations made for the purpose of subsection 17(2)—that subsection 17(1) does not apply to a particular taxon; or
    - (ii) in regulations made for the purpose of subsection 22(3)—that the duration of PBR in a particular taxon will be longer than provided in subsection 22(2); or
    - (iii) in regulations made for the purpose of subsection 42(1)—that a particular taxon is a taxon to which this Act does not apply; and
  - (aa) at the request of the Minister, to advise the Minister on the question of whether an existing, or proposed, grant of PBR should be subject to conditions; and
  - (b) to advise the Registrar on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Registrar refers to the Advisory Committee.

### **64 Membership of Advisory Committee**

- (1) The Advisory Committee consists of:
  - (a) the Registrar; and
  - (b) 2 members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties; and
  - (c) one member who, in the opinion of the Minister, is an appropriate person to represent users, and likely users, of new plant varieties; and
  - (d) one member who, in the opinion of the Minister, is an appropriate person to represent the interests of consumers, and likely consumers, of new plant varieties or of the products of new plant varieties; and
  - (e) one member who will represent the conservation interests in relation to new plant varieties and the potential impacts of new plant varieties; and
  - (f) one member who will represent indigenous Australian interests in relation to new plant varieties and the source, use and impacts of new plant varieties; and
  - (g) 2 other members who, in the opinion of the Minister, possess qualifications or experience that are appropriate for a member of the Advisory Committee.
- (2) The members, other than the Registrar, must be appointed by the Minister.
- (3) The members, other than the Registrar, hold office as part-time members.
- (4) Each member, other than the Registrar, holds office for the period, not exceeding 3 years, that is specified in the instrument of appointment, but is eligible for re-appointment.
- (5) The Minister may terminate the appointment of a member, other than the Registrar, for misbehaviour or for physical or mental incapacity.

(6) The Minister must terminate the appointment of a member, other than the Registrar, if the member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) fails, without reasonable excuse, to disclose any interest in a matter required to be disclosed under section 66.

(7) If a person's appointment as a member is terminated under subsection (6), the Minister must give the person a written notice informing the person of the termination and setting out the reasons for the termination.

(8) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.

## **65 Remuneration and allowances**

(1) The members referred to in paragraphs 64(1)(b), (c), (d), (e), (f) and (g) must be paid:

(a) such remuneration as is determined by the Remuneration Tribunal; and

(b) such allowances as are prescribed.

(2) Subsection (1) has effect subject to the *Remuneration Tribunal Act 1973*.

## **66 Disclosure of interests**

(1) A member who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting.

(2) A disclosure must:

(a) be recorded in the minutes of the meeting of the Advisory Committee; and

(b) be made known in any advice given by the Committee in relation to that matter.

## **67 Meetings**

(1) The Registrar may convene such meetings of the Advisory Committee as are necessary for the purposes of the performance of the functions of the Advisory Committee.

(2) At a meeting of the Advisory Committee, 5 members constitute a quorum.

(3) The Registrar presides at a meeting of the Advisory Committee at which the Registrar is present.

(4) If the Registrar is not present, the members present must elect one of their number to preside at the meeting.

(5) Subject to subsection (2), the Advisory Committee may determine the procedure to be followed at a meeting of the Committee.

## **Part 8—Miscellaneous**

### **68 Public notices**

(1) The Secretary must issue a journal, to be called the *Plant Varieties Journal*, at least 4 times each year.

(2) Any public notice that the Secretary is required to make under this Act must be published in the Journal.

(3) Public notice of any matter additional to the matters referred to in subsection (2) that the Secretary considers it necessary or desirable to publicise may also be published in the Journal.



(4) If the Secretary considers it desirable to give additional public notice of matters by publishing notices of those matters in a periodical other than the Journal, the Secretary may arrange for, or consent to, the giving of additional public notice of those matters in the periodical.

### **69 Notices inviting submissions in respect of certain regulations**

(1) Regulations must not be made for the purposes of subsection 17(2), 22(3) or 42(1) unless, before the making of the regulations and before the Minister seeks any advice from the Advisory Committee concerning those regulations:

(a) the Minister has, in accordance with section 68, given public notice of the Minister's intention to make a regulation for the purposes of that subsection in relation to a particular taxon that is specified in the notice; and

(b) the notice has given a broad indication of the objectives of the intended regulations and invited persons to make submissions to the Minister concerning it within a period of 30 days after the publication of the notice.

(2) If the Minister receives, in accordance with an invitation in a public notice under subsection (1), a submission concerning an intended regulation, the Minister must have regard to the submission so made.

(3) If the Minister seeks advice of the Advisory Committee concerning an intended regulation, the Minister may comply with subsection (2):

(a) by providing to the Committee, at the time of requesting the advice of that Committee, a copy of all submissions received; and

(b) requesting the Advisory Committee to have regard to those submissions in preparing its advice to the Minister.

### **70 Genetic resource centres**

(1) If, in the opinion of the Secretary, a place is suitable for the storage and maintenance of germplasm material, the Secretary may, by notice in writing, declare that place to be a genetic resource centre for the purposes of this Act.

(2) The person in charge of a genetic resource centre may do all things necessary to maintain the viability of propagating material stored at that centre.

### **71 The herbarium**

If, in the opinion of the Secretary, an organisation has facilities suitable for the storage of plant specimens, the Secretary may, by notice in writing, declare the organisation to be the herbarium for the purposes of this Act.

### **72 Agents may act in matters relating to PBR**

Subject to any other law of the Commonwealth, including the High Court Rules and the Federal Court Rules, an application, a written submission or any other document may be prepared or lodged, and any business may be transacted, for the purposes of this Act, by one person on behalf of another person.

### **73 Service of documents**

If the Secretary or the Registrar is required by this Act to give a written notice or other document to an applicant for, or a grantee of, PBR, that notice or other document may be given by being posted by pre-paid post as a letter addressed to the applicant or the grantee at the address for service shown on the application or entered in the Register, as the case requires.

### **74 Infringement offences**

(1) A person must not, in relation to propagating material of a plant variety in which PBR has been granted, do any of the acts referred to in a paragraph of section 11 if such an act would, under section 53, infringe the PBR in the variety.

Penalty: 500 penalty units.

(1A) In subsection (1), strict liability applies to the physical element of circumstance, that the infringement of the PBR would be under section 53.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) The fact that an action for infringement has been brought against a person under section 54 in respect of a particular act does not prevent a prosecution under this section in respect of the same act.

## **75 Offences other than infringement offences**

(1) A person must not make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act.

Penalty: 6 months imprisonment.

(2) A person who is not the grantee of PBR in a plant variety must not represent to another person that he or she is the grantee of PBR in that variety.

Penalty: 60 penalty units.

(3) A person must not represent to another person that PBR granted to that first-mentioned person in a plant variety extends to cover another plant variety that is not:

(a) a dependent variety of the first-mentioned variety; or

(b) a variety that has been declared to be an essentially derived variety of the first-mentioned variety.

Penalty: 60 penalty units.

(4) A person must not represent to another person that a plant of a variety in which PBR has not been granted is a plant of a variety in which PBR has been granted.

Penalty: 60 penalty units.

## **76 Conduct by directors, servants and agents**

(1) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate, within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a servant or agent of the person, within the scope of his or her actual or apparent authority; and

(b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted for the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against section 74 or 75 includes a reference to an offence:

(a) against section 6 of the *Crimes Act 1914*; or

(b) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(c) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to section 74 or 75 of this Act.

#### **76A Doing act when PBR office reopens after end of period otherwise provided for doing act**

(1) If the last day of a period provided by this Act (except this section) or the regulations for doing an act is a day when the PBR office or a PBR sub-office is not open for business, the act may be done in prescribed circumstances on the next day when the office or sub-office is open for business.

(2) For the purposes of this section, the PBR office or a PBR sub-office is taken not to be open for business on a day:

(a) declared by regulations to be a day on which the office or sub-office is not open for business; or

(b) declared, by a prescribed person in writing published in the prescribed way, to be a day on which the office or sub-office is not open for business.

#### Declarations

(3) A declaration mentioned in paragraph (2)(a) or (b) may identify the day by reference to its being declared a public holiday by or under a law of a State or Territory. This does not limit the way the declaration may identify the day.

(4) A declaration mentioned in paragraph (2)(b):

(a) may be made before, on or after the day; and

(b) is not a legislative instrument.

#### Relationship with other law

(5) This section has effect despite the rest of this Act.

(6) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply in relation to the act mentioned in subsection (1) of this section.

#### Exception for prescribed act

(7) This section does not apply to a prescribed act.

Note: Subsection 36(2) of the *Acts Interpretation Act 1901* is relevant to a prescribed act.

## 77 Applications for review

(1) Applications may be made to the AAT for review of:

- (a) a decision by the Minister under subsection 49(2); or
- (b) a decision by the Secretary:
  - (i) under subsection 19(7) to exercise a power under subsection 19(3); or
  - (ii) under subsection 19(3) to license, or refuse to license, a person who applied to be so licensed in response to an invitation under paragraph 19(8)(c); or
  - (iii) under subsection 19(10) to make propagating material available; or
  - (iv) under subsection 19(11) to certify, or to refuse to certify, a plant variety; or
  - (v) under section 30 to accept or reject an application; or
  - (vi) under section 31 to vary, or refuse to vary, an application; or
  - (vii) under subsection 34(1) refusing to extend the period for giving a detailed description; or
  - (viii) under section 37 to require a test growing; or
  - (viiia) under paragraph 37(2B)(b) not to proceed further with an application, objection or request for revocation; or
  - (ix) under subsection 38(4) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or
  - (x) under subsection 38(5) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or
  - (xi) under subsection 39(2) to issue a notice to an applicant; or
  - (xii) under paragraph 40(8)(b) refusing to extend the period for rebutting the *prima facie* case of essential derivation; or
  - (xiii) under section 40 in respect of an application for a declaration of essential derivation; or
  - (xiv) under section 41 to require a test growing; or
  - (xv) under section 44 to grant, or refuse to grant, PBR in a plant variety; or
  - (xvi) under section 50 to revoke, or not to revoke, PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety; or
- (c) a decision of the Registrar under section 21 to amend, or refuse to amend, the Register.

(2) The AAT does not have power under subsection 29(7) of the AAT Act to extend the time for making an application to that Tribunal for a review of a decision referred to in subsection (1).

(3) The Secretary must give public notice of:

- (a) any application made under subsection (1); and
- (b) any decision of the AAT on such an application; and
- (c) any decision of a court in relation to, or arising out of:
  - (i) such an application; or
  - (ii) a decision of the AAT on such an application.

(4) In this section:

**decision** has the same meaning as in the AAT Act.

## 78 Repeal

The *Plant Variety Rights Act 1987* is repealed.

## 79 Compensation for acquisition of property

(1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is to pay the person such reasonable amount of compensation as is agreed on between the person and the Commonwealth, or failing agreement, as is determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in proceedings that are begun otherwise than under this section must be taken into account in assessing compensation payable in proceedings begun under this section and arising out of the same event or circumstance.

(3) In this section:

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

## 80 Regulations

(1) The Governor-General may make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), that subsection includes the power to make regulations:

(a) prescribing fees including:

(i) fees payable in respect of the making of applications for PBR, the examination of those applications and the issue of certificates in respect of the grant of PBR; and

(ii) fees payable in respect of the making of applications for declarations of essential derivation, the examination of those applications and the making of those declarations; and

(iii) fees payable by grantees of PBR at specified intervals or on specified dates; and

(iv) fees payable in respect of costs incurred by the Secretary in respect of the conduct or supervision of the test growing of plants;

and, if the matter is not dealt with by another provision of this Act, specifying the time at which, or the circumstances in which, such fees are to be paid and the manner of payment of such fees; and

(b) making provision in relation to the refund, in specified circumstances, of the whole or part of a fee paid under this Act; and

(c) making provision in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or a part of a fee; and

(d) making provision in relation to the amendment of an entry in the Register to correct a clerical error or an obvious mistake; and

(e) making such transitional and saving provisions as are necessary or convenient as a result of the repeal of the *Plant Variety Rights Act 1987* and the enactment of this Act.

## **Part 9—Transitional**

### **81 Definitions**

In this Part:

**commencing day** means the day on which, in accordance with section 2, this Act commences.

**old Act** means the *Plant Variety Rights Act 1987*.

### **82 Plant variety rights under old Act to be treated as PBR under this Act**

(1) If:

(a) a person was granted plant variety rights in respect of a plant variety under the old Act; and

(b) those rights were still in force immediately before the commencing day;

then, subject to the regulations, those rights have effect, despite the repeal of the old Act, on and after that day, as if:

(c) this Act had been in force at the time when those rights were granted; and

(d) they had been granted at that time as PBR in that variety.

(2) Despite subsection (1), rights treated as if they had been granted as PBR under this Act continue in force for so long only as they would have continued in force if the old Act had not been repealed.

(3) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to claim PBR in respect of plant varieties that would, under this Act, be dependent plant varieties in relation to that particular plant variety.

(4) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to seek a declaration that another plant variety is an essentially derived variety of the particular plant variety unless PBR in that other plant variety was given only on or after the commencing day.

### **83 Applications for plant variety rights lodged and criminal proceedings begun before commencing day**

(1) If, before the commencing day:

(a) a person has made application for plant variety rights under the old Act; but

(b) the application has not been finally disposed of under that Act;

the provisions of the old Act are taken to continue in force, for the purpose of dealing with the application, and any objection that has been made before that day, or is made after that day, in relation to the application.

(2) If before the commencing day, criminal proceedings had been begun under the old Act but those proceedings had not been finally determined before that day, the provisions of the old Act are taken to continue in force, for the purposes of those proceedings.

### **84 Other applications and proceedings under old Act**

(1) Subject to the regulations, this Act applies, on and after the commencing day, to any application, request, action or proceeding made or started under the old Act and not finally dealt with or determined under that Act before that day as if the application, request, action or proceeding had been made or started under a corresponding provision of this Act.

(2) Subsection (1) does not apply in relation to an application for plant variety rights, or to criminal proceedings, covered by section 83.

### **85 Transitional arrangements for membership and functions of Advisory Committee**

(1) The persons who, under the old Act, were members of the Plant Variety Rights Advisory Committee established under section 44 of that Act are to be taken, with effect from

the commencing day, to be members of the Plant Breeder's Rights Advisory Committee established by section 63 of this Act.

(2) Those members who were appointed by the Minister under section 45 of the old Act continue to hold office as if they had been appointed by the Minister under section 64 of the new Act on the same terms and conditions for the balance of the term of their respective appointments.

(3) Any advice given to the Minister or to the Secretary by the Plant Variety Rights Advisory Committee has effect, on and after the commencing day, as if it had been given by the Plant Breeder's Rights Advisory Committee.

#### 86 Register of Plant Varieties

On and after the commencing day, the Register of Plant Varieties under the old Act is taken to form part of the Register of Plant Varieties under this Act.

Endnotes

## Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Plant Breeder's Rights Act 1994*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Plant Breeder's Rights Act 1994	110, 1994	5 Sept 1994	10 Nov 1994 (see <i>Gazette</i> 1994, No. S392)	
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 1999	4, 1999	31 Mar 1999	31 Mar 1999	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (item 733): 5 Dec 1999 (see s. 2(1) and (2) and <i>Gazette</i> 1999, No. S584)	—
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999	170, 1999	10 Dec 1999	Schedule 1: Royal Assent	Sch. 1 (item 7)
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	16 Oct 2001	s. 4
Plant Breeder's Rights Amendment Act 2002	148, 2002	19 Dec 2002	20 Dec 2002	Sch. 1 (items 39–45)
Intellectual Property Laws Amendment Act 2006	106, 2006	27 Sept 2006	Schedule 11 (items 1, 2), Schedule 14 and Schedule 15 (items 2, 3): 28 Sept 2006 Schedule 12 (items 5–7): 27 Mar 2007	Sch. 11 (item 2), Sch. 14 (item 3) and Sch. 15 (item 3)
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 2 (items 16, 17): 30 Jan 2012 (see F2011L02397)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 11 (item 15): 20 Feb 2010	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 1 (item 40): Royal Assent Schedule 5 (item 137(a)): (a)	—



Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (item 92): Royal Assent	—
Intellectual Property Laws Amendment (Raising the Bar) Act 2012	35, 2012	15 Apr 2012	Schedule 6 (items 104–108): 15 Apr 2013	—

(a) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

## Endnote 2—Amendment history

This endnote sets out the amendment history of the *Plant Breeder's Rights Act 1994*.

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted  
exp. = expired or ceased to have effect

Provision affected	How affected
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### Part 1

s. 3	am. No. 4, 1999; No. 148, 2002; No. 106, 2006; No. 35, 2012
s. 7	rep. No. 106, 2006
s. 9A	ad. No. 115, 2001

### Part 2

Note to s. 11	ad. No. 148, 2002
s. 18	rs. No. 148, 2002
Notes 1, 2 to s. 20	ad. No. 131, 2009
s. 21	am. No. 170, 1999
s. 23	am. No. 148, 2002

### Part 3

#### Division 1

Note to s. 25	ad. No. 131, 2009
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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
 exp. = expired or ceased to have effect

Provision affected	How affected
s. 26	am. No. 148, 2002
Note to s. 26(2)	ad. No. 148, 2002
s. 27	am. No. 4, 1999; No. 148, 2002
s. 28	am. No. 106, 2006
s. 29	am. No. 148, 2002
s. 30	am. No. 148, 2002
<b>Division 2</b>	
s. 34	am. No. 148, 2002
s. 35	am. No. 170, 1999
s. 36	am. No. 148, 2002
s. 37	am. No. 170, 1999; No. 148, 2002
<b>Division 3</b>	
s. 39	am. No. 148, 2002
<b>Part 4</b>	
<b>Division 1</b>	
s. 43	am. No. 170, 1999; No. 148, 2002; No. 35, 2012
Note to s. 43(6)	ad. No. 148, 2002
s. 48	am. No. 148, 2002
s. 49	am. No. 148, 2002
<b>Division 2</b>	
s. 50	am. No. 170, 1999; No. 148, 2002
s. 51	am. No. 5, 2011
<b>Part 5</b>	
s. 53	am. No. 4, 1999; No. 148, 2002
s. 54	am. No. 148, 2002
<b>Part 6</b>	
s. 59	am. No. 146, 1999 rs. No. 106, 2006
s. 61	am. Nos. 4 and 170, 1999; No. 8, 2010
s. 62	am. No. 4, 1999
<b>Part 7</b>	
s. 63	am. No. 148, 2002
s. 64	am. No. 148, 2002
s. 65	am. No. 148, 2002
s. 67	am. No. 148, 2002
<b>Part 8</b>	

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

Provision affected	How affected
s. 74	am. No. 115, 2001
s. 75	am. No. 115, 2001
s. 76	am. No. 4, 2010
s. 76A	ad. No. 106, 2006
s. 77	am. No. 148, 2002
s. 80	am. No. 170, 1999
Schedule	am. No. 148, 2002; No. 8, 2010 rep. No. 35, 2012

#### Endnote 3—Application, saving and transitional provisions

This endnote sets out application, saving and transitional provisions for amendments of the Plant Breeder's Rights Act 1994.

Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999 (No. 170, 1999)

#### **Schedule 1**

#### **7 Transitional provision**

(1) If:

(a) a person first sold a plant variety in the territory of a contracting party other than Australia after 9 November 1988 and before 10 November 1990; and

(b) the person lodged an application for PBR under the *Plant Breeder's Rights Act 1994* more than 4 years but less than 6 years after the date of that first sale; and

(c) the application was rejected only because of the operation of subsection 43(6) of that Act;

then, despite the terms of that subsection and subject to subitem (2), the Registrar may further consider that application as if the sales of that plant variety occurring after 9 November 1988 but more than 4 years before the application had not taken place.

(2) Subitem (1) does not apply in relation to an application referred to in that subitem unless the applicant in relation to that application, or any successor in title to that applicant, notifies the Registrar, in writing, to take action under this item in relation to that application within 6 months after the commencement of this item.

Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 (No. 115, 2001)

#### **4 Application of amendments**

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Plant Breeder's Rights Amendment Act 2002 (No. 148, 2002)

### **Schedule 1**

#### **39 Application of item 4**

The amendment made by item 4 applies in relation to an act done on or after the commencement of that item.

#### **40 Application of item 16**

The amendment made by item 16 applies in relation to:

- (a) an application made before the commencement of that item, if the applicant has not paid the examination fee in respect of the application; and
- (b) an application made on or after the commencement of that item.

#### **41 Application of items 18, 19 and 31**

The amendments made by items 18, 19 and 31 apply in relation to a decision that there should be a test growing or further test growing that is made on or after the commencement of those items.

#### **42 Application of item 20**

The amendment made by item 20 applies in relation to a test growing begun on or after the commencement of that item.

#### **43 Application of items 21 and 22**

The amendments made by items 21 and 22 apply in relation to:

- (a) an application made, but not disposed of, before the commencement of those items; and
- (b) an application made on or after the commencement of those items.

#### **44 Application of items 23, 25, 26 and 28**

The amendments made by items 23, 25, 26 and 28 apply in relation to a sale that occurs on or after the commencement of those items.

#### **45 Application of item 27**

The amendment made by item 27 applies in relation to an application made before, on or after the commencement of that item.

Intellectual Property Laws Amendment Act 2006 (No. 106, 2006)

### **Schedule 11**

#### **2 Application**

The amendment of the *Plant Breeder's Rights Act 1994* made by this Schedule applies in relation to applications lodged after the commencement of the amendment.

Schedule 14

#### **3 Transitional provision**

- (1) A form that, just before the commencement of this Schedule, was approved under section 7 of the *Plant Breeder's Rights Act 1994* has effect as if it had been approved, on that commencement, for the purposes of each provision of that Act to which the form is relevant, by the Secretary of the Department administering that Act.
- (2) This item does not prevent the Secretary from approving another form for the purposes of a provision of that Act.

**Schedule 15****3 Saving**

(1) A delegation in force under section 59 of the *Plant Breeder's Rights Act 1994* immediately before the commencement of this Schedule has effect on and after that commencement as if it had been made on that commencement.

(2) This item does not prevent the revocation or variation of the delegation after that commencement.

**Endnote 4—Uncommenced amendments**

This endnote sets out amendments of the *Plant Breeder's Rights Act 1994* that have not yet commenced.

There are no uncommenced amendments.

**Endnote 5—Misdescribed amendments**

This endnote sets out amendments of the *Plant Breeder's Rights Act 1994* that have been misdescribed.

There are no misdescribed amendments.

## FRANCE

### Law of November 28, 2011 on Certificates of New Plant Variety, published in the Official Gazette on December 8, 2011, amending the Code of Intellectual Property (2011)<sup>2</sup>

#### TEXTS TRANSCRIBING THE 1991 UPOV CONVENTION INTO NATIONAL LAW

In France, texts transcribing the 1991 UPOV Convention into national law have been collected in the Intellectual Property Code. Full transcription was achieved with the adoption of the Law on New Plant Variety Certificates of November 28, 2011, which was published in the Official Gazette of the French Republic (JORF) on December 8, 2011, amending the legislative part of this Code, *inter alia* to ensure the following:

- The principle of essentially derived variety was incorporated into French law, protecting new plant variety rightholders against the marketing of another variety which differs from the original variety by only a few non-essential characteristics in an agricultural and technical sense.
- The farmers' exception, also known as the "farm-saved seed" exception was incorporated into French law, permitting harvested crops of protected varieties to be reused, under certain conditions, as seeds in the holdings where they were produced. Previously, this practice was prohibited for varieties protected by a national plant variety certificate under French law.

These texts are applicable to the entire plant kingdom, as specified in article R. 623(55) of Intellectual Property Code.

The following enclosures are provided with the present Note:

- 1) The relevant legislative articles of the Intellectual Property Code.
- 2) The statutory articles of the Intellectual Property Code relating to its scope.

#### (1) RELEVANT LEGISLATIVE ARTICLES OF THE INTELLECTUAL PROPERTY CODE

##### Article L. 623(1)

Amended by art. 3 of [Law No. 2011-1843 of December 8, 2011](#)

For the purposes of this Chapter, a "variety" shall consist of a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be:

1. defined by an expression of characteristics resulting from a given genotype or combination of genotypes;
2. distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
3. considered as a unit with its suitability for being propagated unchanged.

##### Article L. 623(2)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

For the application of this present chapter, a "plant variety" is a newly created variety which:

1. is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application;
2. is uniform, i.e. sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its sexual reproduction or vegetative propagation;

<sup>2</sup> Translation provided by the Office of the Union. Original French version published in Gazette No. 105 of August 2012 ([http://www.upov.int/edocs/pubdocs/en/upov\\_pub\\_438\\_105.pdf](http://www.upov.int/edocs/pubdocs/en/upov_pub_438_105.pdf)).

3. remains stable, i.e. identical to its original definition after repeated reproduction or propagation or, in the case of a particular cycle of reproduction or propagation, at the end of each such cycle.

Article L. 623(3)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

Any new plant variety fulfilling the conditions of article L. 623(2) shall be defined by a denomination, with a corresponding description and a reference specimen preserved in a collection.

Article L. 623(4)

Amended by art. 5 of [Law No.2011-1843 of December 8, 2011](#)

- I. Any new plant variety may be the subject of a title known as “a new plant variety certificate” which shall confer on its owner an exclusive right to produce, reproduce, condition for the purpose of reproduction or propagation, offer for sale, sell or market in any other form, export, import or stock reproduction or propagation material of the protected variety for any of the purposes mentioned.
- II. When the products mentioned in paragraphs 1 and 2 below are obtained through the unauthorized use of reproduction material or propagation material of the protected variety, the exclusive right shall extend to the following, unless the breeder has had reasonable opportunity to exercise his right in relation to the products in question:
  4. the harvested material, including entire plants and parts of plants;
  5. products which are manufactured directly from harvested material of the protected variety.
- III. The exclusive right of the rightholder shall extend to:
  1. varieties which are not clearly distinguishable from the protected variety within the meaning of article [L. 623\(2\)](#);
  2. varieties whose production requires repeated use of the protected variety; and
  3. varieties which are essentially derived from the protected variety within the meaning of article L. 623(2), where this variety is not itself an essentially derived variety.
- IV. Constitutes a variety which is essentially derived from another variety known as the “initial variety”, a variety which:
  1. is predominantly derived from the initial variety or from a variety which itself is predominantly derived from the initial variety;
  2. is clearly distinguishable from the initial variety within the meaning of article L. 623(2); and
  3. except for differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.

NOTE:

Article 19(I)(III) of Law No. 2011-1843 of December 8, 2011 provides: “The amended or new provisions of this article, except for those relating to essentially derived varieties, shall be applicable to new plant variety certificates issued before December 11, 2011. These provisions shall also apply to new plant variety certificates issued for applications for certificates registered before this date. The present paragraph IV does not apply to essentially derived varieties where the breeder made diligent and effective preparations with a view to their exploitation or the breeder exploited them prior to this date.

Article L. 623(4)(1)

Set forth in art. 6 of [Law No. 2011-1843 of December 8, 2011](#)

- I. The right of the holder shall not extend to:
  1. Acts done privately and for non-professional or non-commercial purposes;
  2. Acts done for experimental purposes; and
  3. Acts done for the purpose of breeding a new variety or acts referred to in article [L. 623\(4\)\(I\)](#) relating to this new variety, unless paragraphs III and IV of that article are non-applicable.

- II. The right of the rightholder shall not extend to acts concerning his variety or an essentially derived version of his variety or a variety which is not clearly distinguishable when material of this variety or material derived from this variety has been sold or marketed in whatever form by the holder or with his consent.
- However, the right of the rightholder shall be maintained where these acts:
1. involve further reproduction or propagation of the variety in question;
  2. involve exportation of material of the variety which enables the propagation of the variety into a country which does not protect the intellectual property of varieties of the plant genus to which the variety belongs, except where the exported material is for final animal or human consumption.

Article L. 623(5)

Amended by art. 7 of [Law No.2011-1843 of December 8, 2011](#)

- I. The variety shall no longer be considered to be new if plant reproduction or propagating material or harvested material is been sold or otherwise disposed of to others by the breeder or with the breeder's consent for the purposes of exploitation of the variety for more than twelve months on French territory or within the territory of the European Economic Area.
- The variety shall no longer be considered to be new in case of sale to others or disposal by other means by the breeder or with the breeder's consent for the purposes of exploitation of the variety in another territory for more than four years prior to the filing date of the application for the new plant variety certificate or, in the case of vines, for more than six years prior to said date.
- II. The disposal of material of the variety to an official authority or officially recognized authority under the terms of a statutory obligation for the purposes of experimentation or displaying the variety at an officially recognized exhibition, subject to the express stipulation of the breeder in the latter two cases that the commercial exploitation of the variety whose material has been provided is prohibited, shall not be considered as disposal to others within the meaning of paragraph I above.

Article L. 623(6)

Amended by art 8 of [Law No.2011-1843 of December 8, 2011](#)

A new plant variety certificate may be requested by any national of a State Party to the International Convention for the Protection of New Varieties of Plants and any national from a Member State of the European Union or a person having his domicile, headquarters or establishment in one of these States.

A person filing an application for a new plant variety certificate in France may benefit from the right of priority for a first application previously filed by said person or by its author for the same variety in one of the said States provided the application filed in France does not postdate the first application by more than twelve months.

The novelty, within the meaning of Article [L. 623\(5\)](#), of the variety whose application is granted priority as defined in the second paragraph hereof, shall be determined from the date of filing of the priority application.

Apart from the cases set forth in the first paragraph, any foreigner may enjoy the protection afforded by this Chapter provided a French national may enjoy reciprocity of protection by the State of which he is a national or in which he has his domicile, headquarters or establishment.

Article L. 623(7)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate issued by the authority mentioned in [Article L. 412\(1\)](#) shall come into effect from the date of filing of the application. Any rejection of an application must be reasoned.

Article L. 623(8)

Amended by art 1 of [Law No. 2011-1843 of December 8, 2011](#)

The Minister of Defense may contact the authority mentioned in Article L. 412(1) and acquaint himself confidentially with applications for certificates.



## Article L. 623(9)

Set forth in [Law 92-597 July 1, 1992 – see annex to JORF of July 3, 1992](#)

The list of plant species for which applications for a plant variety certificate cannot be disclosed and freely exploited without a special authorization shall be prescribed by regulation.

Subject to Article L. 623(10), such authorization may be granted at any time. It is obtained as of right after a period of five months with effect from the date of filing of the application for a certificate.

