



**PLANT VARIETY PROTECTION  
GAZETTE AND NEWSLETTER**

**No. 108 – December 2015**

*TABLE OF CONTENTS*

<b>NEW MEMBERS OF UPOV</b>	<b>3</b>
<b>MONTENEGRO</b> .....	<b>3</b>
<b>UNITED REPUBLIC OF TANZANIA</b> .....	<b>3</b>
<b>RATIFICATION OF THE 1991 ACT OF THE UPOV CONVENTION</b>	<b>4</b>
<b>CANADA</b> .....	<b>4</b>
<b>NOTIFICATIONS CONCERNING GENERA AND SPECIES</b>	<b>5</b>
<b>MONTENEGRO</b> .....	<b>5</b>
<b>UNITED REPUBLIC OF TANZANIA</b> .....	<b>5</b>
<b>LEGISLATION</b>	<b>6</b>
<b>BELARUS</b> .....	<b>6</b>
Law of the Republic of Belarus No. 3725-XII of April 13, 1995, on Patents for Plant Varieties, as last amended in 2014 .....	6
<b>BELGIUM</b> .....	<b>19</b>
Royal Decree of 12 May 2015, published in the Belgian Official Gazette of 1 June 2015, on the implementation of the provisions on plant variety rights of the Code of economic law [in French] .....	19
<b>CANADA</b> .....	<b>50</b>
Plant Breeders' Rights Act – S.C. 1990 c.20 [in English and French] .....	50
<b>CHINA</b> .....	<b>100</b>
Regulations of the People's Republic of China on the Protection of New Varieties of Plants, as amended in 2013 .....	100
<b>GERMANY</b> .....	<b>107</b>
Plant Variety Protection Act (Sortenschutzgesetz), as last amended in 2013 .....	107

<b>LATVIA</b> .....	<b>127</b>
Plant Varieties Protection Law .....	127
<b>MONTENEGRO</b> .....	<b>141</b>
Law on protection of plant varieties of August 11, 2008 .....	141
<b>REPUBLIC OF MOLDOVA</b> .....	<b>156</b>
Law on the Protection of Plant Varieties, as last amended in 2015 .....	156
<b>UNITED REPUBLIC OF TANZANIA</b> .....	<b>183</b>
MAINLAND TANZANIA – The Plant Breeders’ Rights Act, 2012.....	183
ZANZIBAR – Plant Breeders’ Rights Act No. 1 of 2014 .....	214

## NEW MEMBERS OF UPOV

---

### MONTENEGRO<sup>1</sup>

On August 24, 2015, Montenegro 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 Montenegro one month after the deposit of its instrument of accession, i.e. on September 24, 2015.

On that date, Montenegro became the seventy-third member of the Union.

### UNITED REPUBLIC OF TANZANIA<sup>2</sup>

On October 22, 2015, the United Republic of Tanzania 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 the United Republic of Tanzania one month after the deposit of its instrument of accession, i.e. on November 22, 2015.

On that date, the United Republic of Tanzania became the seventy-fourth member of the Union.

---

<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 Montenegro is contained in document C(Extr.)/25/10, paragraph 9 ([http://www.upov.int/meetings/en/details.jsp?meeting\\_id=15043](http://www.upov.int/meetings/en/details.jsp?meeting_id=15043)).

<sup>2</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 Mainland Tanzania is contained in document C/46/19, paragraph 15 ([http://www.upov.int/meetings/en/details.jsp?meeting\\_id=26467](http://www.upov.int/meetings/en/details.jsp?meeting_id=26467)). The positive advice of the Council of UPOV concerning the legislation of Zanzibar is contained in document C(Extr.)/30/8, paragraph 13 ([http://www.upov.int/meetings/en/details.jsp?meeting\\_id=28344](http://www.upov.int/meetings/en/details.jsp?meeting_id=28344)) and in document C/48/22, paragraph 16 ([http://www.upov.int/meetings/en/details.jsp?meeting\\_id=33384](http://www.upov.int/meetings/en/details.jsp?meeting_id=33384)).

# **RATIFICATION OF THE 1991 ACT OF THE UPOV CONVENTION**

---

## **CANADA**

On June 19, 2015, the Government of Canada deposited its instrument of ratification of 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.

Canada has been a member of UPOV since March 4, 1991.

The 1991 Act entered into force for Canada on July 19, 2015, one month after the deposit of its instrument of ratification.

According to the notification deposited with the Secretary-General together with the instrument of accession, the legislation governing breeders' rights of Canada applies to all genera and species, except bacteria, algae and fungi, from December 28, 1998.

## **NOTIFICATIONS CONCERNING GENERA AND SPECIES**

### **MONTENEGRO**

On August 24, 2015, the Office of the Union received a notification that the legislation governing breeders' rights of Montenegro applies to all genera and species from October 1, 2015.

### **UNITED REPUBLIC OF TANZANIA**

On October 22, 2015, the Office of the Union received the following notification:

- the Law of plant breeders' rights for Mainland Tanzania applies to all genera and species from June 1, 2013;
- the plant breeders' rights Act for Zanzibar applies to all genera and species from January 2, 2015.

## LEGISLATION

---

### BELARUS

#### **Law of the Republic of Belarus No. 3725-XII of April 13, 1995, on Patents for Plant Varieties, as last amended in 2014**

Amendments and supplements:

Law of the Republic of Belarus No. 48-Z of July 16, 2001

Law of the Republic of Belarus No. 291-Z of June 14, 2004

Law of the Republic of Belarus No. 211-Z of May 7, 2007

Law of the Republic of Belarus No. 109-Z of January 4, 2010

Law of the Republic of Belarus No. 266-Z of May 17, 2011

Law of the Republic of Belarus No. 108-Z of January 4, 2014

#### CHAPTER I

##### *GENERAL PROVISIONS*

##### *Article 1. Basic terms used in this Law, and definitions thereof*

For the purposes of this Law, the following basic terms and definitions shall be used:

“breeder (co-breeders) of a plant variety” means a legal person (legal persons) whose creative work resulted in the breeding or identification and improvement of the plant variety;

“botanical taxon” means a specific group of plants related to each other by common characteristics and properties;

“applicant” means a person who has the right to obtain a patent pursuant to this Law;

“official description of the variety” means a document containing a description of the essential features of a plant variety, as defined by the public institution, “State Inspectorate for Testing and Protecting Plant Varieties” (hereinafter referred to as the “State Inspectorate”), and in accordance with which a patent for a plant variety has been granted;

“Official Gazette” means the official publication of the public institution, “The *National* Center of Intellectual Property” (hereinafter referred to as the “patent authority”), published on paper and electronic carriers, as well as posted on the patent authority’s official website on the Internet;

“patent owner” means a person who has been issued with a patent for a plant variety;

“plant material” means whole plants or generative and vegetative parts thereof, not used for plant propagation;

“seed” means actual plant seeds, seedlings, fruits, parts of complex fruits, seedheads, bulbs, tubers, meristem material, and other generative and vegetative parts of the plant intended for plant propagation;

“service plant variety” means a plant variety bred or identified and improved as a result of activity related to the field of activity of an employer, provided that the activity that led to the breeding or identification and improvement of the plant variety related to the duties of the employee (employees), or the plant variety was bred or identified and improved by the employee (employees) in the performance of tasks assigned by the employer;

“plant variety” means a plant grouping belonging to the lowest of the known botanical taxa, which may be defined by the extent of characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the degree of expression of at least one of the said characteristics, and may be considered as a unified whole in terms of its suitability for reproduction without alteration of whole plants of this grouping;

“essential characteristics” means the plant characteristics which enable the characteristic and distinctive features of a plant variety to be determined (morphological, physiological, etc.), and which in all cases may be described precisely.

#### Article 2. Scope of this Law

This Law shall govern relations arising out of the breeding, or identification and improvement, legal protection and use of plant varieties.

#### Article 3. Plant variety patent legislation

1. Plant variety patent legislation shall be based on the Constitution of the Republic of Belarus, and shall consist of the Civil Code of the Republic of Belarus, this Law, and other legislative acts, as well as international treaties to which the Republic of Belarus is party.

2. If an international treaty to which the Republic of Belarus is party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

### CHAPTER II

#### OBTAINING A PATENT FOR A PLANT VARIETY

#### Article 4. Conditions of patentability of a plant variety

1. A plant variety shall be granted legal protection where it is new, distinct, uniform, and stable.

2. A plant variety shall be deemed to be new if at the time of filing of the application for the plant variety patent (hereinafter referred to as “the application”), plant seeds or plant material of the plant variety in question has not been sold or otherwise disposed of by the breeder (breeders) of the plant variety, the employer thereof, the successor in title of the said persons, or with their consent by other persons for the purposes of commercial exploitation:

on the territory of the Republic of Belarus, earlier than one year before the filing date of the patent application;

on the territory of any other State, earlier than four years before the filing date of the application, and in the case of trees and vines, earlier than six years before the filing date of the application.

3. The plant variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one of the essential features from any other plant variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the grant of legal protection to another plant variety, or for the entry of another variety into the official register of plant varieties in any country shall render said plant variety a matter of common knowledge as of the filing date of the application provided that, as a result of the application, protection had been granted or the variety had been entered in the register.

4. The plant variety shall be deemed to be uniform if, taking into account the particular features of its propagation, plants of the variety are sufficiently uniform in their essential characteristics.

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

#### Article 5. Plant variety patents

1. The right in a plant variety shall be protected by the State and shall be certified by a plant variety patent (hereinafter referred to as “the patent”).

2. The patent shall certify the authorship and priority of the plant variety, and the patent owner's exclusive right in the plant variety.

3. The patent shall be valid for 25 years from the registration date of the plant variety in the State Register of Protected Plant Varieties of the Republic of Belarus (hereinafter referred to as "the State Register").

4. The scope of the legal protection conferred by the patent shall be determined by the sum of essential characteristics of the plant variety, as specified in the official description of the plant variety.

5. The right to obtain a patent shall belong to:

the breeder (co-breeders) of the plant variety;

the natural person and (or) legal entity employing the breeder (co-breeders) of a service plant variety in cases provided for under paragraph 6 of this Article;

the natural person or legal entity to whom the right to obtain a patent has been transferred under an agreement by the persons specified in sub-paragraphs 2-3 of this paragraph, up until the plant variety's registration date;

the successor in title of the persons specified in sub-paragraphs 2-4 of this paragraph.

6. The right to obtain a patent for a service plant variety shall belong to the employer unless otherwise provided for by the contract between said employer and the employee who bred the service plant variety.

The employee who bred the service plant variety shall notify the employer of such in writing. Where the employer, within three months of having been notified by the employee of the breeding of the service plant variety, has not filed an application with the patent authority, or has failed to notify the employee that the right to obtain a patent has been contractually transferred to another person, the right to obtain a patent shall be transferred to the employee who bred the service plant variety. The employer shall in that case be entitled to use the service plant variety under the conditions specified in the license agreement.

Where the employer has obtained a patent for a service plant variety, or has decided to transfer contractually the right to obtain a patent to another person, or has failed to obtain a patent relating to the application filed for reasons beyond his control, the employee who bred the service plant variety shall be entitled to remuneration. The amount of remuneration paid shall be determined by agreement between the employee and employer. The amount of remuneration may be no less than the amount prescribed by the Council of Ministers of the Republic of Belarus.

In the absence of an agreement between the employee who bred the service plant variety, and the employer regarding the amount of remuneration, the employer shall pay an amount of remuneration not less than the amount prescribed by the Council of Ministers of the Republic of Belarus.

In the case of disagreement between the employee who bred the service plant variety, and the employer regarding remuneration, the dispute shall be settled in court.

The procedure and conditions of payment of remuneration shall be determined by the Council of Ministers of the Republic of Belarus.

The employer shall be liable for late payment of remuneration in accordance with legislation.

Termination of an employment contract shall not affect the rights and obligations of the employee and employer arising in connection with the breeding of a service plant variety.

The provisions of this paragraph shall apply both to an employee who bred the service plant variety independently, and to several employees who bred the plant variety.

Other relations arising in connection with the breeding of a service plant variety shall be governed by legislation.

#### Article 6. Filing an application

1. An application shall be filed with the patent authority by the applicant independently, or via a patent attorney registered with the patent authority.

2. The requirements for registering the application, as well as the form of documents specified in Article 7(1), and the second part of Article 7(2) of this Law, shall be prescribed by the State Committee for Science and Technology of the Republic of Belarus.

### Article 7. Application

1. An application must relate to one plant variety and include the following documents:

an application for the grant of the patent, detailing surname, given name, patronymic (where applicable), breeder (co-breeders) of the plant variety, and person (persons) in whose name the patent is sought, as well as their place of residence (location), denomination of the plant variety and botanical taxon thereof; profile of the plant variety with a description of the essential characteristics thereof.

2. The application must be accompanied by proof of payment of patent fees, and (or) proof of beneficial payment terms.

Where the application is filed through a patent attorney, the original power of attorney shall accompany the application, or a copy thereof.

3. The date of filing the application with the patent authority shall be the date of receipt of the documents specified in paragraph 1 of this Article, and where the documents are not submitted simultaneously, the date of receipt of the last of these.