## Article L. 623(10)

Set forth in [Law 92-597 July 1, 1992 – see annex to JORF of July 3, 1992](#)

Before expiry of the deadline indicated in the last paragraph of Article L. 623(9), the prohibitions set forth in the first paragraph of the said article may be extended for a period of one year renewable, upon request of the Minister of Defense. The prohibitions thus extended may be lifted at any time under the same condition. The extension of the prohibitions issued in this article shall entitle the holder of the application for a certificate to claim an indemnity according to the prejudice suffered. In the absence of agreement, this indemnity shall be fixed by the judicial authority.

## Article L. 623(11)

Set forth in [Law 92-597 of July 1, 1992 – see annex to JORF of 3 July 1992](#)

The holder of the certificate may request a review of the indemnity provided for by article L. 623(10) after the expiry of the one-year time limit following the date of the final judgment fixing the amount of the indemnity. The holder of the certificate shall bring evidence to show that the prejudice suffered is greater than the estimate of the court.

## Article L. 623(12)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art. 9 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate shall be issued only if the result of a prior examination shows that the variety for which protection is sought is a new plant variety in accordance with article [L. 623\(2\)](#).

However, the authority mentioned in Article [L. 412\(1\)](#) may consider that a prior examination conducted in another State which is party to the International Convention for the Protection of New Varieties of Plants is sufficient. The authority may take into account an examination carried out by the breeder or his beneficiary.

This committee may seek the assistance of foreign experts.

## Article L. 623(13)

Amended by art 1 of [Law No. 2006-236 of March 1, 2006 – see JORF of March 2, 2006](#)

The period of protection shall be twenty-five years with effect from the date of issue.

The period of protection for forest trees, fruit trees or ornamental trees, vines and also for perennial forage legumes and forage grasses, potatoes and inbred lines used to produce hybrid varieties, is thirty years.

## Article L. 623(14)

Amended by art. 10 of [Law No. 2011-1843 of December 8, 2011](#)

Applications for new plant variety certificates, acts including the issuance of such certificates and all acts transferring or amending the rights attached to an application for a certificate or to an issued certificate shall only be valid with respect to third parties if they have been published on a regular basis under the conditions set out by order of the *Conseil d'Etat*.

## Article L. 623(15)

Amended by art. 11 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate shall designate the new plant variety by a denomination enabling it to be identified without confusion or ambiguity in any State party to the International Convention for the Protection of Plant Varieties.

The breeder shall be required to conserve a permanent plant collection of the protected variety. A description of the new variety shall be included as an annex to the new plant variety certificate. The certificate shall be effective against third parties upon its publication. The denomination indicated on the certificate shall become compulsory upon its publication for all commercial transactions even after the term of the certificate has expired.

The denomination of the said new variety may not be used to deposit a title of a trademark or a trade name in a State Party to the International Convention for the Protection of Plant Varieties. However, such deposit may be carried out as a safeguard measure without impeding the issuance of a new plant variety certificate, provided the proof of waiver of the effects of this deposit in the States party to the UPOV Convention is furnished prior to the issuance of the said certificate.

The stipulations of the preceding paragraph shall not impede the adding of a trademark or trade name to the denomination of the variety for the new plant variety.

#### Article L. 623(16)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Prior examination, the issuance of a certificate and all acts of registration or cancellation shall entail the payment of fees for services rendered.

A fee shall be paid each year during the entire period of validity of the certificate.

The scale of fees shall be fixed by regulation.

The proceeds of these fees shall be included in the revenues of the public benefit corporation mentioned in article [L. 412\(1\)](#).

#### Article L. 623(17)

Set forth in [Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)

A variety which is essential to human or animal life may be subject to the automatic licensing regime by decree of the *Conseil d'Etat* or, when it is of interest to public health, by joint order of the Minister of Agriculture and the Minister of Public Health.

#### Article L. 623(18)

Set forth in [Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)

From the day of publication of the order subjecting new plant variety certificates to the automatic licensing regime, any person providing technical and professional guarantees may apply to the Minister of Agriculture for a license for their exploitation.

Such license may only be non-exclusive. It shall be granted by the Minister of Agriculture under special conditions with respect to its duration and scope, but excluding the fees arising therefrom.

It shall come into effect on the day of notification of the order to the parties.

In the absence of mutual agreement, the amount of these fees shall be fixed by the judicial authority, determined in accordance with [article L. 623\(31\)](#).

#### Article L. 623(19)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

If the holder of an automatic license does not meet the required conditions, the Minister of Agriculture may declare the license forfeit after seeking the opinion of the Authority mentioned in article [L. 412\(1\)](#).

#### Article L. 623(20)

Set forth in [Law 92-597 July 1, 1992 see annex to JORF of July 3, 1992](#)

For national defense purposes, the State may at any time automatically obtain a license for the exploitation of a new plant variety for which an application has been filed or a certificate has been issued, where such exploitation is carried out by the State itself or on its behalf.

The automatic license shall be granted upon request of the Minister of Defense by order of the Minister of Agriculture. Such order shall set out the licensing conditions, excluding the relevant fees. The license shall come into effect on the date of the application for the automatic license. In the absence of agreement, the amount of the fees shall be fixed by the judicial authority and shall be fixed in accordance with article L. 623(31).

Article L. 623(21).

Set forth in [Law 92-597 July 1, 1992 see annex to JORF of July 3, 1992](#)  
The rights attached to an automatic license may not be sold or transferred.

Article L. 623(22)

Set forth in [Law 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)  
For national defense purposes, the State may, at any time by decree, wholly or partially expropriate new plant varieties for which applications for certificates have been filed or certificates issued.  
In the absence of mutual agreement the expropriation indemnity shall be fixed by the *tribunal de grande instance*.

Article L. 623(22)(1)

Set forth in article 8 of [Law No. 2004-1338 of December 8, 2004 – see JORF of December 9, 2004](#)

When the holder of a patent on a biotechnological invention is unable to exploit said patent without violating upon an earlier plant breeder's right, he may request the granting of a license to exploit the protected variety as long as this invention represents significant technical progress with regard to the plant variety and is of considerable economic value. The applicant must justify that he was able only to obtain a license from the rightholder for the exploitation of the variety and that he is exploiting the variety diligently and effectively.

Article L. 623(22)(2)

Set forth in art. 8 of [Law No. 2004-1338 of December 8, 2004 – see JORF of December 9, 2004](#)

Applications for a license provided for in article L. 623(22)(1) shall be filed at the *tribunal de grande instance*.

Licenses shall be non-exclusive. The court shall determine their duration, scope and the amount of fees arising therefrom. These conditions may be amended by decision of the court at the request of the holder of the right or license.

The rights conferred by the license may only be transferred with the company or part of the company or goodwill to which they are attached.

If such a license is granted, the rightholder shall obtain a reciprocal license in fair conditions in order to use the protected invention, upon application to the court.

If the holder of a license does not meet the conditions under which the license was granted, the holder of the new plant variety certificate and, where applicable, the other licensees may obtain the withdrawal of this license by the court.

Article L. 623(22)(3)

Set forth in art. 12 of [Law No. 2011-1843 of December 8, 2011](#)

Any individual or corporate body may obtain a compulsory license according to the conditions set forth in the present article and article L. 623(22)(4).

An application for a compulsory license shall be filed with the *tribunal de grande instance* where the rights holder is located. It must be accompanied by documentation showing that:

1. the applicant was unable to obtain a license during a period of one year with effect from the date of his application to the holder of the certificate;
2. the applicant is exploiting the variety diligently and effectively;
3. the license is in the public interest, particularly with regard to acute shortages in the agricultural market concerned by this variety.

The application for a compulsory license may be filed pursuant to paragraphs 2-5 hereof by the holder of the certificate for an essentially derived variety of a protected variety who was not able to obtain the authorizations required for the exploitation of his own variety from the holder of the initial variety certificate.

Similarly, the holder of the certificate protecting the initial variety may obtain a license arising from the certificate protecting the essentially derived variety. The compulsory license shall be non-exclusive. The court shall determine its duration, scope and the amount of the relevant fees. These conditions may be amended by the court at the request of the rightholder or the licensee. If the holder of a compulsory license does not meet the conditions for holding the license, the holder of the plant variety certificate, and where applicable, the other licensees may obtain the withdrawal of this license by the court.

NOTE:

Art. 19(I) of Law No. 2011-1843 of December 8, 2011: New provisions of this Article shall be applied to plant variety certificates issued before December 11, 2011. These provisions shall also be applied to plant variety certificates issued for applications registered before this date.

#### Article L. 623(22)(4)

Set forth in art. 12 of [Law No. 2011-1843 of December 8, 2011](#)

The rights deriving from a compulsory license may not be sold or transferred, save with the company or the part of the company to which they are attached.

Such sale or transfer shall be subject to the authorization of the court, on pain of nullity.

NOTE:

Art. 19(I) of Law No. 2011-1843 of December 8, 2011: The new provisions of this article shall apply to breeder's certificates issued before 11 December 2011. These provisions shall also apply to certificates issued following an application recorded before that date.

#### Article L. 623(23)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art. 13 of [Law No. 2011-1843 of December 8, 2011](#)

The holder of a plant breeder's certificate shall lose his rights if:

1. He is unable at any time to show the authorities the plant propagating material enabling reproduction of the protected variety with the morphological and physiological characteristics identified in the breeder's certificate;
2. He refuses to undergo the inspections conducted with a view to ascertaining the steps he has taken for the conservation of the variety; and
3. He fails to pay the annual fee provided for in article [L. 623-16\(2\)](#) within the prescribe time limit.

The loss of rights shall be noted by the agency mentioned in article [L. 412\(1\)](#). Where rights are lost under the terms of paragraph 3 above, the rightholder may, within six months of the expiry of the prescribed time limit, lodge an appeal for his rights to be reinstated if he can advance a legitimate reason for the failure to pay the fee. Such appeal may not, however, violate the rights of third parties where applicable. The final decision noting the loss of rights shall be made public.

#### Article L. 623(23)(1)

Set forth in art. 14 of [Law No. 2011-1843 of December 8, 2011](#)

The plant breeder's certificate shall be declared null by a court decision if it is found:

1. that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled; or
2. that on the date on which it was issued, the variety did not satisfy the conditions set forth in article [L. 623\(2\)](#).

#### Article L. 623(24)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art 15 of [Law No. 2011-1843 of December 8, 2011](#)

The provisions of article L. 613(8) and L. 613(29) to L. 613(32) shall apply to applications for plant variety certificates and breeder's certificates.

The same shall hold true for article L. 613(9), L. 613(21) and 613(24), the agency mentioned in article [L. 412\(1\)](#) replacing the National Industrial Property Institute.

Article L. 611(7) shall also apply to plant breeder's certificates, since inventions are understood to be the varieties, patents to be the plant breeder's certificates and the arbitration commission as being that instituted by a specific decree in the particular area of plant varieties.

#### Article L. 623(24)(1)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

By exception to article [L. 623\(4\)](#), for the species listed in Council of Europe Regulation (EC) No. 2100/94 of July 27, 1994 on Community plant variety rights and for other species which may be listed by decree in the *Conseil d'Etat*, farmers may use on their own holding, without the authorization of the breeder for propagation purposes the product of the harvest which they have obtained by planting a protected variety.

NOTE:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

#### Article L. 623-24(2)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Save for small farmers within the meaning of the aforementioned Regulation (CE) No. 2100/94, the farmer shall pay the rightholder a fee for using his varieties.

NOTE:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

#### Article L. 623-24(3)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Where no contract exists between the rightholder and the farmer, or between several rightholders and a specific group of farmers, or no inter-professional agreement has been reached according to the stipulations of Part II, Title III of Book IV of the Rural and Maritime Fisheries Code, the application of the exemption set forth in article L. 623-24(1) herein, including the procedure for fixing the amount of the compensation referred to in article L. 623-24(2), whose amount is substantially lower than the amount received for the production under license of the propagation material of the same variety, shall be fixed by decree of the *Conseil d'Etat* as provided for in article L. 623-24(1).

NOTE:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

#### Article L. 623-24(4)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Where farmers contract service providers to sort their seeds, such sorting must be conducted in conditions which make it possible to guarantee the traceability of the products of protected varieties.

In the event of failure to respect these conditions, the seeds shall be considered to have been sold and shall be judged to be counterfeits within the meaning of article [L. 623\(25\)](#).

NOTE:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

#### Article L. 623-24(5)

Set forth in art 16 of [Law No. 2011-1843 of December 8, 2011](#)

Should the farmer fail to comply with the conditions for exemption set forth in article [L. 623\(24\)\(1\)](#), he shall lose the benefit of the provisions of the present section.

## NOTE:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before 11 December 2011.

## Article L. 623-25

Amended by art. 17 of [Law No. 2011-1843 of December 8, 2011](#)

Subject to the provisions of article L. 623(24)(1), any deliberate violation of the rights of the rightholder as defined in article L. 623(4) shall constitute counterfeiting which entails the civil liability of the counterfeiter. Within the meaning of this article, incorrect use or misuse of the denomination of the protected variety shall also constitute violation of a breeder's right.

The holder of an *ex officio* license referred to in article L. 623(17) and L. 623(20), the holder of a compulsory license referred to in article L. 623(22)(3) and, unless otherwise provided, the holder of an exclusive right of exploitation may take the action provided for in paragraph 1 hereof if, following a warning, the rightholder does not take such action.

The rightholder may join the proceedings instituted by the licensee in accordance with the preceding paragraph.

Any licensee may join the proceedings instituted by the rightholder in order to secure reparation for his own damages.

## NOTE:

Article 19(I) of Law No. 2011-1843 of December 8, 2011: These old or new provisions shall apply to plant breeder's certificates issued before December 11, 2011. These provisions shall also apply to certificates issued for applications recorded before that date.

## Article L. 623(26)

Set forth in [Law No. 92-597 of July 7, 1992 – see annex to JORF of July 3, 1992](#)

Acts predating the publication of the issuance of the certificate shall not be considered to have violated the rights conferred by the certificate. Nonetheless, acts following the notification to the presumed person responsible of a certified true copy of the application for a certificate may be investigated and prosecuted.

## Article L. 623(27)

Amended by art. 20 of [Law No. 2007-1544 of October 29, 2007 –see JORF of October 30, 2007](#)

Any person empowered to deal with counterfeiting may refer a matter to the civil court with jurisdiction, if necessary under fine, against the alleged counterfeiter or the intermediaries whose services he uses, to secure an order for any measure intended to prevent the imminent violation of the rights conferred by the right or to prevent the continuation of alleged acts of counterfeit. The civil court with jurisdiction may also order any urgent measures upon application where the circumstances require that these measures not be taken adversarially, in particular where any delay may be irreparably prejudicial to the applicant. Whether seize by application or by referral, the court may only order the measures being sought if evidence reasonably accessible to the applicant contains serious indicia that the applicant's rights are being violated or that such violation is imminent.

The court may prohibit the continuation of the alleged counterfeiting, subject it to the issuance of guarantees intended to ensure the compensation, as the case may be, of the applicant, or order the seizure or custody by third parties of the products suspected of violating the rights vested by virtue of the title, to prevent their introduction or circulation in commercial channels. If the applicant can support his allegation of circumstances likely to jeopardize the preventive seizure of movable and immovable property belonging to the alleged counterfeiter, including the freezing of his bank accounts and non-personal assets, may be ordered in accordance with ordinary law. To determine the property likely to be seized, the court may order the disclosure of banking, financial accounting or commercial documents or access to the relevant information. It may also grant the applicant an allowance where the existence of the damages he has suffered is not reasonably in doubt.

If seize by referral or application, the court may subject the execution of the measures it orders to the issuance by the applicant of guarantees intended to ensure the compensation, if necessary, of the defendant of the proceedings for counterfeiting if the action for counterfeit is subsequently found to be unsubstantiated or the measures are reversed.



Where measures taken to stop a violation of rights are ordered before the institution of substantive proceedings, the applicant must take action before a civil or criminal court within a time limit fixed by regulations. Barring that, upon application by the defendant, which need not advance any grounds, the measures ordered shall be reversed without prejudice to any damages which may be claimed.

Article L. 623(27)(1)

Set forth in art. 20 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)  
Counterfeiting may be established by any means.

Thus, any person empowered to proceed against counterfeiting may, in any location, direct any bailiffs, assisted by experts designated by the applicant, following an order rendered in response to an application before the civil court with jurisdiction, secure either the detailed description, with or without the taking of samples, or the actual seizure of the alleged counterfeits and any document related thereto.

For the same evidentiary purposes, the court may order, the actual seizure of materials and instruments used to produce or distribute the alleged counterfeits.

The court may make the measures it orders conditional upon provision by the applicant of guarantees intended to ensure the compensation, if necessary, of the defendant if the action for counterfeiting is subsequently found to be unsubstantiated or the seizure reversed.

Should the applicant fail to make substantive allegations either before a civil or a criminal court within the prescribed time limit, the entirety of the seizure, including the description thereof, shall be cancelled at the request of the party subject to the seizure, without such party being required to adduce reasons and without prejudice to any damages which may be claimed.

Article L. 623(27)(2)

Set forth in art. 20 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Upon request, the court seized of an application in civil proceedings provided for herein may order, if necessary under fine, for the purposes of determining the origin and distribution network of the counterfeit products which violate the rights of the application, the disclosure of all documents or information held by the defendant or by any other person found in possession of the counterfeit products or who provides services used in the counterfeiting or who has been reported as participating in the production Article L. 623(22)(4), manufacture or distribution of the products or the provisions of these services.

The disclosure of documents or information may be ordered if there is no legal impediment.

The documents or information sought shall concern:

- (a) the name and address of producers, manufacturers, distributors, supplies and non-personal prior holders of the products or services, as well as receiving wholesalers and retailers;
- (b) the quantities produced, marketed, delivered received or ordered, as well as the price of the products or services in question.

Article L. 623(28)

Amended by art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

To determine damages, the court shall take into consideration the adverse economic effects, including loss, suffered by the injured party, the profits made by the counterfeiter and the moral prejudice caused to the rightholder as a result of the infringement.

Nonetheless, as an alternative and upon request by the injured party, the court may award by way of damages a lump sum which may not be less than the amount of the fees or rights which would have been payable if the counterfeiter had sought the authorization to avail himself of the rights he has usurped.

Article L. 623(28)(1)

Set forth in art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

In case of a finding of guilt for counterfeiting, the court may order, at the request of the injured party, that the products found to be counterfeits and the materials and instruments which mainly served in their creation or manufacture be withdrawn from commercial channels,

permanently removed from such channels, destroyed or confiscated to the benefit of the injured party.

The court may also order any measures it considers appropriate for the publicity of the judgment, in particular its posting or publication *in extenso* in the newspapers or the online public communication services it selects, according to the arrangements it orders.

The measures stipulated above shall be at the expense of the counterfeiter.

#### Article L. 623(29)

Set forth in Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992

The civil and criminal proceedings provided for in this chapter must be instituted no later than three years after the acts triggering them.

If civil proceedings are instituted, they shall have suspensive effect over the time limit of criminal proceedings.

#### Article L. 623(30)

Amended by art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Where a variety which is the subject of an application for a breeder's certificate is exploited for the purposes of national defense by the State or its suppliers, subcontractors and subsidiary suppliers without a license, the court seized of the matter may not order the cessation or suspension of such exploitation, or the confiscation provided for in article L. 623(28)(1).

If the presiding judge of the court seized of the matter orders an expert opinion or a description with or without actual seizure, the representative of the public official in charge of the matter must suspend the seizure, description and any search in the company concerned if the research or propagation contract bears a defense security classification.

The same shall apply if the research or propagation is conducted in an army facility.

The presiding judge of the court seized of the matter may, if so requested by the rightholder, order an expert opinion which may be produced by two persons accredited by the Ministry of Defense, in the presence of its representatives.

The provisions of article L. 623(26) shall not apply to applications for plant breeder's certificate exploited in the conditions defined herein so long as such applications are subject to the prohibitions provided for in article L. 623(9) and L. 623(10).

The authors of such exploitation shall be fully liable in accordance with the present article.

#### Article L. 623(31)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Civil action and applications relating to plant varieties, including where they also concern a related matter of unfair competition, shall be exclusively heard by a *tribunal de grande instance*, whose number may not be less than 10, save for appeals against administrative action by a ministry, which shall fall under the jurisdiction of an administrative court.

The Paris Court of Appeal shall be directly seized of appeals against decisions of the organ mentioned in article [L. 412\(1\)](#) rendered in accordance with the present chapter.

The preceding provisions shall not impede the use of arbitration in the conditions provided for by [articles 2059 and 2060](#) of the Civil Code.

#### Article L. 623(32)

Amended by art. 3 of [Law No. 2011-267 of March 14, 2011](#)

Any deliberate violation of the rights of the holder of a plant breeder's certificate, as defined in [article L. 623\(4\)](#), shall constitute an offence punishable by a fine of 10,000 euros. If in the previous five years, the defendant has been found guilty of the same offense or, in case of the commission of the offence by an organized enterprise or on an online public communication network, a term of imprisonment of six months may also be ordered.

#### Article L. 623 (32)(1)

Set forth in art. 22 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)



Individuals found guilty of the offence provided for in article L. 623(32) may also be ordered, at their expense, to withdraw from commercial channels any counterfeit objects and any item which served or was intended to serve in the commission of the offense.

The court may order the destruction, at the cost of the guilty party, or the transfer to the injured party of objects and items withdrawn from commercial channels or confiscated, without prejudice to any award for damages.

The court may also order, at the expense of the guilty party, the posting of the judgment or its broadcast within the meaning of article 131(35) of the Criminal Code.

#### Article L. 623(32)(2)

Amended by art. 125 of [Law No. 2009-526 of May 12, 2009](#)

Corporate bodies found to be criminally responsible within the meaning of [article 121\(2\) of the Criminal Code](#), for the offense defined in article [L. 623\(32\)](#) shall, in addition to the fine stipulated in [article 131\(38\) of the Criminal Code](#), be liable for the punishment provided for in [article 131\(39\) of the Criminal Code](#).

The prohibition mentioned in article 131(39)(2) of the Criminal Code concerns acts performed in the course of or as a result of the activity during which the offense was committed.

Corporate bodies found to be criminally responsible may moreover be ordered, at their expense, to withdraw from commercial channels the objects found to be counterfeit and any item which served or was intended to serve in the commission of the crime.

The court may order the destruction at the expense of the guilty party or the transfer to the injured part of the objects and items withdrawn from commercial channels or confiscated, without prejudice to any award for damages.

#### Article L. 623(33)

Set forth in Law No. 92-597 July 1, 1992 – see annex to JORF of July 3, 1992

Action by the public prosecutor for the application of the punishment provided for in the previous article may only be taken by the public prosecutor following a complaint by the injured party.

The magistrate's court seized of the matter may only rule after the civil court has established the actuality of the offense by a decision which is *res judicata*. Challenges by the defendant alleging the nullity of the breeder's certificate or questions relating to the propriety of the said certificate may only be raised before the civil court.

#### Article L. 623(35)

Amended by art. 3(V) of [Order No. 2000-916 of September 19, 2000 – see JORF of September 22, 2000, in force as from January 1, 2002](#)

Without prejudice, if more serious sentences provided for in case of offences against the security of the State are applicable, any person who knowingly acts outwith any of the prohibitions provided for in articles L. 623(9) and L. 623(10) shall be punishable by a fine of 4,500 euros. If the violation has been detrimental to national defense, a term of imprisonment of five years may also be imposed.

## 2) RELEVANT ARTICLES OF THE REGULATORY PART OF THE INTELLECTUAL PROPERTY CODE RELATING TO THE SCOPE OF THE PROTECTION

#### Article R. 623(55)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

1. Plant breeder's certificates may be issued in the conditions provided for in article L. 623(1) to L. 623(35) and article R. 623(1) to R. 623(54) for any variety belonging to a species of the plant kingdom.

Any foreigner who is a national of a State Party to the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised on November 10, 1972, or has his residence, headquarters or business in one of these Member States may obtain a plant breeder's certificate for the varieties belonging to the genus or

species falling under the same protection and enumerated in the annex to this convention or on a supplementary list prepared in accordance with its provisions.

Any foreigner who is a national of a State Party to the International Convention for the Protection of New Varieties of Plants in the modified text of October 23, 1978 or has his residence, headquarters or premises in a State Party may obtain a plant breeder's certificate under the same conditions as French nationals.

2. Foreigners who hold neither the nationality of one of the States Parties and who do not have their residence, headquarters or premises in a State Party may not obtain plant breeder's certificates unless French nationals benefit from reciprocal protection on the part of the State of which the foreigner is a national or where he has his residence, headquarters or premises.

Orders made by the Minister of Foreign Affairs and the Minister of Agriculture upon proposal of the commission for the protection of plant varieties shall prepare a list of States whose legislation satisfies the criterion of reciprocity. Such orders may include an exhaustive list of plant varieties for which the criterion of reciprocity has been satisfied.

#### Article R. 623(56)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)  
The term of protection shall be twenty years.

For forest, fruit or ornamental trees, vine and grains and perennial fodder legumes, potatoes and inbred lines used for the production of hybrid varieties, the duration of the protection shall be twenty-five years.

#### Article R. 623(57)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

The breeder's right shall concern all the parts of any plant propagating material of the variety under consideration together with part or all of the plant of that variety.

#### Article R. 623(58)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

Any person who, during all the acts of transfer or concession or sale of the varieties referred to in the preceding articles, wishes to make use of the facility afforded by article L. 623(15) to attach to the variety denomination a trade or manufacture mark, whether he owns the mark or holds it by way of concession, must take the necessary precautions, in particular in correspondence, advertising, the preparation of commercial brochures, on packaging or labels, to ensure that such denomination is sufficiently apparent in its context that no confusion is likely to arise in the mind of the buyer as to the identity of the variety.

## GEORGIA

### Law of Georgia on New Breeds of Animals and Varieties of Plants (as last amended in 2010)

#### Chapter I General Provisions

##### Article 1

1. This Law regulates relations linked with the legal protection and use of new breeds of animals and varieties of plants and applies to all new genera and species of household animals and plants.
2. Use of methods of genetic engineering is prohibited in breeding animal husbandry and plant propagation material.

##### Article 2

1. The terms used in the Law shall have the following meaning:
  - a) Breeder:
    - a.a) the person who discovered and developed, or bred a new plant variety and/or animal breed;
    - a.b) the person who is the employer or who has commissioned the work of the person referred to in subparagraph a.a of this subparagraph;
    - a.c) the successor in title of the person referred to in subparagraph a.a or a.b of this subparagraph;
  - b) Application - the package of documents, necessary for the registration of a new animal breed and/or plant variety and the granting of a certificate, drawn up under the requirements established by this Law;
  - c) Certificate - the protective document certifying the registration of the new animal breed and/or plant variety and the breeder's right under this Law;
  - d) Breed of animal - a group of animals which, in spite of its protectability, has genetically determined constitutional-exterior features; along with this, some of them are specific and differentiates it from other animal groups. A breed may be represented by a male or female individual or breeding material;
  - e) Categories of protection of an animal breed – type, line;
  - f) Breeding animal – the animal envisaged for the reproduction and propagation of a breed.
  - g) Breeding material – a breeding animal, its seed and embryo;
  - h) Production animal – the animal used for the purposes different from the reproduction purposes of the breed;
  - i) Initial breed – the animal breed selected by the breeder for breeding a new animal breed and/or plant variety.
  - j) Plant variety - a plant grouping within the lowest rank of a single botanical taxon, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes, it is distinguished from other plant groupings by the expression of at least one of the said characteristics and may be considered as a unit with regard to its suitability for being reproduced unchanged;

k) Propagation material - the seed, plant or its part intended for the propagation of a plant variety;

l) Harvest - any output received as a result of the propagation of a plant variety;

m) The International Convention for the Protection of New Varieties of Plants - "The International Convention for the Protection of New Varieties of Plants", adopted on December 2, 1961;

n) Union - the Union for the Protection of New Varieties of Plants, founded by the International Convention for the Protection of New Varieties of Plants.

#### Article 3

1. The National Intellectual Property Center Sakpatenti (hereinafter Sakpatenti) shall ensure granting of the breeder's right and informing of the public by means of publication of an official bulletin on applications for the new animal breeds and/or plant varieties and granting of the breeder's right.

2. Testing of the new animal breed and/or plant variety for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal entity of the public law - united national body of accreditation – accreditation center, under the requirements and testing methods approved by the Ministry of Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid test, the Council of Experts existing at the Ministry of Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the animal breed and/or plant variety. The Ministry of Agriculture of Georgia shall be responsible for implementation of these procedures.

3. Sakpatenti may take the decision concerning the grant of the breeder's right in a new animal breed on the basis of the results of the tests carried out by competent authorities of another country or tests carried out by the breeder in regard to distinctness, uniformity and stability of the new animal breed, and may take the decision concerning the grant of the breeder's right in a new plant variety on the basis of the results of the tests carried out by competent authorities of other member country of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability of the new animal breed,

#### Article 4

The duration of a breeder's exclusive right from the day of registration of the new variety or breed by Sakpatenti shall be:

a) 25 years for a new plant variety, except the varieties provided for by subparagraph b of this Article;

b) 30 years for of vine, caulescent, fruit, decorative, tea, subtropical cultures and forest new plant varieties (including rootstocks);

c) 30 years for a new animal breed.

### Chapter II Breeder and Holder of Certificate

#### Article 5

1. The breeder shall acquire breeder's exclusive (economic) rights as a result of the registration of the new animal breed and/or plant variety at Sakpatenti and granting of a certificate.

2. If the breeder requests so, Sakpatenti shall be obliged not to publish his name.

3. Where the new animal breed and/or plant variety was discovered and developed or bred as a result of joint intellectual creation of several natural persons, each shall be deemed as a co-breeder.

4. Relations between the co-breeders shall be defined on the basis of a contract.

#### Article 6

1. A breeder shall be entitled to register the new animal breed and/or plant variety and obtain a certificate.
2. The right to register and obtain a certificate for the new animal breed and/or plant variety discovered and developed or bred as a result of joint intellectual creation of several natural persons shall be enjoyed by all the breeders jointly, as well as each of them, in the case of written refusal of the other breeders to register and obtain a certificate.

#### Article 7

1. Where discovering and developing or breeding of the new animal breed and/or plant variety is connected with the fulfilment of duties or a special task by the employee, the right to register the new animal breed and/or plant variety and obtain the certificate shall be enjoyed by the employer, if such a task envisages breeding activity and if the contract concluded between the employee and employer does not provide for otherwise. If the certificate granted as a result of the registration of the new animal breed and/or plant variety belongs to the employer, the employee shall be entitled to receive from the employer the remuneration adequate to the use of the variety or breed, on the basis of their mutual agreement.
2. Where discovering and developing or breeding of the new animal breed and/or plant variety is not connected with the fulfilment of duties or a special task by the employee, the right to register the new animal breed and/or plant variety and obtain the certificate shall be enjoyed by the employee. In this case from the day of filing the application, the employer shall enjoy the prior right to obtain a license to use the new animal breed/plant variety and/or to purchase the breeder's exclusive rights resulting from the registration of the new animal breed/plant variety and the grant of the certificate.