### Article 8. Plant variety denominations

1. The plant variety shall be designated by a denomination indicating the botanical taxon thereof.

2. Denomination of the plant variety must be brief, enable the plant variety to be identified, differ from denominations of existing plant varieties of the same or closely related botanical taxon, should not be misleading in relation to the characteristics, origin or significance of the plant variety, or in relation to the identity of the breeder (co-breeders) of the plant variety, or of the patent owner, and must also comply with other requirements prescribed by the Council of Ministers of the Republic of Belarus.

3. A plant variety denomination submitted to the patent authority must be the same as that submitted to a foreign State with which the Republic of Belarus has concluded a treaty on the protection of plant varieties.

4. A plant variety denomination proposed in the application by the breeder (co-breeders) of the plant variety, or, with his (their) consent, by another person entitled to obtain a patent, shall be verified by the patent authority during the preliminary examination of the application for compliance with the requirements prescribed in paragraphs 1-3 of this Article and other legislative acts.

Where the plant variety denomination fails to meet the requirements prescribed in paragraphs 1-3 of this Article and other legislative acts, the patent authority shall request the applicant to submit another denomination within two months of receiving the request.

Where the applicant fails to submit another denomination within the specified timeframe, the patent authority shall decide not to grant the patent, and shall notify the applicant of such within five days.

5. Where the plant variety is offered for sale or otherwise introduced into civil circulation, the registered denomination of the plant variety may be combined with a trademark, service mark, trade name, other means of individualization of participants in civil circulation, goods, works or services, provided that, in so combining, the plant variety denomination is easily recognizable, and rights in the trademarks, service marks, trade names, and other means of individualization of participants in civil circulation, goods, works or services are not infringed.

6. A person who offers for sale, or otherwise introduces into civil circulation, plant seeds, shall use the registered plant variety denomination on the territory of the Republic of Belarus and foreign States with which the Republic of Belarus has concluded international treaties on plant variety protection.

7. Where, due to previously acquired rights in trademarks, service marks, trade names, or other means of individualization of participants in civil circulation, goods, works or services, a person is prohibited from using a certain plant variety denomination, but is obliged to use said denomination under paragraph 6 of this Article, the patent authority shall request the patent owner to submit another denomination for the plant variety in question within two months of receipt of the request. The other plant variety denomination must be agreed with the breeder (co-breeders) of the plant variety.

Where the patent owner fails to submit another denomination within the specified time limit, the patent authority shall decide to terminate the patent.

8. The plant variety denomination shall be registered in the State Register at the same time as the plant variety is registered therein.

9. The procedure for confirming the consent of the breeder (co-breeders) of the plant variety to the plant variety denomination in accordance with paragraphs 4 and 7 of this Article shall be prescribed by the State Committee for Science and Technology of the Republic of Belarus.

#### Article 9. Priority of a plant variety

1. Priority of a plant variety shall be established by the date of filing of the application with the patent authority.

2. Priority of a plant variety may be established by the date of filing of the first application in a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (first application), if the application was filed with the patent authority (subsequent application) within 12 months of the date of filing of the first application (Convention priority of the plant variety).

An applicant wishing to exercise the right of Convention priority of the plant variety must indicate as such when submitting a subsequent application with the patent authority. A copy of the first application, certified as received by the authority, and a translation thereof into Belarusian or Russian, as well as samples or other evidence that the plant variety in both applications is one and the same, shall be submitted within three months of the filing date of the subsequent application.

Convention priority of the plant variety shall be established during the preliminary or patent examination of the subsequent application, depending upon the date of receipt by the patent authority of the documents specified in the second part of this paragraph.

3. Where Convention priority of the plant variety is requested, the applicant shall be granted the opportunity within three years of the filing of the first application, to provide the patent authority with which the subsequent application was filed, with the necessary documents and other materials required for the purposes of a patent examination. Other application materials refer in particular to materials containing the results of testing the plant variety, as specified in the fourth sub-paragraph of Article 13(3) of this Law, and a translation thereof into Belarusian or Russian.

If the first application is rejected or withdrawn, the applicant shall be granted the opportunity, within two years of the filing of the subsequent application with the patent authority, to provide the necessary documents and other materials required for the purposes of a patent examination.

#### Article 10. Examination of an application

1. Examination of an application shall be carried out by the patent authority in accordance with this Law, as well as other legislative acts relevant to a State inspection thereof. The procedure for examining an application and taking decisions based on the results thereof shall be determined by the Council of Ministers of the Republic of Belarus.

Examination of an application shall include a preliminary and patent examination.

2. During examination of the application, the applicant shall be entitled at his own initiative to make amendments to documents or other application materials, or, at the request of the patent authority or the State Inspectorate, submit correctly completed documents provided that the essential characteristics of the plant variety for which the application was filed, are retained.

The applicant shall inform the patent authority of any amendments made to the information in the application.

3. An applicant may withdraw an application prior to the date of registration of the plant variety in the State Register.

#### Article 11. Preliminary examination of an application

1. Preliminary examination of an application shall be carried out within three months of receipt by the patent authority.

2. During preliminary examination of an application, the documents included in the application and compliance with prescribed requirements shall be verified, priority of the plant variety shall be established, and the plant variety denomination's compliance with the requirements of Article 8(1)-(3) of this Law and other legislative acts shall likewise be verified.

3. Where the submitted documents, or information contained therein, fail to meet the prescribed requirements, the patent authority shall request the applicant to submit correctly completed documents within two months of the applicant receiving the request. Where, prior to the expiry of the two-month time limit, the patent authority receives a request from the applicant to extend the time limit for the submission of correctly completed documents, said time limit may be extended, but by no longer than three months. In this case, the time limit for conducting the preliminary examination of the application shall likewise be extended.

Where the applicant fails within the prescribed time limit to submit correctly completed documents, or a request to extend the prescribed time limit, the patent authority shall refuse to grant a patent, and shall notify the applicant to that effect within five days.

4. Where an application includes the documents specified in Article 7(1) of this Law, and is accompanied by the documents specified in Article 7(2) of this Law, which meet the prescribed requirements, the patent authority shall accept the application for examination.

5. The patent authority shall notify the applicant in writing within five days of its decision based on the results of the preliminary examination of the application, as well as the priority of the plant variety.

#### Article 12. Publication of application details

1. Details of an application which has undergone a preliminary examination, based on the results of which a decision has been taken to accept the application for examination, shall be published by the patent authority within three months of the decision being taken in the Official Gazette. The details to be published shall be determined by the patent authority.

2. Application details shall not be published where, prior to the expiry of the time limit for publication, the application in question is withdrawn, or a patent has been granted and the plant variety has been registered in the State Register, or patent grant has been refused, and all avenues of appeal have been exhausted.

3. The breeder (co-breeders) of the plant variety shall be entitled to decline in writing to be cited as such in the published application details if he (they) is (are) not the applicant(s).

4. Following publication of the application details, any person shall be entitled to familiarize themselves with the materials of said application at the patent authority.

#### Article 13. Patent examination of an application

1. Patent examination of an application shall be carried out following completion of the preliminary examination, based on the results of which it was decided to accept the application for examination.

2. During the patent examination, novelty of the plant variety shall be verified, the plant variety shall be assessed in terms of satisfying the conditions of distinctness, uniformity, and stability (hereinafter referred to as "the assessment"), it shall be determined whether the plant variety belongs to the botanical taxon specified by the applicant in the application, and Convention priority of the plant variety shall also be established, unless it was established while conducting the preliminary examination of the application. The assessment shall be carried out by the State Inspectorate in accordance with its own approved methods.

Following the assessment, the State Inspectorate shall compile a report. Where the plant variety satisfies the conditions of distinctness, uniformity, and stability, the report shall include an official description of the plant variety. The form of the report shall be approved by the Ministry of Agriculture and Food of the Republic of Belarus, in agreement with the State Committee for Science and Technology of the Republic of Belarus.

3. In conducting the assessment, the State inspection may be based on the results of:

field or other tests of the plant variety carried out by the State Inspectorate in relation to genera and species included in the list approved by the Ministry of Agriculture and Food of the Republic of Belarus. In order to carry out testing, the State Inspectorate shall request plant seeds from the applicant;

tests carried out under agreements with legal entities and (or) natural persons of the Republic of Belarus, or with competent organizations for the testing of plant varieties of foreign States with which the Republic of Belarus has concluded international treaties on protection of plant varieties;

tests carried out by the applicant, or at his behest, by another person in the Republic of Belarus or overseas.

4. Where the plant variety relates to a genus or species not included in the list approved by the Ministry of Agriculture and Food of the Republic of Belarus, the applicant shall submit to the State Inspectorate for assessment the results of the tests specified in sub-paragraph 4 of paragraph 3 of this Article, and a translation thereof into Belarusian or Russian.

5. During patent examination of the application, where the information included in the application documents and other materials fails to meet the prescribed requirements, the patent authority shall be entitled to request from the applicant correctly completed application documents and materials, which must be submitted within two months of the applicant receiving the request. Where, prior to the expiry of the two-month time limit, the patent authority receives a request from the applicant to extend the time

limit for the submission of correctly completed application documents and other materials, the time limit in question may be extended, but by no longer than three months.

Where the applicant fails within the prescribed time limit to submit correctly completed application documents and other materials, or a request to extend the prescribed time limit, the patent authority shall refuse to grant a patent, and shall notify the applicant of such within five days.

6. An applicant shall be entitled to familiarize himself with the materials used in conducting the patent examination of the application, as well as observe the tests.

7. The patent authority shall decide to grant or refuse to grant a patent based on the results of the patent examination of the application, including the report.

8. A decision taken based on the results of the patent examination of the application shall be sent by the patent authority to the applicant within five days.

9. Copies of the materials specified in the decision taken based on the results of the patent examination of the application may be requested by the applicant within two months of receiving the decision by lodging a request with the patent authority.

The patent authority shall submit copies of the materials specified in the decision taken based on the results of the patent examination of the application, within one month.

#### Article 14. Provisional legal protection of a plant variety

1. The plant variety which is the subject matter of the application shall be granted provisional legal protection from the publication date of application details until the registration date of the plant variety in the State Register.

2. The patent owner shall be entitled to compensation for losses incurred during the period of provisional legal protection as a result of any action specified in Article 22(5) of this Law, which is carried out without his permission, as if the plant variety had been granted legal protection.

3. Provisional legal protection shall be deemed not to have accrued where the application has been withdrawn, or a decision has been taken to refuse to grant a patent, and all avenues of appeal have been exhausted.

#### Article 15. Appealing the patent authority's decisions based on the results of examination of an application

1. Where the patent authority's decision based on the results of the preliminary or patent examination of an application is disputed, the applicant shall be entitled to lodge a reasonable appeal with the Appeals Board of the patent authority, and (or) a court.

2. An appeal may be lodged by the applicant within one year of receiving the patent authority's decision based on the results of examination of the application.

Where the applicant requests copies of materials pursuant to Article 13(9) of this Law, the time limit for lodging the appeal shall be calculated from the date of receipt of the copies in question.

3. The Appeals Board of the patent authority shall examine the appeal within one month of the date of receipt.

4. The decision of the Appeals Board of the patent authority may be challenged by the applicant in court within six months of the date of receipt.

#### Article 16. Reinstatement of a missed deadline

1. The time limits specified in Article 8(4), Article 11(3), Article 13(5) and (9), and Article 15(2) of this Law, which have been missed by the applicant, may, at his request, be reinstated by the patent authority where there are extenuating circumstances for missing the deadline.

2. An application to reinstate a missed deadline may be lodged by the applicant with the patent authority within one year of expiry of the missed deadline in question.

3. Upon reinstatement at the applicant's request of time limits stipulated in Article 8(4), Article 11(3), and Article 13(5) of this Law, the patent authority shall cancel a previous decision to refuse to grant a patent.

Article 17. Registering a plant variety. Entering information into the State Register and amending information

1. Based on the decision to grant a patent, and on condition of proof of payment of patent fees, and (or) proof of beneficial payment terms, the patent authority shall register the plant variety in the State Register within ten working days. Information relating to the registration of the plant variety (patent information) shall be entered into the State Register, as well as amendments to said information. The procedure for maintaining the State Register shall be prescribed by the Council of Ministers of the Republic of Belarus. The list of information on the plant variety to be entered into the State Register shall be determined by the patent authority.
2. Where no proof of payment of patent fees, and (or) proof of beneficial payment terms are provided, the plant variety shall not be registered in the State Register, a patent shall not be granted, the breeder shall not be certified, and patent grant in respect of the application, refused.
3. Where an amendment is entered into the State Register, along with an application to enter an amendment, the patent owner shall send the patent authority documents constituting the grounds for the amendment, proof of payment of patent fees, and (or) proof of beneficial payment terms.
4. After notifying the patent owner, the patent authority shall rectify errors permitted by the patent authority in registering the plant variety in the State Register, for which the patent owner shall not be liable to pay a patent fee.

Article 18. Publication of patent information

1. The patent authority shall publish information on the patent in the Official Gazette within three months of registering the plant variety in the State Register. The details to be published shall be determined by the patent authority.
2. Amendments to patent information entered into the State Register shall also be published in the Official Gazette.

Article 19. Patent grant

1. The patent authority shall grant a patent to the patent owner within five days of publication of patent information in the Official Gazette.
2. Where the application specifies more than one person as being entitled to obtain a patent, a single patent shall be granted, specifying all patent owners.