#### Article 8

If the employer refuses to register the new animal breed and/or plant variety and obtain the certificate, the employee shall be entitled to register and obtain the certificate.

#### Article 9

Where for one and the same new animal breed and/or plant variety two or more applications are filed with Sakpatenti at various times, the breed/variety shall be registered and a certificate granted in the name of the first applicant.

### Chapter III Protectability of New Animal Breeds and Plant Varieties

#### Article 10

1. A new animal breed and/or plant variety shall be registered and granted a certificate, if it meets the protectability criteria.
2. Protectability criteria of the new animal breed/plant variety shall be novelty, distinctness, uniformity, and stability.

#### Article 11

1. The animal breed shall be deemed to be new if, at the date of filing of the application for a breeder's right, breeding animal or breeding material of the breed has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation:
2. The novelty of the animal breed shall not be affected if the breeding animal or breeding material derived from this breed is used by another person:
  - a) for damaging the breeder;
  - b) for carrying out competition or production testing of the animal breed;

c) for the purpose of permitting for distribution, identification of the quality or carrying out a test of other kind with respect to the animal breed.

3. The novelty of the animal breed shall not be affected if the surplus product obtained in the cases provided for in subparagraphs b and c of paragraph 2 is used without its recognition as the product derived from the animal breed.

#### Article 12

1. The plant variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating material of the variety has not been sold and/or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety.

2. Notwithstanding the requirements of paragraph 1 of this Article, granting of the breeder's right shall be possible to the variety of plant, which for the day of enacting of this Law is no longer new, provided that the application was filed with Sakpatenti within one year from the day of entry into force of this Law and one of the following conditions is complied with:

a) the plant variety was entered in the National Catalogue of plants admitted for trade;

b) the plant variety was protected by the breeder's right in any state member of the Union, or an application was filed in any state member of the Union and filing of this application led to granting of a breeder's right;

3. Duration of the breeder's right, granted in accordance with paragraph 2 of this Article, shall be calculated from the day of entry in the Catalogue referred to in subparagraph a of paragraph 2 of this Article, from the day of granting of the breeder's right referred to in subparagraph b of paragraph 2 of this Article. In relevant cases the earliest of these dates shall be used.

4. Where the breeder's right is granted in accordance with the requirements of this Article, the breeder shall be obliged to grant a license for the exploitation of the new animal breed or plant variety on reasonable conditions to enable a third person to continue exploitation of the plant variety, which he had begun in bona fide before filing the application by the breeder with Sakpatenti.

#### Article 13

The new animal breed and/or plant variety shall be deemed to be distinct if it is clearly distinguishable from other breed/variety whose existence is a matter of common knowledge at the time of the filing of the application with Sakpatenti; in particular, filing of an application for the granting of a breeder's right or for the entering of the breed/variety in the Register or the Catalogue of New Animal Breeds and Plant Varieties, in any country, shall make the breed/variety a matter of common knowledge from the date of filing the application, provided that the application leads to the granting of a breeder's right or the breed/variety is entered in the Register or the Catalogue of New Animal Breeds and Plant Varieties.

#### Article 14

1. The new animal breed shall be deemed to be uniform, if animals of this breed, in spite of the particular features of propagation, are sufficiently similar in their constitutional-exterior features.

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

#### Article 15

1. The new animal breed shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

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

Chapter IV  
Examination, Publication, Registration and Granting of Certificate  
for the New Animal Breed and Plant Varieties

Article 16

The breeder shall file the application with the request of the registration of the new animal breed or plant variety and obtainment of a certificate with Sakpatenti personally or by means of a representative.

Article 17

1. The application shall comprise:
  - a) a request, with the indication of the name and address of the breeder;
  - b) the proposed denomination of the new animal breed or plant variety;
  - c) in case of a new animal breed - the description of the new animal breed, the main zoological, constitutional-exterior features and household characteristics, and in case of a plant variety – the description of the new plant variety, the main morphological, biological and botanical characteristics;
  - d) the photographic image of the new animal breed or plant variety;
  - e) a written obligation of the breeder to supply to the accredited person, under Article 3(2) of this Law, samples of breeding material of the animal breed or propagation material of the plant variety, respectively, within the prescribed term, with the prescribed quantity, free of charge;
  - f) indication of the date, when the breeding animal or the breeding material of the breed or the propagation material of the variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his consent.
2. One application shall be filed for one new animal breed or plant variety.
3. Where the application is filed by a representative, within 1 month from the day of filing the application, the application shall be attached a document confirming the representation.
4. The application shall be filed in the state language of Georgia, and the other application materials may be filed in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their translation into the Georgian language.
5. Where the application is filed by an assignee, within 1 month from the day of filing the application, the application shall be attached a document confirming the assignment.
6. Where the data and documents and materials defined by paragraphs 3 to 5 of this Article are not submitted in relevant terms, the proceeding of the application shall be terminated.

Article 18

If before its filing with Sakpatenti the application was filed, in case of an animal breed, with the competent authority of another country, or in case of a plant variety, with the competent authority of other member of the Union, the relevant country, where this application was filed, the denomination of the new animal breed or plant variety, the application number and the date of filing shall be indicated.

Article 19

1. If the new animal breed described in the application filed with Sakpatenti is protected and/or permitted for distribution in another country, the applicant shall be obliged to attach to

the application a certified copy of the official certificate reflecting the testing as to distinctness, uniformity and stability, issued by the competent authority of the respective country, and its translation into the Georgian language.

2. If the plant variety described in the application filed with Sakpatenti was filed in any other member state of the Union, the applicant shall be obliged to attach to the application a certified copy of the first application and its translation into the Georgian language.

#### Article 20

1. The applicant shall propose the denomination of the new animal breed or plant variety.

2. The denomination of the animal breed shall indicate this breed, make it easily identifiable, shall be brief, must be distinguishable from every denomination designating the breed of animal of the same or closely related zoological species, must not be contrary to the commonly recognized norms of morality, must not insult religious feelings, must not consist only of figures except, where this is an established practice, and must not cause confusion concerning the characteristics, origin, or value of the breed, or the identity of the breeder.

3. The plant variety shall be indicated by a denomination which further shall be the generic denomination of this variety and make the variety easily identifiable. It must be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, must not be contrary to the commonly recognized norms of morality, must not insult religious feelings, must not consist only of figures except, where this is an established practice and must not cause confusion concerning the characteristics, origin, value, identity of the variety, or the breeder.

4. If the denomination of the new animal breed or plant variety does not satisfy the requirements of paragraph 2 or 3 of this Article, respectively, or if prior right of third party prevents the use of the denomination of the breed, the applicant shall be obliged to present a new denomination within 1 month from the receipt of the notification, in accordance with paragraph 5 of this Article.

5. Any person who, within the territory of Georgia, offers for sale or markets an animal breed or plant variety protected within the said territory shall be obliged to use the denomination of that breed or variety, even after the expiration of the breeder's right in that breed or variety, except where, in accordance with the paragraph 4 of this Article, prior rights prevent such use.

6. When an animal breed or plant variety is offered for sale or marketed, it shall be permitted to associate the registered denomination of the breed or variety with a trademark, trade name or other similar indication provided that the denomination of the animal breed or plant variety is nevertheless easily recognizable.

#### Article 21

The application shall be deemed filed with Sakpatenti from the day of the submission of the following materials:

- a) the request;
- b) the proposed denomination of the new animal breed or plant variety;
- c) the description of the new animal breed or plant variety.

#### Article 22

1. In case two or more applications are filed with Sakpatenti for one and the same animal breed and/or plant variety, the priority shall be established for the application filed earlier with Sakpatenti.

2. The breeder wishing to enjoy the priority established under a treaty on the protection of new animal breeds concluded with another country shall be obliged to file an application with Sakpatenti within 12 months from filing of the application in the contracting party of this treaty.



3. The breeder wishing to enjoy the priority established under the International Convention for the Protection of New Varieties of Plants shall be obliged to file an application with Sakpatenti within 12 months from filing of the earlier application in the contracting party of this Convention.

4. In the application filed with Sakpatenti the date of filing the application in other country must be indicated. The applicant shall be obliged to present within 6 months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country where the application was first filed, and its translation into the Georgian language.

5. In case of a new plant variety, the breeder shall be entitled within 2 years after the expiration of the period of priority or, where the first application is rejected or withdrawn, from the day of such rejection or withdrawal to furnish Sakpatenti any necessary information, document or material required for the purpose of the examination.

#### Article 23

Sakpatenti shall perform the formal examination of the application that includes checking the completeness and execution of the application materials, including the confirmation of the application filing date.

#### Article 24

1. Sakpatenti shall confirm the application filing date in 2 days term from the day of filing.
2. The formal examination of the application shall be performed within 1 month from the day of filing the application.
3. If the application does not meet the requirements of Articles 17 and 21 of this Law, during the formal requirements examination Sakpatenti may request from the applicant to repair the deficiency and submit the relevant materials. The applicant shall be obliged to repair the deficiency or submit relevant materials within 1 month from the day of receiving the notification.
4. If the applicant complies with the requirement of paragraph 3 of this Article, then the date of fulfilling the above request shall be deemed to be the date of filing of the application. If the applicant fails to comply with the request, the application shall not be considered filed, and the application materials shall be returned to the applicant.
5. If the application does not comply with the conditions of the formal requirements examination, proceeding of the application shall be terminated, of which the applicant shall be notified.

#### Article 25

1. If it is confirmed that the application complies with the conditions of formal requirements examination, Sakpatenti shall publish the data of the new animal breed or plant variety in the Official Bulletin and shall take a decision to hand over the animal breed for testing.
2. The following shall be published in the Official Bulletin:
  - a) the data of the breeder;
  - b) the date of filing the application;
  - c) the proposed denomination of the new animal breed or plant variety;
  - d) the brief description of the new animal breed or plant variety.
3. Description of the new animal breed or plant variety shall be laid open to public for familiarization.

#### Article 26

Any person shall be authorized to present to Sakpatenti a written objection within 3 months from the publication of the new animal breed or plant variety data in the Official Bulletin if:

- a) the new animal breed or plant variety does not comply with the requirements of protectability;
- b) the description of the new animal breed or plant variety does not convey a complete impression for the evaluation of this breed;
- c) false data are given in the description of the new animal breed or plant variety;
- d) the priority requested, in accordance with paragraph 2 of Article 22 of this Law, for the new animal breed or plant variety described in the application is baseless according to the application presented for this breed or variety in another country.

#### Article 27

1. Within 1 week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the accredited person defined in paragraph 2 of Article 3 of this Law. Copies of the objection materials shall be handed over to the applicant.
2. Sakpatenti with respect to the objection shall take a decision on the basis of conclusion made by the accredited person defined under paragraph 2 of Article 3 of this Law.
3. Procedures and terms of consideration of objection shall be determined by the Ministry of Agriculture of Georgia together with Sakpatenti.

#### Article 28

1. Following to the completion of the formal requirements examination and the publication of the application materials in the Official Bulletin, within 2 weeks the new animal breed shall be handed over for testing to the accredited person defined under paragraph 2 Article 3 of this Law.
2. The new animal breed or plant variety shall be tested for distinctness, uniformity and stability by means of examination.
3. The applicant shall be authorized to request the extension of procedure terms of the application proceeding, and where he fails to comply with the terms – the restoration of these terms in accordance with the established rule.
4. The applicant, at any stage of the application proceeding, may withdraw the application or request termination of the application proceeding.

#### Article 29

1. Results of the new animal breed or plant variety tests carried out in Georgia shall be done by the accredited person defined in Article 3(2), who shall hand over them to Sakpatenti.
2. In the case of the positive conclusion of the new animal breed or plant variety testing, the person who performed the tests, together with the applicant, shall draw up the description of the animal breed or plant variety, which he shall send to Sakpatenti together with the conclusion.
3. Data of the tests shall be a trade secret of the applicant; their transfer to the other person without agreement with Sakpatenti and the applicant, shall be deemed to be a violation and shall result in liability under the legislation in Georgia.

#### Article 30

1. In case of the positive conclusion of the new animal breed/plant variety testing, Sakpatenti shall take a decision to register the new animal breed/plant variety data. Sakpatenti shall record the denomination of the new animal breed, description and other data

in the Register of New Animal Breeds and Plant Varieties and issue a certificate, which represents a document certifying the property of the exclusive right holder.

2. The following shall be recorded in the Register of New Animal Breeds and Plant Varieties:
  - a) the genus and species of the new breed/variety;
  - b) the denomination of the new breed/variety;
  - c) the description and photographic image of the new breed/variety;
  - d) the name and address of the breeder;
  - e) the number and date of registration.
3. The format of a certificate issued for the new animal breed/plant variety shall be developed by Sakpatenti.
4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the animal, the denomination of the new animal breed/plant variety, the description and photographic image of the new animal breed/plant variety, the name and address of the breeder, the registration number and date.
5. Any person shall be entitled to familiarize with the Register of New Animal Breeds and Plant Varieties under established order.

#### Article 31

1. If the application filed with Sakpatenti concerns the breed protected in another country, that animal breed shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a breed a certified copy of the official document confirming the breeder's right issued by the competent body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application, or within 2 months term from the day of filing the application. For such an application only the formal requirements examination shall be performed.
2. If the application filed with Sakpatenti concerns the variety protected in other state member of the Union, that plant variety shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a variety a certified copy of the official documents confirming the breeder's right issued by the competent body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application, or within 2 months term from filing the application. For such an application only the formal requirements examination shall be performed.
3. If the application filed with Sakpatenti concerns the breed/variety for which tests for distinctness, uniformity and stability have been already performed by the accredited person referred to in Article 3(2) of this Law and the positive conclusion has been issued, only the examination as novelty, denomination requirements and the formal requirements shall be performed.
4. If the applications referred to in paragraphs 1-3 of this Article comply with the conditions of the formal requirements examination, Sakpatenti shall take a decision to register the new animal breed/plant variety, shall record the data in the Register of New Animal Breeds and Plant Varieties, issue a certificate and publish the registration data in the relevant Official Bulletin.

#### Article 32

Under Article 25 of this Law from the day of publication of the new animal breed or plant variety data in the Official Bulletin to the day of registration, the applicant provisionally shall be granted the same rights, he would have in the case of registration. If a third party from the day of publication of the new animal breed or plant variety data to the day of registration, has carried out acts which, require the breeder's consent, the breeder shall be entitled to request equitable remuneration only after registration of the new animal breed or plant variety.

Chapter V  
Rights and Liabilities of the Holder of Breeder's Exclusive Right

Article 33

1. The exclusive right of the breeder shall be the right to authorize and/or prohibit, or perform the following with respect to the new animal breed or plant variety:
  - a) production and reproduction (in case of new plant variety)/reproduction (in case of a new animal breed);
  - b) conditioning for the purpose of propagation (in case of a new plant variety);
  - c) offering for sale, alienation or other transfer of rights;
  - d) exporting;
  - e) importing;
  - f) stocking of propagation material for the purposes mentioned in subparagraphs a-e of this paragraph(in case of a new plant variety);
  - g) stocking of the breeding material for the purposes mentioned in subparagraphs a and c-e of this paragraph (in case of a new animal breed).
2. The breeder may authorize the acts referred to in paragraph 1 of this Article with certain conditions and restrictions.
3. The breeder's exclusive right shall also apply to the breeding material obtained by another person from the animal breed protected by the certificate, the animal derived from this material and the product obtained from this animal.
4. Taking into account the requirements of Article 37 of this Law, the acts defined by paragraph 1 of this Article in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagation material of the variety protected by the certificate, shall require the authorization of the breeder, unless the breeder has had an opportunity to exercise his exclusive rights in relation to the said propagation material.
5. The exclusive right of the breeder shall also apply to:
  - a) a plant variety which is essentially derived from the variety protected by the certificate, where the protected variety is not itself an essentially derived variety,
  - b) a plant variety which is not clearly distinguishable in accordance with Article 13 of this Law from the plant variety protected by the certificate;
  - c) a plant variety whose production requires the repeated use of plant variety protected by the certificate.

Article 34

1. An animal breed shall be deemed to be derived from another animal breed if:
  - a) it is derived from the initial breed, or from a breed that is itself derived from the initial breed, and if the essential features characteristic of the genotype or combination of genotypes of the initial breed are expressed clearly in these animal breeds; at the same time, it clearly differs from the initial breed in one or several describable features.
  - b) in it, except the variation characteristic of the propagation process, the essential features characteristic of the genotype or combination of genotypes of the initial breed are expressed completely.

## Article 35

1. A plant variety shall be deemed to be essentially derived from another variety if:
  - 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 distinguishable from the initial variety by external properties, except for the differences characteristic of the propagation process, and 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.
2. Essentially derived varieties may be obtained: by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

## Article 36

1. The exclusive right of the breeder of the new animal breed shall not apply to:
  - a) acts done for private use of the new animal breed and for non-commercial purposes;
  - b) act done for experimental-breeding purposes.

## Article 37

1. The exclusive right of the new plant variety breeder shall not apply to:
  - a) private use of the new plant variety and use for non-commercial purposes;
  - b) acts done for experimental purposes.
  - c) acts done for the purpose of breeding other varieties, except the cases provided for in Article 33(4), also acts referred to in Article 33(1) to (3).
2. The Ministry of Agriculture of Georgia, subject to the safeguarding of the legitimate interests of the breeder shall be entitled to restrict within reasonable limits the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the propagation material which they have obtained by planting, on their own holdings, the variety protected by the certificate or a variety covered by Article 33(5)(a) or (b) or paragraph 1 of this Article.

## Article 38

1. The exclusive right of the new plant variety breeder shall not apply to acts concerning any material of the variety protected by the certificate or any material derived from the said material, which has been included into the civil circulation by the breeder or with his consent in the territory of Georgia, unless such acts involve:
  - a) further propagation of the variety protected by the certificate;
  - b) export of plant material of the variety protected by the certificate, which enables the propagation of the variety, into a country which does not protect the variety belonging to this genus and species, except where the exported material is for final consumption purposes.
2. For the purposes of paragraph 1 of this Article, material means, in relation to a variety:
  - a) propagation material of any kind;
  - b) harvested material, including the entire plant and its parts;
  - c) any product made from the harvested material.

### Article 39

The breeder shall be obliged to ensure, during the whole period of validity of the exclusive right, obtainment of the breeding material of the new animal breed or propagation material of the plant variety enabling to produce the animal breed or plant variety having the features referred to in the description of the new animal breed or plant variety.

## Chapter VI Nullity and Cancellation of New Animal Breed and Plant Variety Registration and Certificates

### Article 40

Upon request of the interested person, the new animal breed or plant variety registration and certificate shall be recognized to be null from the registration day, if it is established that at the time of registration and issuing the certificate:

- a) the animal breed did not comply with the requirements of Articles 12 and 13 of this Law;
- b) the grant of the breeder's right was based on the information and documents furnished by the breeder, along with this, the animal breed or plant variety did not comply with the requirements of Article 14 or 15 of this Law, respectively;
- c) the breeder's right was granted to a person who was not entitled to it, except for the case when he transferred this right to the person who was entitled to obtain the breeder's right in accordance with the rule established by this Law.

### Article 41

1. Upon request of the interested person, the new animal breed or plant variety registration and certificate may be recognized as cancelled from the day of taking the relevant decision, when it is established that:

- a) the new animal breed or plant variety no longer fulfils the requirements of Article 14 and 15 of this Law, established for the new animal breed or plant variety;
- b) the breeder failed to submit within the prescribed term the information, documents or materials deemed necessary for verifying the maintenance of the breed or variety upon the request of the Ministry of Agriculture of Georgia in accordance with Article 39 of this Law.
- c) the breeder failed to satisfy the requirements established for maintenance of rights;
- d) where the denomination of the animal breed or plant variety was cancelled after the grant of the right, the breeder did not propose another, suitable denomination.

2. The registration and certificate of the new animal breed or plant variety may be recognized as null or cancelled on the basis of a written request submitted to Sakpatenti by the breeder.

3. The data of the recognition of the new animal breed or plant variety registration and certificate as null and cancelled shall be entered by Sakpatenti in the Register of New Animal Breeds and Plant Varieties and the reference of the above-mentioned shall be published in the respective Official Bulletin.

### Article 42

On the basis of a written request submitted to Sakpatenti, the holder of the exclusive right during the validity term of the new animal breed or plant variety registration shall be authorized to enter changes or additions in the registered data only in respect to the address of the breeder or his representative.

Chapter VII  
License of Use of New Animal Breed or Plant Variety

Article 43

1. The licensor (breeder) shall be authorized to grant a license to use the registered new animal breed or plant variety to another person (licensee).
2. Granting of the license for the use of the new animal breed or plant variety shall be admissible for the new animal breed or plant variety permitted for distribution in the territory of Georgia.
3. The license may be simple or exclusive.
4. On the basis of the simple license agreement, the licensor shall transfer to the licensee the right to use the new animal breed or plant variety. At the same time, the licensor shall preserve all the exclusive rights and the right to conclude other simple license agreements.
5. On the basis of the exclusive license agreement, the licensor shall transfer the right to use the new animal breed or plant variety only to the licensee. At the same time, the licensor during the validity term of the exclusive license shall forfeit the exclusive rights transferred on the basis of these agreements as well as the right to conclude other license agreements.
6. The license agreement shall be made in the written form and shall provide for: the accurate data of the new animal breed or plant variety, types of use of the breed or variety, the validity term of the agreement and the territory, amount of the remuneration or the rule of determining the amount and term, as well as other conditions considered essential by the parties.
7. The right to use the new animal breed or plant variety in any way not provided for directly by the license agreement shall belong to the licensor.
8. The licensee shall not be allowed to transfer the right resulting from the license agreement or to grant a sublicense if it is not provided for directly in the license agreement.

Article 44

1. The compulsory license may be granted upon the request of any interested person only for reasons of satisfying public interest.
2. In case of a new animal breed or plant variety the compulsory license shall be issued on the basis of a recommendation given by the National Council of Animal Husbandry and Seeds functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of Agriculture of Georgia.
3. The compulsory license may be issued only when the interested person earlier was trying to obtain the license from the holder of the exclusive rights with reasonable conditions and terms, but his attempt was not successful.
4. The decision on granting the compulsory license shall define the scope of use of the new animal breed or plant variety, duration of the compulsory license, rights and obligations of the breeder and the licensee and the amount of remuneration. The decision on granting the compulsory license shall be legalized with the order of the Minister of Agriculture of Georgia.
5. The duration of the compulsory license agreement shall be extended if by examination performed by the Ministry of Agriculture of Georgia it is ascertained that conditions of the license are complied with and there is a necessity of extension.
6. If the examination carried out during the validity term of the compulsory license proves that there are no grounds for granting the compulsory or official license, the effect of the compulsory license shall be terminated on the basis of an order of the Ministry of Agriculture of Georgia.
7. At granting of the compulsory license, the breeder shall be entitled to receive the equitable remuneration.

Chapter VIII  
Violation of Breeder's Rights and Liability

Article 45

The use of this animal breed or plant variety by a third party contrary to the requirements of this Law shall be deemed to be a violation of the breeder's rights and shall result in liability under the legislation of Georgia.

Chapter IX  
Permission for Distribution of Seeds and Planting Materials in Georgia

Article 46

1. Seeds and planting materials are permitted for distribution in Georgia:
  - a) by a certificate of quality;
  - b) by a phytosanitary certificate.
2. Additional conditions of distribution of seeds and planting materials in Georgia shall be defined by the resolution of the Government of Georgia.

Chapter IX  
Transitional and Final Provisions

Article 47

1. Within 3 months term from the entry into force of this Law, the Ministry of Agriculture together with the National Intellectual Property Center Sakpatenti shall prepare and approve:
  - a) the rule of consideration the opposition of the interested person in connection with publication of the new animal breed data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses;
  - b) the rule of consideration the opposition of the interested person in connection with publication of the new plant variety data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses.
2. The Ministry of Agriculture of Georgia shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new animal breed and methods of testing, taking into account the international practice.
3. The Ministry of Agriculture of Georgia shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new plant variety and methods of testing, taking into account the international practice.
4. The Ministry of Agriculture of Georgia shall ensure establishment of the Standing Council of Experts on the basis of Article 3 (2) of this Law and shall approve its regulations.
5. Before March 1, 2011, the resolution of the Government of Georgia On Approval of Additional Conditions of Distribution of Seeds and Planting Materials in Georgia shall be adopted.

Article 48

1. Upon the entry into force of this Law the following shall be declared invalid:
  - a) The Law of Georgia For the Protection of New Breeds of Animals of December 29, 2006 (Sakartvelos Sakanonmdeblo Matsne, №4, 12.01.2007, Art. 60);
  - b) The Law of Georgia For the Protection of New Varieties of Plants of December 29, 2006 (Sakartvelos Sakanonmdeblo Matsne, №4, 12.01.2007, Art. 61);



c) The Law of Georgia On Breeding Animal Husbandry of September 3, 1996 (Parlamentis Utsqebani, №22-23, October 17, 1996, p. 43);

d) The Law of Georgia On Permission for Distribution of Varieties of Agricultural Crops, Quality Seeds and Planting Material of June 25, 1999 (Sakartvelos Sakanonmdeblo Matsne, №29 (36), 1999, Art. 157).

2. The subordinate legislation issued on the basis of legislative acts referred to in subparagraphs a and b of paragraph 1 of this Article retain legal force before their compliance with this Law.

#### Article 49

The Law shall enter into force on publication.

President of Georgia

Mikheil Saakashvili

Tbilisi,

December 15, 2010.

№4066-rs

## LITHUANIA

### **Law on the Protection of Plant Varieties of 1994 (as last amended in 2012)<sup>3</sup>**

#### **22 November 2001 No IX – 618 (No XI-1994)**

Vilnius

#### CHAPTER ONE GENERAL PROVISIONS

##### Article 1. Purpose of the Law

1. The Law shall regulate relationships of natural and legal persons relating to the legal protection and use of plant varieties.
2. The Law applies to all varieties of agricultural, fruit, vegetables and ornamental plant genera and species.
3. This Law shall implement the legal act of the European Union referred to in the Annex to the Law.

##### Article 2. Definitions

For the purposes of this Law

1. Harvested material shall mean entire plants or parts of plants.
2. Plant genus shall mean a grouping of organisms constituting a systematic unit and uniting closely related plant species descended from a common ancestor.
3. Plant species shall mean a grouping of related organisms constituting a systematic unit, occupying a relatively constant place in nature and fulfilling its functions in the universal biological metabolism in the manner specific only for that grouping.
4. Plant variety (hereinafter – variety) shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:
  - 1) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
  - 2) distinguished from any other plant grouping by the expression of at least one of the said characteristics;
  - 3) considered as a unit with regard to its suitability for being propagated unchanged.
5. Plant taxon shall mean any taxonomic grouping of plants (class, rank, family, genus, species, subspecies, variety, form).
6. Propagating material shall mean a seed, an entire plant or a vegetative part of a plant (grafts, stocks, shoots, parts of rootstocks, tubers, etc.) intended for the propagation of plants of a certain variety.
7. Genotype shall mean the sum of hereditary factors of an organism.
8. Licensing agreement shall mean a written agreement concluded by the breeder with natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area whereby these persons are granted the right to propagate and market the propagating material of the protected variety under agreed conditions within the defined territory.
9. Licence fee shall mean the fee payable under a licensing agreement.

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<sup>3</sup> Official translation provided by the Lithuanian Authorities.

10. Breeder shall mean:

- 1) one or several natural persons who bred or discovered and developed a new plant variety;
- 2) a legal person whose one or several employees, working under an employment contract or fulfilling an assigned task, bred or discovered and developed a new plant variety;
- 3) branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area, which bred or discovered and developed a new plant variety;
- 4) a successor in title who has acquired property rights to the variety from the persons indicated in subparagraphs 1-3 of this paragraph.

11. Breeder's remuneration shall mean the remuneration paid to the breeder by a farmer or another land user for the propagating material of the protected variety grown on one's own holding and used for further reproduction or multiplication purposes on one's own holding.

12. Protected variety of significance for the national economy shall mean a variety required for guaranteeing the supply of the propagating material possessing certain characteristics to the market.

13. Application for a plant variety right shall mean a written request for the granting of a plant variety right filed with the manager of the List of Protected Plant Varieties in the Republic of Lithuania.

14. Commonly known variety shall mean a variety which becomes a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

### Article 3. Conditions for the Grant of Plant Variety Rights

Plant variety rights shall be granted to the breeder where the variety is established to comply with the requirements of novelty, distinctness, uniformity and stability and also designated by a denomination in accordance with the requirements laid down in Article 18 of this Law.

### Article 4. Novelty

1. The variety shall be deemed to be new if, prior to the date of filing of the application for a plant variety right (hereinafter – application), propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by the initiative or with the consent of the breeder, for purposes of exploitation of the variety:

- 1) in the Republic of Lithuania – earlier than one year before that date;
- 2) in the territory of another country – earlier than four years or, in the case of trees, vines or berry shrubs, earlier than six years before the said date.

2. The variety shall satisfy the condition of novelty in selling or otherwise transferring the right of disposal of the propagating or harvested material of the variety to other persons if:

- 1) damage has been caused to the breeder or his successor in title;
- 2) the breeder's right has been transferred on the basis of a contractual relationship;
- 3) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area reproduce the propagating material of the relevant variety on behalf of the breeder, provided that the breeder preserves his property right to the propagating material, and the propagating material is not used in the production of propagating material of another variety;
- 4) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area conduct field trials or laboratory tests with a view to evaluating the variety;

5) this has been done for the purpose of implementing laws or administrative obligations, particularly in relation to biological safety or the entry of the variety in the National List of Plant Varieties;

6) the harvested material of the variety produced in the course of breeding the variety or carrying out the activities listed in subparagraphs 3-5 of this paragraph is sold or otherwise disposed of as a by-product or surplus product without making reference to the variety.

#### Article 5. Distinctness

1. The variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of at least one of its characteristics from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

2. Any other variety shall be deemed to be a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

#### Article 6. Uniformity

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

#### Article 7. Stability

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

#### Article 8. List of Protected Plant Varieties in the Republic of Lithuania

1. The List of Protected Plant Varieties in the Republic of Lithuania (hereinafter – the List of Protected Varieties) shall be a list of plant varieties covered by plant variety rights in the Republic of Lithuania.