Article 20. Patent fees

1. In accordance with tax legislation, patent fees shall be levied for filing an application, conducting a patent examination of the application, registering a plant variety in the State Register, granting a patent, certifying a breeder, and maintaining the patent, as well as for performing other legally significant acts connected with plant variety patents.
2. Where benefits are enjoyed in relation to patent fees stipulated under tax legislation, the applicant (patent owner) shall submit proof of entitlement to said benefits to the patent authority.

CHAPTER III

RIGHTS IN A PLANT VARIETY. LIMITATION OF THE EXCLUSIVE RIGHT IN A PLANT VARIETY

Article 21. Rights of the breeder (co-breeders) of a plant variety

1. Moral and proprietary rights in relation to a plant variety belong to the breeder (co-breeders) thereof.
2. The right of authorship (the right to be recognized as the breeder (co-breeders) of a plant variety) shall be a moral right and shall be protected indefinitely. The right of authorship shall be inalienable and non-transferable.

The patent authority shall grant breeder certification to the breeder (co-breeders) of a plant variety in accordance with due legal process.

3. The breeder (co-breeders) of a plant variety shall be entitled to specify its denomination, which must meet the requirements prescribed in Article 8(1)-(3) of this Law and other legislative acts.
4. Where two or more natural persons participated in the breeding or identification and improvement of a plant variety, they shall be recognized as co-breeders of the plant variety. The procedure for exercising

the rights belonging to the co-breeders of the plant variety shall be established by agreement between the parties.

Natural persons who have made no personal, creative contribution to breeding, or identifying and improving the plant variety, but who merely assisted the breeder of the plant variety technically, organizationally or materially, or who merely facilitated the securing of rights in the plant variety, shall not be considered co-breeders of the plant variety.

#### Article 22. Patent owners' rights and obligations

1. The exclusive right in a plant variety shall belong to the patent owner.
2. The exclusive right in a plant variety shall include the right to use the plant variety at one's discretion, and to permit or prohibit use of the plant variety by other persons.
3. The exclusive right in a plant variety shall be exercised by the patent owner during the patent's term of validity, commencing as of the plant variety's registration date in the State Register.
4. The patent owner may transfer the exclusive right in a plant variety under a contract of assignment of the exclusive right in a plant variety, grant permission to use the plant variety under a license agreement, or dispose of the exclusive right in the plant variety by any other means.
5. For the purposes of this Law, the following acts in relation to plant seeds shall be considered use of a plant variety:

- cultivation or reproduction (propagation);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other introduction into civil circulation;
- exporting;
- importing;

storing for any of the purposes mentioned in sub-paragraphs 2-7 of this section.

Acts specified in the first part of this paragraph performed in relation to plant material obtained by using plant seeds without the patent owner's consent, with the exception of cases provided for under Article 23 of this Law, shall likewise be deemed to constitute use of a plant variety.

6. The patent owner's permission shall be required to use plant varieties which:
  - are essentially derived from another plant variety which has been granted legal protection, unless the protected variety itself is an essentially derived plant variety;
  - are not obviously distinguishable from another plant variety which has been granted legal protection pursuant to Article 4(3) of this Law;
  - require the use of another plant variety, which has been granted legal protection, more than once in order to cultivate plant seeds.

A plant variety shall be considered a variety essentially derived from another plant variety where it:

- inherits the basic characteristics of the initial plant variety, or a plant variety which has itself inherited the basic characteristics of the initial variety, preserving in so doing the basic characteristics resulting from the genotype or a combination of genotypes of the initial plant variety;
- is distinguishable from the initial plant variety in accordance with Article 4(3) of this Law, with the exception of differences caused in particular by the use of backcrossing and mutant-selection methods, or genetic engineering methods.

7. Where several persons are the patent owners, the procedure for disposal of the exclusive right in a plant variety shall be established by agreement between the parties.

Each of the patent owners shall be entitled to use the plant variety at his discretion.

8. A patent owner must exercise his exclusive right in a plant variety without prejudicing the rights of other persons.

9. The patent owner must maintain the plant variety for the patent term so as to safeguard the integrity of the essential characteristics as specified in the official description of the plant variety as at the date of the receipt of the patent.

At the request of the State Inspectorate, the patent owner shall submit information, documents or materials in order to conduct routine testing of the plant variety for compliance with the conditions of distinctness, uniformity, and stability, and provide the option to conduct the testing in question locally. The time limits and procedure for submitting the request shall be prescribed by the State Inspectorate.

#### Article 23. Acts not considered an infringement of the exclusive right in a plant variety

Acts performed without the patent owner's consent shall not be considered an infringement of the exclusive right in a plant variety where the acts in question are:

for personal purposes (for personal use, without directly or indirectly pursuing commercial purposes);

for experimental purposes;

for the purposes of breeding other plant varieties using as initial material a plant variety which has been granted legal protection, as well as acts relating to plant varieties so bred, as provided for under Article 22(5) of this Law, with the exception of cases where the provisions of Article 22(6) of this Law shall apply.

#### Article 24. Exhaustion of the exclusive right in a plant variety

1. A patent owner may not exercise his exclusive right in a plant variety in relation to plant varieties subject to the provisions of Article 22(6) of this Law which have been sold or otherwise introduced into civil circulation by the patent owner with his consent on the territory of Belarus.

2. The provisions of paragraph 1 of this Article shall not apply where sale of the plant variety or introduction into civil circulation thereof by other means is intended for subsequent propagation of the plant variety, or is connected with export of the plant variety, enabling propagation of the plant variety in a country where varieties of the botanical taxon in question lack protection, with the exception of importing into said country plant seeds or plant material, and any product obtained directly from the plant material for the purpose of consumption.

### CHAPTER IV

#### PATENT INVALIDATION. PATENT LAPSE

##### Article 25. Patent invalidation

1. A patent may be deemed invalid at any time during its entire term where:

it is established that as of the plant variety's registration date in the State Register, the conditions of patentability with regard to the novelty and distinctness of the plant variety had not been fulfilled;

it is established that as of the plant variety's registration date in the State Register, the conditions of patentability with regard to the uniformity and stability of the plant variety had not been fulfilled, and the decision taken based on the results of examination of the application had been principally based on information, documents, and other materials submitted by the applicant;

the person(s) specified in the patent as breeder (co-breeders) of the plant variety or the patent owner is (are) not entitled to be considered as such.

In order to invalidate a patent, an objection to the grant thereof shall be filed.

2. Objections to a patent grant on grounds provided for under sub-paragraphs 2 and 3 of the first part of paragraph 1 of this Article, shall be lodged with the Appeals Board of the patent authority.

An objection to a patent grant must be examined by the Appeals Board of the patent authority within six months of receipt. The person lodging the objection in question, as well as the patent owner, shall be entitled to participate in the examination.

A decision of the Appeals Board of the patent authority on an objection to a patent grant may be appealed by the person who filed the objection, or by the patent owner in court within six months of receiving said decision.

3. An objection to a patent grant for a reason specified under sub-paragraph 4 of the first part of paragraph 1 of this Article, shall be examined in court.

4. An invalidated patent shall be deemed as such as of the plant variety's registration date in the State Register.
5. The patent authority shall enter details of a patent invalidation in the State Register, and publish said details in the Official Gazette.
6. License agreements concluded on the basis of a patent subsequently deemed invalid shall cease to have effect from the date of the decision on invalidity of the patent.

#### Article 26. Lapse of a patent

1. By decision of the patent authority, a patent shall lapse:  
at the patent owner's request, submitted in writing to the patent office;  
due to non-payment within the prescribed time limit of patent fees to maintain the patent;  
where the conditions of patentability with regard to the uniformity and stability of the plant variety have not been fulfilled;  
where upon a request submitted in accordance with the second part of Article 22(9) of this Law, within the time limit specified in the request, the patent owner fails to provide information, documents or materials considered necessary to conduct routine testing of the plant variety for compliance with the conditions of distinctness, uniformity, and stability;  
where use of the plant variety denomination is prohibited, and the patent owner has failed to provide an alternative denomination for the plant variety.
2. The patent authority shall enter details of a lapsed patent into the State Register, and publish said details in the Official Gazette.
3. A decision of the patent authority regarding a lapsed patent may be appealed by the patent owner in court within six months of receiving the decision in question.

### CHAPTER V

#### TRANSFER OF RIGHTS IN A PLANT VARIETY. USING A PLANT VARIETY

##### Article 27. Transfer of rights in a plant variety

1. The right to obtain a patent, and the exclusive right in a plant variety, shall be inherited in the customary order of succession.
2. Proprietary rights of the breeder (co-breeders) of the plant variety to remuneration shall be inherited.

##### Article 28. Contracts of assignment of the exclusive right in a plant variety

1. A contract of assignment of the exclusive right in a plant variety shall be concluded in writing, and shall be subject to registration by the patent authority in the State Register of license agreements, assignment contracts, and pledge contracts of rights in intellectual property subject matter of the Republic of Belarus. Failure to satisfy the registration requirements shall invalidate the contract of assignment of the exclusive right in a plant variety.
2. The exclusive right in a plant variety shall be transferred from the patent owner to another party as of the date of registration with the patent authority of a contract of assignment of the exclusive right in a plant variety.

##### Article 29. License agreements

1. Any natural person or legal entity wishing to use a plant variety, with the exception of cases specified in Articles 23 and 24(1) of this Law, shall conclude an agreement to transfer the right to use the plant variety with the patent owner (license agreement), in accordance with legislation.
2. A license agreement must include the conditions of its term of validity.
3. A license agreement shall be concluded in writing and must be registered by the patent authority in the State Register of license agreements, assignment contracts, and pledge contracts of rights in intellectual property subject matter of the Republic of Belarus. Failure to satisfy the registration requirements shall invalidate the license agreement.

#### Article 30. Open licenses

1. A patent owner may file an application with the patent authority for publication in the Official Gazette to grant any person permission to use a plant variety under the terms of a non-exclusive license (hereinafter referred to as an "open license").
2. Any person wishing to use a plant variety shall be entitled to require the patent owner to conclude a license agreement on terms corresponding to those specified in the open-license application.

#### Article 31. Compulsory licenses

1. If a patent owner fails to use, or makes insufficient use of, a plant variety within three years of the plant variety's entry into the State Register, any person ready and willing to use the plant variety may apply to the court for the grant of a compulsory, non-exclusive license, where the patent owner refuses to conclude a license agreement.
2. Where the patent owner fails to prove that non-use or insufficient use of the plant variety was due to valid reasons, the court shall grant a compulsory license, specifying limitations in use of the plant variety, payment amounts, time limits and procedures, and the quantity of plant seed to be transferred.

### CHAPTER VI

#### PROTECTION OF RIGHTS IN PLANT VARIETIES

##### Article 32. Infringement of rights of breeders (co-breeders) of plant varieties

Conferral of authorship, enforced co-authorship, and refusal to remunerate the breeder (co-breeders) of a plant variety shall entail responsibility in accordance with legislation.

##### Article 33. Infringement of the exclusive right in a plant variety

1. Using a plant variety without the patent owner's consent shall be deemed an infringement of the exclusive right in a plant variety, except in cases provided for in Article 23 of this Law.
2. The provisions of paragraph 1 of this Article shall be applied in relation to plant varieties specified in Article 22(6) of this Law.
3. Infringement of the exclusive right in a plant variety shall entail responsibility in accordance with legislation.

##### Article 34. Protection of rights in plant varieties

1. In order to protect infringed rights, the breeder (co-breeders) of the plant variety and the patent owner shall apply in accordance with established procedure to the courts and other competent authorities.
2. Where the exclusive right in a plant variety has been infringed, the patent owner shall be entitled to demand cessation of the infringement, compensation from the person infringing the exclusive right in the plant variety for losses incurred, and also use of other means of protection in accordance with legislation.
3. Claims against the infringer of the exclusive right in a plant variety may likewise be instigated by the licensee under an exclusive license.

### CHAPTER VII

#### THE RIGHT TO PROTECT PLANT VARIETIES IN FOREIGN COUNTRIES. RIGHTS OF FOREIGN NATIONALS, STATELESS PERSONS, AND FOREIGN LEGAL ENTITIES

##### Article 35. The right to protect plant varieties in foreign countries

1. An applicant shall be entitled to file an application for the grant of protection to a plant variety in foreign countries.
2. The applicant may choose a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 in order to file the application with the competent authority of the State in question.

The applicant may file an application with the competent authorities of other States party to multilateral international treaties on protection of plant varieties, without first having to wait for the grant of a patent in respect of the patent filed with the patent authority.

3. The patent authority may not refuse to grant a patent to an applicant who is a national of a State party to an international treaty on protection of plant varieties of the Republic of Belarus, or to limit the patent term on the basis that protection of the plant variety had not been requested, the granting of protection had been denied, or the term of protection in any State party had expired.

Article 36. Rights of foreign nationals, stateless persons, and foreign legal entities

Foreign nationals, stateless persons, and foreign legal entities shall enjoy the rights prescribed under this Law and other legislative acts in relation to plant-variety patents, and shall bear responsibility on an equal footing with nationals and legal entities of the Republic of Belarus, unless otherwise specified by laws and international treaties of the Republic of Belarus.

President of the Republic of Belarus

A. Lukashenko

## BELGIUM

### **Royal Decree of 12 May 2015, published in the Belgian Official Gazette of 1 June 2015, on the implementation of the provisions on plant variety rights of the Code of economic law [in French]**

Titre 3. - [1 Droit d'obtenteur]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

CHAPITRE 1er. - [1 Droit matériel]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 1re. - [1 Conditions régissant l'octroi du droit d'obtenteur]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.104. [1 Les variétés de tous les genres et espèces botaniques, y compris notamment leurs hybrides, peuvent faire l'objet d'un droit d'obtenteur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.105. [1 Le droit d'obtenteur est octroyé lorsque la variété est distincte, homogène, stable et nouvelle.

En outre, la variété doit être désignée par une dénomination conformément aux dispositions de l'article XI.143.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.106. [1 § 1er. Une variété est considérée comme distincte si elle se distingue nettement, par référence à l'expression des caractères qui résulte d'un génotype ou d'une combinaison de génotypes donnés, de toute autre variété dont l'existence est notoirement connue à la date de dépôt de la demande déterminée conformément à l'article XI.133 ou, le cas échéant, à la date de priorité déterminée conformément à l'article XI.134.

§ 2. L'existence d'une autre variété est notamment considérée comme notoirement connue si, à la date de dépôt de la demande déterminée conformément à l'article XI.133 ou, le cas échéant, à la date de priorité déterminée conformément à l'article XI.134 :

1° cette autre variété fait l'objet d'une protection des obtentions végétales ou est inscrite dans un registre officiel des variétés, dans tout Etat ou auprès de toute organisation intergouvernementale compétente dans ce domaine;

2° une demande d'octroi d'une protection des obtentions végétales pour cette autre variété ou d'inscription dans un tel registre officiel est introduite, à condition qu'entre-temps la demande ait donné lieu à l'octroi de la protection ou à l'inscription dans le registre;

3° la culture ou la commercialisation de cette autre variété est déjà en cours;

4° cette autre variété est présente dans une collection de référence ou est décrite précisément dans une publication.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.107. [1 Une variété est considérée comme homogène si elle est suffisamment homogène dans l'expression des caractères compris dans l'examen de la distinction et de tout autre caractère utilisé pour la description de la variété, sous réserve de la variation prévisible compte tenu des particularités de sa multiplication.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.108. [1 Une variété est considérée comme stable si l'expression des caractères compris dans l'examen de la distinction et de tout autre caractère utilisé pour la description de la variété reste inchangée à la suite de multiplications successives ou, en cas de cycle particulier de multiplication, à la fin de chaque cycle.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.109. [1 § 1er. Une variété est considérée comme nouvelle si, à la date de dépôt de la demande déterminée conformément à l'article XI.133 ou, le cas échéant, à la date de priorité déterminée conformément à l'article XI.134, des constituants variétaux ou un matériel de récolte de la variété n'ont pas été vendus ou cédés d'une autre manière à des tiers, par l'obtenteur ou avec son consentement, aux fins de l'exploitation de la variété :

1° sur le territoire de la Belgique, plus d'un an avant la date susmentionnée;

2° en dehors du territoire de la Belgique, plus de quatre ans ou, dans le cas des arbres ou de la vigne, plus de six ans avant la date susmentionnée.

§ 2. La cession de constituants variétaux à un organisme officiel à des fins légales ou à des tiers sur la base d'un contrat ou de tout autre rapport de droit aux fins exclusives de production, de reproduction, de multiplication, de conditionnement ou de stockage n'est pas considérée comme une cession à des tiers au sens du paragraphe 1er, à condition que l'obtenteur conserve le droit exclusif de cession de ces constituants variétaux ou d'autres et qu'il ne soit pas procédé à une autre cession.

Toutefois, cette cession de constituants variétaux est considérée comme une cession au sens du paragraphe 1er si ces constituants sont utilisés de manière répétée pour la production d'une variété hybride et s'il y a cession de constituants variétaux ou d'un matériel de récolte de la variété hybride.

De même, la cession de constituants variétaux par une société ou une entreprise au sens de l'article 54, § 2, du Traité sur le fonctionnement de l'Union européenne à une autre de ces sociétés ou entreprises n'est pas considérée comme une cession à des tiers si l'une d'elles appartient entièrement à l'autre ou si les deux appartiennent entièrement à une troisième société ou entreprise de ce type, à condition qu'il ne soit pas procédé à une autre cession. Cette disposition ne s'applique pas aux sociétés coopératives.

§ 3. La cession de constituants variétaux ou de matériel de récolte de la variété qui ont été produits à partir de végétaux cultivés aux fins spécifiées à l'article XI.116, 2° et 3°, et qui ne sont pas utilisés en vue d'une nouvelle multiplication n'est pas considérée comme une exploitation de la variété, à moins qu'il ne soit fait référence à cette variété aux fins de cette cession.

De même, il n'est pas tenu compte de la cession à des tiers si elle est due au fait ou est la conséquence du fait que l'obtenteur a présenté la variété dans une exposition officielle ou officiellement reconnue au sens de la Convention relative aux expositions internationales ou dans une exposition organisée dans un Etat membre de l'Union européenne et officiellement reconnue comme équivalente par cet Etat membre.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.110. [1 Le demandeur désigne la variété par une dénomination, conformément à l'article XI.143.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 2. - [1 Ayants droit ou ayants cause]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.111. [1 § 1er. La personne qui a créé ou qui a découvert et développé la variété ou son ayant droit ou ayant cause, ci-après dénommée "obteneur", a droit au droit d'obteneur.

§ 2. Si la variété nouvelle a été créée ou découverte et développée par deux ou plusieurs personnes, le droit appartient conjointement à ces personnes ou à leurs ayants droit ou à leurs ayants cause respectifs, sauf convention contraire.

§ 3. Si la variété nouvelle a été créée ou découverte et développée par un salarié dans le cadre de son contrat de travail, le droit reviendra à l'employeur, sauf stipulation contraire.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.112. [1 § 1er. Toute personne physique ou morale ou tout organisme, assimilé à une personne morale en vertu de la législation dont il relève, peut déposer une demande de droit d'obteneur.

§ 2. Une demande peut être déposée conjointement par deux personnes ou plus.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 3. - [1 Effets du droit d'obteneur]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.113. [1 § 1er. Le droit d'obteneur a pour effet de réserver à son ou ses titulaires, ci-après dénommés "titulaire", le droit d'accomplir les actes indiqués au paragraphe 2.

§ 2. Sans préjudice des articles XI.115 et XI.116, l'autorisation du titulaire est requise pour les actes suivants accomplis à l'égard des constituants variétaux, du matériel de récolte ou des produits fabriqués directement à partir d'un matériel de récolte de la variété protégée :

- 1° la production ou la multiplication;
- 2° le conditionnement aux fins de la multiplication;
- 3° l'offre à la vente;
- 4° la vente ou toute autre forme de commercialisation;
- 5° l'importation;
- 6° l'exportation;
- 7° la détention à l'une des fins mentionnées ci-dessus.

Le titulaire peut subordonner son autorisation à des conditions et à des limitations.

§ 3. Le paragraphe 2 s'applique au matériel de récolte uniquement si celui-ci a été obtenu par l'utilisation non autorisée de constituants variétaux de la variété protégée et sauf si le titulaire a pu raisonnablement exercer son droit en relation avec lesdits constituants variétaux.

§ 4. Le paragraphe 2 s'applique aux produits fabriqués directement à partir d'un matériel de récolte de la variété protégée uniquement si ces produits ont été fabriqués par l'utilisation non autorisée dudit

matériel de récolte et sauf si le titulaire a pu raisonnablement exercer son droit en relation avec ledit matériel de récolte.]]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.114. [1 § 1er. Les dispositions de l'article X.113 s'appliquent également :

1° aux variétés essentiellement dérivées de la variété protégée, lorsque celle-ci n'est pas elle-même une variété essentiellement dérivée,

2° aux variétés qui ne se distinguent pas nettement de la variété protégée conformément à l'article XI.106,

et

3° aux variétés dont la production nécessite l'utilisation répétée de la variété protégée.

§ 2. Aux fins du paragraphe 1er, 1°, une variété est réputée essentiellement dérivée d'une autre variété, dénommée ci-après "variété initiale", si

1° elle est principalement dérivée de la variété initiale, ou d'une variété qui est elle-même principalement dérivée de la variété initiale,

2° elle se distingue nettement de la variété initiale conformément à l'article XI.106,

et

3° sauf en ce qui concerne les différences résultant de la dérivation, elle est conforme à la variété initiale dans l'expression des caractères essentiels qui résulte du génotype ou de la combinaison de génotypes de la variété initiale.

§ 3. Les variétés essentiellement dérivées peuvent être obtenues, par exemple, par sélection d'un mutant naturel ou induit ou d'un variant somaclonal, par sélection d'un individu variant parmi les plantes de la variété initiale, par rétrocroisements ou par transformation par génie génétique.]]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.115. [1 § 1er. Nonobstant l'article XI.113, § 2, les agriculteurs sont autorisés à utiliser, à des fins de multiplication dans leur propre exploitation, le produit de la récolte obtenu par la mise en culture, dans leur propre exploitation, d'une variété protégée ou d'une variété visée à l'article XI.114.

§ 2. Les conditions permettant de donner effet à la dérogation prévue au paragraphe 1er et de sauvegarder les intérêts légitimes de l'obteneur et de l'agriculteur sont fixées par le Roi.]]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.116. [1 Le droit d'obteneur ne s'étend pas :

1° aux actes accomplis à titre privé et à des fins non commerciales;

2° aux actes accomplis à titre expérimental;

3° aux actes accomplis en vue de créer ou de découvrir et mettre au point d'autres variétés;

4° aux actes mentionnés à l'article XI.113, §§ 2, 3 et 4, portant sur ces autres variétés, sauf si l'article XI.114 est applicable;

5° aux actes dont l'interdiction serait contraire aux dispositions de l'article XI.115 ou de l'article XI.126.]]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.117. [1 § 1er. Le droit d'obtenteur ne s'étend pas aux actes concernant du matériel de la variété protégée, ou d'une variété visée à l'article XI.114, qui a été commercialisé sur le territoire de l'Union européenne, par le titulaire ou avec son consentement, ou concernant du matériel dérivé dudit matériel, à moins que ces actes :

1° impliquent une nouvelle multiplication de la variété en cause, sauf si cette multiplication était prévue lors de la cession du matériel,

ou

2° impliquent une exportation de matériel de la variété permettant de reproduire la variété vers un pays qui ne protège pas les variétés du genre végétal ou de l'espèce végétale dont la variété fait partie, sauf si le matériel exporté est destiné à la consommation.

§ 2. Aux fins du paragraphe 1er on entend par "matériel", en relation avec une variété :

1° les constituants variétaux, sous quelque forme que ce soit;

2° le produit de la récolte, y compris les plantes entières et les parties de plantes;

3° tout produit fabriqué directement à partir du produit de la récolte.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.118. [1 § 1er. Toute personne qui, sur le territoire de la Belgique, offre ou cède à des tiers, à des fins commerciales, des constituants variétaux d'une variété protégée ou d'une variété couverte par l'article XI.114 est tenue d'utiliser la dénomination variétale qui a été approuvée conformément à l'article XI.143. Sous forme écrite, la dénomination variétale doit être facilement reconnaissable et clairement lisible. Si une marque, un nom commercial ou une indication similaire est associée à la dénomination variétale attribuée, cette dénomination doit être facilement reconnaissable en tant que telle.

§ 2. Le paragraphe 1er continue à s'appliquer même après l'extinction du droit d'obtenteur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.119. [1 § 1er. Le titulaire ne peut utiliser un droit conféré en ce qui concerne une dénomination identique à la dénomination variétale pour entraver la libre utilisation de cette dénomination en relation avec cette variété, même après l'extinction du droit d'obtenteur.

§ 2. Un tiers peut utiliser un droit conféré en ce qui concerne une dénomination identique à la dénomination variétale pour entraver la libre utilisation de cette dénomination uniquement si ce droit a été accordé avant l'attribution de la dénomination variétale conformément à l'article XI.143.

§ 3. Lorsqu'une variété bénéficie d'un droit d'obtenteur, la dénomination qui lui a été attribuée ou toute autre dénomination avec laquelle elle pourrait être confondue ne peut être utilisée, sur le territoire de l'Union européenne, en relation avec une autre variété de la même espèce botanique ou d'une espèce voisine ou pour le matériel de cette autre variété.

Le Roi définit les espèces considérées comme voisines.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 4. - [1 Durée et extinction du droit d'obtenteur]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.120. [1 Le droit d'obtenteur s'éteint au terme de la vingt-cinquième année civile suivant celle de l'octroi du droit d'obtenteur; pour les variétés de vignes, d'arbres et de pommes de terre, il s'éteint au terme de la trentième année civile.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.121. [1 § 1er. Le titulaire peut renoncer au droit d'obtenteur par une déclaration écrite et signée adressée à l'Office.

§ 2. La renonciation entraîne l'extinction du droit d'obtenteur à la date de réception par l'Office de la déclaration visée au paragraphe 1er et sous réserve de son inscription au registre visé à l'article XI.152, ci-après dénommé "le registre". Toutefois si, à cette date, la taxe annuelle pour le maintien en vigueur du droit d'obtenteur n'a pas encore été acquittée, la déchéance du droit d'obtenteur prend effet au terme de la période couverte par la dernière taxe annuelle acquittée.