2. The List of Protected Varieties shall be comprised and administered by the manager of the List of Protected Varieties – the institution authorised by the Ministry of Agriculture.

### CHAPTER TWO APPLICATION FOR THE GRANT OF A PLANT VARIETY RIGHT

#### Article 9. Filing of the Application

1. The breeder or the person authorised by him (hereinafter – the applicant) wishing to be afforded protection for the variety bred or discovered and developed by him shall file an application for the grant of a plant variety right with the manager of the List of Protected Varieties.

2. The application shall contain a request for the grant of a plant variety right and other documents the list, form and procedure for filing whereof shall be established by the manager of the List of Protected Varieties.

3. A separate application shall be filed in respect of every variety. The request for the grant of a plant variety right and other related documents shall be filed in the Lithuanian or another language determined by the manager of the List of Protected Varieties. In this case, an official translation into the Lithuanian language shall be submitted.

4. Where several natural or legal persons bred or discovered and developed the variety jointly, one application shall be filed indicating the share of each owner. Foreign natural or legal persons shall file their applications through their authorised representative in the Republic of Lithuania.

5. The filing of an application in a Member of the International Union for the Protection of New Varieties of Plants or in a Member State of the European Union shall not restrict the applicant's right to file an application to the manager of the List of Protected Varieties without waiting for a reply concerning the grant of a plant variety right.

6. The date of filing of the application shall be the date on which the manager of the List of Protected Varieties received and registered an application for the grant of a plant variety right which complies with the requirements laid down in paragraph 2 of this Article.

#### Article 10. Right of Priority of an Application

1. The right of priority of an application shall be determined by the date of filing of the application.

2. The applicant shall have the right to file his first application with the competent authority of any Member of the International Union for the Protection of New Varieties of Plants or any Member State of the European Union. If, prior to filing an application with the manager of the List of Protected Varieties in Lithuania, the applicant has already applied for the grant of a plant variety right for the same variety in any Member of the International Union for the Protection of New Varieties of Plants or in any Member State of the European Union, the right of priority of the application may, at the applicant's request, be determined by the date of filing of the first application. In this case the application must be filed with the manager of the List of Protected Varieties within 12 months from the date of filing of the first application. The day of filing of the application shall not be included in the latter period.

3. In order to benefit from the right of priority of the application in the case referred to in paragraph 2 of this Article, the applicant shall, within a period of three months from the date of filing of the subsequent application with the manager of the List of Protected Varieties, submit a copy of the first application certified by the foreign competent authority with which that application was filed. The manager of the List of Protected Varieties may request the applicant to furnish additional documents or other evidence that the variety which is the subject matter of both applications is the same.

4. The breeder shall be allowed a period of two years after the expiration of the period of priority specified in paragraph 2 of this Article or, where the first application is rejected or withdrawn, the period set by the manager of the List of Protected Varieties after such rejection or withdrawal, in which to furnish, in accordance with the procedure laid down in this Law, to the manager of the List of Protected Varieties with which he has filed the subsequent application, any necessary documents or material required for the purpose of the examination under Articles 11, 12, and 13 of this Law.

5. Events, occurring within the period provided for in paragraph 2 of this Article, such as the filing of another application for protection for the same variety, the publication of the application or the use of the variety that is the subject of the first application, shall not give the manager of the List of Protected Varieties a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

6. Where the breeder lodges an appeal in accordance with the procedure established in Article 36 of this Law against the applicant who was not entitled to a plant variety right and the manager of the List of Protected Varieties takes a decision to refuse protection for the variety on these grounds, the breeder shall have the right to require that the date of the refused application be deemed to be the date of his application. In this case, the breeder must file an application with the manager of the List of Protected Varieties within one month of the date of the decision to refuse the grant of a plant variety right.

CHAPTER THREE  
EXAMINATION OF THE APPLICATION AND TECHNICAL EXAMINATION  
OF THE VARIETY

Article 11. Preliminary Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the preliminary examination of the application within one month from the date of filing of the application. The examination shall determine the priority of the application, as well as verify whether the application complies with the requirements set by the manager of the List of Protected Varieties.
2. Having established within one month that the submitted documents do not comply with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. If the applicant corrects the identified deficiencies within the time limit specified by the manager of the List of Protected Varieties, the date of filing of the application shall be the date on which the manager of the List of Protected Varieties received and registered the application for the grant of a plant variety right. If the deficiencies are not corrected, the application shall be deemed not to have been filed and the applicant shall be notified thereof in writing.
3. If the application complies with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing.

Article 12. Substantive Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the substantive examination of the application within the period set by the manager of the List of Protected Varieties, which is computed from the date of filing of the application.
2. The substantive examination shall verify whether the variety indicated in the application for the grant of a plant variety right is new, whether the applicant is entitled to file this application and whether the proposed variety denomination complies with the requirements laid down in Article 18 of this Law.
3. Having established that the variety does not comply with the requirements laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. Should the applicant fail to correct the deficiencies that may have been identified, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

Article 13. Technical Examination of the Variety

1. Following the preliminary and substantive examinations of the application, technical examination of the variety shall be carried out. It shall be verified through tests whether the variety complies with the conditions of distinctness, uniformity and stability.
2. By decision of the manager of the List of Protected Varieties, the technical examination of the variety shall also be deemed to have been carried out if the distinctness, uniformity and stability of the variety have been assessed and recognised by the competent authority of any other country and the applicant has furnished all the documents supporting this fact as well as the consent of the relevant authority to use the findings of its technical examination of the variety.

Article 14. Arrangement of the Technical Examination  
of the Variety and Examination Results

1. Responsibility for the technical examination of a variety shall rest with the manager of the List of Protected Varieties. The manager of the List of Protected Varieties may conduct the technical examination of the variety itself or avail itself of the services of national or foreign competent bodies.

2. The applicant shall pay a fee for the technical examination of the variety to the manager of the List of Protected Varieties or the national or foreign competent body that has conducted this technical examination, in the amounts fixed by them.

3. If the results of the technical examination of the variety comply with the requirements of distinctness, uniformity and stability laid down by this Law and the applicant has paid the fee for the technical examination of the variety in accordance with the procedure laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall compile an official description of the variety and take a reference sample of the propagating material of the variety for keeping.

4. Where it is established that the variety does not comply with the requirements referred to in paragraph 3 of this Article and/or the applicant has not paid the fee for the technical examination of the variety, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

5. The manager of the List of Protected Varieties shall keep the documents relating to the examination of the application and the technical examination of the variety for the entire duration of the plant variety right.

#### Article 15. Provisional Protection

The breeder's interests shall also be protected during the period from the date of filing of the application for the grant of a plant variety right to the grant of that right. During the period of such provisional protection, the breeder shall be entitled to claim damages from any person who has infringed his rights specified in Article 26 of this Law.

#### Article 16. Publication of Information

The manager of the List of Protected Varieties shall publish information relating to:

- 1) received, withdrawn and rejected applications;
- 2) variety denominations proposed in the applications;
- 3) varieties covered by the plant variety right, their breeders and/or authorised representatives of the breeders;
- 4) varieties afforded provisional protection;
- 5) change of the breeders and/or their authorised representatives;
- 6) decisions on the nullification of the plant variety right, cancellation or extension of that right;
- 7) other information specified by the manager of the List of Protected Varieties.

### CHAPTER FOUR DESIGNATION AND USE OF A VARIETY DENOMINATION

#### Article 17. Variety Denomination

1. A variety shall be designated by a denomination which will be its generic designation. The denomination shall be indicated in the application filed by the applicant.

2. Upon the entry of the variety in the List of Protected Varieties, it must in all cases be referred to by the designated denomination. The same variety denomination must be used even after the expiration of the plant variety right.

#### Article 18. Characteristics of the Denomination

1. The variety denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of breeders. It must be different

from every denomination which designates, in the Republic of Lithuania or any other country, an existing variety of the same plant species or of a closely related species.

2. Prior rights of third persons shall not be affected. The new variety may not be designated by the denomination of the variety whose protection has expired.
3. The denomination must comply with the norms of the standard Lithuanian language.

#### Article 19. Change of the Variety Denomination

The variety denomination may be changed by a decision of the manager of the List of Protected Varieties or by a court decision.

### CHAPTER FIVE GRANT, DURATION AND TERMINATION OF THE PLANT VARIETY RIGHT

#### Article 20. Entry into Force of the Plant Variety Right

1. Having established that the plant variety satisfies the conditions for plant variety rights laid down in Article 3 of this Law, the manager of the List of Protected Varieties shall take a decision to enter the variety in the List of Protected Varieties under the proposed denomination and inform the applicant thereof in writing. The decision shall specify the denomination of the variety, its breeder, the variety description and the duration of the plant variety right.
2. Upon the entry of the variety in the List of Protected Varieties, the breeder shall be issued a certificate of the plant variety right. The manager of the List of Protected Varieties shall define the form of the certificate.
3. The plant variety right shall be granted for the variety from the date of its entry in the List of Protected Varieties.

#### Article 21. Refusal to Grant the Plant Variety Right

Where the variety does not comply with the requirements laid down by this Law, the manager of the List of Protected Varieties shall refuse to enter the variety in the List of Protected Varieties and shall notify the applicant thereof in writing.

#### Article 22. Duration of the Plant Variety Right

1. The term of the plant variety right shall run for a period of 25 years, or, in the case of potatoes, trees, berry shrubs and vines, for a period of 30 years from the date of their entry in the list of Protected Varieties.
2. The manager of the List of Protected Varieties shall be entitled, at the request of the breeder or his authorised representative, to extend the term of the plant variety right for up to further five years. The duration of the plant variety right shall be extended if the breeder or his authorised representative files with the manager of the List of Protected Varieties a written request for the extension of this term before the expiry thereof.
3. The plant variety right shall lapse before the expiry of the terms laid down in this Article if the breeder surrenders it by sending a written declaration to such effect to the manager of the List of Protected Varieties. The date of the expiration of the plant variety right may be indicated in the breeder's application. Where the date is not indicated, the surrender shall be effective from the day following the date of receipt of the application.

#### Article 23. Nullity of the Plant Variety Right

1. The plant variety right shall be declared null and void from the day of entry of the variety in the List of Protected Varieties if:
  - 1) it is established that the variety did not comply with the requirements of novelty or distinctness at the time of the grant of the plant variety right;



2) the grant of the plant variety right has been based only upon information and documents furnished by the breeder, while the variety did not comply with the requirements of uniformity or stability under Articles 6 and 7 of this Law at the time of the grant of the plant variety right;

3) it is established that the plant variety right has been granted to a person who is not entitled to it.

2. Having established the reasons referred to in paragraph 1 of this Article, the manager of the List of Protected Varieties shall take a decision to declare the plant variety right null and void and notify the breeder thereof in writing.

#### Article 24. Cancellation of the Plant Variety Right

1. The plant variety right shall be cancelled if:

1) the breeder or his authorised representative files a written request with the manager of the List of Protected Varieties to delete the variety from the List of Protected Varieties;

2) the manager of the List of Protected Varieties establishes that the variety does not comply with the requirements of uniformity and stability under Articles 6 and 7 of this Law;

3) the breeder has not provided the manager of the List of Protected Varieties at the latter's request with the information, documents or other material necessary for verifying the maintenance of the variety;

4) the manager of the List of Protected Varieties establishes that the variety denomination no longer complies with the requirements laid down by this Law, and the breeder does not propose another suitable denomination;

5) the breeder fails to pay the state fee for the plant variety right.

2. The manager of the List of Protected Varieties must notify the breeder in writing that his plant variety right may be cancelled for reasons referred to in paragraph 1 of this Article and set the time limit for eliminating these reasons.

3. If the breeder fails to eliminate the reasons for cancelling the plant variety right within the time limit specified in paragraph 2 of this Article, the manager of the List of Protected Varieties shall take a decision to cancel the plant variety right and notify the breeder thereof in writing.

4. The breeder shall lose his rights referred to in Article 26 of this Law from the date of cancellation of the plant variety right.

#### Article 25. State Fees

State fees shall be established and paid for the services provided by the manager of the List of Protected Varieties in accordance with the procedure laid down by the Law on Fees and Charges and by the Government.

### CHAPTER SIX RIGHTS AND OBLIGATIONS OF THE BREEDER

#### Article 26. Rights of the Breeder

1. Subject to the provisions of Articles 28 and 29 of this Law, the breeder shall be entitled to authorise the performance of the following acts in respect of the propagating material of the protected variety:

1) production and reproduction (multiplication);

2) conditioning for the purpose of propagation;

3) offering for sale;

4) selling or other marketing;

5) exporting;

- 6) importing;
- 7) stocking for any of the purposes mentioned in subparagraphs 1-6 of this paragraph.

2. A person who has not concluded a licensing agreement or has not obtained the written authorisation of the breeder for the use of the propagating material of the variety covered by the plant variety right shall be prohibited from performing any acts referred to in paragraph 1 of this Article in respect of the propagating material of the protected variety.

3. Persons using the variety under a licensing agreement must notify the breeder of the propagating material reproduced, sold or otherwise marketed, unless the licensing agreement provides otherwise.

4. The use of harvested material obtained through the use of the propagating material of the protected variety without a licensing agreement shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to this propagating material.

#### Article 27. Application of Breeder's Rights to Essentially Derived Varieties and Certain Other Varieties

1. The provisions of Article 26 of this Law shall also apply in relation to:

- 1) varieties which are essentially derived from the protected variety, where this protected variety is not itself an essentially derived variety;
- 2) varieties which are not clearly distinguishable in accordance with the provisions of paragraph 1 of Article 5 of this Law from the protected variety;
- 3) varieties whose production requires the repeated use of the protected variety.

2. A variety shall be deemed to be essentially derived from another variety, hereinafter referred to as the initial variety, when:

- 1) 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;
- 2) it is clearly distinguishable from the initial variety but 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, except for the differences which result from the act of derivation of this variety.

3. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

#### Article 28. Exceptions to the Breeder's Right

1. A variety may be used without the breeder's authorisation:

- 1) privately and for non-commercial purposes;
- 2) for scientific purposes;
- 3) for the purpose of breeding new varieties and carrying out acts referred to in Article 26 of this Law in respect of these varieties, except for the cases where the provisions of Article 27 of this Law apply.

2. Farmers and other land users may use the protected variety without the breeder's authorisation when:

- 1) they use the propagating material from the harvest of the protected variety obtained on their own holdings or on land plots used by them for their own agricultural purposes;
- 2) they pay remuneration to the breeder. The amount of such remuneration and the payment procedure shall be established by mutual agreement between the breeder or his authorised representative and the farmer or another land user. In the absence of such an

agreement, the remuneration shall amount to at least 50 percent of the average licence fee charged in Lithuania for the propagating material of the lowest category of the same plant species, subject to certification.

3. The provisions of paragraph 2 of this Article shall apply to farmers and other land users only in the cases when they:

1) are growing on their own holdings or land plots used by them the following plant species: oats, barley, rye, spelt wheat and durum wheat, triticale, rape, linseed (with the exclusion of flax), peas, beans, vetch, lupine, lucerne, potatoes;

2) use for further propagating purposes on their own holdings the product of the harvest which they have obtained by planting, on their own holdings or land plots used by them, propagating material of a variety of the species referred to in subparagraph 1 of this paragraph (other than a hybrid or synthetic variety) protected in Lithuania.

4. Farmers and other land users shall not be required to pay the remuneration specified in subparagraph 2 of paragraph 2 of this Article if their own holding or land plot used by them is not larger than the area defined by the Minister of Agriculture.

5. Farmers and other land users who are propagating the certified propagating material of protected varieties must, on the request of breeders, provide them with information relating to the use of the propagating material of the protected variety.

#### Article 29. Exhaustion of the Breeder's Right

The breeder's right shall not extend to acts concerning any propagating or harvested material of the protected variety, or of a variety referred to in Article 27, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the country which is a member of the International Union for the Protection of New Varieties of Plants, or any material derived from the said material, unless such acts:

1) involve further production of the propagating material of the variety in question;

2) involve an export of the propagating or harvested material of the variety into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the harvested material is exported for final consumption purposes.

#### Article 30. Assignment of the Breeder's Rights

1. Natural and legal persons who have acquired the property right to the variety must submit to the manager of the List of Protected Varieties documents supporting this fact.

2. The manager of the List of Protected Varieties shall examine the received documents and register the new breeder within one month from the receipt of the application.

#### Article 31. Obligations of the Breeder

At the request of the manager of the List of Protected Varieties, the breeder must provide samples of the propagating material of the protected variety for the purpose of renewing the reference sample or verifying the identity and other characteristics of the propagated variety.

### CHAPTER SEVEN LICENSING AGREEMENTS

#### Article 32. Conclusion of Licensing Agreements

1. The breeder of the protected variety (licensor) may authorise another person (licensee) to perform the acts referred to in Article 26 of this Law. A licensing agreement shall be concluded to this effect.

2. The licensee may not transfer the rights to perform the acts referred to in Article 26 to the third person, unless the licensing agreement provides otherwise.

3. Upon the conclusion of the licensing agreement, the breeder of the protected variety shall submit it to the manager of the List of Protected Varieties for registration.

#### Article 33. Types of Licensing Agreements

1. The breeder shall have the right to conclude:
  - 1) an exclusive licensing agreement;
  - 2) a non-exclusive licensing agreement.
2. The conclusion of an exclusive licensing agreement shall restrict the breeder's right to use the variety by rights transferred to the licensee.
3. The conclusion of a non-exclusive licensing agreement shall not restrict the breeder's rights established by this Law.

#### Article 34. Requirements of Licensing Agreements

A licensing agreement shall be concluded in writing. A licensing agreement shall set out the following:

- 1) the requisites of the parties to the agreement;
- 2) the denomination of the plant species and variety;
- 3) purposes, ways or methods of exploitation of the variety;
- 4) the territory of exploitation of the variety;
- 5) the period of validity of the licensing agreement;
- 6) rights, obligations and liability of the parties to the agreement;
- 7) the amount of the licence fee, terms and procedure for payment thereof;
- 8) the procedure for settling disputes;
- 9) other conditions in conformity with laws and other legal acts.

#### Article 35. Compulsory Licensing Agreement

1. A compulsory licensing agreement may be concluded if there is a lack in the country of the propagating material of the protected variety of significance for the national economy or if the breeder has not propagated the variety of significance for the national economy for a period of three years after its entry in the List of Protected Varieties. A natural or legal person who wishes to conclude a compulsory licensing agreement may apply to the manager of the List of Protected Varieties.
2. A compulsory licensing agreement shall be concluded and terminated by the decision of the manager of the List of Protected Varieties.
3. The licence fee payable for the exploitation of the variety under a compulsory licensing agreement shall be fixed by the decision of the manager of the List of Protected Varieties and shall be equal to the average licence fee charged for the propagating material of the same plant species in Lithuania.
4. The breeder must sell to the licensee the initial propagating material required for the reproduction (multiplication) of the variety for the price that is paid on the average for the propagating material of other varieties of the same plant species.
5. A compulsory licensing agreement may be concluded for a maximum period of four years. The breeder may request the manager of the List of Protected Varieties to shorten the period of the compulsory licensing agreement or to terminate the agreement, if the reasons for concluding the licensing agreement cease to exist or the licensee violates the conditions laid down in the licensing agreement.
6. The conclusion of a compulsory licensing agreement shall not restrict the breeder's rights established by this Law.

7. Disputes arising in relation to the conclusion and termination of a compulsory licensing agreement shall be settled by court.

CHAPTER EIGHT  
DECISION MAKING, APPEALS AGAINST DECISIONS  
AND EXAMINATION OF APPEALS

Article 36. Appeals against the Application

1. After the publication of the registration of the application every interested person shall have access the application documents, the results of the technical examination of the variety and the variety description.
2. Prior to a decision to grant the plant variety right or to refuse granting that right, the interested persons may lodge an appeal with the manager of the List of Protected Varieties against the ineligible applicant, as well as on the contention that the variety does not comply with the conditions for the grant of plant variety rights referred to in Article 3 of this Law. Appeals against the variety denomination may be lodged within three months from the date of the publication of the application. The appeal shall be accompanied by the documents or other material justifying the appeal. The person who has lodges the appeal shall have the right to withdraw it at any time.
3. The manager of the List of Protected Varieties must notify the applicant in writing of the received appeal or the withdrawal thereof.

Article 37. Board of Appeal

1. For the purposes of deciding on appeals by applicants from the decisions of the manager of the List of Protected Varieties, also on appeals against unsatisfactory examinations of applications and technical examinations of varieties, as well as on other issues relating to plant variety rights, the Minister of Agriculture shall set up the Board of Appeal composed of five members and appoint the chairman of the Board. The Board of Appeal shall be appointed for a period of three years and comprised of representatives from the Ministry of Agriculture, agricultural, farmers' non-profit organisations, as well as scientific institutions.
2. The activities of the Board of Appeal shall be governed by the regulations approved by the Minister of Agriculture.
3. Decisions of the Board of Appeal shall be binding on the manager of the List of Protected Varieties.

Article 38. Procedure of Making Decisions, Appealing  
against Decisions and Examining Appeals

1. The time limits and procedure for appealing against the decisions of the manager of the List of Protected Varieties, as well as the time limits for correcting the identified deficiencies in the applications, taking decisions and notifying of such decisions, filing the received and withdrawn appeals shall be specified in the regulations of the List of Protected Varieties.
2. Decisions of the manager of the List of Protected Varieties shall be appealed against to the Board of Appeal, whereas decisions of the Board of Appeal shall be appealed against in court.

CHAPTER NINE  
INTERNATIONAL CO-OPERATION

Article 39. International Treaties

Where international treaties to which the Republic of Lithuania is a party establish other requirements for plant variety rights than those laid down in this Law, the provisions of the international treaties of the Republic of Lithuania shall apply.

#### Article 40. International Co-operation

The manager of the List of Protected Varieties shall co-operate with institutions of other states, exchange information and documents relating to plant variety rights, as well as perform other acts for the fulfilment of international obligations.

### CHAPTER TEN ENFORCEMENT OF THE BREEDER'S RIGHTS AND LIABILITY FOR VIOLATIONS OF THE LAW ON THE PROTECTION OF PLANT VARIETIES

#### Article 41. Remedies for Infringement

1. Breeders or their authorised representatives, with the aim of defending their rights, as well as licensees, with the aim of defending the rights assigned to them, shall be entitled in accordance with the procedure established by law to apply to court and request to:

- 1) recognise the rights;
- 2) issue an injunction aimed at prohibiting the continuation of unlawful acts;
- 3) prohibit the performance of acts likely to cause an actual infringement of the rights or to inflict damage;
- 4) compensate for material damage, including lost profits and other expenses incurred;
- 5) apply other remedies provided for by this Law and other laws.

2. In order to ensure the enforcement of an injunction prohibiting the continuation of unlawful acts, as well as a prohibition to perform acts likely to cause an actual infringement of the rights or to inflict damage, the court may, at the request of persons referred to in paragraph 1 of this Article, apply provisional protection measures.

3. Where the person, against whom an injunction aimed at prohibiting the continuation of unlawful acts is issued or who is liable to be subject to the corrective measures provided for in Article 41(4), acted without fault as regards the infringement of the rights established by this Law, the court may, at the request of that person, order pecuniary compensation to be paid to the injured party, if execution of the measures provided for in paragraph 1 of this Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### Article 41(1). Right of Information

When adjudicating a dispute concerning an infringement of the rights established by this Law and in response to a justified request of the claimant, the court may, in the course of proceedings, order persons to provide immediate information on the infringement of the claimant's rights provided for in this Law, as well as the origin and distribution networks of protected plant varieties, also the quantities and prices of the used propagating material of those varieties.

#### Article 41(2). Evidence

1. The court may, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, order in accordance with the procedure laid down in the Code of Civil Procedure that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of the propagating material of the protected plant variety shall be considered by the court to constitute reasonable evidence of an infringement of the rights established by this Law.

2. Under the conditions specified in paragraph 1 of this Article, in the case of an infringement of the rights established by this Law committed for commercial purposes, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, order the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information. In the event of failure to

communicate such evidence without valid reasons within the time limit set by the court or refusal of access to such evidence, the court shall be entitled to take a decision on the basis of the evidence submitted to it.

#### Article 41(3). Provisional Measures and Measures for Preserving Evidence

1. The application of provisional measures and measures for preserving evidence shall be governed by the Code of Civil Procedure and this Law.

2. Where there are sufficient grounds to suspect that an infringement of the rights established by this Law has been committed, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, apply provisional measures necessary to prevent any imminent unlawful acts, to forbid the continuation of the unlawful acts and to enforce the final decision of the court, that is to:

1) forbid persons to commit any imminent infringement of the rights established by this Law;

2) order persons to discontinue, on a provisional basis, any infringement of the rights established by this Law;

3) seize, forbid the entry into or remove from the channels of commerce the propagating material of the protected variety suspected of possible or actual infringement of the rights established by this Law;

4) seize the property of the persons allegedly infringing the rights established by this Law, which is possessed by the said persons or third persons, including bank accounts and accounts at other credit institutions; as well as require to communicate banking, financial or commercial documents or to grant access to these documents, if an infringement has been committed for commercial purposes;

5) apply other measures provided for by the Code of Civil Procedure.

3. If the applied provisional measures referred to in subparagraphs 1 and 2 of paragraph 2 of this Article are infringed and such infringement continues, the court may order the alleged infringers to ensure adequate compensation for damages to the person who requested the application of provisional measures.

4. The court shall be entitled to require the person, who requests the application of provisional measures, to provide any reasonably available evidence in order to satisfy itself with a sufficient degree of certainty that he or the person, in respect of whose interests the application of provisional measures is requested, is the holder or user of the rights established by this Law and that the applicant's rights are being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence sufficient to support its claims that his rights established by this Law have been infringed or are about to be infringed, order provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information, that is:

1) the detailed description of the propagating material of the protected variety infringing the rights established by this Law, with or without the detention thereof;

2) the arrest and seizure of the propagating material of the protected variety infringing the rights established by this Law and the documents relating thereto;

3) the application of other prompt and effective provisional measures provided for by the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been informed and heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied without the defendant having been informed and heard, the defendant must be notified thereof without delay after the execution

of those measures at the latest. At the request of the parties, including the right to be heard, provisional measures and measures for preserving evidence may be reviewed with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

7. Where the applied provisional measures or measures to preserve evidence are revoked by the court, or where they lapse due to any act or omission by the person who has applied for those measures, or where a court decision becomes effective stating that there has been no infringement or threat of infringement of the rights established by this Law, or the person, who has requested the application of provisional measures or measures for preserving evidence, does not institute, within the period determined by the court, proceedings, the defendant shall be entitled to claim compensation for any injury caused by those measures.

#### Article 41(4). Corrective Measures

1. The persons referred to in paragraph 1 of Article 41 of this Law shall be entitled to apply to court and request to recall, to remove from the channels of commerce the propagating material of protected plant varieties in such a way that they would not incur any injury and the protection of their rights would be safeguarded, or to destroy the propagating material of plant varieties which the court found to be infringing the rights established by this Law.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other claims by a person, requesting the application of these measures, for compensation for any injury suffered by him as a result of the infringement of his rights. Moreover, these measures shall be carried out without compensation, at the expense of the infringer, taking into account the proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third persons.

#### Article 41(5). Compensation for Material Damage

1. The procedure for compensation for material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost profits, expenses incurred and other important circumstances. The profits made by the infringer may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, be recognised as losses. The propagating material of the protected variety infringing the rights established by this Law may be handed over to the holders of those rights, at their request.

3. The amount of lost profits of persons referred to in paragraph 1 of Article 41 of this Law shall be assessed taking into account the income that would have been received through authorised use of the propagating material of protected plant varieties.

4. Instead of claiming compensation for the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, persons referred to in paragraph 1 of Article 41 of this Law may claim remuneration or fees which would have been due if the infringer had requested authorisation to use the propagating material of the protected variety (i.e. concluded a licensing agreement or obtained authorisation), and where the infringer acted intentionally or with negligence – up to double remuneration or fees.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in activities infringing the rights established by this Law (i.e. acted without fault), the court may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the recovery of profits. The profits of the infringer shall include all that the infringer has saved and/or received by infringing the rights established by this Law. The profits of the infringer shall be determined and recovered regardless of the fact whether or not the holder of the rights would have gained similar profits himself. When determining the profits of the infringer, the holder of the rights must present only the evidence which would support the gross earnings received by the infringer; the amount of the net profits (profits after the deduction of expenses) must be proved by the infringer himself.



#### Article 41(6). Publication of Judicial Decisions

The court taking a decision on the infringement of the rights established by this Law may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the infringer to disseminate, at his own expense, the information concerning the decision, including publishing the decision in full or in part in the mass media, or in any other way. The court decision may be published or the information concerning the court decision disseminated after the court decision becomes effective, unless otherwise established by the court. The court decision shall define the manner and extent of its publication. Persons referred to in paragraph 1 of Article 41 of this Law may request that the infringer makes to the account indicated by the court an advance payment of the amount necessary to disseminate the information concerning the court decision or to publish the court decision itself.

#### Article 41(7). Establishment of Non-infringement of Plant Variety Rights

The person concerned shall be entitled to bring an action to court requesting to establish that his activities do not infringe plant variety rights.

Where the persons concerned proves that his activities do not infringe the provisions of plant variety rights, the court shall take a decision establishing non-infringement of plant variety rights.

Breeders or their authorised representatives must inform all licensees about the proceedings initiated for establishing non-infringement of plant variety rights. Unless the licensing agreement provides otherwise, licensees shall be entitled to participate in these proceedings.

#### Article 41(8). Liability for Violations of this Law

Natural and legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area shall be held liable for violating the provisions of this Law in accordance with the procedure laid down by laws of the Republic of Lithuania.

#### Article 41(9). Application of Border Measures

The propagating material of the protected plant varieties the import whereof from third countries into the Republic of Lithuania or the export whereof from the Republic of Lithuania to third countries is considered an infringement of the rights of persons referred to in paragraph 1 of Article 41 shall be subject to border measures defined by legal acts of the European Union and the Republic of Lithuania.

### CHAPTER ELEVEN FINAL PROVISIONS

#### Article 42. Entry into Force of the Law

The Law shall enter into force on 1 April 2002.

#### Article 43. Repeal of Laws

The following laws shall be repealed as of 1 April 2002:

- 1) Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;
- 2) Law Amending Articles 3, 6, 17, 18, 19, 20, 24, 25 and 27 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;
- 3) Law Amending Article 23 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC VALDAS ADAMKUS

Annex to the Republic of Lithuania Law on the Protection of Plant Varieties

EU LEGAL ACTS IMPLEMENTED BY THE LAW ON THE PROTECTION OF PLANT VARIETIES

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 Special edition, Chapter 17, Volume 02, p. 32).

## PANAMA

### **Law No. 63 of October 5, 2012 amending articles of Law No. 23 of 1997 on Standards for the Protection of New Varieties of Plants<sup>4</sup>**

THE NATIONAL ASSEMBLY DECREES THE FOLLOWING

Article 1. Article 232 of Law No. 23 of 1997 provides as follows:

#### Article 232 Definitions

For the purposes of this Law, the following terms and definitions shall apply:

#### Breeder

Natural or legal person who breeds or discovers and develops a plant variety, an employer of such a person, if applicable law so provides, or who has commissioned the work, or the assignee of the aforementioned persons, as the case may be.

#### Council for the Protection of Plant Varieties

An advisory body composed of the various bodies and associations interested in the protection of plant varieties. It is chaired by the Minister of Agricultural Development.

#### Faculty of Agriculture in the University of Panama

State university institution empowered to conduct technical analyses to determine whether a variety meets the conditions laid down in this Law for its registration and the granting of plant breeders' rights in its regard.

#### General Directorate of the Industrial Property Registry, Ministry of Commerce and Industry (DIGERPI)

State agency responsible for keeping industrial property records of the Republic of Panama. For the purposes of this Law, it shall be responsible for the registration of protected varieties and granting plant breeder's rights.

International Convention for the Protection of New Varieties of Plants (UPOV Convention) of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978 and March 19, 1991

An international convention which may be adhered to by States and certain intergovernmental organizations. Its objective is the protection of plant varieties through an intellectual property right. It serves as the basic text of the International Union for the Protection of New Varieties of Plants (UPOV).

Intergovernmental organization with its headquarters in Geneva, Switzerland, based on the International Convention for the Protection of New Varieties of Plants.

#### Law

Where written in lower case, a term referring to a document which, in whatever manner, represents, constitutes or grants rights.

#### National Seeds Commission

National commission established by Decree No. 3 of 1978, composed of representatives government and private bodies. Its purpose is, inter alia, quality control of seeds or

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<sup>4</sup> Translation provided by the Office of the Union. Original Spanish version published in Gazette No. 106 of December 2013 ([http://www.upov.int/edocs/pubdocs/en/upov\\_pub\\_438\\_106.pdf](http://www.upov.int/edocs/pubdocs/en/upov_pub_438_106.pdf)).

propagating material used in the country, certification and registration of seeds and compliance with the relevant extant legislation. It is composed of a Technical Secretariat which includes the Seeds Reproduction Unit, the Official Seeds Laboratory and the Certification and Registration Unit.

#### Panamanian Institute of Agricultural Research (IDIAP)

State agency with legal personality, vested with its own assets and administrative, economic and technical autonomy, responsible for regulating all research, development and application of agricultural science and technology policies in the public sector. It is empowered to perform technical analyses to test whether a variety meets the conditions laid down in this Law for its registration and the granting plant breeders' rights in its regard.

#### Propagating material

Seeds, fruits, plants, or parts of plants, used in the reproduction of plants. Encompasses the whole plant.

#### Protected variety

Variety registered in the Register of Protected Varieties, General Directorate of Registration of Industrial Property, Ministry of Commerce and Industry, and subject of a plant breeder's right.

#### Recognized priority

Precedence for the grant of a breeder's right, based on the submission abroad of an application relating to the same materials which are the subject of a later application in the Republic of Panama.

#### Reference specimen

The smallest entity used by the breeder to maintain his variety, from which is taken the representative sample for the registration of the variety.

#### Registry

Registry of protected varieties kept in the General Directorate of the Industrial Property Registry of the Ministry of Commerce and Industry.

International Union for the Protection of New Varieties of Plants (UPOV). Intergovernmental organization based in Geneva, Switzerland, whose basic text is the International Convention for the Protection of New Varieties of Plants.

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

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

Article 2. Article 233 of Law No. 23 of 1997 provides:

Scope. This Law shall apply to all plant genera and species.

Article 3. Article 234 of Law No. 23 of 1997 provides:

National treatment and reciprocity. The following shall benefit from the rights laid down by this Law:

1. Nationals of the Republic of Panama and all persons domiciled, resident or based therein.

2. Nationals of a UPOV member, as well as natural persons resident in the territory of a UPOV member and legal entities with head offices in said territory. The said nationals, natural persons or legal entities of a member of UPOV shall comply with the conditions and formalities imposed on the nationals of the Republic of Panama.

3. For the purposes of paragraph (2), "nationals" shall mean, where the member of UPOV is a State, the nationals of that State and where the member of UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.

4. Nationals of any State who, without being members of UPOV, grant effective protection to nationals of the Republic of Panama. For the purposes of this section, the Executive Body shall determine whether the protection granted by another State is effective and reciprocal.

Article 4. Article 236 of Law No. 23 of 1997 provides:

Principles. The breeder shall be entitled to apply for a breeder's right.

Where various persons together create and develop a variety, they shall jointly enjoy a right to protection. Unless otherwise stipulated among the breeders, they shall have equal rights.

Where the person who creates or discovers and develops a plant variety is an employee, the right to apply for a breeder's right shall be governed by the employment contract under which the variety was created or discovered and developed, in accordance with the law applicable to such contracts.

Article 5. Article 237 of Law No. 23 of 1997 states:

Characteristics of the right. The breeder's right shall be transferable and inheritable. The heir or rightful claimant may make use of such right, derive benefits therefrom and dispose of it during its period of validity in the same manner and subject to the same conditions as the predecessor. The rightholder may grant licenses for the exploitation of the protected varieties in accordance with the provisions of Articles 238 and 239.

Save where expressly provided for in this Law, the free exercise of a breeder's right shall not be restricted except for reasons of public interest. Where the effect of any such restriction is that the Minister of Commerce and Industry authorizes a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 6. Article 238 of Law No. 23 of 1997 states:

Scope of the Breeder's Right

1. Breeder's right over reproduction and propagating materials:

Save as provided for in this Law with regard to exceptions and the exhaustion of the breeder's right, the breeder's authorization shall be required for the following acts in relation to the reproduction and propagating material of the protected variety:

- a. Production or reproduction (multiplication);
- b. Conditioning for the purpose of propagation;
- c. Offering for sale;
- d. Selling or other marketing;
- e. Exporting;
- f. Importing;
- g. Stocking for any of the above purposes;

The breeder may make his authorization granted by virtue of the acts listed above subject to certain conditions and limitations he may define.

## 2. Breeder's right over the product of the harvest:

Unless otherwise provided herein with regard to the exceptions and the exhaustion of the breeder's right, the breeder's authorization shall be required for the acts mentioned in (a) to (h) of paragraph 1 above, where such acts are performed in respect of the product of the harvest, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the propagating material.

Article 7. Article 239 of Law No. 23 of 1997 provides:

Essentially derived and certain other varieties. The provisions of the preceding article shall apply for propagation material of the protected variety or the product of the harvest in respect of:

1. Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety.
2. Varieties which are not clearly distinguishable in accordance with Article 7 of this Law from the protected variety.
3. Varieties whose production requires the repeated use of the protected variety.

For the purposes of this Law, a variety shall be deemed to be essentially derived from another variety ("the initial 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.

Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 8. Article 241 of Law No. 23 of 1997 provides:

Authorization to sell seed. Regarding the requirements for the sale of seeds, the National Seeds Commission shall consider the provisions of this Law.

Article 9. Article 243 of Law No. 23 of 1997 states:

Conditions of Protection The breeder's right shall be granted if the variety is new, distinct, uniform, stable and has been designated by a denomination in accordance with Article 265.

A breeder's right shall be subject to the aforementioned conditions only and shall be granted subject to the breeder's compliance with the formalities provided for herein and payment of the relevant fees.

Article 10. Article 244 of Law No. 23 of 1997 provides:

Novelty. The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

1. in the territory of the Republic of Panama, earlier than one year before that date;
2. in a territory of any other State, earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

Article 11. Article 245 of Law No. 23 of 1997 provides:

Distinctness 15.-(1) A variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the filing of the application. In particular, in case of the filing in any country of an application for the granting of a breeder's right or the entering in a registry of varieties of varieties allowed to be traded, the variety which is the subject of the application shall be deemed to be commonly knowledge with effect from the date of the application if this leads to the grant of the breeder's right or registration in the catalogue, as the case may be.

Knowledge of the existence of the said other variety may be established by various references, such as ongoing commercial exploitation of the variety, entry of the variety in a register of varieties maintained by a recognized professional association, or the presence of the variety in a reference collection.

Article 12. Article 249 of Law No. 23 of 1997 provides:

Duration of the Breeder's Right The breeder's right shall be granted for 20 years with effect from the date of grant of the protection. For trees and vines, including, in each case, their rootstocks, the protection shall last for 25 years. The breeder's right shall be valid only for as long as the breeder pays the fees associated with the registration and maintains his rights in the terms set forth herein.

Upon expiry of the protection, the varieties shall be considered to have passed into the public domain.

Article 13. Article 250-A shall be added to Law No. 23 of 1997 as follows:

Article 250 Exceptions to the Breeder's Right The breeder's right shall not extend to

1. acts done privately and for non-commercial purposes;
2. acts done for experimental purposes; and
3. acts done for the purpose of breeding other varieties, and, except where the provisions of Article 239 apply, acts referred to in Article 238 in respect of such other varieties.

Notwithstanding the provisions of this Law regarding the scope of the breeder's right, the breeder's right in relation to any variety, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, shall be restricted in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 231(1) and (2).

Article 14. Article 250-B shall be added to Law No. 23 of 1997 as follows:

Exhaustion of the Breeder's Right. The breeder's right shall not extend to acts concerning the material of his variety or a derived variety that has been sold or otherwise marketed in the territory of Panama by the breeder or with his consent unless such acts:

1. involve further propagation of the variety in question; or
2. involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

Regarding the effects of the exhaustion of the right, "material", in relation to a variety, shall be understood as:

1. propagating material of any kind; and
2. harvested material, including entire plants and parts of plants.

Article 15. Article 252 of Law No. 23 of 1997 provides:

Registration of plant varieties. The registration of plant varieties shall be performed by the General Directorate of the Industrial Property Registry of the Ministry of Commerce and Industry (DIGERPI).

All administrative procedures pertaining to this Law before DIGERPI may be conducted using existing or known electronic or telematic means.

All matters relating to the use of electronic or telematic means shall be governed by applicable law.

To that end, DIGERPI shall determine the general conditions, requirements and specifications necessary.

For this purpose, the General Directorate of the Industrial Property Registry shall maintain a register of plant varieties, in which it shall record applications and granted rights. The General Directorate of the Industrial Property Registry shall differentiate between the registry of applications and the registry of granted rights, which shall be public.

Any person having a legitimate interest may:

1. consult the documents relating to the application;
2. consult the documents relating to a breeder's right that has already been granted; and,
3. Visit growing tests and examine other necessary tests for the purpose of technical review.

In the case of varieties whose production requires repeated use of other varieties (components), the applicant may, upon filing the application, request that the documents and trials relating to the components be exempted from advertising media.

The General Directorate of the Industrial Property Registry shall retain elements of records, originals or copies, for a period of five years with effect from the withdrawal or rejection of the application or the date of exhaustion of the breeder's right, as the case may be.

Upon expiry of the aforementioned time limit, such records shall be transmitted to the General Directorate of National Archives of the Public Registry

To facilitate custody, consultation and issuance of certified copies and certifications, DIGERPI shall establish an electronic document repository which will store documents contained in the files and paper records in its custody.

The documents thus stored, together with their duly authenticated and certified copies, shall have the same legal force as the original document, be admissible as evidence and have the same force granted to documents in Volume II of the Code of Civil Procedure of the Judicial Code.

Article 16. Article 254 of Law No. 23 of 1997 provides:

Fees. The General Directorate of the Industrial Property Registry shall levy fees for services relating to the protection of plant varieties as follows:

- a. application for breeder's right: B/.100.00
- b. application for antecedents: B/.25.00
- c. application for certification: B/.35.00
- d. For an extract of each document: B/.10.00
- e. for application to register a change of name of the owner, address, domicile, transfer, contractual or compulsory license and other administrative changes: B/.50.00
- f. application for certified copy of a document: B/.10.00
- g. for any publication in BORPI: B/.10.00
- h. Breeder's certificate: B/.50.00



Through the Minister of Commerce and Industry, the Executive is empowered to establish the amounts of fees for services not included in the previous Article which are payable by interested parties. This power shall extend to variation and new fixings which, from time to time and with the approval from the Director General of DIGERPI, are deemed necessary or desirable.

Article 17. Article 256 of Law No. 23 of 1997 provides:

Form and content of the application. Any person seeking the protection of a variety shall submit an application to the General Directorate of the Industrial Property Registry and pay the appropriate fee.

Under penalty of nullity, the application must include at least the following information:

1. the name and address of the person who created and developed the variety, if such person is not the applicant;
2. the name and address of the applicant and the legal representative;
3. the identification of the botanical taxon (Latin name or common name);
4. the proposed denomination of the variety, or a provisional designation;
5. if the priority of a previous application is claimed, the member State of the UPOV Convention that received such request and on which date;
6. official description of the variety; and
7. proof of payment of the application fee.

This matter will be duly regulated by the Executive.

Article 18. Article 257 of Law No. 23 of 1997 provides:

Priority The applicant may benefit from the priority of an earlier application filed legally for the same variety, by himself or his predecessor in title, with the authority of a UPOV member.

If the application to the General Directorate of the Industrial Property Registry was preceded by one or more applications, the priority may only be based on the earliest application.

The priority must be expressly claimed in an application to the General Directorate of the Industrial Property Registry. It may only be claimed within a period of 12 months from the date of filing of the earliest application. The filing shall date not be included in the 12-month period.

To be accorded the right of priority, the applicant must provide to the Department of Registration of Industrial Property, within three months with effect from the filing date in accordance with the provisions of this Law, a copy of the documents which constitute the first application, certified by the authority with which the application was filed.

The General Directorate of the Industrial Property Registry may require the provision, within three months as from the date of receipt of the communication, a translation of the first application or any documents that constitute the first application.

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

The applicant shall be entitled to a period of up to two years from the date of expiry of the priority period, or, if the first application is rejected or withdrawn, of an appropriate period from the time of rejection or withdrawal, within which to furnish any information, documents or material required for the purposes of the examination provided for in this Law.

Article 19. Article 258 of Law No. 23 of 1997 provides:

Examination of the form of the application and date of filing. The application shall fulfill the requirements as to content and form.

If the application is incomplete or not formally appropriate, the General Directorate of the Industrial Property Registry shall request the applicant to correct it within 30 calendar days

with effect from the date of receipt of the notification. Any application which has not been corrected within that period shall be deemed not to have been filed.

A complete application which meets the requirements shall be assigned a date of filing, which shall be entered in the Register of Applications. The filing date shall be that on which the General Directorate of the Industrial Property Registry received the information set forth in this Law.

Article 20. Article 259 of Law No. 23 de 1997 provides:

Examination of the content of the application. The application shall be considered on its merits, in order to decide, on the basis of the information and materials provided therein, that the variety is new, distinct, uniform and stable, that the denomination is in accordance with the provisions of Article 265 and that the applicant is legally authorized under the provisions of this Law.

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

The technical examination of the variety to determine whether it is distinct, uniform and stable shall be governed by the provisions of Article 260.

Article 21. Article 260 of Law No. 23 of 1997 states:

Technical examination of the variety.

1. The variety shall undergo a technical examination to determine that it is distinct, uniform and stable.
2. Once it has been established that the variety meets the above-mentioned conditions, the official description of the variety shall be established.
3. The General Directorate of the Industrial Property Registry shall organize the examination of distinctness, uniformity and stability as follows:
  - a. The Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama shall grow the variety or conduct other necessary tests.
  - b. These bodies shall see to its cultivation or other necessary tests.
  - c. They shall take into account the results of growing tests or other test previously conducted.

In view of this examination, the breeder shall provide any information, documentation or material necessary, as specified in this Law or its regulations.

4. The cost of the technical examination shall be paid by the applicant directly to the institution that conducts it. Such cost will be determined by the materials used and the services provided. The examination fee shall be reasonable. This matter shall be regulated by the Executive.

Article 22. Article 262 of Law No. 23 of 1997 provides:

Publication of the application. If the application meets the requirements of this Law, it shall be published in the Official Bulletin of the of Industrial Property Registry (BORPI) supported, at least, by the items set forth in Article 256(1), (2), (3), (4) and (5).

Article 23. Article 263 of Law No. 23 of 1997 provides:

Challenge to the granting of a breeder's right. Once an application is published any person who considers that the applicant should not be granted a breeder's certificate may, within two months from the date of publication in the BORPI, file a challenge before the courts with jurisdiction over industrial property, according to the procedure set forth in Law No. 35 of May 10, 1996.

The challenge may only seek the dismissal of the application on the grounds that the variety is not new, distinct, uniform and stable, or that the applicant is not entitled to protection.

Article 24. Article 264 of Law No. 23 of 1997 provides:

Grant of breeder's right and rejection of the application. The General Directorate of the Industrial Property Registry shall grant the breeder's right where, as a result of the technical review of the variety, conducted by the Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama or any other agency designated for this purpose, it is established that the variety meets the conditions set forth in Article 243 and that the applicant has satisfied all other requirements of this Law.

The General Directorate of the Industrial Property Registry shall reject the application if it finds otherwise.

The grant of a breeder's right or the rejection of the application shall be entered in the register of plant varieties and published in the BORPI.

The breeder's right shall also be entered into the Registry. The description of the variety may be included by reference in the registration of the technical files of the General Directorate of the Industrial Property Registry and examinations conducted by the Agricultural Research Institute of Panama or the Faculty of Agricultural Sciences of the University of Panama or by any other designated agency.

Article 25. Article 264-A shall be added to Law No. 23 of 1997 as follows:

Provisional protection. Provisional protection shall be provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

The holder of a breeder's right shall at least be entitled to equitable remuneration or, if warranted, to reasonable compensation from any person who, during the period provided in the previous paragraph, has performed acts which, once the right is granted, require the breeder's authorization as provided in Article 238 and 239.

Article 26. Article 265 of Law No. 23 of 1997 provides:

Denomination

1. The variety shall be designated by a denomination which shall be its generic designation. Subject to paragraph 4, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

2. The denomination must enable the variety to be identified. It may not consist solely of figures, except where this is an established practice for designating varieties. 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. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

3. The denomination of the variety shall be proposed by the breeder to the General Directorate of the Industrial Property Registry. If it is found that the denomination does not satisfy the requirements of paragraph 2, the General Directorate of the Industrial Property Registry shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the General Directorate of the Industrial Property Registry at the same time as the breeder's right is granted.

4. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph 7, is obliged to use it, the General Directorate of the Industrial Property Registry shall require the breeder to submit another denomination for the variety.

5. Any variety that is the subject of an application for the grant of a breeder's right shall be completed under the same name in all UPOV members. The General Directorate of the Industrial Property Registry shall register the denomination so submitted, unless it considers

the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

6. The General Directorate of the Industrial Property Registry shall ensure that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the General Directorate of the Industrial Property Registry.

7. Any person who offers for sale or markets propagating material of a variety protected within the territory of the Republic of Panama shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph 4, prior rights prevent such use.

8. When a variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 27. Article 267 of Law No. 23 of 1997 provides:

Registration Formalities. The denomination proposed for the variety for which protection is sought shall be submitted at the same time as the application.

Subject to the payment of a fee and the indication of a provisional designation in the application, the applicant may defer the procedure for registration of the denomination. In such case, the applicant shall submit the proposed designation within 30 days with effect from the date of receipt of the request. If the proposal is not submitted within this deadline, the application shall be rejected.

To consider the feasibility of a denomination, the General Directorate of the Industrial Property Registry shall submit its proposal to the Institute of Agricultural Research of Panama, which is the competent authority to determine whether a name may be registered. The General Directorate of the Industrial Property Registry shall accept the findings of the report of the Institute of Agricultural Research of Panama.

The denomination shall be registered at the same time as the grant of the breeder's right.

The proposed designation shall be published in the Bulletin unless the General Directorate Registry of Industrial Property rejects it in accordance with the provisions of this law.

Once the application is published, any person who believes that the registration of the name should not be allowed, based on any of the grounds for rejection provided for in this Law, may file within two months from the date of publication in the BORPI, a challenge with the courts with jurisdiction over Industrial Property, in accordance with the procedure outlined in Law No. 35 of May 10, 1996.

Article 28. Article 268 of Law No. 23 of 1997 provides:

Cancellation of a Denomination and Registration of a New Denomination. The General Directorate of the Industrial Property Registry shall cancel the registered name:

1. If the right holder so requests, citing the existence of a legitimate interest.
2. If a third person submits a court decision prohibiting the use of the denomination in relation to the variety. Any interested party, after hearing the owner, may request the courts with jurisdiction over industrial property to declaring invalid a registered name if it does not meet the requirements of this Law.

Regarding this Article, the affected party may file a new name which shall be recorded and published as soon as it is approved, subject to opposition and revocation if necessary.

Article 29. Article 270 of Law No. 23 of 1997 provides:

Rights. For the duration of the right, the breeder shall pay the fest set out below:

- a. two hundred balboas (B/. 200) prior to the granting of registration, which shall be equivalent to the first five years of protection;
- b. two thousand two hundred balboas (B/. 2200) upon expiration of the first term of protection and for the next five years;
- c. Two thousand four hundred balboas (B/. 2400) upon expiration of the second term of protection, for the next five years;
- d. Three thousand two hundred balboas (B/. 3200) upon expiration of the third term of protection and for the remainder of the protection.

Payment may be made at any time before the expiration date of the relevant five years, except for the first payment. If no payment is made after six months from the date on which payment of any of the fees referred to in this Article is due, the breeder will be understood to have abandoned his breeder's right, which shall lapse as of right.

Article 30. Article 271 of Law No. 23 of 1997 states:

Expiration and waiver of the breeder's right. The breeder's right shall pass into the public domain when:

1. Its validity expires at the end of the time limit specified in Article 249.
2. The rightholder waives the right by written notice to the General Directorate of the Industrial Property Registry.

Article 31. Article 271-A is added to Law No. 23 of 1997 as follows:

Cancellation of the Breeder's Right

1. The breeder's right may be declared extinct if it appears that the conditions of uniformity and stability are no longer fulfilled.
2. Furthermore, the breeder's right may be cancelled if, after being requested to do so within the prescribed period:
  - a. the breeder fails to provide the information, documents or material deemed necessary for the verification of the maintenance of the variety;
  - b. the breeder fails to pay such fees as may be due to keep his right in force; and
  - c. the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
3. A breeder's right may not be revoked for reasons other than those set forth in paragraphs 1 and 2 above.

Article 32. Article 272 of Law No. 23 of 1997 states:

Nullity of the Breeder's Right. The breeder's right shall be declared null and void when it is established:

1. that the variety was not new or distinct on the date of filing of the application or, as the case may be, the date of priority;
2. that, where the grant of the breeder's right was based essentially upon information and documents furnished by the breeder, the variety was not uniform or stable on the above-mentioned date; and
3. the breeder's right was granted to a person not entitled to it, and that the claimant did not engage in, or declined to engage in, an application for judicial adjudication, in accordance with Article 242.

Except otherwise provided in this Law, a breeder's right which is declared null shall be considered not to have been granted.

Any person demonstrating an interest shall be entitled to file a petition for annulment before the courts with jurisdiction over Industrial Property, in accordance with the procedure set forth in Law No. 35 of May 10, 1996.

Article 33. Article 273 of Law No. 23 of 1997 provides:

Civil remedies. Any person who, without authorization, performs acts that require the authorization of the holder, uses a designation or fails to use a variety denomination in violation of the provisions of this Law, may be sued by the breeder or the holder of an exclusive license. The provisions for unauthorized use of industrial property rights and the procedure established by Law 35 of May 10, 1996 shall be applied in such person's regard.

Subject to the provisions of this Law, the provisions applicable to the exercise of rights conferred by virtue of inventions and utility models, as established by the provisions governing Industrial Property in the Republic of Panama, shall apply mutatis mutandis to the exercise of rights under a plant breeder's right.

Article 34. Article 275 of Law No. 23 of 1997 provides:

Economic sanctions linked to unauthorized use of the name of a plant variety. Without prejudice to claims for compensation or other claims by the rightholder or the licensee, a court may, at the request of the claimant, impose a financial penalty of one thousand balboas (B/. 1,000) to ten thousand balboas (B/. 10,000) and double this penalty in case of recidivism, if it is shown that the defendant knowingly used a designation or failed to use a variety designation in violation of the provisions of this Law.

Article 35. Article 279 of Law No. 23 of 1997 provides:

Article 279 Coordination The Agricultural Research Institute shall coordinate with the General Directorate of the Industrial Property Registry all matters relating to the examination of the application with regard to botanical taxa, technical reviews, maintaining the variety, the viability of the denominations, publication in the Official Bulletin of the Industrial Property Registry, and any other action necessary for the adequate protection and registration of the plant variety.

Article 36. The present Law amends Articles 232, 233, 234, 236, 237, 238, 239, 241, 243, 244, 245, 249, 252, 254, 256, 257, 258, 259, 260, 262, 263, 264, 265, 267, 268, 270, 271, 272, 273, 275 and 279, adds Articles 250-A, 250-B y 264-A, 271-A, repeals Articles 240, 266, 274 and 280 of Law No. 23 of July 15, 1997 and all other contrary provisions.

Article 37. This law shall come into effect on the day of its promulgation.

It is ordered that communication and fulfilment be provided.

Bill 512 of 2012, approved upon third reading in the Palacio Justo Arosemena, city of Panama, on the twenty-sixth day of the month of September in the year two thousand and twelve.

The President  
Sergio R. Gálvez Evers

The Secretary-General  
Wigberto E. Quintero G.

NATIONAL EXECUTIVE, PRESIDENCY OF THE REPUBLIC, PANAMA  
REPUBLIC OF PANAMA, OCTOBER 5, 2012

Ricardo Martinelli Berrocal  
President of the Republic

Ricardo Quijano J.

Minister of Commerce and Industry

## SINGAPORE

### Plant Varieties Protection Act (Chapter 232A) (as last amended in 2014)



## THE STATUTES OF THE REPUBLIC OF SINGAPORE

### PLANT VARIETIES PROTECTION ACT

#### (CHAPTER 232A)

(Original Enactment: Act 22 of 2004)

REVISED EDITION 2006

(31st January 2006)

*Prepared and Published by*

THE LAW REVISION COMMISSION  
UNDER THE AUTHORITY OF  
THE REVISED EDITION OF THE LAWS ACT (CHAPTER 275)

Informal Consolidation – version in force from 30/7/2014



## CHAPTER 232A

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# Plant Varieties Protection Act

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An Act to provide for the protection of plant varieties.

[1st July 2004]

## PART I

## PRELIMINARY

**Short title**

1. This Act may be cited as the Plant Varieties Protection Act.

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**Interpretation**

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

“applicant”, in relation to any application, means the person by whom or on whose behalf the application is made;

“application” means an application for a grant of protection;

“breeder”, in relation to any plant variety, means —

(a) subject to paragraph (b), a person who bred, or discovered and developed, the plant variety;

(b) if the plant variety was bred, or discovered and developed, by a person in the course of performing his duties or functions as an employee of another person, that other person; or

(c) the successor in title to the person in paragraph (a) or (b), as the case may be;

“Convention” means the international agreement called the International Convention for the Protection of New Varieties of Plants of 2nd December 1961, as revised or amended from time to time;

“Court” means the High Court;

“denomination” means the distinguishing name or identification for a plant variety;

“Examiner” means any person, organisation or entity appointed by the Registrar for the purpose of referring any question or matter relating to a grant of protection;

*[Act 16 of 2014 wef 30/07/2014]*

“grant of protection” means a grant of protection made by the Registrar under section 21;

“grantee” means the holder of a grant of protection;

“harvested material” means any harvested material to which the rights of a grantee under section 28(1) are extended by virtue of section 28(7);

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“Office” means the Intellectual Property Office of Singapore incorporated under the Intellectual Property Office of Singapore Act (Cap. 140);

[2/2007 wef 01/03/2007]

“plant” includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;

“plant variety” means a plant grouping within a single botanical taxon of the lowest rank which, irrespective of whether the conditions for a grant of protection are fully met, can be —

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

[Deleted by Act 16 of 2014 wef 30/07/2014]

“procedural representative”, in relation to any plant variety, means a person who is resident or has an office in Singapore and who is appointed by the breeder of that variety to act on his behalf in respect of the making of any application for, or any proceedings relating to, a grant of protection for that variety;

“propagating material”, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced;

“propagation”, in relation to a plant or any of its components, means the growth, culture or multiplication of that plant or component;

“protected variety” means a plant variety in respect of which a grant of protection is in force, and includes any essentially

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derived or other plant variety to which the grant of protection is extended by virtue of section 29(1);

“register” means the register of plant varieties maintained under section 39;

“Registrar” means the Registrar of Plant Varieties referred to in section 5;

“Registry” means the Registry of Plant Varieties referred to in section 7;

“relevant characteristics”, in relation to any plant variety, means the phenotypical and genotypical expressions of the variety that permit its identification;

“term”, in relation to a grant of protection, means the term of the grant of protection under section 24;

“UPOV member” means a state or an intergovernmental party to the Convention which is a member of the International Union for the Protection of New Varieties of Plants constituted pursuant to the Convention.

### **Act to bind Government**

3. This Act shall bind the Government but nothing in this Act shall render the Government liable to be prosecuted for an offence.

### **Application of Act**

4. This Act shall apply to all plant genera and species.

*[Act 16 of 2014 wef 30/07/2014]*

## **PART II**

### **ADMINISTRATION**

#### **Registrar of Plant Varieties and other officers**

5.—(1) There shall be a Registrar of Plant Varieties who shall have the chief control of the Registry of Plant Varieties.

(2) There shall be one or more Deputy Registrars of Plant Varieties who shall, subject to the control of the Registrar, have all the powers

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and functions of the Registrar under this Act, other than the powers of the Registrar under section 6.

(3) There shall be one or more Assistant Registrars of Plant Varieties.

(4) The Registrar and all the other officers under this section shall be appointed by the Minister.

### **Delegation by Registrar**

**6.—(1)** The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to an Assistant Registrar of Plant Varieties, any public officer, or any person with the relevant qualifications for or experience in the matter or class of matters, so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

*[Act 16 of 2012 wef 07/03/2014]*

*[Act 16 of 2014 wef 30/07/2014]*

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by any Deputy Registrar of Plant Varieties.