§ 3. La renonciation ne peut être inscrite s'il existe, d'après les inscriptions portées au registre, des personnes qui, relativement au droit d'obtenteur, détiennent des droits ou ont obtenu des licences, ou qui ont engagé une procédure en revendication du droit d'obtenteur, à moins que ces personnes n'acquiescent à la renonciation.

§ 4. Les dispositions du présent article sont applicables par analogie à la demande d'un droit d'obtenteur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.122. [1 § 1er. Le droit d'obtenteur est déclaré nul par le tribunal si :

1° les conditions fixées à l'article XI.106 ou XI.109 n'étaient pas remplies au moment de l'octroi du droit d'obtenteur,

ou

2° lorsque l'octroi du droit d'obtenteur a été essentiellement fondé sur les renseignements et documents fournis par le demandeur, les conditions fixées aux articles XI.107 et XI.108 n'étaient pas effectivement remplies au moment de l'octroi du droit d'obtenteur,

ou

3° le droit d'obtenteur a été octroyé à une personne qui n'y avait pas droit, à moins qu'il ne soit transféré à la personne qui y a droit.

§ 2. Le droit d'obtenteur déclaré nul est réputé n'avoir pas eu, dès l'origine, les effets prévus par la présente loi.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.123. [1 § 1er. A défaut de paiement de la taxe annuelle prévue à l'article XI.151 dans le délai prescrit, le titulaire est déchu de plein droit de ses droits. La déchéance prend effet à la date de l'échéance de la taxe annuelle non acquittée.

§ 2. Le tribunal prononce la déchéance du droit d'obtenteur du titulaire, avec effet in futurum, s'il est établi que les conditions énoncées à l'article XI.107 ou XI.108 ne sont plus remplies.

S'il est établi que ces conditions n'étaient déjà plus remplies à une date antérieure à celle de la déchéance, la déchéance peut prendre effet à compter de cette date.

§ 3. L'Office peut prononcer la déchéance du droit d'obtenteur du titulaire, avec effet in futurum, après mise en demeure et dans un délai raisonnable qui lui est notifié :

1° si le titulaire a failli à l'obligation visée à l'article XI.144, § 1er,

ou

2° si le titulaire ne répond pas à une demande de l'Office en vertu de l'article XI.145, § 3, en vue du contrôle du maintien de la variété,

ou

3° si le titulaire ne propose pas une autre dénomination appropriée alors que l'Office prévoit de radier la dénomination variétale.

§ 4. Excepté dans les cas visés aux paragraphes 1er et 2, la déchéance prend effet à la date mentionnée dans la notification visée au paragraphe 3, sous réserve de son inscription dans le registre. ]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 5. - [1 Le droit d'obtenteur comme objet de propriété]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.124. [1 § 1er. La demande d'un droit d'obtenteur et le droit d'obtenteur peuvent être transférés à un ou plusieurs ayants droit ou ayants cause.

§ 2. Le transfert entre vifs d'une demande ou d'un droit d'obtenteur doit être fait par écrit à peine de nullité.

§ 3. Sauf dispositions contraires de l'article XI.160, le transfert ne porte pas atteinte aux droits acquis par des tiers avant la date du transfert.

§ 4. Tout transfert doit être notifié à l'Office dans les formes et délais fixés par le Roi.

§ 5. Le transfert n'a d'effet à l'égard de l'Office et n'est opposable aux tiers qu'à partir de la date de réception par l'Office des preuves documentaires telles que requises par le Roi et sous réserve de son inscription au registre. Toutefois, avant son inscription au registre, un transfert est opposable aux tiers qui ont acquis des droits après la date du transfert, mais qui avaient connaissance de celui-ci lors de l'acquisition de ces droits. ]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.125. [1 § 1er. Une demande de droit d'obtenteur ou un droit d'obtenteur peut faire, en totalité ou en partie, l'objet de licences contractuelles. Ces licences peuvent être exclusives ou non exclusives.

§ 2. Les licences doivent être délivrées par écrit à peine de nullité.

§ 3. Le demandeur ou le titulaire notifie sans délai à l'Office, de la manière arrêtée par le Roi, les licences qu'il concède en Belgique.

§ 4. Les licences n'ont d'effet à l'égard de l'Office et ne sont opposables aux tiers qu'à partir de la date de réception par l'Office de la notification visée au paragraphe 3 et sous réserve de son inscription au registre. Toutefois, avant son inscription au registre, une licence est opposable aux tiers qui ont acquis des droits après la date de la concession de la licence, mais qui avaient connaissance de celle-ci lors de l'acquisition de ces droits.

§ 5. Le demandeur ou le titulaire peut invoquer les droits conférés par la demande ou par le droit d'obtenteur à l'encontre d'une personne détenant une licence qui enfreint l'une des conditions ou limitations attachées à sa licence. ]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.126. [1 § 1er. Le ministre peut octroyer une licence obligatoire pour l'exploitation non exclusive d'une variété végétale couverte par un droit d'obtenteur :

1° à la ou les personnes qui en font la demande, de la manière arrêtée par le Roi, mais uniquement pour des raisons d'intérêt public et à des conditions raisonnables. Le Roi peut citer certains cas à titre d'exemples de l'intérêt public;

2° au titulaire du droit d'obtenteur d'une variété essentiellement dérivée si les critères énoncés au point 1° sont remplis;

3° au titulaire d'un brevet concernant une invention biotechnologique lorsqu'il ne peut exploiter celle-ci sans porter atteinte à un droit d'obtenteur antérieur sur une variété, pour autant que l'invention biotechnologique représente un progrès technique important d'un intérêt économique considérable par

rapport à la variété végétale protégée et à condition que cette licence soit octroyée principalement pour l'approvisionnement du marché national;

4° au titulaire d'un brevet concernant une invention biotechnologique, lorsque le titulaire d'un droit d'obtenteur a, conformément aux dispositions de la loi sur les brevets d'invention, obtenu une licence obligatoire pour l'exploitation non exclusive de l'invention couverte par ce brevet parce qu'il ne peut exploiter le droit d'obtenteur sans porter atteinte à ce brevet antérieur et à condition que cette licence soit octroyée principalement pour l'approvisionnement du marché national.

§ 2. Les demandeurs de licence visés au paragraphe 1er doivent établir qu'ils se sont vainement adressés au titulaire du droit d'obtenteur pour obtenir une licence à l'amiable.

§ 3. La demande est transmise par le ministre à la Commission des licences obligatoires visée à l'article XI.128, afin que celle-ci entende les intéressés, les concilie s'il se peut et, dans le cas contraire, lui donne un avis motivé sur le bien-fondé de la demande. La Commission joint à son avis le dossier de l'affaire.

Le ministre décide de la suite à réserver à la demande et notifie sa décision aux intéressés de la manière arrêtée par le Roi.

§ 4. Dans le cas visé au paragraphe 1er, 3°, la demande de licence obligatoire est déclarée fondée si le titulaire du droit d'obtenteur dominant ne conteste ni la dépendance du brevet du demandeur de la licence, ni sa validité, ni le fait que l'invention représente un progrès technique important, d'un intérêt économique considérable, par rapport à la variété végétale protégée.

Le fait pour le titulaire du droit d'obtenteur antérieur de nier la dépendance du brevet du demandeur de la licence emporte de plein droit pour ce dernier l'autorisation d'exploiter l'invention décrite dans son propre brevet ainsi que la variété végétale dominante sans pouvoir de ce chef être poursuivi en contrefaçon par le titulaire du droit d'obtenteur antérieur.

La contestation de la validité du brevet dépendant suspend la procédure administrative relative à la reconnaissance du bien-fondé de la demande de licence, à condition, soit qu'une action en nullité dudit brevet soit déjà introduite devant l'autorité compétente par le titulaire du droit d'obtenteur dominant, soit que celui-ci cite le demandeur de la licence devant le tribunal dans les deux mois de la notification qui lui a été faite du dépôt de la demande de licence.

La contestation du progrès technique important, d'un intérêt économique considérable du brevet dépendant par rapport à la variété végétale décrite dans le droit d'obtenteur dominant suspend la procédure administrative relative à la reconnaissance du bien-fondé de la demande de licence, à condition que le titulaire du droit d'obtenteur dominant introduise, dans les deux mois de la notification qui lui a été faite du dépôt de la demande de licence, une requête au tribunal siégeant comme en référé. La décision judiciaire n'est pas susceptible d'appel ou d'opposition.

L'inobservation du délai prévu aux deux alinéas précédents entraîne forclusion du droit du titulaire du droit d'obtenteur dominant de faire valoir sa contestation devant le tribunal.

§ 5. Dans les quatre mois de la notification de la décision, le titulaire et le licencié concluent une convention écrite concernant leurs droits et obligations réciproques. Le ministre en est informé.

A défaut d'une convention dans le délai susvisé, les droits et les obligations réciproques sont fixés par le tribunal siégeant comme en référé, sur citation de la partie la plus diligente.

Une copie du jugement définitif est transmise gratuitement au ministre par le greffier, dans le mois du prononcé.

Les droits et obligations réciproques précisent le type d'actes couverts et tiennent compte des intérêts de tout titulaire d'un droit d'obtenteur qui seraient affectés par l'octroi de la licence obligatoire. Ils comportent une limite de durée, prévoient le paiement d'une rémunération adéquate au titulaire et peuvent imposer à celui-ci certaines obligations qu'il est tenu de remplir pour permettre l'usage de la licence obligatoire.

La personne à laquelle la licence obligatoire est octroyée doit disposer de ressources financières et techniques appropriées pour exploiter ladite licence.

Pour autant que des éléments nouveaux soient intervenus, il peut être procédé, à la requête du titulaire du droit d'obtenteur ou du licencié, à la révision des décisions prises en ce qui concerne leurs obligations réciproques et, le cas échéant, les conditions d'exploitation. La compétence de révision appartient à l'autorité de qui la décision émane et la procédure à suivre est la même que celle qui est prévue pour conduire à la décision soumise à révision.

§ 6. Lorsqu'une action en revendication intentée, en vertu de l'article XI.159, § 1er, à l'encontre du titulaire est inscrite dans le registre, le ministre peut suspendre la procédure d'octroi de licence obligatoire. Il ne peut reprendre la procédure avant l'inscription au registre du jugement passé en force

de chose jugée ou d'une décision constatant qu'il a été mis fin, par tout autre moyen, à l'action en revendication.

En cas de transfert du droit d'obtenteur produisant des effets à l'égard de l'Office, le nouveau titulaire devient partie à la procédure, sur la requête du demandeur et si la demande de licence qu'il a constituée auprès du nouveau titulaire n'a pas abouti dans un délai de deux mois à compter de la réception de la notification par laquelle l'Office l'a informé de l'inscription du nom du nouveau titulaire au registre. La demande introduite par le demandeur doit être accompagnée de preuves documentaires suffisantes pour établir l'insuccès de ses efforts et, s'il y a lieu, pour faire la preuve des démarches accomplies auprès du nouveau titulaire.

§ 7. Le ministre octroie la licence obligatoire par arrêté, selon les modalités définies par le Roi. L'arrêté est publié au Moniteur belge.

§ 8. A la demande du titulaire du droit d'obtenteur et après avoir pris connaissance de l'avis de la Commission, le ministre peut retirer la licence obligatoire s'il résulte d'un jugement coulé en force de chose jugée que le licencié s'est rendu coupable à l'égard du titulaire du droit d'obtenteur d'un acte illicite ou qu'il a manqué à ses obligations.

La décision de retrait mentionne le cas échéant la raison pour laquelle l'avis de la Commission n'a pas été suivi.

L'arrêté de retrait est publié par extrait au Moniteur belge.

§ 9. Dès l'octroi de la licence obligatoire, les rapports entre le titulaire et le licencié sont assimilés, sauf dérogations prévues par l'arrêté d'octroi, à ceux existant entre un concédant et un licencié contractuels.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

## CHAPITRE 2. - [1 Le Conseil et la Commission]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.127. [1 § 1er. Il est institué auprès du SPF Economie un Conseil du droit d'obtenteur, ci-après dénommé "le Conseil", composé de personnes particulièrement qualifiées en matière juridique, de génétique, de botanique ou de phytotechnie.

§ 2. Le rôle, la composition et le fonctionnement du Conseil et de ses sections sont déterminés par le Roi. Les membres du Conseil sont nommés et révoqués par le ministre.

§ 3. Les frais de fonctionnement du Conseil sont à charge du budget du Service public fédéral visé au paragraphe 1er.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.128. [1 § 1er. Il est institué auprès du Service public fédéral visé à l'article XI.127, § 1er, une Commission des licences obligatoires, ci-après dénommée la Commission, qui a pour mission d'accomplir les tâches qui lui sont dévolues par l'article XI.126.

La Commission est composée de dix membres nommés par le ministre.

Huit membres sont désignés, en nombre égal, sur proposition des organisations représentatives :

- de l'industrie et du commerce,
- de l'agriculture,
- des petites et moyennes entreprises, et
- des consommateurs.

Les organisations visées à l'alinéa précédent sont désignées par le ministre.

Deux membres sont désignés parmi les membres du Conseil visé à l'article XI.127. Ils restent membres de la Commission pour la durée de leur mandat au sein de celle-ci, indépendamment de leur qualité de membre du Conseil.

Le mandat de membre de la Commission est d'une durée de six ans. Il est renouvelable.

La Commission est présidée par un de ses membres, désigné par le ministre pour un terme de trois ans renouvelable.

Les avis sont adoptés par consensus. A défaut de consensus, l'avis reprend les différentes opinions.

Le Roi détermine les modalités de fonctionnement et d'organisation de la Commission.

La Commission élabore son règlement d'ordre intérieur. Celui-ci entre en vigueur après approbation du ministre.

§ 2. Lorsque le ministre est saisi d'une requête en vue de l'octroi d'une licence obligatoire, il désigne auprès de la Commission, un ou plusieurs agents qualifiés, choisis parmi les fonctionnaires du SPF Economie.

La Commission définit la mission des agents visés à l'alinéa 1er et fixe les modalités en vertu desquelles ces agents lui rendent compte de leur mission. La Commission précise les conditions de transmission des documents visés à l'alinéa 4, en vue d'assurer la protection des renseignements confidentiels.

Les agents commissionnés à cet effet par le ministre sont compétents pour recueillir tous renseignements, recevoir toutes dépositions ou tous témoignages écrits ou oraux qu'ils estiment nécessaires à l'accomplissement de leur mission.

Dans l'exercice de leurs fonctions, ces agents peuvent :

1° moyennant un avertissement d'au moins cinq jours ouvrables ou sans avertissement préalable s'ils ont des raisons de croire qu'il existe un risque de destruction de pièces utiles à l'instruction de la demande de licence obligatoire, pénétrer, pendant les heures habituelles d'ouverture ou de travail, dans les bureaux, locaux, ateliers, bâtiments, cours adjacentes et enclos dont l'accès est nécessaire à l'accomplissement de leur mission;

2° faire toutes les constatations utiles, se faire produire, sur première réquisition et sans déplacement, les documents, pièces ou livres nécessaires à leurs recherches et constatations et en prendre copie;

3° prélever des échantillons, suivant les modes et les conditions déterminées par le Roi;

4° saisir, contre récépissé, les documents visés au point 2 qui sont nécessaires à l'accomplissement de leur mission;

5° commettre des experts dont ils déterminent la mission, suivant les conditions déterminées par le Roi.

A défaut de confirmation par le président de la Commission dans les quinze jours, la saisie est levée de plein droit. La personne entre les mains de laquelle les objets sont saisis peut en être constituée gardien judiciaire.

Le président de la Commission peut donner mainlevée de la saisie qu'il a confirmée, le cas échéant sur requête du propriétaire des objets saisis adressée à la Commission.

Moyennant un avertissement d'au moins cinq jours ouvrables ou sans avertissement préalable s'ils ont des raisons de croire qu'il existe un risque de destruction de pièces utiles à l'instruction de la demande de licence obligatoire, les agents commissionnés peuvent visiter les locaux habités moyennant autorisation préalable du président du tribunal de commerce. Les visites dans les locaux habités doivent s'effectuer entre huit et dix-huit heures et être faites conjointement par deux agents au moins.

Dans l'exercice de leur mission, ils peuvent requérir l'assistance des services de police.

Les agents commissionnés exercent les pouvoirs qui leur sont accordés par le présent article sous la surveillance du procureur général, sans préjudice de leur subordination à l'égard de leurs supérieurs dans l'administration.

§ 3. Les agents commissionnés à cet effet remettent leur rapport à la Commission. La Commission n'émet son avis qu'après avoir entendu le titulaire du droit d'obtenteur et la personne qui requiert ou a obtenu la licence obligatoire. Ces personnes peuvent se faire assister ou représenter, soit par un avocat, soit par une personne que la Commission agréée spécialement dans chaque affaire. La Commission entend également les experts et les personnes qu'elle juge utile d'interroger. Elle peut charger les agents commissionnés de procéder à un complément d'information et de remettre un rapport complémentaire.

Un mois au moins avant la date de sa réunion, la Commission avise par envoi recommandé les personnes qui doivent être entendues au cours de cette réunion. En cas d'urgence, le délai est réduit de moitié.

§ 4. Les frais de fonctionnement de la Commission sont à charge du budget du Service public fédéral visé à l'article XI.127, § 1er.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

CHAPITRE 3. - [1 Procédure devant l'Office]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 1re. - [1 Parties à la procédure et mandataires]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.129. [1 § 1er. Peuvent être parties à la procédure devant l'Office, les personnes suivantes :

1° le demandeur qui dépose une demande de droit d'obtenteur;

2° l'auteur d'une objection, au sens de l'article XI.139, § 1er;

3° le titulaire;

4° toute personne dont la demande ou la requête est une condition préalable à une décision de l'Office.

§ 2. L'Office peut autoriser, sur demande écrite, toute autre personne non visée au paragraphe 1er, mais qui est directement et individuellement concernée, à intervenir en qualité de partie à la procédure.

§ 3. Toute personne physique ou morale, de même que tout organisme assimilé à une personne morale en vertu de la législation dont il relève, est considérée comme une personne au sens des paragraphes 1er et 2.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.130. [1 Toute désignation d'un mandataire s'effectue selon les modalités définies par le Roi.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 2. - [1 Demande]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.131. [1 Le dépôt de la demande de droit d'obtenteur est effectué à l'Office, soit en personne, soit par envoi postal, soit de toute autre manière déterminée par le Roi.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.132. [1 § 1er. La demande de droit d'obtenteur doit au moins comporter :

1° une demande d'octroi du droit d'obtenteur;

2° l'identification du taxon botanique;

3° des informations relatives à l'identité du demandeur ou des demandeurs conjoints;

4° le nom de l'obtenteur et la déclaration selon laquelle aucune autre personne n'a, à la connaissance du demandeur, participé à la création ou à la découverte et au développement de la variété. Si le demandeur n'est pas l'obtenteur ou s'il n'est pas le seul obtenteur, il fournit les preuves documentaires pertinentes indiquant à quel titre il a acquis le droit au droit d'obtenteur;

5° une désignation provisoire de la variété;

6° une description technique de la variété;

7° des précisions concernant toute commercialisation antérieure de la variété;

8° des précisions concernant toute autre demande introduite pour la variété.

§ 2. La demande doit satisfaire aux conditions et formes fixées par le présent titre.

§ 3. Le Roi peut préciser et compléter par d'autres éléments ceux qui sont mentionnés au paragraphe 1er.

§ 4. Le demandeur propose une dénomination variétale qui peut accompagner la demande.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.133. [1 La date de dépôt de la demande de droit d'obtenteur est celle à laquelle une demande parvient à l'Office conformément à l'article XI.131, à condition que les conditions de l'article XI.132, § 1er, soient remplies et que la redevance due pour le dépôt en vertu de l'article XI.150, § 1er, alinéa 1er, soit payée.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.134. [1 § 1er. Le droit de priorité d'une demande est déterminé en fonction de la date de réception de cette demande. Si des demandes ont la même date de dépôt, leurs priorités respectives sont fixées en fonction de l'ordre dans lequel elles ont été reçues, si celui-ci peut être établi. A défaut, elles ont la même priorité.

§ 2. Si le demandeur ou son prédécesseur en droit a déjà demandé un droit d'obtenteur pour la variété dans une autre partie contractante que la Belgique, à savoir un Etat ou une organisation intergouvernementale membre de l'Union internationale pour la protection des obtentions végétales, et si la date de dépôt se situe dans un délai de douze mois suivant le dépôt de la première demande, le demandeur bénéficie, pour sa demande de droit d'obtenteur belge, d'un droit de priorité au titre de la première demande, à condition que cette demande existe toujours à la date de dépôt.

§ 3. Le droit de priorité a pour conséquence que, pour l'application des articles XI.106, XI.109 et XI.111, la date de dépôt de la première demande vaut date de dépôt de la demande de droit d'obtenteur belge.

§ 4. Toute revendication d'un droit de priorité s'éteint si le demandeur ne présente pas à l'Office, dans un délai de trois mois à compter de la date de dépôt, une copie de la première demande. Si la première demande n'a pas été rédigée en français, néerlandais ou allemand, l'Office peut en outre exiger une traduction de la première demande dans une de ces langues.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 3. - [1 Examen]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.135. [1 § 1er. L'Office examine :

1° si la demande remplit les conditions fixées à l'article XI.132;

2° le cas échéant, si une revendication du droit de priorité est conforme à l'article XI.134, §§ 2 et 4;

et

3° si la redevance due pour le dépôt en vertu de l'article XI.150, § 1er, alinéa 1er, a été acquittée dans le délai prescrit.

§ 2. Si la demande, tout en remplissant les conditions énoncées à l'article XI.133, ne remplit pas les autres conditions visées à l'article XI.132, § 2, l'Office invite le demandeur à remédier aux irrégularités éventuellement constatées dans le délai prescrit.

§ 3. Si la demande ne remplit pas les conditions énoncées à l'article XI.133, l'Office informe le demandeur que sa demande est incomplète.

§ 4. En cas de demande incomplète, le demandeur est responsable de la conservation et du renvoi éventuels du matériel et des documents.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.136. [1 § 1er. L'Office examine, sur la base des informations fournies dans la demande, si la variété peut faire l'objet d'un droit d'obtenteur conformément à l'article XI.104, s'il s'agit d'une variété nouvelle au sens de l'article XI.109 et si le demandeur est habilité à déposer une demande conformément à l'article XI.112.

§ 2. L'Office examine également, selon les modalités définies par le Roi, si la dénomination variétale proposée est éligible conformément à l'article XI.143.

§ 3. Le premier demandeur est considéré comme ayant droit au droit d'obtenteur. Cette disposition ne s'applique pas si, avant qu'il ait été statué sur la demande, il est démontré par une décision judiciaire passée en force de chose jugée concernant une revendication du droit en vertu de l'article XI.159, § 3, que le droit ne revient pas, ou ne revient pas uniquement, au premier demandeur. Si l'identité de l'unique personne habilitée ou de l'autre personne habilitée a été établie, cette ou ces personnes peuvent entamer une procédure en tant que demandeurs.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.137. [1 § 1er. Si, à la suite des examens visés aux articles XI.135 et XI.136, l'Office constate qu'aucun obstacle ne s'oppose à l'octroi du droit d'obtenteur, il prend les dispositions appropriées pour que l'examen technique de la variété soit effectué.

§ 2. L'examen technique vise à vérifier que les conditions prévues aux articles XI.106, XI.107 et XI.108 sont remplies. Cet examen permet à l'Office d'établir la description officielle de la variété et d'en obtenir un échantillon officiel.

§ 3. L'examen technique a lieu sous la direction de l'Office, qui peut se faire assister par le Conseil. Il est mené conformément aux principes directeurs reconnus par l'Office et, le cas échéant, par le Conseil et conformément aux instructions données par l'Office.

§ 4. L'Office est habilité à conclure des accords de coopération en matière d'examen technique des variétés et à prendre, à cette fin, les mesures d'application requises.

§ 5. Lorsque les essais en culture et les autres essais nécessaires ont été effectués, en vertu du paragraphe 4, par le service d'une partie contractante visée à l'article XI.134, § 2, chargé d'octroyer les droits d'obtenteur de cette partie ou sont en cours auprès de ce service, et que les résultats peuvent être obtenus par l'Office et sont applicables aux conditions agro-climatiques de la Belgique, le rapport d'examen visé à l'article XI.138 peut être fondé sur lesdits résultats.

§ 6. Lorsque le rapport d'examen précité n'est pas fondé sur des résultats obtenus en application du paragraphe 5, l'examen est fondé sur des essais en culture et les autres essais nécessaires effectués soit par l'Office ou par une tierce institution sous contrat, soit par le demandeur à la demande de l'Office.

§ 7. Le demandeur est tenu de fournir tout renseignement, document ou matériel requis par l'Office aux fins de l'examen technique.

§ 8. Si le demandeur revendique un droit de priorité conformément à l'article XI.134, § 2, il présente le matériel nécessaire et toute autre pièce requise dans un délai de deux ans à compter de la date de dépôt de la demande, conformément à l'article XI.133. Si la première demande est retirée ou rejetée avant l'expiration du délai de deux ans, l'Office peut exiger du demandeur qu'il présente le matériel ou toute autre pièce requise dans un délai déterminé.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.138. [1 § 1er. Lorsque l'examen technique effectué en vertu de l'article XI.137, § 1er, est achevé, il fait l'objet d'un rapport d'examen qui est transmis à l'Office. Si le rapport démontre que les conditions énoncées aux articles XI.106, XI.107 et XI.108 sont remplies, une description de la variété y est jointe.

§ 2. Le rapport d'examen et les conclusions de l'Office quant à ce rapport d'examen et, le cas échéant, les conclusions du Conseil, sont communiquées au demandeur.

§ 3. Le demandeur peut prendre connaissance du dossier et présenter des observations.

§ 4. S'il estime que le rapport d'examen ne permet pas de décider en connaissance de cause, l'Office peut, de sa propre initiative après avoir consulté le demandeur ou à la demande de ce dernier, prévoir un examen complémentaire. Pour l'évaluation des résultats, tout examen complémentaire effectué avant qu'une décision visée aux articles XI.141 et XI.142 ne devienne définitive est considéré comme faisant partie de l'examen visé à l'article XI.135.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.139. [1 § 1er. Toute personne peut adresser à l'Office une objection écrite à l'octroi du droit d'obtenteur.