(3) Where the delegate is a person with the relevant qualifications or experience referred to in subsection (1), he shall, when exercising the delegated powers or functions, be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

*[Act 16 of 2014 wef 30/07/2014]*

### **Registry of Plant Varieties**

**7.** For the purposes of this Act, there shall be an office which shall be known as the Registry of Plant Varieties.

### **Seal of Registry**

**8.** There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

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**Powers of Registrar**

9. The Registrar may, for the purposes of this Act —

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

**Disobedience to summons an offence**

10.—(1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

**Refusal to give evidence an offence**

11.—(1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

**Costs awarded by Registrar**

12.—(1) The Registrar may award costs in respect of the matters, and in the amounts provided for in rules made under this Act, against any party to proceedings brought before him.

(2) The rules may provide for the taxation of the costs, or any part of the costs, by the Registrar.

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(3) A party desirous to obtain costs or to have the costs taxed must apply to the Registrar in accordance with the rules.

(4) If a party is ordered to pay the costs of another party, the costs may be recovered in a court of competent jurisdiction as a debt due by the first party to the other party.

### PART III

#### APPLICATION FOR GRANT OF PROTECTION

##### **Application for grant of protection**

**13.**—(1) An application for a grant of protection for a plant variety shall be made by the breeder of that plant variety in the prescribed manner to the Registrar.

(2) The application shall contain or be accompanied by the following:

- (a) a description of the plant variety;
- (b) the proposed denomination for the plant variety which qualifies for approval and registration under section 36;
- (c) an address for service in relation to that application, being an address within Singapore; and
- (d) if a right of priority is claimed under section 14, full particulars of the relevant priority application.

(3) The application shall be accompanied by an application fee and such other fees as may be prescribed.

(4) An application that complies with subsections (1), (2) and (3) at the time it is received at the Registry shall, for the purposes of this Act, be deemed to be made at that time.

(5) An application that does not comply with subsection (1), (2) or (3) at the time it is received shall nevertheless be deemed to be made at that time if it is rectified within such time and in such manner as the Registrar may specify.

(6) The Registrar shall, if satisfied that an application complies with subsections (1), (2) and (3) —

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- (a) publish the application and the proposed denomination for the plant variety in the prescribed manner; and
- (b) notify the applicant of the publication.

**Priority resulting from foreign application****14.—(1) If —**

- (a) the breeder of a plant variety has made an application in any UPOV member other than Singapore (referred to in this section as the foreign application) for the equivalent of a grant of protection; and
- (b) within 12 months after —
  - (i) the date on which the foreign application was made; or
  - (ii) where more than one foreign application has been made (whether in one UPOV member or more than one UPOV member), the date the earliest foreign application was made,

the breeder makes an application for the grant of protection in respect of the plant variety in Singapore,

the breeder may, when making the application under this Act, claim a right of priority and sections 22 and 23 shall apply to the application for a grant of protection in Singapore as if it had been made on the date the foreign application (or the earliest foreign application) was made.

(2) The breeder shall, within 3 months of making the claim of a right of priority under subsection (1), submit to the Registrar a copy of any document constituting the foreign application, which must be certified as correct by the authority in the UPOV member to which the foreign application was made.

(3) The breeder shall be allowed a period of 2 years after the expiration of the period referred to in subsection (1)(b) or, where the foreign application (or the earliest foreign application) is rejected or withdrawn, a period of 2 years after such rejection or withdrawal, in which to furnish any necessary information, document or material required for the purpose of the examination under section 17 to the Registrar or an Examiner appointed by the Registrar for the purposes

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of this subsection, as the case may be, or an examination report under section 18 to the Registrar.

*[Act 16 of 2014 wef 30/07/2014]*

### **Publication**

**15.** The Registrar shall publish the following information in the prescribed manner at regular intervals:

- (a) applications for grant of protection;
- (b) registrations of denominations for protected varieties;
- (c) withdrawals of applications for grant of protection;
- (d) rejections of applications for grant of protection;
- (e) grants of protection made;
- (f) any change in the breeder or procedural representative in respect of a plant variety;
- (g) lapses of grants of protection;
- (h) licences in relation to grants of protection, where applicable;
- (i) any other matters which the Registrar thinks fit.

### **Objections to denomination and grant of protection**

**16.—(1)** Any person may, within the prescribed period after the publication of a denomination, by notice in writing to the Registrar, object to the approval of that denomination.

(2) Any person may, within the prescribed period after the publication of an application for a grant of protection for a plant variety, by notice in writing to the Registrar, object to the making of a grant in respect of that plant variety on the ground that the plant variety is not new within the meaning of section 22.

(3) The Minister may make rules to provide for objection proceedings and for matters relating thereto.

(4) If a person who neither resides nor carries on business in Singapore makes an objection under this section, the Registrar may require the person to give security for the costs of the proceedings and may, if security is not given, dismiss the proceedings.

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*Plant Varieties Protection* CAP. 232A 12**Examination of plant variety**

**17.—**(1) Subject to section 18, the applicant shall, within the prescribed period after making an application, give to the Registrar or any Examiner appointed by the Registrar for the purposes of this section —

- (a) in such detail as the Registrar or the Examiner may require for examination under subsection (2), a description of —
- (i) the origin and breeding of the plant variety concerned (referred to in this section as the candidate variety);
  - (ii) the botanical features of the candidate variety; and
  - (iii) at least one plant variety that is, to the knowledge of the breeder, most similar to the candidate variety and at least one characteristic which distinguishes the candidate variety from such other variety or varieties; and

*[Act 16 of 2014 wef 30/07/2014]*

- (b) propagating material of the candidate variety.

*[Act 16 of 2014 wef 30/07/2014]*

(2) The Registrar or the Examiner shall examine the candidate variety —

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

*[Act 16 of 2014 wef 30/07/2014]*

(3) The Registrar or the Examiner may, by way of written notice, request the applicant to furnish any further information, document or propagating material of the candidate variety and of any similar plant variety in addition to any plant variety referred to in subsection (1)(a)(iii).

*[Act 16 of 2014 wef 30/07/2014]*

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(4) Where the Registrar or the Examiner has made a request for further information, documents or propagating material under subsection (3), the applicant shall —

- (a) furnish such information, document or propagating material within the period stated in the written notice; or
- (b) where such information, document or propagating material is not available, notify the Registrar or the Examiner, as the case may be, of this fact within that period.

*[Act 16 of 2014 wef 30/07/2014]*

### **Corresponding examination**

**18.**—(1) Subject to subsection (2), the applicant may, instead of complying with the provisions in section 17, lodge with the Registrar in such manner as the Registrar may require and within the prescribed period, an examination report issued and certified by an Examiner in any UPOV member other than Singapore.

*[Act 16 of 2014 wef 30/07/2014]*

(2) The Registrar may reject an examination report lodged under subsection (1), in which case the applicant shall comply with the provisions in section 17.

### **Withdrawal or lapse of application**

**19.**—(1) Any application may be withdrawn by the applicant at any time before a grant of protection is made in respect of it.

(2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of that withdrawal.

*[Act 16 of 2014 wef 30/07/2014]*

(3) Where any information, document or material required to be given to the Registrar or an Examiner under the provisions of this Act is not supplied within the period stated in the written notice issued by the Registrar or the Examiner, as the case may be, requiring such information, document or material, the application concerned shall lapse upon the expiration of that period.

*[Act 16 of 2014 wef 30/07/2014]*

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*Plant Varieties Protection* CAP. 232A 14**Provisional protection**

**20.** Where a grant of protection for a plant variety has been made under section 21, the grantee shall have the right to take proceedings in respect of the protected variety under this Act as if the grant of protection had been made on the date the application for that grant of protection was published under section 15.

## PART IV

## GRANT AND REVOCATION OF PROTECTION

**Making of grant of protection**

**21.—**(1) The Registrar shall —

- (a) except where an application has been withdrawn or has lapsed under section 19, make a grant of protection in respect of every application that is eligible for the making of a grant of protection; and
- (b) decline to make a grant of protection in respect of every application that is not eligible for the making of a grant of protection.

(2) An application shall be treated as being eligible for the making of a grant of protection if, and only if —

- (a) the applicant has complied with section 13 and section 17 or 18, as the case may be; and
- (b) the Registrar —
  - (i) has approved, for the plant variety in respect of which the application was made, the denomination proposed by the applicant under section 36;
  - (ii) is satisfied that the applicant is the breeder of that plant variety; and
  - (iii) is satisfied that that plant variety is new, distinct, stable and uniform within the meaning of section 22.

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**Conditions for grant of protection**

**22.**—(1) For the purpose of sections 16(2), 21(2)(b)(iii) and 25(2)(a) —

- (a) a plant variety is new if harvested or propagating material of the plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety —
  - (i) earlier than 12 months before the date the application is made, where the sale or disposal and the exploitation of the plant variety is in Singapore; and
  - (ii) earlier than 6 years before that date in the case of trees or vines, or earlier than 4 years before that date in any other case, where the sale or disposal and the exploitation of the plant variety is outside Singapore;
- (b) a plant variety is distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of the making of the application;
- (c) a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle; and
- (d) a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(2) For the purposes of subsection (1)(a), where, in order to increase the stock of a plant variety or for any testing of a plant variety, the breeder of the plant variety makes any arrangement under which —

- (a) propagating material of that plant variety is to be sold to or used by some other person; and
- (b) any unused portion of that propagating material, and all the material of any type produced from that propagating material, is —
  - (i) to be sold to the breeder by that other person; or

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(ii) otherwise to become the property of the breeder,  
no account shall be taken of any sale or disposal under that arrangement.

(3) For the purposes of subsection (1)(a), a plant variety does not cease to be new by virtue only of the sale or disposal at any time of —

- (a) material that is not propagating material or harvested material;  
or
- (b) propagating material if sold or disposed of as a by-product or a surplus product of the creation of that plant variety, provided that —
  - (i) the material is sold or disposed of without variety identification for purposes of consumption; and
  - (ii) having been produced during the breeding, increase of stock, test, or trial of that plant variety, the material is not or no longer required for any of those activities.

(3A) Notwithstanding subsection (1)(a), where this Act did not apply to a plant genus or species before the date of commencement of section 3 of the Plant Varieties Protection (Amendment) Act 2014, and an application for a grant of protection is made within one year after that date in respect of any plant variety belonging to that plant genus or species, that plant variety shall be deemed to be new if harvested or propagating material of that plant variety has not been sold, or otherwise disposed of, in Singapore to another person, by or with the consent of the breeder for the purposes of exploitation in Singapore of that plant variety —

- (a) earlier than 6 years before the date that application is made, in the case of trees or vines; or
- (b) earlier than 4 years before the date that application is made, in any other case.

*[Act 16 of 2014 wef 30/07/2014]*

(4) For the purpose of subsection (1)(b), the making of an application in any country for —

- (a) a grant of protection in respect of a plant variety; or

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- (b) the entering of a plant variety in an official register of plant varieties,

shall be deemed to render that plant variety a matter of common knowledge from the date of application, provided that the application leads to a grant of protection in respect of that plant variety or to the entering of that plant variety in the official register of plant varieties, as the case may be.

**Varieties bred or discovered and developed by 2 or more persons independently**

**23.** Where —

- (a) before a grant of protection has been made in respect of any plant variety, 2 or more applications in respect of that plant variety have been made;
- (b) the Registrar is satisfied that the applicants concerned are persons who bred, or discovered and developed, that plant variety independently, or are successors of such persons; and
- (c) the Registrar is satisfied that, but for this section, each of those applicants would be entitled to a grant of protection in respect of that plant variety,

the Registrar shall make a grant of protection to the applicant whose application was made first.

**Term of grant of protection**

**24.—(1)** The Registrar shall endorse on every grant of protection the date of the grant of protection.

(2) Subject to sections 25 and 26, the term of a grant of protection shall be a period of 25 calendar years from the date of the grant of protection.

(3) The grantee shall during the term of the grant of protection pay an annual fee of a prescribed amount and furnish such information as the Registrar may require in the prescribed manner and within the prescribed period.

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*Plant Varieties Protection* CAP. 232A 18**Grounds of invalidity of grant of protection**

**25.—**(1) An application for a declaration of invalidity of any grant of protection on any ground referred to in subsection (2) may be made by any person to the Court.

(2) A grant of protection shall be declared invalid if the Court is satisfied that —

- (a) the plant variety concerned is not new or distinct within the meaning of section 22;
- (b) where the grant of protection was made on the basis of an examination report by an Examiner lodged under section 18, the plant variety was not, at the time the grant of protection was made, stable or uniform within the meaning of section 22(1)(c) or (d), respectively; or
- (c) the grant of protection has been made to a person who is not entitled to it, unless it has since been transferred to the person who is so entitled.

(3) The Registrar shall remove from the register any grant of protection which has been declared invalid by the Court under this section.

**Cancellation of grant of protection**

**26.—**(1) An application for cancellation of any grant of protection may be made by any person —

- (a) to the Registrar, on any ground referred to in subsection (2); or
- (b) to the Court, on the ground referred to in subsection (3).

(2) A grant of protection shall be cancelled by the Registrar at any time during its term in the event that —

- (a) the grantee, after having been requested by the Registrar to provide such information, documents or material as the Registrar thinks fit for verifying the maintenance of the plant variety, failed to do so within the period specified by the Registrar;

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- (b) in any particular year, the annual fee required under section 24(3) to be paid, has not been paid within the prescribed period; or
- (c) the grantee, after having been requested by the Registrar to propose another suitable denomination under section 38, failed to do so within the prescribed period.

(3) A grant of protection shall be cancelled by the Court at any time during its term in the event that it is established that the plant variety is no longer stable or uniform within the meaning of section 22(1)(c) or (d), respectively.

(4) The Registrar shall remove from the register any grant of protection which has been cancelled under this section.

#### **Renunciation of grantee's right**

27.—(1) A grantee may, in writing to the Registrar, renounce his grant of protection.

(2) The Registrar shall remove from the register any grant of protection which has been renounced under subsection (1).

### PART V

#### SCOPE AND NATURE OF GRANT OF PROTECTION

##### **Scope and nature of grant of protection**

28.—(1) Subject to sections 31 and 32, a grantee in respect of any protected variety shall be entitled to prevent a person from doing any of the following acts in respect of the propagating material of the protected variety without the authorisation, by way of a licence or otherwise, of the grantee:

- (a) production or reproduction;
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other forms of marketing;
- (e) export;

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(f) import;

(g) stocking for any of the purposes specified in paragraphs (a) to (f).

(2) The grantee may give his authorisation subject to conditions and limitations.

(3) A grant of protection is personal property and may be assigned or transmitted in the same way as other personal property.

(4) An assignment of a grant of protection under subsection (3) is not effective unless it is in writing and signed by or on behalf of the assignor.

(5) Subject to subsection (6), a licence granted by a grantee in respect of any protected variety is binding on every successor in title to the grantee's interest —

(a) except any person who, in good faith and without any notice (actual or constructive) of the licence, has given valuable consideration for the interest in the grant of protection; or

(b) unless the licence provides otherwise,

and any reference in this Act to doing anything with, or without, the consent of the grantee shall be construed accordingly.

(6) Every person shall be deemed to have notice of a licence if the prescribed particulars of the grant of the licence are entered in the register under section 42.

(7) Subject to sections 31 and 32, the rights of a grantee under subsection (1) shall also apply to harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety unless the grantee has had a reasonable opportunity, before the harvested material was obtained, to exercise his rights in relation to the unauthorised use of the propagating material.

### **Essentially derived and certain other plant varieties**

**29.—**(1) Where a grant of protection is made under section 21, that grant of protection shall also extend to —

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- (a) any plant variety which is essentially derived from the plant variety in respect of which the grant of protection was made (referred to in this section as the original plant variety);
  - (b) any plant variety which is not distinct in accordance with section 22(1)(b) from the original plant variety; and
  - (c) any plant variety the production of which requires the repeated use of the original plant variety.
- (2) For the purposes of this section, a plant variety shall be treated as being essentially derived from the original plant variety if —
- (a) it is predominantly derived from the original plant variety or from a plant variety that is itself predominantly derived from the original plant variety;
  - (b) it retains the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety;
  - (c) it is clearly distinguishable from the original plant variety; and
  - (d) except for the differences which result from the act of derivation, it conforms to the original plant variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety.

### **Infringement of grant of protection**

- 30.**—(1) A grant of protection is infringed by any person who —
- (a) not being entitled by any licence or transfer or otherwise, does in Singapore, or authorises the doing in Singapore of, any act specified in section 28(1) in respect of any propagating material or harvested material of a protected variety;
  - (b) where propagating material of the protected variety has been imported into Singapore, propagates, sells or uses that material as propagating material without the authority of the grantee concerned; or

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- (c) imports into Singapore, without the consent of the grantee —
- (i) from a country that is not a UPOV member, any harvested material of the protected variety; or
  - (ii) from a UPOV member, any harvested material of the protected variety in respect of which it is not possible to make the equivalent of a grant of protection under the law of that member.

(2) Subject to the provisions of this Act, the relief that the Court may grant in an action for an infringement of a grant of protection includes an injunction (subject to such terms, if any, as the Court thinks fit) and either damages or an account of profits.

(3) Where, in an action under this section —

- (a) an infringement of a grant of protection is established; and
- (b) the Court is satisfied that it is proper to do so, having regard to —
  - (i) the flagrancy of the infringement;
  - (ii) any benefit shown to have accrued to the defendant by reason of the infringement; and
  - (iii) all other relevant matters,

the Court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

(4) Where, in any action under this section, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(5) Nothing in subsection (4) shall affect any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this Act other than damages.

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**Exceptions to infringement of grant of protection**

**31.**—(1) It is not an infringement of a grant of protection in respect of a protected variety for any person to do —

- (a) any act privately and for a non-commercial purpose;
- (b) any act for any experimental or research purpose; or
- (c) any act for the purposes of breeding any other plant variety and, except in the case of an essentially derived or other plant variety to which the grant of protection is extended by virtue of section 29(1), any act that requires the authorisation of the grantee under section 28(1) in respect of such other variety.

(2) It is not an infringement of a grant of protection for any person engaging in farming activities to use, for propagating purposes and for the purpose of safeguarding agricultural or horticultural production, on his own holdings, harvested material from the protected variety where —

- (a) the genera or species within which the protected variety is classified has been prescribed for the purposes of this section as exempt from the rights of a grantee; and
- (b) the harvested material —
  - (i) has been obtained by purchase or otherwise with the authority of the grantee concerned; or
  - (ii) having been obtained in accordance with sub-paragraph (i), has subsequently been propagated or grown on those holdings.

**Exhaustion of grant of protection**

**32.**—(1) An act concerning —

- (a) any material of a protected variety which has been sold or otherwise marketed in Singapore by or with the consent of the grantee; or
- (b) any material that is derived from such material,

does not infringe a grant of protection, unless such act involves —

- (i) further propagation of the protected variety; or

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- (ii) the export of any material of that protected variety which enables the propagation of the protected variety to a country which does not protect varieties of the plant genus or species to which the protected variety belongs, except where the exported material is for final consumption purposes.
- (2) In this section, “material” means —
- (a) propagating material of any kind; and
  - (b) harvested material, including entire plants and parts of plants.

## PART VI

### AUTHORISATION AND COMPULSORY LICENCES

#### **Rights under authorisation**

**33.** Where a person has been authorised to do any act referred to in section 28(1) by licence by a grantee, that person shall have the same rights as the grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the protected variety which affects any right given under that licence and committed after the authorisation was granted.

#### **Compulsory licences**

**34.—(1)** Any person may apply to the Court for the grant of a compulsory licence to exploit a protected variety in Singapore.

(2) The Court may make an order for the grant of a compulsory licence, subject to such terms as it thinks fit, in accordance with an application under subsection (1) if, and only if, the Court is satisfied that the grant of a compulsory licence is in the public interest.

(3) Without prejudice to the generality of subsection (2), the Court may set out in its order —

- (a) the extent to which the protected variety may be exploited; and
- (b) the right of the licensee to obtain propagating material from the grantee to the extent reasonable.

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(4) The Court shall set out in its order the equitable remuneration which the licensee shall pay to the grantee.

(5) A licence shall not be granted under this section to any person who is unable to demonstrate to the Court that he will be able to exploit the protected variety in a manner acceptable to the Court.

(6) No licence shall be granted under this section unless the person applying for the licence has first taken all reasonable steps to obtain authorisation from the grantee on reasonable commercial terms and conditions and has failed to obtain such authorisation within a reasonable period of time.

(7) A licence granted under this section shall not prevent the grantee from exploiting the protected variety himself or from granting a licence in this respect.

(8) A licence in respect of a protected variety granted under this section may be transferred to another person, but only together with the business activity in connection with which the protected variety is exploited or is intended to be exploited.

(9) Any licence granted under this section may, upon the application of any interested party, be terminated by the Court where the Court is satisfied that the ground upon which the licence was granted has ceased to exist.

## PART VII

### NOTICE OF PROTECTION

#### **Notice of protection**

**35.—**(1) Where an applicant sells any propagating material of the plant variety in respect of which his application relates, he shall take all reasonable steps, by means of suitable labeling or other identification of that material to inform the purchaser of the existence of his application, unless and until his application is withdrawn or lapses or the Registrar declines to make a grant in respect of that application.

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(2) Any person who —

(a) has acquired any rights in respect of any plant variety under section 21, or who is a licensee of such rights; and

(b) sells any propagating material of that plant variety,

shall take all reasonable steps, by means of suitable labeling or other identification of that material, to inform the purchaser of those rights.

(3) In determining, for the purposes of section 30(4), whether or not any person had reasonable grounds for supposing that any action was an infringement of a grant of protection, the Court may take into account the extent, if any, to which a person referred to in subsection (1) or (2), as the case may be, has complied with that subsection in respect of any propagating material in relation to which that infringement occurred.

## PART VIII

### DENOMINATION

#### **Approval and registration of denomination**

**36.—**(1) A plant variety in respect of which an application for a grant of protection is made shall have a denomination and, subject to subsections (2) and (3), the denomination shall be approved by the Registrar and registered at the time the grant of protection is made.

(2) The Registrar shall approve and register a proposed denomination for a plant variety if, and only if, in the opinion of the Registrar, it complies with the prescribed requirements.

(3) The Registrar shall not approve or register a denomination for the plant variety which —

(a) consists solely of figures, except where this is an established practice for designating plant varieties;

(b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;

(c) is contrary to any written law or public order, or is likely to be offensive to the public;

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- (d) is likely to cause confusion with a trade mark, a name, a business or any other rights for which any person other than the applicant enjoys protection under any law; or
- (e) is likely to cause confusion with a trade mark for any material of another plant variety or for goods similar to any material of the first-mentioned plant variety for which the applicant enjoys protection under any law.

(4) Where a denomination for a plant variety has previously been submitted in any UPOV member other than Singapore for the purpose of registration in that UPOV member, the denomination submitted for the purpose of an application in Singapore in respect of that plant variety must be the same as the denomination submitted in the UPOV member.

(5) The Registrar shall approve the denomination submitted under subsection (4) upon the grant of protection, unless the Registrar considers the denomination to be unsuitable for use within Singapore.

(6) Where the Registrar refuses to approve a denomination under subsection (2), (3) or (5), the Registrar shall require, and the applicant shall propose, another denomination within the prescribed period.

### **Use of denomination**

**37.—**(1) Any person who offers for sale or disposes of propagating material of a protected variety shall use the registered denomination for that protected variety, whether or not the term of the grant of protection has expired.

(2) A person shall not offer for sale or dispose of, under the registered denomination of a protected variety, propagating material of some other plant variety, whether or not the term of grant of protection has expired.

(3) A registered denomination for a protected variety or a denomination which is confusingly similar to the registered denomination shall not be used for any plant variety of the same plant species as the protected variety or for a plant specie which is closely related thereto or for any material of such a plant variety, so long as —

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- (a) the registration of the registered denomination of the protected variety is in force; or
- (b) the registered denomination of the protected variety is still in use in respect of the commercial exploitation of the protected variety, even if the term of the grant of protection has expired.

(4) A person who sells or markets the propagating material or harvested material of a protected variety may, for that purpose, associate a trade mark, trade name or other similar indication which he owns with the registered denomination of that protected variety.

(5) Where a person associates a trade mark, trade name or other similar indication with the registered denomination under subsection (4), the denomination must nevertheless be easily recognisable and distinct from the trade mark, trade name or other similar indication.

#### **Invalidation of registration of denomination**

**38.**—(1) An application for a declaration of invalidity of a registered denomination may be made to the Court on the ground that it is registered in breach of section 36(3).

(2) Where —

- (a) the registration of a denomination has been declared invalid by the Court under subsection (1); or
- (b) the use of the registered denomination by the grantee has been prohibited or restricted by an order of Court pursuant to any proceedings taken under any law,

the Registrar shall require the grantee to submit another suitable denomination for registration within the prescribed period.

### PART IX

#### REGISTER OF PLANT VARIETIES

##### **Register to be maintained**

**39.**—(1) The Registrar shall maintain a register of plant varieties.

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- (2) There shall be entered in the register —
- (a) grants of protection made;
  - (b) every decision of the Registrar making or declining the making of a grant;
  - (c) the approved denomination for a plant variety;
  - (d) such particulars of the grantee as the Registrar may determine; and
  - (e) any other matters and information relating to a protected variety or grant of protection whose entry in the register appears to the Registrar to be useful.
- (3) The register may be kept in whole or in part using a computer.
- (4) Any record of a particular or other matter made by using a computer used for the purpose of keeping the register, or any part of the register, is taken to be an entry in the register.

#### **Inspection of and extract from register**

**40.**—(1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.

(2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part of the register.

(3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of the prescribed fee.

(4) [*Deleted by Act 16 of 2012 wef 30/07/2014*]

(5) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection (3) is a right to a copy or extract in a form in which it can be taken away.

*[Act 16 of 2012 wef 30/07/2014]*

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(6) In this section, “certified copy” and “certified extract” mean a copy and extract certified by the Registrar.

[Act 16 of 2012 wef 30/07/2014]

### **Rectification of register**

**41.**—(1) Any person having a sufficient interest may apply to the Registrar for the rectification of an error or omission in the register.

(2) Except where the Registrar directs otherwise, the effect of a rectification of the register is that the error or omission in question is deemed never to have been made.

(3) Subject to subsection (4), an application for rectification may not be made in respect of a matter affecting the validity of a grant of protection.

(4) The Registrar may make any correction in the register pursuant to any Court order affecting a grant of protection.

(5) The Registrar may remove from the register any matter which appears to him to have ceased to have effect.

### **Changes reflected in register**

**42.**—(1) The Registrar may enter the following in the register:

- (a) any change in the name or address of the grantee;
- (b) any change in ownership of the rights in relation to a grant of protection;
- (c) a note of any licence granted by a grantee,

upon receiving such information under section 24(3) or on request made in the prescribed manner by the grantee of a registered grant of protection.

(2) Where a grant of protection has been transferred to another person, or a licence (including a licence granted under section 34) has been granted or transferred, an entry of this fact shall, upon request and the payment of the prescribed fee, be made in the register.

### **Registration to be prima facie evidence of validity**

**43.** In any proceedings before the Court relating to a grant of protection —

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- (a) the entry in the register of a person as a grantee shall be prima facie evidence of the validity of the grant of protection; and
- (b) the entry in the register of any change in ownership of the rights in relation to the grant of protection shall be prima facie evidence of such change in ownership.

## PART X OFFENCES

### **Falsification of register**

**44.** Any person who —

- (a) makes, or causes to be made, a false entry in the register;
- (b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or
- (c) produces or tenders, or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

### **Falsely representing plant variety as protected variety**

**45.** Any person who —

- (a) falsely represents that a plant variety is a protected variety; or
- (b) makes a false representation as to the propagating material of a protected variety,

knowing or having reason to believe that the representation is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

### **Misuse of denomination**

**46.** Any person who wilfully or negligently acts in contravention of section 37(1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

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## PART XI

## MISCELLANEOUS

**Registrar not liable in respect of official acts**

47.—(1) The Registrar and any officer of the Registry shall not be taken to warrant the correctness or validity of a grant of protection or the registration of a denomination under this Act or under any international agreement or convention to which Singapore is a party.

(2) The Registrar, any officer of the Registry and any Examiner referred to in section 17(1) and officer thereof (if the Examiner is not an individual), shall not incur any liability by reason only of, or in connection with, any examination required or authorised by this Act, or any such international agreement or convention, or any report or other proceedings consequent on such examination.

*[Act 16 of 2014 wef 30/07/2014]*

**Right of appeal**

48.—(1) Except as provided in subsection (2) or by rules made under this Act, there shall be no appeal to the Court from a decision of the Registrar for any matter under this Act.

(2) The following shall be subject to appeal to the Court:

- (a) a decision of the Registrar to decline to make a grant of protection;
- (b) a decision of the Registrar to make a grant of protection;
- (c) a decision of the Registrar approving or disapproving a proposed denomination.

**Forms and directions of Registrar**

49. The Minister may make rules for the publication by the Registrar of —

- (a) the forms to be used for any purpose relating to a grant of protection or any other proceedings before the Registrar under this Act; and
- (b) the practice directions issued by the Registrar.

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**Amendment of documents**

**49A.** The Registrar may, at the written request of a person who has made any application under this Act (including an application for a grant of protection for a plant variety), or filed a notice or other document for the purposes of this Act, or at the written request of the person's agent, amend the application, notice or document —

- (a) to correct a clerical error or an obvious mistake; or
- (b) if the Registrar is of the opinion that it is fair and reasonable in all the circumstances of the case to do so.

*[Act 16 of 2012 wef 30/07/2014]*

**Fees**

**50.—(1)** There shall be paid in respect of applications, grants, registrations and other matters under this Act such fees as may be prescribed.

*[Act 16 of 2012 wef 30/07/2014]*

(2) The Minister may make rules as to the remission of fees under prescribed circumstances.

(3) All fees collected shall be paid into the funds of the Office.

*[Act 16 of 2012 wef 30/07/2014]*

**Hours of business and excluded days**

**51.—(1)** The Registrar may issue practice directions to specify —

- (a) the hours of business of the Registry; and
- (b) the days which are to be treated as excluded days.

(2) The Minister may prescribe the effect of doing any business under this Act —

- (a) on any day after the hours of business of the Registry; or
- (b) on any day which is an excluded day.

(3) For the purposes of subsections (1) and (2) —

- (a) different hours of business may be specified for different classes of business;
- (b) different excluded days may be specified for different classes of business; and

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- (c) different effects of doing business —
- (i) outside the hours of business of the Registry; or
  - (ii) on an excluded day,
- may be prescribed for different classes of business.