§ 2. Sans préjudice de l'article XI.153, les auteurs des objections ont accès aux documents, y compris les résultats de l'examen technique et, le cas échéant, la description de la variété.

§ 3. Les objections ne peuvent invoquer que les motifs suivants :

1° les conditions énoncées aux articles XI.106, XI.107, XI.108, XI.109 et XI.111 ne sont pas remplies;

2° la dénomination variétale n'est pas conforme aux dispositions de l'article XI.143.

§ 4. Le Roi détermine les informations que doivent contenir les objections et fixe le délai dans lequel les objections doivent être adressées et les modalités d'examen de celles-ci.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.140. [1 Si une objection pour non-respect des conditions énumérées à l'article XI.111, §§ 1er, 2 et 3, entraîne le retrait ou le rejet de la demande de droit d'obtenteur et si l'auteur de l'objection dépose, pour la même variété, une demande de droit d'obtenteur dans un délai d'un mois à compter du retrait ou du rejet définitif de la demande, ce dernier peut exiger que la date de dépôt de la demande retirée ou rejetée soit considérée comme la date de dépôt de sa demande.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 4. - [1 Décisions]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.141. [1 § 1er. L'Office rejette aussitôt la demande de droit d'obtenteur s'il constate que le demandeur :

1° n'a pas remédié aux irrégularités visées à l'article XI.135, § 2, dans le délai qui lui était imparti pour pouvoir le faire;

ou

2° ne s'est pas conformé à la requête de l'Office visée à l'article XI.137, § 7 ou 8, dans le délai fixé, à moins que l'Office n'ait consenti à la non-présentation des renseignements, documents ou matériels;

ou

3° n'a pas proposé de dénomination éligible selon l'article XI.143 dans le délai fixé par l'Office.

§ 2. L'Office rejette également la demande de droit d'obtenteur :

1° s'il constate que les conditions qu'il est appelé à vérifier conformément à l'article XI.136 ne sont pas remplies;

ou

2° s'il arrive à la conclusion, sur base du rapport d'examen visé à l'article XI.138, que les conditions énoncées aux articles XI.106, XI.107 et XI.108 ne sont pas remplies.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.142. [1 S'il estime que les résultats de l'examen technique suffisent pour statuer sur la demande et qu'aucun obstacle au sens des articles XI.139 et XI.141 ne s'y oppose, l'Office octroie le droit d'obtenteur et délivre un certificat d'obtenteur. La décision comporte la description officielle de la variété.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.143. [1 § 1er. Lorsqu'un droit d'obtenteur est octroyé, l'Office approuve, pour la variété en question, la dénomination variétale proposée par le demandeur conformément à l'article XI.132, § 3, s'il considère, sur la base de l'examen effectué conformément à l'article XI.136, § 2, que cette dénomination est éligible.

§ 2. Le Roi détermine les conditions auxquelles doit satisfaire la dénomination variétale pour être éligible, ainsi que les conditions de son emploi.

§ 3. La dénomination est destinée à être la désignation générique de la variété.

§ 4. L'Office enregistre la dénomination en même temps qu'est octroyé le droit d'obtenteur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 5. - [1 Maintien du droit d'obtenteur]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.144. [1 § 1er. Le titulaire est tenu de maintenir la variété protégée ou, le cas échéant, ses constituants héréditaires, pendant toute la durée de validité du droit.

§ 2. Le titulaire peut être requis d'assurer lui-même la pérennité de l'échantillon officiel.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.145. [1 § 1er. L'Office peut contrôler que la variété et, le cas échéant, ses constituants héréditaires sont maintenus pendant toute la durée de la protection.

§ 2. L'Office est habilité à conclure des accords de coopération en matière de contrôle du maintien des variétés et à prendre, à cette fin, les mesures d'application requises.

§ 3. Sur demande de l'Office, le titulaire est tenu de présenter à l'Office ou à toute partie désignée par celui-ci, dans le délai imparti, les renseignements, documents ou matériel jugés nécessaires au contrôle du maintien de la variété protégée et de ne pas faire obstacle à l'examen des mesures prises en vue du maintien.

§ 4. Lorsqu'il y a des indices donnant à penser que la variété n'est pas maintenue et que, le cas échéant, les soupçons ne sont pas dissipés par les renseignements et documents fournis par le titulaire en application du paragraphe 3, l'Office ordonne un contrôle du maintien de la variété, dont il fixe les modalités.

Le titulaire est tenu de permettre l'inspection du matériel de la variété concernée et du lieu dans lequel est conservée l'identité de la variété, de manière à ce que puissent être recueillis les renseignements nécessaires pour apprécier si la variété est maintenue.

Le titulaire est tenu de conserver la documentation nécessaire pour permettre de vérifier que les mesures appropriées ont été prises.

§ 5. Le contrôle comporte des essais en culture ou d'autres essais dans lesquels le matériel fourni par le titulaire est comparé à la description officielle ou à l'échantillon officiel de la variété.

§ 6. Lorsque le contrôle fait apparaître que le titulaire n'a pas maintenu la variété, le titulaire est, sur requête de l'Office ou à sa demande, entendu avant qu'une décision de déchéance soit prise en vertu de l'article XI.123.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.146. [1 Sur demande de l'Office, le titulaire est tenu de fournir à l'Office ou à toute partie désignée par celui-ci, dans le délai imparti, des échantillons appropriés de la variété protégée ou, le cas échéant, de ses constituants héréditaires aux fins :

1° de la constitution ou du renouvellement de l'échantillon officiel de la variété,

ou

2° de la conduite d'examens comparatifs de variétés aux fins de la protection.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.147. [1 § 1er. L'Office, selon les modalités définies par le Roi, modifie une dénomination variétale attribuée conformément à l'article XI.143 s'il constate que cette dénomination ne satisfait pas ou ne satisfait plus aux conditions visées dans cet article et si, en présence d'un droit antérieur d'un tiers, le titulaire accepte la modification ou si une décision judiciaire passée en force de chose jugée interdit l'utilisation de la dénomination variétale par le titulaire ou toute personne tenue d'employer la dénomination variétale.

§ 2. L'Office invite le titulaire à proposer une dénomination variétale modifiée et poursuit la procédure conformément à l'article XI.143.

§ 3. La dénomination modifiée qui est proposée peut faire l'objet d'objections conformément à l'article XI.139, § 3, 2°.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 6. - [1 Autres dispositions régissant la procédure]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.148. [1 § 1er. Lorsque, malgré toute la diligence dont il a fait preuve dans les circonstances particulières, le demandeur d'un droit d'obtenteur ou le titulaire ou toute autre partie à une procédure engagée devant l'Office n'a pas été en mesure d'observer un délai à l'égard de l'Office, il peut être, sur requête, rétabli dans ses droits si cet empêchement a eu pour conséquence directe, en vertu des dispositions de la présente loi, la perte d'un droit ou d'un moyen de recours.

§ 2. La requête est présentée par écrit dans un délai de deux mois à compter de la cessation de l'empêchement. L'acte non accompli doit l'être dans ce délai. La requête n'est recevable que dans un délai d'un an à compter de l'expiration du délai non observé.

§ 3. La requête est dûment motivée et indique les faits et les justifications invoqués à son appui. Elle n'est réputée présentée qu'après paiement de la redevance de restauration dans les droits, dans le délai prévu au paragraphe 2. L'Office décide sur la requête.

§ 4. Le présent article ne s'applique pas aux délais prévus au paragraphe 2 ainsi qu'à l'article XI.134.

§ 5. Quiconque a, de bonne foi, au cours de la période comprise entre la perte d'un droit lié, au sens du paragraphe 1er, à la demande ou à l'octroi du droit d'obtenteur et la restauration dudit droit, exploité ou fait des préparatifs effectifs et sérieux pour exploiter le matériel d'une variété faisant l'objet d'une demande publiée de droit d'obtenteur ou d'une variété protégée peut, à titre gratuit, poursuivre cette exploitation dans son établissement ou pour les besoins de son établissement.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.149. [1 § 1er. Lorsqu'une action en revendication intentée, en vertu de l'article XI.159, § 3, à l'encontre du demandeur est inscrite au registre, l'Office peut suspendre la procédure. L'Office peut préciser la date à laquelle il entend poursuivre la procédure.

§ 2. Lorsqu'une décision passée en force de chose jugée a été rendue sur l'action en revendication visée au paragraphe 1er ou qu'une décision constatant qu'il a été mis fin, par tout autre moyen, à cette action, est inscrite au registre, l'Office reprend la procédure. Il peut reprendre la procédure à une date antérieure, mais pas avant la date fixée en application du paragraphe 1er.

§ 3. Lorsque le droit au droit d'obtenteur est transféré au profit d'un tiers et que ce transfert produit ses effets à l'égard de l'Office, le tiers concerné peut se substituer au premier demandeur, sous réserve d'en informer l'Office dans un délai d'un mois à compter de l'inscription de la décision passée en force de chose jugée au registre. Les redevances à acquitter en application de l'article XI.150 déjà versées par le premier demandeur sont réputées avoir été acquittées par le second demandeur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 7. - [1 Redevances et taxes]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.150. [1 § 1er. Le Roi fixe le montant des redevances que le demandeur doit acquitter pour le dépôt et l'instruction de sa demande.

Le Roi fixe également :

1° le montant des redevances dues pour les inscriptions faites par l'Office en application des articles XI.124, XI.125 et XI.126,

2° le montant des redevances dues pour la délivrance par l'Office, d'attestations et de copies,

3° le montant des redevances pour le contrôle du maintien de la variété,

4° le montant de la redevance de restitution en entier.

§ 2. Si les redevances dues en vertu du paragraphe 1er, alinéa 1er, ne sont pas payées, le demandeur est réputé renoncer à sa demande.

§ 3. Le Roi fixe les modalités de perception des redevances.

§ 4. Les redevances ne sont pas remboursables.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.151. [1 § 1er. En vue du maintien en vigueur du droit d'obtenteur, l'Office perçoit des taxes annuelles pendant la durée du droit.

§ 2. La taxe annuelle doit être payée par anticipation. Son paiement vient à échéance le dernier jour du mois de la date anniversaire de l'octroi du droit d'obtenteur.

La taxe annuelle pour la première année est payée avant la fin du mois qui suit celui au cours duquel le droit d'obtenteur est octroyé.

Lorsque le paiement de la taxe annuelle n'a pas été effectué à son échéance, ladite taxe peut encore être acquittée augmentée d'une surtaxe, dans un délai de deux mois à compter de l'échéance de la taxe annuelle.

§ 3. Le Roi fixe le montant et les modalités de perception de la taxe annuelle et de la surtaxe.

§ 4. La taxe annuelle n'est pas remboursable.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Section 8. - [1 Tenue du registre]1

-----

(1)<Insérée par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.152. [1 § 1er. L'Office tient un registre des demandes de droit d'obtenteur et des droits d'obtenteur octroyés.

§ 2. Dans le registre sont portées les inscriptions suivantes :

1° les demandes de droit d'obtenteur avec mention du taxon, de la désignation provisoire de la variété, de la date de dépôt, ainsi que des nom et adresse du demandeur, de l'obtenteur et de tout mandataire concerné;

2° tout cas de fin d'une procédure concernant des demandes de droit d'obtenteur avec mention des données visées au point 1° ;

3° les propositions de dénomination variétale;

4° les modifications relatives à l'identité du demandeur ou de son mandataire;

5° tout transfert notifié d'une demande, avec mention des nom et adresse des ayants droit ou ayants cause;

6° les licences contractuelles notifiées, avec mention des nom et adresse des licenciés;

7° toute contestation portant sur des droits civils, ainsi que la décision passée en force de chose jugée concernant cette action en justice ou tout abandon de celle-ci.

§ 3. Après l'octroi du droit d'obtenteur, sont également portées dans le registre les inscriptions suivantes :

1° l'espèce et la dénomination de la variété;

2° la description officielle de la variété;

3° dans le cas des variétés nécessitant, pour la production de matériel, l'emploi répété de matériel de certains composants, la mention de ces composants;

4° les nom et adresse du titulaire, de l'obtenteur et de tout mandataire concerné;

5° la date de début et d'extinction du droit d'obtenteur, ainsi que les motifs de son extinction;

6° tout transfert notifié d'un droit d'obtenteur, avec mention des nom et adresse des ayants droit ou ayants cause;

7° les licences contractuelles notifiées, avec mention des nom et adresse des licenciés;

8° les licences obligatoires et les décisions qui s'y rapportent, avec mention des nom et adresse des licenciés;

9° toute modification dans un droit d'obtenteur;

10° si le titulaire d'une variété initiale et l'obtenteur d'une variété essentiellement dérivée de la variété initiale en font tous deux la demande, l'identification des variétés en tant que variétés initiale et essentiellement dérivée, y compris les dénominations variétales et les noms des parties concernées. Une demande adressée par une seule des parties concernées n'est suffisante que si celle-ci a obtenu, soit la reconnaissance incontestée de l'autre partie conformément à l'article XI.161, soit une décision judiciaire passée en force de chose jugée comportant une identification des variétés concernées en tant que variétés initiale et essentiellement dérivée;

11° toute contestation portant sur des droits civils ainsi que la décision passée en force de chose jugée concernant cette action en justice ou tout abandon de celle-ci.