### Composition of offences

**52.**—(1) The Registrar or any person authorised by him in writing may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$2,000.

(2) The Office may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

(2A) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

*[2/2007 wef 01/03/2007]*

(3) All sums collected under this section shall be paid into the funds of the Office.

### Jurisdiction of court

**53.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

### Rules

**54.**—(1) The Minister may make rules —

- (a) for prescribing anything authorised or required by this Act to be prescribed; and
- (b) generally for regulating practice and procedure under this Act.

(2) Without affecting the generality of subsection (1), rules made under this section may make provision —

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- (a) as to the manner of making applications and filing other documents and in respect of anything that is to accompany or to be furnished together with any application;
  - (b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings or other matter before the Registrar, and the rectification of irregularities of procedure;
  - (c) providing for the testing and treatment of plant varieties to which applications relate;
  - (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
  - (e) as to the service of documents;
  - (f) prescribing time limits for anything required to be done under this Act;
  - (g) providing for the extension of any time limit prescribed or specified by the Registrar, whether or not it has already expired;
  - (h) providing for the forfeiture of any priority given in respect of an application;
  - (i) authorising the preparation, publication, sale and exchange of copies of diagrams, photographs and documents filed with the Registry, and indexes and abridgments to them;
  - (j) prescribing the mode of publishing any matters required by this Act to be published;
  - (k) prescribing the requirements to be met in selecting the denomination of plant varieties, and providing for the approval or rejection by the Registrar of any denomination or the amendment to any denomination; and
  - (l) prescribing fees and charges for the purposes of this Act.

#### THE SCHEDULE

*[Deleted by Act 16 of 2014 wef 30/07/2014]*

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LEGISLATIVE SOURCE KEY  
PLANT VARIETIES PROTECTION ACT  
(CHAPTER 232A)

— Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

- Aust. Plant Act 1994 : Australia, Plant Breeder's Rights Act 1994
- HK Plant Ord. 1997 : Hong Kong, Plant Varieties Protection Ordinance (Chapter 490, 1997 Ed.)
- ICPNVP 1991 : International Convention for the Protection of New Varieties of Plants 1991
- UPOV Model Law 1996 : Model Law on the Protection of New Varieties of Plants by UPOV, 1996
- Sweden Plant Act 1997 : Sweden, Act on the Protection of Plant Breeders' Rights, 1997
- Patents 1995 Ed. : Singapore Patents Act (Chapter 221, 1995 Revised Edition)
- Trade Marks 1999 Ed. : Singapore Trade Marks Act (Chapter 332, 1999 Revised Edition)

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LEGISLATIVE HISTORY  
PLANT VARIETIES PROTECTION ACT  
(CHAPTER 232A)

This Legislative History is provided for the convenience of users of the Plant Varieties Protection Act. It is not part of this Act.

**1. Act 22 of 2004 — Plant Varieties Protection Act 2004**

- Date of First Reading : 19 May 2004  
(Bill No. 21/2004 published on  
20 May 2004)
- Date of Second and Third Readings : 15 June 2004
- Date of commencement : 1 July 2004

**2. 2006 Revised Edition — Plant Varieties Protection Act**

- Date of operation : 31 January 2006

**3. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007**

- Date of First Reading : 8 November 2006  
(Bill No. 14/2006 published on  
16 February 2007)
- Date of Second and Third Readings : 22 January 2007
- Dates of commencement : 1 March 2007

**4. G.N. No. S 743/2013 — Plant Varieties Protection Act (Amendment of Schedule) Notification 2013**

- Date of commencement : 9 December 2013

**5. Act 16 of 2012 — Intellectual Property (Miscellaneous Amendment) Act 2012**

- Date of First Reading : 14 May 2012  
(Bill No. 14/2012 published on  
14 May 2012)
- Date of Second and Third Readings : 10 July 2012
- Date of commencement : 7 March 2014

**6. Act 16 of 2012 — Intellectual Property (Miscellaneous Amendment) Act 2012**

- Date of First Reading : 14 May 2012  
(Bill No. 14/2012 published on  
14 May 2012)

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Date of Second and Third Readings : 10 July 2012

Date of commencement : 30 July 2014

**7. Act 16 of 2014 — Plant Varieties Protection (Amendment) Act 2014**

Date of First Reading : 17 February 2014  
(Bill No. 9/2014 published on  
17 February 2014)

Date of Second and Third Readings : 13 March 2014

Date of commencement : 30 July 2014

Informal Consolidation – version in force from 30/7/2014

**Plant Varieties Protection Rules**

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PLANT VARIETIES PROTECTION ACT  
(CHAPTER 232A, SECTION 54)

PLANT VARIETIES PROTECTION RULES

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**PART I**

**PRELIMINARY**

**Citation**

1. These Rules may be cited as the Plant Varieties Protection Rules.

**Definitions**

- 2.—(1) In these Rules, unless the context otherwise requires, “Plant Varieties Protection Journal” means the journal by that name published under rule 78.

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(2) Unless the context otherwise requires, the word “month”, wherever it occurs in any decision, direction or other document issued by the Registrar, means calendar month.

(3) Any period of time fixed by these Rules or by any decision, direction or other document for the doing of any act shall be reckoned in accordance with paragraphs (4) and (5).

(4) Where the act is required to be done within a specified period from or after a specified date, the specified period begins immediately after that date.

(5) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

### **Fees**

3.—(1) The fees specified in the Second Schedule shall be payable to the Registrar in respect of the matters specified in the Schedule.

(2) Unless otherwise provided for in the Act or these Rules, or the Registrar permits or directs otherwise in any particular case —

- (a) any fee specified in the Second Schedule in respect of a matter shall be paid at the same time as —
  - (i) the filing of the form for that matter; or
  - (ii) if no form is prescribed for the matter, the request for the matter is made; and
- (b) if the fee is not paid, the form or request shall not be treated as filed or made (as the case may be).

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### **Forms**

4.—(1) The Registrar shall publish in the Plant Varieties Protection Journal —

- (a) the forms to be used for any purpose relating to the making of a grant of protection or any other proceedings before the Registrar under the Act;
- (b) the Registrar’s directions relating to the use of any form; and

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(c) any amendment or modification of any such form or direction.

(2) Any form may be modified on the direction of the Registrar for use in a case other than the case for which it is intended.

(3) Any reference in these Rules to a numbered form shall be construed as a reference to the current version of the form bearing the corresponding number which is published in the Plant Varieties Protection Journal.

### **Filing of documents**

5.—(1) The Registrar may refuse to accept or process any document filed at the Registry that fails to comply with the Act or these Rules.

(2) Every document filed at the Registry shall —

(a) be in English or where the document is not in English, be accompanied by an English translation of the document in accordance with rule 79;

(b) be filed using durable paper; and

(c) be in writing that is legible and permanent.

(3) Where the Registrar refuses to accept any document that does not comply with paragraph (2), the Registrar may return the document with a notice stating the manner in which the document does not comply with that paragraph.

(4) Where any document filed at the Registry is a copy, the Registrar may —

(a) decide whether to accept or process the document; and

(b) require the original to be filed with the Registry.

### **Signature on documents**

6.—(1) A document to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by —

(a) all the partners;

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- (b) any partner stating that he signs on behalf of the partnership;  
or
- (c) any other person who satisfies the Registrar that he is authorised to sign the document on behalf of the partnership.

(2) A document to be signed for or on behalf of a body corporate shall be signed by a director, the company secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorised to sign the document on behalf of the body corporate.

(3) A document to be signed for or on behalf of an unincorporated body or association of persons may be signed by any person who appears to the Registrar to be qualified to so sign.

(4) In this rule, “document” means any document to be given or sent to, filed with or served on the Registrar in any manner in respect of any matter under the Act or these Rules.

#### **Service of documents**

7.—(1) Where the Act or these Rules authorise or require any document to be given or sent to, filed with or served on any party, the giving, sending, filing or service may be effected by sending the document by post and if so sent, shall be deemed —

- (a) to be effected by properly addressing, prepaying and posting a letter containing the document; and
- (b) unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) For the purposes of paragraph (1), a document is sent to a party by post if the document is sent by pre-paid post to the party at his address for service referred to in rule 9.

#### **Furnishing of address**

8.—(1) Where the Act or these Rules require that an address be furnished, the address furnished shall be as full as possible for the purpose of enabling any person to easily find the place of business of

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the person or partnership or association of persons or body corporate, whose address is furnished.

(2) The Registrar may require the address to include the name of the street, the number of the block of building, the number of the premises or name of premises, if any, and the postal code.

#### **Address for service**

9.—(1) For the purposes of any proceedings before the Registrar, an address for service in Singapore shall be filed in accordance with paragraph (2) or (5) by or on behalf of —

- (a) every applicant in respect of an application for a grant of protection;
- (b) every person objecting to the making of a grant of protection or the registration of a proposed denomination;
- (c) every applicant applying to the Registrar for the rectification of the register under section 41 of the Act;
- (d) every grantee in respect of a protected plant variety which is the subject of the grant of protection to the Registrar for the renunciation of the grant of protection or the rectification of the register under section 41 of the Act; and
- (e) every other party to any proceedings before the Registrar.

(2) Where a form is required to be filed under these Rules for any matter in relation to the proceedings, being a form which requires the furnishing of an address for service, the address for service shall be filed on that form.

(3) The filing of an address for service in accordance with paragraph (2) shall be effective only for the matter for which the form is filed.

(4) Notwithstanding paragraph (3) —

- (a) where the address for service is filed on Form PVP 3 or Form PVP 12, the filing of the address for service shall be effective for the purposes of all proceedings in respect of the plant variety in relation to which that form is filed;

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- (b) where the address for service is filed on Form PVP 6, the filing of the address for service shall be effective for the purposes of the proceedings in relation to which that form is filed and any related proceedings; and

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- (c) where the address for service is filed on Form PVP 11, the filing of the address for service shall be effective for the purposes of —

- (i) the payment of the annual fee and submission of information under section 24(3) of the Act for each anniversary of the date of the grant of protection for the plant variety in relation to which that form is filed; and

- (ii) any related proceedings.

*[S 504/2014 wef 30/07/2014]*

(5) In a case where paragraph (2) or (4) does not apply, the address for service shall be filed on Form PVP 1.

(6) Where an address for service is not filed as required under paragraph (1), the Registrar may send to the person concerned notice to file an address for service within 2 months from the date of the notice and if that person fails to do so —

- (a) in the case of an applicant referred to in paragraph (1)(a) or (c), the application shall be treated as withdrawn;
- (b) in the case of a person referred to in paragraph (1)(b), he shall be deemed to have withdrawn from the proceedings in question; and
- (c) in the case of a grantee referred to in paragraph (1)(d) or a party referred to in paragraph (1)(e), he shall not be permitted to take part in the proceedings in question.

(7) An application requesting the Registrar to alter an address for service shall be made on Form PVP 1.

(8) Any thing sent to or served on a person at his address for service shall be taken to have been duly sent to or served on the person.

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(9) Subject to any filing to the contrary under paragraphs (2) to (7), or under any part of these Rules, the Registrar may —

- (a) treat the address for service of an applicant for grant of protection as that of the grantee upon the grant of protection; and
- (b) treat the trade or business address in Singapore of a person as his address for service.

### **Procedural representatives**

**10.—**(1) A breeder shall notify the Registrar of the appointment of a procedural representative in Form PVP 2.

(2) The Registrar may, in dealing with any matter under the Act or these Rules in respect of which a person has been appointed to act as a procedural representative on behalf of a breeder (referred to in this rule as the procedural representative's principal), require the personal signature or presence of either the procedural representative or his principal.

(3) The Registrar may, by notice in writing sent to a procedural representative, require the procedural representative to produce evidence of his appointment.

(4) Where a breeder substitutes one procedural representative for another, the newly appointed procedural representative shall file with the Registrar Form PVP 2 on or before the first occasion he acts as the procedural representative.

(5) Where there is a change in the name of a procedural representative and the procedural representative remains the same legal entity after such change, the procedural representative may file one Form PVP 2 in respect of such change in name for all the matters under the Act for which the procedural representative has been appointed.

(6) Any act required or authorised by the Act in connection with the making of a grant of protection, or any procedure relating to a grant of protection, may not be done by or to the newly appointed procedural representative referred to in paragraph (4) until after he has complied with that paragraph.

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## PART II

### GRANT OF PROTECTION

#### *Division 1 — Application*

#### **Application for grant of protection**

**11.**—(1) An application under section 13 of the Act shall be made on Form PVP 3 and shall be accompanied by —

- (a) the technical questionnaire in Form PVP-TQ; and
- (b) payment of the application fee specified in the Second Schedule.

(2) Where any of the requirements specified in the Forms are not satisfied, the Registrar shall send a notice to the applicant stating the omission, error or deficiency, and the applicant shall have 2 months in which to rectify the omission, error or deficiency in the application, failing which his application shall lapse in accordance with section 19 of the Act.

#### **Representation of plant variety**

**12.**—(1) An application may be accompanied by a representation of the plant variety in respect of which the application is made, which may be in the form of a drawing or photograph.

- (2) The drawings or photographs shall be —
- (a) suitable for reproduction; and
  - (b) of a size and presentation as may be specified by the Registrar in practice directions.

#### **Claim to priority**

**13.**—(1) If a right of priority is claimed under section 14 of the Act, particulars of that claim shall be included in the application made under rule 11(1).

(2) The particulars which shall be given, in respect of a foreign application referred to in section 14 of the Act, are —

- (a) the serial or application number allocated to the foreign application on filing;

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- (b) the date of filing of the foreign application; and
- (c) any other information, documents or material that is necessary for the making of a grant of protection in Singapore, as set out in the Act and these Rules.

(3) The Registrar may require the applicant to file a certificate by the registering or other competent authority concerned certifying or verifying to the satisfaction of the Registrar —

- (a) the date of filing of the foreign application;
- (b) the registering or competent authority;
- (c) the country or territory of the registering or competent authority (where applicable); and
- (d) the full particulars of the plant variety (including but not limited to a description of the plant variety and the proposed denomination).

(4) Where the certificate referred to in paragraph (3) is not in the English language, there shall be annexed to the certificate a translation in English of the contents of the certificate, certified or verified to the satisfaction of the Registrar.

### **Samples or specimens**

**14.**—(1) Unless otherwise required by the Act or the Registrar, no samples of live biological material or plant specimens shall be lodged with the Registrar.

(2) The Registrar may, in his discretion, refuse to accept any sample or specimen.

### **Deficiencies in applications**

**15.**—(1) Where an application for a grant of protection does not satisfy the requirements of rule 11(1), the Registrar shall send notice of this to the applicant requiring the applicant to remedy any such deficiency.

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(2) Where the Registrar refuses to approve a proposed denomination under section 36(3) of the Act which has been submitted in the

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application, the Registrar shall send a notice to the applicant requiring the applicant to propose another denomination.

(3) If the applicant fails to remedy all deficiencies set out in the notice referred to in paragraph (1), or propose another denomination in accordance with paragraph (2) within 2 months from the date of the notice, the application shall lapse in accordance with section 19 of the Act.

### **Publication of application**

16. A notice of every application shall be published under section 15 of the Act and each notice shall contain the following particulars:

- (a) the date of application;
- (b) the priority date, if any, accorded pursuant to a claim to a right to priority under section 14 of the Act and the name of the UPOV member concerned;
- (c) the name, address and address for service of the applicant;
- (d) the proposed plant variety;
- (e) the proposed denomination for the plant variety;
- (f) a representation of the plant variety, if submitted in the application; and
- (g) any other matters which the Registrar thinks fit.

### **Amendment of application or document**

17.—(1) Subject to paragraph (2), an applicant may apply to amend an application for a grant of protection and such application shall be made on Form PVP 4.

(2) An application to amend an application for a grant of protection to correct or change the name or other particulars of the applicant shall be made on Form PVP 1.

(3) An application to amend an application for a grant of protection to correct or change the name of the applicant shall be accompanied by relevant documentary evidence of such change.

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(4) Before acting on an application to amend an application for a grant of protection, the Registrar may require the applicant to furnish such proof as the Registrar thinks fit.

(5) Where an application is made for amendment of an application for a grant of protection which has been published, and the amendment affects any of the particulars specified in rule 16, the amendment or a statement of the effect of the amendment shall be published.

(6) A request for amendment of any error in any document filed at the Registry in connection with an application shall be made on Form PVP 4 and the correction shall be clearly identified on a document and filed together with the form or, if not, on the form itself.

#### **Withdrawal of application**

**18.—**(1) An applicant may, before a grant of protection is made, withdraw his application by submitting a notice of withdrawal on Form PVP 5.

(2) Upon receipt of Form PVP 5, the Registrar shall make all necessary rectifications and corrections to the register or in any other document or publication as is necessary to reflect the withdrawal.

#### *Division 2 — Objections*

#### **Objections to application or registration of denominations**

**19.—**(1) A person (referred to in this Division as the objector) may, within 2 months from the date of publication of an application or a denomination proposed for registration, file with the Registrar a notice objecting to the application or the denomination in Form PVP 6 (referred to in this Division as a notice of objection).

(2) The objector shall serve on the applicant a copy of the notice of objection at the same time as the notice is filed with the Registrar.

(3) A request for an extension of time to file the notice of objection shall be made by filing with the Registrar Form PVP 15 within 2 months from the date of publication of the application or denomination.

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(4) The total extension of time for which the Registrar may allow to file the notice of objection shall not exceed 4 months from the date of publication of the application or denomination.

(5) Before making a request for an extension of time, the person seeking the extension shall serve a notice on the applicant and every other person likely to be affected by the extension, which shall contain —

(a) a statement of the person's intention to request for the extension, the extension requested for, and the reason for the extension; and

(b) a request for the consent of the applicant or other person to the extension.

(6) The request for the extension shall be supported by a copy of the notice referred to in paragraph (5) and the consent in writing, if this is given.

(7) The Registrar may refuse to grant the extension —

(a) if the person requesting the extension fails to show a good and sufficient reason for the extension; or

(b) if the person fails to show, to the Registrar's satisfaction, that a notice referred to in paragraph (5) has been served on the applicant and every person likely to be affected by the extension.

(8) Where a person on whom a notice referred to in paragraph (5) is served fails or refuses to give his consent to the extension within 2 weeks from the date of the notice, the Registrar may, if he is satisfied that a good and sufficient reason has been shown for the extension, grant the extension; and the Registrar may do so without having to conduct a hearing in accordance with rule 56.

### **Contents of notice of objection**

**20.** The notice of objection shall, in addition to any other requirement in these Rules, contain a statement of the grounds and the facts upon which the objector objects to the making of a grant of protection or the registration of the denomination.

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### **Counter-statement**

**21.**—(1) Within 2 months from the date of receipt of the copy of the notice of objection from the objector, the applicant shall file with the Registrar a counter-statement in Form PVP 7 (referred to in this Division as the counter-statement) setting out —

- (a) the grounds on which the applicant relies as supporting his application or the registration of the proposed denomination; and
- (b) the facts alleged in the notice of objection which the applicant admits, if any.

(2) The applicant shall serve a copy of the counter-statement on the objector at the same time as the counter-statement is filed with the Registrar.

(3) If the applicant does not comply with paragraph (1) or (2), he shall be deemed to have withdrawn his application for a grant.

(4) A request for an extension of time to file the counter-statement shall be made by the applicant to the Registrar in Form PVP 15 within 2 months from the date of receipt of the notice of objection from the objector.

(5) The total extension of time for which the Registrar may allow to file the counter-statement shall not exceed 4 months from the date of receipt by the applicant of the notice of objection.

(6) Before making a request for an extension of time, the applicant shall serve a notice on the objector and every other person likely to be affected by the extension, which shall contain —

- (a) a statement of the applicant's intention to request for the extension, the extension requested for, and the reason for the extension; and
- (b) a request for the consent of the objector or other person to the extension.

(7) The request for the extension shall be supported by a copy of the notice referred to in paragraph (6) and the consent in writing, if this is given.

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- (8) The Registrar may refuse to grant the extension —
- (a) if the applicant fails to show a good and sufficient reason for the extension; or
  - (b) if the applicant fails to show, to the Registrar's satisfaction, that a notice referred to in paragraph (6) has been served on the objector and every person likely to be affected by the extension.
- (9) Where a person on whom a notice referred to in paragraph (6) is served fails or refuses to give his consent to the extension within 2 weeks from the date of the notice, the Registrar may, if he is satisfied that a good and sufficient reason has been shown for the extension, grant the extension; and the Registrar may do so without having to conduct a hearing in accordance with rule 56.

#### **Evidence in support of objection**

**22.**—(1) Within 2 months from the date of receipt of the counter-statement from the applicant, the objector shall file with the Registrar such evidence by way of a statutory declaration as he may desire to adduce in support of his objection and shall, at the same time, send to the applicant a copy of that evidence.

(2) If the objector does not file any evidence in accordance with paragraph (1), he shall, unless the Registrar otherwise directs, be deemed to have withdrawn his objection.

#### **Evidence in support of application or registration**

**23.**—(1) Within 2 months from the date of receipt by the applicant of the copy of the objector's evidence referred to in rule 22, the applicant shall file with the Registrar such evidence by way of a statutory declaration as he may desire to adduce in support of his application or the registration of the proposed denomination and shall, at the same time, send to the objector a copy of that evidence.

(2) If the applicant does not file any evidence in accordance with paragraph (1), he shall, unless the Registrar otherwise directs, be deemed to have withdrawn his application.

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### **Evidence in reply by objector**

**24.**—(1) Within 2 months from the date of receipt of the copy of the applicant's evidence referred to in rule 23, the objector may file with the Registrar evidence in reply by way of a statutory declaration and shall, at the same time, send to the applicant a copy of that evidence.

(2) Evidence in reply shall be confined to matters strictly in reply to the applicant's evidence.

### **Further evidence**

**25.** No further evidence may be filed by either party except that, in any proceedings before the Registrar, the Registrar may at any time, if he thinks fit, give leave to either party to file further evidence upon such terms as to costs or otherwise as the Registrar thinks fit.

### **Exhibits**

**26.**—(1) Where there are exhibits to any evidence filed in an objection, the party who is relying on the exhibits in support of his case shall, at the request of the other party and at that other party's expense, send a copy of each exhibit to that other party.

(2) If such copy cannot conveniently be furnished, the originals shall be filed with the Registrar in order that they may be open to inspection.

(3) Notwithstanding any provision in these Rules, the Registrar shall not accept as an exhibit any live biological material or plant specimens, unless such exhibit is requested.

### **Pre-hearing review**

**27.**—(1) At any time after the completion of the filing of evidence by the parties, the Registrar may direct the parties to attend a pre-hearing review at which he may give such directions as he considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings.

(2) At the pre-hearing review, the Registrar may consider any matter including the possibility of settlement of all or any of the issues in the

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proceedings and may require the parties to furnish him with such information as he may require.

(3) If any party fails to comply with any direction given under paragraph (1) or (2), the Registrar may dismiss the proceedings or make such other order as he thinks fit.

(4) Any direction or order by the Registrar may be set aside or varied by him on such terms as he thinks fit.

(5) If, at any time during the pre-hearing review, the parties are agreeable to a settlement of all or some of the matters in dispute in the proceedings, the Registrar may give his decision in relation to the proceedings or make such order as he thinks just to give effect to the settlement.

(6) If any party does not appear at the pre-hearing review, the Registrar may dismiss the proceedings or make such other order as the Registrar thinks fit, or he may adjourn the review.

(7) An order made by the Registrar in the absence of a party may be set aside by the Registrar, on the application of that party, on such terms as the Registrar thinks fit.

### **Objection hearing**

**28.**—(1) Upon completion of the filing of evidence by the parties, the Registrar shall give notice to the parties of a date on which he will hear arguments on the case.

(2) The parties shall file with the Registrar their written submissions and bundles of authorities at least one month before the date of hearing, and shall at the same time exchange with one another their respective written submissions and bundles of authorities.

(3) Any party who intends to appear at the hearing shall file with the Registrar Form PVP 8 before the hearing.

(4) Any party who does not file with the Registrar Form PVP 8 before the hearing may be treated as not desiring to be heard, and the Registrar may proceed with the hearing in the absence of that party or may, without proceeding with the hearing, give his decision or dismiss the proceedings, or make such other order as he thinks fit.

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(5) If, after filing with the Registrar Form PVP 8, a party does not appear at the hearing, the Registrar may proceed with the hearing in the absence of that party, or may, without proceeding with the hearing, give his decision or dismiss the proceedings, or make such other order as he thinks fit.

(6) If neither party appears at the hearing, the proceedings may be struck out of the list except that it may thereafter be restored on the direction of the Registrar.

(7) Any decision made by the Registrar pursuant to a hearing in which any party does not appear may, on the application of that party, be set aside by the Registrar on such terms as he thinks fit.

(8) An application under this rule to restore any proceedings or to set aside any decision under paragraph (6) or (7) shall be made within 7 days after the proceedings have been struck out of the list or after the hearing, as the case may be.

#### **Technical advisor**

**29.**—(1) The Registrar may appoint an Examiner or officer thereof as a technical advisor to any objection proceedings to render an opinion on the evidence provided by the parties.

*[S 504/2014 wef 30/07/2014]*

(2) A technical advisor to any objection proceedings shall, within a reasonable time and after having sight of all the evidence and exhibits provided by the parties, provide the Registrar a report as to the merits of both the application and the objection, as well as a recommendation on whether to allow or disregard the objection.

#### **Registrar's decision in objection proceedings**

**30.** The Registrar shall, within 3 months from the date of the hearing, inform the parties of his decision and the grounds thereof.

#### **Extension of time in objection proceedings**

**31.** Unless expressly stated otherwise in these Rules, where any extension of time is granted to any party, the Registrar may, if he thinks fit, without giving the party a hearing, grant a reasonable

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extension of time to the other party in which to take any subsequent step.

#### **Costs in uncontested objection**

32. Where an objection is uncontested by the applicant, the Registrar shall, in deciding whether costs should be awarded to the objector, consider whether proceedings might have been avoided if reasonable notice had been given by the objector to the applicant before the notice of objection was filed.

#### **No registration of denomination pending outcome of objection hearing**

33. The Registrar shall not register any denomination where an objection in relation to that denomination is pending under this Division.

### *Division 3 — Examination*

#### **Request for examination**

34.—(1) Upon receipt of notification from the Registrar that the application is in order, an applicant shall, within 3 months from the date of the notification, submit a request for an examination to the Registrar in Form PVP 9.

*[S 504/2014 wef 30/07/2014]*

(2) The Registrar shall forward such request for examination to an Examiner referred to in section 17 of the Act for the conduct of the examination.

*[S 504/2014 wef 30/07/2014]*

(3) The applicant shall pay to the Examiner such charges as the Examiner may reasonably require in respect of the applicant's request for examination.

*[S 504/2014 wef 30/07/2014]*

#### **Examination by Examiner**

35.—(1) The applicant shall submit to the Examiner which receives a request for examination under rule 34(2), at the address specified by

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that Examiner, propagating material, descriptions, drawings or photographs of the plant variety in respect of which the examination is to be conducted, or any other material or document that is necessary for conducting an examination.

[S 504/2014 wef 30/07/2014]

(1A) The submission to an Examiner under paragraph (1) must be made —

- (a) in any case where that Examiner is in Singapore, within one month after any written request of that Examiner; or
- (b) in any other case, within 3 months after any written request of that Examiner.

[S 504/2014 wef 30/07/2014]

(2) If during an examination, the Examiner is of the opinion that the plant variety —

- (a) is not distinct, stable or uniform within the meaning of section 22 of the Act; or
- (b) is unsuitable for a grant of protection for any other reason which, in the opinion of the Examiner, is relevant to the grant of protection in respect of the plant variety,

[S 504/2014 wef 30/07/2014]

the Examiner shall notify the applicant in writing of that opinion and shall state fully the reasons for the opinion.

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(3) A copy of the written opinion referred to in paragraph (2) shall be sent to the Registrar.

(4) The applicant may respond to the written opinion referred to in paragraph (2) by submitting to the Registrar, and to the Examiner at the same time —

- (a) written arguments disagreeing with the Examiner's opinion;
- (b) supporting documents for the further consideration of the Examiner; or

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(c) an amendment to the description of the application for plant variety rights.

*[S 504/2014 wef 30/07/2014]*

(5) Where the applicant wishes to file written arguments and an amendment to the description of the application under paragraph (4), he shall submit both at the same time.

(6) Any response by the applicant to a written opinion referred to in paragraph (5) shall be made within 2 months from the date of the Examiner's letter enclosing the written opinion.

*[S 504/2014 wef 30/07/2014]*

(7) Where the applicant has filed an argument or amendment under paragraph (4), the Examiner may, in its discretion, issue a further written opinion to the Registrar stating fully the reasons for the opinion referred to in paragraph (2) and the requirement to notify the applicant in paragraph (2) and the right of the applicant to respond in accordance with paragraph (4) shall apply to such further written opinion.

*[S 504/2014 wef 30/07/2014]*

(8) Any response by the applicant to the further written opinion referred to in paragraph (7) shall be made within 2 months from the date of the further written opinion.

(9) A further written opinion issued by the Examiner to the Registrar referred to in paragraph (7) need not take into account any argument or amendment filed by the applicant under paragraph (4) after it has commenced drawing up its opinion.

*[S 504/2014 wef 30/07/2014]*

### **Corresponding examination report**

**36.—**(1) An applicant may, in lieu of submitting a request for an examination under rule 34(1), submit to the Registrar, within 3 months from the date of the notification referred to in that rule, in Form PVP 10, a request to rely on an examination report issued and certified by an Examiner in any UPOV member other than Singapore (referred to in this rule as a corresponding examination report).

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(2) Subject to paragraph (3), the applicant referred to in paragraph (1) shall submit to the Registrar the corresponding examination report within 3 years from the date of the foreign application referred to in section 14 of the Act.

(3) Where a corresponding examination report has been issued but the applicant is unable to submit the corresponding examination report, the applicant shall, if he intends to rely on the corresponding examination report, ensure that the Examiner which issued that report delivers a copy of the report to the Registrar within 3 years from the date of the foreign application.

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(4) The Registrar shall —

- (a) consider any corresponding examination report received under paragraph (2) or (3); or
- (b) forward the corresponding examination report to an Examiner appointed by the Registrar for the purposes of this paragraph, for consideration by the Examiner for the purposes of the examination report issued under rule 37.

[S 504/2014 wef 30/07/2014]

(5) Notwithstanding paragraph (4), where the Registrar rejects a corresponding examination report under section 18(2) of the Act, the Registrar shall notify the applicant in writing of the rejection and the reasons why the report was rejected.

(6) Where the Registrar rejects a corresponding examination report, the applicant shall submit a request for examination to the Registrar in Form PVP 9 and, for the purposes of determining the time within which a request for examination is to be submitted, the date of the notification of rejection referred to in paragraph (5) shall be taken to be the date of notification that the application is in order under rule 34(1).

[S 504/2014 wef 30/07/2014]

### **Examination report**

37. The Examiner referred to in rule 35 or 36(4) shall issue an examination report to the Registrar upon conclusion of —

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- (a) its examination under rule 35; or
- (b) its consideration of a corresponding examination report under rule 36,

as the case may be, consisting of a report on whether the plant variety which is the subject of the application is distinct, stable and uniform within the meaning of section 22 of the Act.

*[S 504/2014 wef 30/07/2014]*

### **Removal of material**

**38.—**(1) The applicant shall effect the removal or disposal of any propagating or other material of any plant variety submitted to the Examiner referred to in rule 35 or 36(4) —

- (a) in a case where the application has been withdrawn before the examination has been concluded, within 2 months of the date of withdrawal; or
- (b) in a case where the examination has been concluded, within 2 months from the date the applicant has been notified by the Registrar as to whether a grant of protection has been made.

*[S 504/2014 wef 30/07/2014]*

(2) If the applicant does not comply with paragraph (1), the Examiner may remove or dispose of any propagating or other material of any plant variety and recover the expenses reasonably incurred in so doing from the applicant.

*[S 504/2014 wef 30/07/2014]*

### *Division 4 — Making and publication of grant of protection*

#### **Making of grant of protection**

**39.—**(1) Where the Registrar makes a grant of protection in respect of an application, he shall notify the applicant accordingly and send a certificate of grant of protection to the applicant.

(2) Where the Registrar declines to make a grant of protection in respect of an application, he shall notify the applicant accordingly.

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### **Publication of grant of protection**

**40.** A grant of protection or the rejection of an application shall be published at such time and in such manner as the Registrar may direct.

#### *Division 5 — Exceptions to infringement of grant of protection*

### **Plant genera and species exempt from rights of grantee under section 31(2) of Act**

**41.** All plant genera and species are prescribed under section 31(2) of the Act as exempt from the rights of a grantee.

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#### *Division 6 — Replacement denominations*

### **Submission and registration of replacement denominations**

**42.—(1)** For the purposes of section 38(2) of the Act, where a grantee is required by the Registrar to submit a suitable replacement denomination, the grantee shall do so within 3 months from the date the Registrar notifies him in writing of the requirement to do so.

(2) The Registrar shall publish every replacement denomination submitted under section 15 of the Act.

(3) Any person who wishes to object to the registration of a replacement denomination shall, within 2 months from the date of publication of the replacement denomination referred to in paragraph (1), file with the Registrar a notice of objection in Form PVP 6.

(4) The notice of objection shall contain a statement of the grounds upon which the person objects to the registration of the denomination.

(5) Rules 19(2) to (8) and 21 to 33 shall apply, with the necessary modifications, to any proceedings arising from the notice of objection.

(6) For the purposes of the application of the rules referred to in paragraph (5) —

- (a) any reference to the registration of a denomination shall be read as a reference to the registration of a replacement denomination referred to in paragraph (1);

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- (b) any reference to the notice of objection shall be read as a reference to the notice of objection referred to in paragraphs (3) and (4); and
- (c) any reference to the objector shall be read as a reference to the person referred to in paragraphs (3) and (4).

### PART III REGISTER

#### **Entry in register of particulars of application, grant of protection and other matters**

43.—(1) No entry shall be made in the register in respect of any application for a grant of protection before the application has been published in accordance with section 15 of the Act.

(2) Upon the publication of an application for a grant of protection, the Registrar shall cause to be entered in the register —

- (a) the name and address of the applicant or applicants;
- (b) the date of filing and the file reference of the application;
- (c) the address for service of the applicant or applicants;
- (d) the date on which the application was published;
- (e) the details, descriptions and drawings or photos, or both, of the plant variety in respect of which the application is made; and
- (f) where applicable, the date of filing and the file reference of any foreign application referred to in section 14 of the Act and the country or territory in which the foreign application was made.

(3) The Registrar shall, in addition to the matters referred to in paragraph (2), cause to be entered in the register —

- (a) the date on which the application has lapsed, has been withdrawn or treated as having been withdrawn, or rejected;
- (b) where a grant of protection has been made in respect of an application, the date on which the grant of protection is made;

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- (c) the address for service, if different from the entry made in accordance with paragraph (2)(c);
- (d) the cessation of the grant of protection, where applicable;
- (e) particulars of any decision to revoke the grant of protection;
- (f) particulars of any decision to change the particulars as recorded in the register with regards to the grant of protection; and
- (g) particulars of any court order in relation to the grant of protection.

(4) Any person may apply to the Registrar in Form PVP 18 for any matter to be entered in the register, and the Registrar may, in his discretion, under section 15(i) of the Act, enter such matter in the register.

**Application for registration of transactions, instruments, etc.**

44.—(1) An application to register, or to give notice to the Registrar of —

- (a) any grant of licence;
- (b) any change in ownership of the rights in relation to the grant of protection;
- (c) any transfer of a grant of protection; or
- (d) any transfer of a licence,

shall be made on Form PVP 12.

(2) The application shall, unless the Registrar otherwise directs, be accompanied by —

- (a) a certified copy of any document which establishes the transaction or matter referred to in paragraph (1); or
- (b) a certified copy of such extracts from such document as suffice to establish the transaction or matter referred to in paragraph (1).

(3) The Registrar may require such other information to be furnished for an application under paragraph (1) as he thinks

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necessary before entering the particulars of such transaction or matter in the register.

#### **Rectification of error or omission in register**

**45.—**(1) An application to rectify an error or omission in the register under section 41(1) of the Act shall be made on Form PVP 4.

(2) Where a request is sought to correct the same error in both the register and any document filed at the Registry in connection with the registration, the request may be made on a single form.

(3) The Registrar may call for such written explanation of the reasons for the request or evidence in support of it as he may require in order to satisfy himself that there is an error and shall, upon being so satisfied, make such correction as may be agreed between the applicant and the Registrar.

(4) This rule is without prejudice to the power of the Registrar to correct any irregularity in the register which is attributable wholly or in part to an error, a default or an omission on the part of the Registry.

#### **Application to change name and address in register**

**46.—**(1) A request by a grantee for the alteration of his name or address or address for service entered in the register or on any application or other document filed at the Registry shall be made on Form PVP 1.

(2) If the Registrar is satisfied that a request to alter a name or an address or address for service may be allowed, he shall cause the register, application or other document to be altered accordingly.

### PART IV

#### ANNUAL FEE AND INFORMATION

##### **Payment of annual fee and submission of information**

**47.—**(1) At any time not less than 2 months but not more than 3 months before each anniversary of the date of the grant of protection, the Registrar shall send a notice in writing to a grantee at his address

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for service, notifying him of the date on which the annual fee specified in the Second Schedule is due.

(2) Payment of the annual fee shall be made to the Registry together with Form PVP 11.

#### **Extension of time for payment of annual fee or submission of information**

48.—(1) Subject to paragraph (2), if the applicant wishes to have an extension of time to pay the annual fee or to submit the duly completed form required under rule 47, he shall file with the Registrar a request for an extension of time in Form PVP 15 before the expiry of the time specified in the notice in that rule or any extended period previously allowed by the Registrar.

(2) The total period of extension which may be granted under paragraph (1) shall not exceed 4 months.

#### **Cancellation of grant of protection upon failure to provide information or pay annual fee**

49.—(1) The Registrar may cancel a grant of protection under section 26(2)(a) of the Act if the grantee does not provide such information, documents or material as required in Form PVP 11 for verifying the maintenance of the plant variety, within the period specified in the notice in rule 47, or any extended period allowed by the Registrar.

(2) The Registrar may cancel a grant of protection under section 26(2)(b) of the Act if the grantee does not pay the annual fee at the end of the period specified in the notice in rule 47, or any extended period allowed by the Registrar.

### PART V

#### CANCELLATION AND RENUNCIATION

##### **Application to cancel grant of protection**

50.—(1) An application to the Registrar to cancel a grant of protection under section 26(2) of the Act shall be made on Form PVP 13.

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(2) The application shall be accompanied by a statement of the grounds on which the application is made.

(3) The applicant shall, if he is not the grantee, serve a copy of the application and statement on the grantee at the same time as he files these documents with the Registrar.

### **Counter-statement**

**51.—**(1) Within 2 months from the date of receipt of the copies of the application and statement, the grantee may file with the Registrar a counter-statement in Form PVP 7 setting out —

- (a) the grounds on which he relies as supporting his grant of protection; and
- (b) the facts alleged in the application which he admits, if any.

(2) The grantee shall serve on the applicant a copy of the counter-statement at the same time as he files the counter-statement with the Registrar.

(3) A request for an extension of time to file the counter-statement shall be made to the Registrar on Form PVP 15 within 2 months from the date of receipt of the copies of the application and statement.

(4) The total extension of time for which the Registrar may allow to file the counter-statement shall not exceed 4 months from the date of receipt of the copies of the application and statement.

(5) Before making a request for an extension of time, the grantee shall serve a notice on the applicant and every other person likely to be affected by the extension, which shall contain —

- (a) a statement of the grantee's intention to request for the extension, the extension requested for, and the reason for the extension; and
- (b) a request for the consent of the applicant or other person to the extension.

(6) The request for the extension shall be supported by a copy of the notice referred to in paragraph (5) and the consent in writing, if this is given.

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- (7) The Registrar may refuse to grant the extension —
- (a) if the grantee fails to show a good and sufficient reason for the extension; or
  - (b) if the grantee fails to show, to the Registrar's satisfaction, that a notice referred to in paragraph (5) has been served on the applicant and every other person likely to be affected by the extension.
- (8) Where a person on whom a notice referred to in paragraph (5) is served fails or refuses to give his consent to the extension within 2 weeks from the date of the notice, the Registrar may, if he is satisfied that a good and sufficient reason has been shown for the extension, grant the extension; and the Registrar may do so without having to conduct a hearing in accordance with rule 56.
- (9) Where no counter-statement has been filed within the time allowed, the application for cancellation referred to in rule 50 shall be granted.

#### **Further procedure**

- 52.**—(1) Upon an application being made under rule 50 and a counter-statement being filed under rule 51, rules 22 to 32 shall apply, with the necessary modifications, to further proceedings thereon.
- (2) For the purposes of the application of rules 22 to 32 —
- (a) references in those rules to the applicant shall be treated as references to the grantee;
  - (b) references in those rules to the application shall be treated as references to the grantee's grant of protection;
  - (c) references in those rules to the objector shall be treated as references to the applicant for cancellation; and
  - (d) the reference in rule 23(2) to the withdrawal of the application shall be treated as a reference to the admission by the grantee to the facts alleged by the applicant in his application for cancellation.

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### **Intervention by third parties**

**53.—**(1) Any person, other than the grantee, claiming to have an interest in a grant of protection which is the subject of an application under rule 50 may apply to the Registrar in writing for leave to intervene.

(2) The Registrar may, after hearing the parties concerned if he so required, refuse leave to intervene, or grant leave to intervene upon such terms (including any undertaking as to costs) as he thinks fit.

(3) Any person granted leave to intervene shall, subject to the terms and conditions imposed in respect of the intervention, be treated as a party to the proceedings in question.

### **Application for renunciation of grant of protection**

**54.—**(1) The grantee may apply for the renunciation of his grant of protection under section 27(1) of the Act by filing with the Registrar a notice in Form PVP 14.

(2) A notice under paragraph (1) shall have no effect unless the grantee certifies in that notice that every other person having a right in the protected variety concerned (if any) —

- (a) has been given not less than 3 months' notice of the grantee's intention to renounce the grant of protection; and
- (b) is not affected by or consents to the renunciation.

*[S 504/2014 wef 30/07/2014]*

### **Publication and entry into register of cancellation or renunciation**

**55.** Where the Registrar —

- (a) cancels a grant of protection pursuant to an application referred to in rule 50; or
- (b) is satisfied that a notice of application for the renunciation of a grant of protection referred to in rule 54 complies with paragraph (2) of that rule and is otherwise regular,

the Registrar shall publish the cancellation or renunciation, as the case may be, and make the appropriate entry in the register.

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## PART VI

### EVIDENCE AND PROCEDURE

#### **Right of affected party to be heard**

**56.**—(1) Without prejudice to any of the provisions of the Act or these Rules requiring the Registrar to hear any party to proceedings under the Act or these Rules, or to give such party an opportunity to be heard, the Registrar shall, before exercising any power given to the Registrar by the Act or these Rules adversely to any party, give that party an opportunity to be heard.

(2) The Registrar shall give that party at least 10 days' notice of the date on which he may be heard.

(3) The Registrar shall notify that party of his decision made in the exercise of his power.

#### **Hearing before Registrar to be in public**

**57.** The hearing before the Registrar of any dispute between 2 or more parties relating to any matter under the Act or these Rules shall be in public unless the Registrar, after consultation with those parties who appear in person or are represented at the hearing, otherwise directs.

#### **Evidence in proceedings before Registrar**

**58.**—(1) In any proceedings before the Registrar under the Act or these Rules, evidence shall be given by way of a statutory declaration, unless otherwise provided by the Act or these Rules or directed by the Registrar.

(2) Subject to the provisions of these Rules and the Oaths and Declarations Act (Cap. 211), Order 41 of the Rules of Court (Cap. 322, R 5) shall apply, with the necessary modifications, in relation to a statutory declaration filed or used in any proceedings before the Registrar as it applies to an affidavit filed or used in any proceedings before the Court.

(3) Any such statutory declaration may, in the case of an appeal to the Court, be used before the Court in lieu of evidence by affidavit,

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and if so used, shall have all the incidents and consequences of evidence by affidavit.

(4) The Registrar may, in any particular case, take oral evidence in lieu of or in addition to a statutory declaration and shall, unless the Registrar otherwise directs, allow any witness to be cross-examined on his statutory declaration or oral evidence.

### **Statutory declarations**

**59.** Any statutory declaration filed under the Act or these Rules, or used in any proceedings under the Act or these Rules, shall be made and subscribed as follows:

- (a) in Singapore, before any justice of the peace, or any commissioner for oaths or other officer authorised by law to administer an oath for the purpose of any legal proceedings;
- (b) in any other part of the Commonwealth, before any court, judge, justice of the peace, notary public or any officer authorised by law to administer an oath there for the purpose of any legal proceedings; and
- (c) elsewhere, before a Consul, Vice-Consul, or other person exercising the functions of a Singapore Consul, or before a notary public, judge or magistrate.

### **Notice of seal of officer taking declaration**

**60.** Any document purporting to have affixed, impressed or subscribed thereto or thereon the seal or signature of any person authorised by rule 59 to take a declaration may be admitted by the Registrar without proof of the genuineness of the seal or signature or of the official character of the person or his authority to take the declaration.

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## PART VII

### COSTS

#### **Application for costs**

**61.**—(1) For the purposes of section 12 of the Act, a party to proceedings before the Registrar who desires to obtain costs shall apply to the Registrar for an award of costs in relation to the proceedings —

- (a) during the proceedings; or
- (b) within one month from —
  - (i) the day on which the Registrar makes a decision in the proceedings that ends those proceedings; or
  - (ii) the date of the Registrar's notice to the party that the proceedings have been withdrawn, discontinued or dismissed,

as the case may be.

(2) Before awarding costs in respect of the proceedings, the Registrar shall give each party to the proceedings an opportunity to be heard in relation to the award of costs.

#### **Taxation of costs**

**62.**—(1) Where the Registrar has awarded party and party costs to a party to proceedings before the Registrar, if the party wishes to have the costs taxed by the Registrar, the party shall, within one month from the date of the award of costs —

- (a) apply for the costs to be taxed by filing a copy of the bill of costs with the Registrar; and
- (b) send at the same time a copy of the bill of costs to every other person having an interest in the taxation proceedings.

(2) Every bill of costs shall set out the following:

- (a) the work done in the cause or matter;
- (b) all disbursements made in the cause or matter;
- (c) the sum claimed for each item; and

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(d) in chronological order and with dates, all events in the cause or matter which are relevant to the taxation proceedings.

(3) Where costs have already been awarded for any of the items set out in the bill of costs, this fact and the amount awarded shall be indicated.

(4) Any party on whom a copy of the bill of costs has been served in accordance with paragraph (1) shall, if he wishes to dispute the bill or any part thereof, within one month from the receipt of the copy of the bill, mark the copy in accordance with paragraph (5) and send copies of the marked copy to the Registrar and the party requesting for taxation.

(5) The marking of a copy of a bill of costs shall be effected by writing on the right hand margin against each item the word “Agree” if the party concerned agrees with the cost claimed for that item, or the word “Disagree” if the party concerned disagrees with the cost claimed for that item.

(6) Upon expiry of the period referred to in paragraph (4), the Registrar shall give to the parties having an interest in the taxation proceedings notice of the date and time appointed for taxation.

### **Taxation proceedings**

**63.—**(1) If any party entitled to be heard in any taxation proceedings does not attend at the time appointed for taxation, the Registrar may proceed with the taxation.

(2) The Registrar may, if he thinks it necessary to do so, adjourn the proceedings.

### **Scale of costs**

**64.—**(1) The provisions in the Fifth Schedule shall apply in relation to taxation proceedings.

(2) Costs awarded in these proceedings are not intended to compensate the parties for the expense to which they may have been put.

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### **Certificate**

**65.** When a bill of costs has been taxed, the party who requested the taxation may file with the Registrar Form PVP 19, and the Registrar shall proceed to issue to him a certificate for the amount of the taxed costs.

## **PART VIII**

### **EXTENSION OF TIME**

#### **Request for extension of time**

**66.—**(1) The Registrar may upon receiving a request in Form PVP 15 extend, by such period and upon such terms as the Registrar considers fit, any period of time —

- (a) prescribed by these Rules; or
- (b) specified by the Registrar for doing any act or taking any proceedings.

*[S 504/2014 wef 30/07/2014]*

(2) Before making a request for an extension of time, the person seeking the extension shall serve a notice on every person or party likely to be affected by the extension, which shall contain —

- (a) a statement of his intention to request for the extension, the extension requested for, and the reason for the extension; and
- (b) a request for the consent in writing of the person or party to the extension.

(3) The request for extension shall be made before the expiry of the period of time in question and shall be supported by a copy of the notice referred to in paragraph (2) and the consent in writing, if this is given.

(4) The Registrar may refuse to grant the extension —

- (a) if the person requesting the extension fails to show a good and sufficient reason for the extension; or

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(b) if the person fails to show, to the Registrar's satisfaction, that a notice referred to in paragraph (2) has been served on every person or party likely to be affected by the extension.

(5) Where a person or party on whom a notice referred to in paragraph (2) is served fails or refuses to give his consent to the extension within 2 weeks from the date of the notice, the Registrar may, if he is satisfied that a good and sufficient reason has been shown for the extension, grant the extension; and the Registrar may do so without having to conduct a hearing in accordance with rule 56.

(6) Paragraphs (1) to (5) shall not apply to the following matters:

(a) the doing of any act referred to in rules 9(6), 28(8), 35(1A), (6) and (8), 38(1), 48(2), 61(1)(b) and 62(1) and (4);

*[S 504/2014 wef 30/07/2014]*

(b) the filing of a notice of objection under rule 19 or 42; and

(c) the filing of a counter-statement under rule 21 or 51.

#### **Where non-compliance with time caused by Registry**

**67.**—(1) Where, by reason of an act or omission of any person employed in the Registry, an act or step in relation to an application for the grant of plant varieties right or any other proceedings before the Registrar, required to be done or taken within a period of time, has not been so done or taken, the Registrar may, notwithstanding the provisions of these Rules, extend the period for doing the act or taking the step by such period as the Registrar thinks fit.

(2) Notwithstanding the provisions of these Rules, the period of time for doing an act or taking a step under paragraph (1) may be extended although the period has expired.

#### **Change of commencement date of period for filing evidence**

**68.** Where the period within which any party to any proceedings before the Registrar may file evidence under these Rules is to begin upon the expiry of any period in which any other party may file evidence and that other party notifies the Registrar that he does not wish to file any, or any further, evidence, the Registrar may direct that the period within which the first-mentioned party may file evidence

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shall begin on such date as may be specified in the direction, and the Registrar shall notify all parties to the dispute of that date.

## PART IX

### MISCELLANEOUS PROVISIONS

#### **Hours of business and excluded days**

**69.**—(1) Any business done under the Act or these Rules —

(a) on any day after the hours of business of the Registry for that class of businesses; or

(b) on any day which is an excluded day for that class of business,

shall be taken to have been done on the next following day which is not an excluded day for that class of business.

(2) Where the time for doing any business under the Act or these Rules expires on an excluded day for the doing of that class of business, that time shall be extended to the next following day which is not an excluded day for the doing of that class of business.

#### **Extension of period where interruption in postal service, etc.**

**70.**—(1) Where, on any day, there is an interruption in —

(a) the postal service of Singapore; or

(b) the operation of the Registry,

the Registrar may issue practice directions to certify that day as one on which there has been an “interruption” and, where any period of time specified in the Act or these Rules for the giving, sending, filing or serving of any notice, application or other document expires on a day so certified, the period shall be extended to the first following day (not being an excluded day) which is not so certified.

*[S 504/2014 wef 30/07/2014]*

(2) *[Deleted by S 504/2014 wef 30/07/2014]*

(3) If in any case the Registrar is satisfied that the failure to give, send, file or serve any notice, application or other document within the period specified in the Act or these Rules was wholly or mainly

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attributable to a failure of or delay in the postal service of Singapore, the Registrar may, if he thinks fit and upon such terms as he may direct, extend the period so that it ends on the day of the receipt by the addressee of the notice, application or other document or, if the day of such receipt is an excluded day, on the first following day which is not an excluded day.

(4) The Registrar shall give notice of an extension referred to in paragraph (3) to all parties to the matter.

**Certificates and copies**

**71.** An application under section 40(3) of the Act for —

- (a) a certified copy of an entry in the register; or
- (b) a certified extract from the register,

shall be made on Form PVP 16.

**Irregularities**

**72.** Any irregularity in procedure which, in the opinion of the Registrar, is not detrimental to the interests of any person or party may be corrected on such terms as the Registrar may direct.

**Case management conference**

**73.** Notwithstanding anything in these Rules, at any stage of any application to or proceedings before the Registrar, the Registrar may direct the applicant or parties to attend a case management conference in order that the Registrar may make such order or give such direction as he thinks fit for the just, expeditious and economical disposal of the matter.

**Registrar's power to require documents, information or evidence**

**74.** At any stage of any proceedings before the Registrar, the Registrar may direct that such documents, information or evidence as he may reasonably require shall be filed within such period as he may specify.

**75.** *[Deleted by S 504/2014 wef 30/07/2014]*

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### **Application to Court**

**76.** A person who makes an application to the Court under the Act shall, as soon as practicable, file a copy of the application with the Registrar.

### **Filing of court orders**

**77.—(1)** Where an order is made by the Court in any matter under the Act, the person or persons in whose favour the order is made shall, as soon as practicable, file a copy of the order with the Registrar on Form PVP 17.

(2) If the order is to rectify or alter the register, the person in whose favour the order is made or, if there is more than one person, such one of them, as the Registrar may direct, shall file with the Registrar Form PVP 17.

(3) The Registrar shall rectify or alter the register in accordance with such order.

### **Plant Varieties Protection Journal**

**78.** The Registrar shall publish a journal, to be called the Plant Varieties Protection Journal, which shall contain —

- (a) all such matters as are required to be published in that Journal under rules 4(1) and (3), 16, 18(2), 40, 42(2) and 55; and
- (b) such other information as the Registrar thinks fit.

### **Translations**

**79.—(1)** Unless otherwise provided for in these Rules, where any document or part of a document which is in a language other than English is filed at the Registry or sent to the Registrar in pursuance of the Act or these Rules, it shall be accompanied by a translation into English of the document or that part, verified to the satisfaction of the Registrar as corresponding to the original text.

(2) Where the document is or forms part of an application, the Registry shall not, in the absence of such a translation, take any further action in relation to that document, unless the Registrar otherwise directs.

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(3) Where more than one copy of the document referred to in paragraph (1) or (2) is required to be so filed or sent, a corresponding number of copies of the translation shall accompany it.

(4) The Registrar may refuse to accept any translation which is in his opinion inaccurate and thereupon another translation of the document in question verified as aforesaid shall be furnished, together with the appropriate number of copies thereof.

### **Inspection of register, etc.**

**80.** Any person may, upon request and payment of the applicable fee referred to in the Second Schedule —

- (a) inspect the register; or
- (b) search and retrieve —
  - (i) information on applications for the grant of protection; and
  - (ii) any other information as the Registrar may allow, in his absolute discretion, to be retrieved from the register.

## FIRST SCHEDULE

*[Deleted by S 504/2014 wef 30/07/2014]*

## SECOND SCHEDULE

Rules 3(1) and (2)(a), 11(1)(b), 47(1)  
and 80

### FEES

<i>Form No.</i>	<i>Matter</i>	<i>Corresponding Rule(s)</i>	<i>Fees</i>
PVP 1	(a) Request to change the name and/or address of an applicant for a grant of protection	Rules 9(5) and (7), 17(2) and 46(1)	\$20

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p. 44 2006 Ed.] *Plant Varieties Protection Rules* [CAP. 232A, R 1SECOND SCHEDULE — *continued*

	(b) Request to change the name and/or address of a grantee		
	(c) Request to change an address for service		
PVP 2	(a) Filing of a notice of appointment or substitution of procedural representative	Rule 10(1), (4) and (5)	\$8.50
	(b) Change in name of procedural representative		
PVP 3	Application for grant of protection under section 13 of the Act	Rules 9(4)(a) and 11(1)	\$1,600
PVP-TQ	Technical questionnaire	Rule 11(1)(a)	—
PVP 4	(a) Application to amend an application for a grant of protection	Rules 17(1) and (6) and 45(1)	\$40
	(b) Application for rectification of an error or omission in the register under section 41 of the Act		
PVP 5	Notice of withdrawal of application for grant of protection under section 19 of the Act	Rule 18(1) and (2)	—
PVP 6	Filing of a notice of objection	Rules 9(4)(b), 19(1) and 42(3)	\$340
PVP 7	Filing of a counter-statement	Rules 21(1) and 51(1)	\$325
PVP 8	Filing of a notice of appearance at hearing	Rule 28(3), (4) and (5)	\$650

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CAP. 232A, R 1] *Plant Varieties Protection Rules* [2006 Ed. p. 45SECOND SCHEDULE — *continued*

PVP 9	Request for examination by Examiner under section 17 of the Act	Rules 34(1) and 36(6)	\$20
PVP 10	(a) Request to submit examination report by an Examiner in any UPOV member other than Singapore  (b) Request to rely on examination report by an Examiner in any UPOV member other than Singapore	Rules 36(1)	\$20  \$570
PVP 11	Payment of annual fee and submission of information under section 24(3) of the Act	Rules 9(4)(c), 47(2) and 49(1)	\$100
PVP 12	(a) Application to register particulars of a transaction or matter under section 42 of the Act	Rules 9(4)(a) and 44(1)	\$80
	(b) Application to cancel or amend the particulars of a transaction or matter under section 42 of the Act		
PVP 13	Application for the cancellation of a grant of protection	Rule 50(1)	\$50
PVP 14	Notice of renunciation of a grant of protection	Rule 54(1)	\$50
PVP 15	Request for an extension of time	Rules 19(3), 21(4), 48(1), 51(3) and 66(1)	\$30
PVP 16	Application for a certified copy of an entry in the	Rule 71	\$30

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SECOND SCHEDULE — *continued*

	register or a certified extract from the register under section 40(3) of the Act		
PVP 17	Filing of an order of the Court with the Registrar (other than in relation to an application under PVP 12 or PVP 13)	Rule 77(1) and (2)	\$50
PVP 18	Request for publication of matters under section 15(i) of the Act	Rule 43(4)	\$75
PVP 19	Request to extract the Registrar's Certificate of Taxation	Rule 65	\$30
—	Inspection of register under section 40(2) of the Act, for each search per file	Rule 80	\$6.

[S 504/2014 wef 30/07/2014]

THIRD SCHEDULE

[Deleted by S 504/2014 wef 30/07/2014]

FOURTH SCHEDULE

[Deleted by S 504/2014 wef 30/07/2014]

FIFTH SCHEDULE

Rule 64(1)

SCALE OF COSTS

	<i>Matter</i>	<i>Amount</i>
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CAP. 232A, R 1] *Plant Varieties Protection Rules* [2006 Ed. p. 47FIFTH SCHEDULE — *continued*

1.	Drawing and filing notice of objection, application for cancellation of a grant of protection, or application for rectification of an entry in the register, all including a statement of grounds	\$200
2.	Drawing and filing counter-statement	\$200
3.	Preparing and filing evidence for objection and revocation, invalidation or rectification proceedings	\$200 — \$1,000 per statutory declaration
4.	Perusing any document referred to in items 1, 2 and 3	\$100 — \$500 per document
INTERLOCUTORY HEARINGS		
5.	Preparing for all interlocutory proceedings	\$50 — \$300
6.	Attending all interlocutory proceedings	\$50 — \$300
FULL HEARINGS		
7.	Preparing for hearing	\$500 — \$2,000
8.	Attendance at hearing	\$200 an hour or \$800 a day
9.	General expenses and travelling of each witness required to attend the hearing	\$100 — \$200 per day (Expert) \$50 — \$100 per day (Non expert)
TAXATION		
10.	Drawing bill of costs	\$3 per page
11.	Attending taxation and obtaining the Registrar's certificate or order	\$100-\$300.

[G.N. No. S 368/2004]

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LEGISLATIVE HISTORY  
PLANT VARIETIES PROTECTION RULES  
(CHAPTER 232A, R 1)

This Legislative History is provided for the convenience of users of the Plant Varieties Protection Rules. It is not part of these Rules.

**1. G. N. No. S 368/2004 — Plant Varieties Protection Rules 2004**

Date of commencement : 1 July 2004

**2. 2006 Revised Edition — Plant Varieties Protection Rules**

Date of operation : 31 August 2006

**3. G.N. No. S 742/2013 — Plant Varieties Protection (Amendment) Rules 2013**

Date of commencement : 9 December 2013

**4. G.N. No. S 504/2014 — Plant Varieties Protection (Amendment) Rules 2014**

Date of commencement : 30 July 2014

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[End of Gazette and Newsletter]