§ 4. Le Roi peut fixer tout autre détail ou toute autre condition relatif à l'inscription dans le registre.

§ 5. Les inscriptions visées aux paragraphes 2, 7°, et 3, 11°, sont effectuées par le greffier de la juridiction ayant statué sur le litige concerné, sur requête de la personne ayant introduit l'action ou de tout intéressé.

§ 6. L'Office peut, en ce qui concerne le nombre et le type de caractères ou les expressions établies de ces caractères, adapter d'office et après avoir consulté le titulaire, la description officielle de la variété, si nécessaire, aux principes applicables à la description des variétés du taxon concerné, afin de rendre la description de la variété comparable aux descriptions d'autres variétés du taxon concerné.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.153. [1 § 1er. Le registre visé à l'article XI.152 est ouvert à l'inspection publique, dans les locaux de l'Office.

§ 2. Des extraits du registre sont délivrés à la demande de toute personne intéressée.

§ 3. Toute personne ayant un intérêt légitime peut, selon les modalités définies par le Roi :

1° consulter les pièces relatives à une demande de droit d'obtenteur,

2° consulter les pièces relatives à un droit d'obtenteur déjà octroyé,

3° visiter les essais en culture destinés à l'examen technique d'une variété,

et

4° visiter les essais en culture destinés à la vérification technique du maintien d'une variété.

§ 4. Dans le cas des variétés pour lesquelles du matériel présentant des composants spécifiques doit être utilisé à plusieurs reprises pour la production de matériel de la variété, sur requête du demandeur du droit d'obtenteur, tous les renseignements relatifs aux composants, y compris leur culture, sont exclus de la consultation publique. Une telle requête n'est plus recevable lorsqu'il a été statué sur la demande du droit d'obtenteur.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

Art. XI.154. [1 Les inscriptions au registre imposées par l'article XI.152, § 2, et § 3, 1°, 4°, 5°, 6°, 7°, 8°, 9°, 10° et 11°, sont publiées par l'Office de la manière fixée par le Roi.]1

-----

(1)<Inséré par L 2014-04-19/60, art. 3, 024; En vigueur : 01-01-2015>

**12 MAI 2015. - Arrêté royal relatif à la mise en oeuvre des dispositions relatives au droit d'obtenteur de la loi du 19 avril 2014 portant insertion du livre XI, " Propriété intellectuelle " dans le Code de droit économique et portant insertion des dispositions propres au livre XI dans les livres I, XV et XVII du même Code**

**Source : ECONOMIE, PME, CLASSES MOYENNES ET ENERGIE**

**Publication : 01-06-2015 numéro : 2015011211 page : 30697 [IMAGE](#)**

**Dossier numéro : 2015-05-12/11**

**Entrée en vigueur : 01-07-2015**

Table des matières	Texte	Début
<a href="#">CHAPITRE 1er.</a> . - Dispositions générales		
Art. 1-4		
<a href="#">CHAPITRE 2.</a> - Procédure devant l'Office		
<a href="#">Section 1re.</a> - La demande		
Art. 5-8		
<a href="#">Section 2.</a> - Examen de la demande		
Art. 9-11		
<a href="#">Section 3.</a> - Dénomination variétale		
Art. 12-13		
<a href="#">Section 4.</a> - Examen technique et objections		
Art. 14-18		
<a href="#">Section 5.</a> - Modification de la dénomination variétale		
Art. 19		
<a href="#">Section 6.</a> - Tenue du registre et inspection publique		
Art. 20-25		
<a href="#">Section 7.</a> - Redevances et taxes		
Art. 26-30		
<a href="#">CHAPITRE 3.</a> - Droit matériel		
<a href="#">Section 1re.</a> - Déchéance du droit d'obtenteur		
Art. 31		
<a href="#">Section 2.</a> - Transfert de propriété		
Art. 32		
<a href="#">Section 3.</a> - Licences		
Art. 33-36		
<a href="#">CHAPITRE 4.</a> - Dérogation au droit d'obtenteur		
Art. 37-41		
<a href="#">CHAPITRE 5.</a> - Le Conseil du droit d'obtenteur et la Commission des licences obligatoires		
<a href="#">Section 1.</a> . - Le Conseil du droit d'obtenteur		
Art. 42-48		
<a href="#">Section 2.</a> - La Commission des licences obligatoires		
Art. 49		
<a href="#">CHAPITRE 6.</a> - Dispositions finales		
Art. 50-52		
<a href="#">ANNEXE.</a>		
Art. N		

Texte	Table des matières	Début
<a href="#">CHAPITRE 1er.</a> . - Dispositions générales		
Article <a href="#">1er.</a> Pour l'application du présent arrêté, l'on entend par :		
1° l'Office : l'Office de la Propriété Intellectuelle auprès du Service public fédéral Economie;		
2° le ministre : le ministre qui a la propriété intellectuelle dans ses attributions;		
3° la Partie contractante : un Etat ou une organisation intergouvernementale membre de l'Union internationale pour la protection des obtentions végétales, dénommée ci-après UPOV;		
4° le service d'une Partie contractante : le service chargé d'octroyer des droits d'obtenteur de cette Partie contractante;		
5° un organisme génétiquement modifié : un organisme, à l'exception des êtres humains, dont le matériel génétique a été modifié d'une manière qui ne s'effectue pas naturellement, par multiplication et/ou recombinaison naturelle.		

[Art. 2.](#) Le dépôt des communications à l'Office dans le cadre de la loi et de ses arrêtés d'exécution se fait par écrit.

[Art. 3.](#) § 1er. Toute personne peut déposer un pouvoir autorisant un mandataire à accomplir un ou plusieurs actes devant l'Office concernant une ou plusieurs affaires de droit d'obtenteur la concernant.

Le pouvoir est déposé en original à l'Office.

La désignation d'un groupement de mandataires est réputée conférer pouvoir d'agir à tout mandataire qui peut prouver qu'il exerce au sein du groupement.

Toute désignation d'un mandataire est communiquée à l'Office. La communication mentionne les nom et adresse du mandataire et du demandeur qui effectue cette désignation.

§ 2. En cas d'inobservation des dispositions du paragraphe 1er, la communication est réputée ne pas avoir été reçue.

§ 3. Un mandataire dont le mandat prend fin conserve sa qualité de mandataire jusqu'à ce que la fin de son mandat ait été notifiée à l'Office. Toutefois, sous réserve de clauses contraires du mandat, celui-ci prend fin pour l'Office lors du décès du mandant.

§ 4. Si plusieurs parties à la procédure et agissant en commun n'ont pas notifié la désignation d'un mandataire à l'Office, la partie à la procédure première nommée sur une demande de droit d'obtenteur ou une licence d'exploitation à accorder par le ministre ou dans une objection, est réputée être désignée comme mandataire de l'autre ou des autres parties à la procédure.

[Art. 4.](#) § 1er. Lorsque la désignation d'un mandataire est communiquée à l'Office, le pouvoir signé nécessaire à cette fin est déposé dans un délai de deux mois à dater de la communication de la désignation. Sur demande motivée, l'Office peut accorder une seule prolongation de deux mois. Si le pouvoir n'est pas déposé en temps voulu, les actes accomplis par le mandataire sont réputés non avenus.

§ 2. Le pouvoir peut concerner une ou plusieurs procédures et doit être fourni en un nombre correspondant d'exemplaires.

Un pouvoir général habilitant un mandataire à représenter son mandant dans toutes les procédures qui le concernent peut aussi être déposé. Le mandataire constitué doit fournir une copie de ce pouvoir général pour chaque procédure dans un délai de deux mois.

§ 3. L'Office peut définir le contenu des pouvoirs, y compris le pouvoir général mentionné au paragraphe 2, et remet gratuitement aux intéressés des formulaires de ces pouvoirs.

## [CHAPITRE 2.](#) - Procédure devant l'Office

### [Section 1re.](#) - La demande

[Art. 5.](#) § 1er. La demande de droit d'obtenteur est déposée à l'Office.

Aux fins du dépôt de la demande de droit d'obtenteur, l'Office met gratuitement à disposition un formulaire de demande et un questionnaire d'ordre technique dont il fixe le modèle.

§ 2. Le dépôt est fait soit par le demandeur, soit par un mandataire domicilié ou ayant un établissement effectif sur le territoire de l'Union européenne.

Les personnes physiques et morales qui n'ont ni domicile ni établissement effectif dans un Etat membre de l'Union européenne doivent, pour agir devant l'Office, être représentées par un mandataire domicilié ou ayant un établissement effectif dans un Etat membre de l'Union européenne et agir par son entremise.

Le dépôt est effectué soit en personne, soit par envoi postal, soit par fax. Dans ce dernier cas, l'exemplaire original doit parvenir à l'Office endéans les 14 jours calendrier, à compter de la date de réception du fax.

[Art. 6.](#) § 1er. Lorsqu'il reçoit une demande, l'Office lui attribue un numéro. Il inscrit ce numéro sur les documents accompagnant la demande et la date de leur réception par l'Office.

§ 2. L'Office délivre au demandeur un récépissé. Ce récépissé précise au moins le numéro de dossier attribué par l'Office, le nombre de documents reçus, la date de réception par l'Office et la date de dépôt au sens de l'article XI.133 du Code de droit économique.

§ 3. Lorsque deux ou plusieurs demandes envoyées par la poste sont délivrées au même moment à l'Office, elles sont censées être reçues dans l'ordre de leur oblitération.

[Art. 7.](#) La proposition de dénomination variétale est signée et déposée par écrit auprès de l'Office. L'Office met gratuitement à disposition un formulaire de proposition de dénomination variétale.

[Art. 8.](#) Le demandeur peut, jusqu'à la délivrance du certificat d'obtenteur, demander la rectification d'erreurs matérielles dans les documents déposés.

La requête comporte le texte de la rectification proposée. La rectification est annotée dans le registre.

## Section 2. - Examen de la demande

Art. 9. § 1er. Si l'Office constate que la demande ne remplit pas les conditions énoncées à l'article XI.132, § 1er, du Code de droit économique, il informe le demandeur des irrégularités constatées en lui précisant que seule la date de réception de renseignements suffisants pour remédier à ces irrégularités sera considérée comme la date de dépôt au sens de l'article XI.133 du même Code.

§ 2. La condition énoncée à l'article XI.132, § 1er, 7°, du Code de droit économique n'est remplie que si la demande indique la date et le pays de la première cession au sens de l'article XI.109, § 1er, du même Code, ou, lorsque aucune cession n'a encore été effectuée, si elle comporte une déclaration attestant cette absence de cession.

§ 3. La condition énoncée à l'article XI.132, § 1er, 8°, du Code de droit économique n'est remplie que si la demande mentionne, dans la mesure où le demandeur les connaît, la date et le pays dans lequel la demande antérieure a été introduite pour la variété considérée, lorsque ladite demande antérieure porte sur:

- 1° l'octroi, par une Partie contractante, d'un droit de propriété sur la variété, ou
- 2° la reconnaissance officielle, par une Partie contractante, de la variété aux fins de certification et de commercialisation, cette reconnaissance comportant une description officielle de la variété.

Art. 10. § 1er. Si l'Office constate que la demande n'est pas conforme aux paragraphes 2, 3 et 4 ou à l'article 5, il applique les dispositions de l'article 6, mais en invitant le demandeur à remédier aux irrégularités constatées dans le délai qu'il lui impartit. Ce délai ne peut être inférieur à un mois.

S'il n'est pas remédié à ces irrégularités dans le délai requis, l'Office rejette la demande conformément à l'article XI.141, § 1er, 1°, du Code de droit économique.

§ 2. La demande comporte les indications suivantes:

1° la nationalité du demandeur, s'il s'agit d'une personne physique, sa désignation comme partie à la procédure au sens de l'article XI.129 du Code de droit économique et, lorsque le demandeur n'est pas l'obteneur, les nom et adresse de ce dernier;

2° le nom latin du genre, de l'espèce ou de la sous-espèce auxquels la variété appartient et son nom commun;

3° les caractères de la variété qui, selon le demandeur, la distinguent clairement d'autres variétés, ces dernières pouvant être nommées afin de servir de variétés de référence pour les essais;

4° la sélection, le maintien et la reproduction (multiplication) de la variété; les renseignements doivent notamment porter sur :

a) les caractères, la dénomination de la variété ou, à défaut, la désignation provisoire, ainsi que sur la culture d'une ou de plusieurs autres variétés dont le matériel doit être utilisé de manière répétée pour la production de la variété considérée, ou

b) les caractères génétiquement modifiés, lorsque la variété considérée constitue un organisme génétiquement modifié;

5° le pays dans lequel la variété a été soit créée, soit découverte et développée;

6° la date et le pays de la première cession des constituants variétaux ou du matériel de récolte de la variété, afin d'apprécier la nouveauté de la variété au sens de l'article XI.109 du Code de droit économique ou, lorsqu'aucune cession n'a encore été effectuée, une déclaration attestant cette absence de cession;

7° le nom de l'autorité auprès de laquelle les demandes visées à l'article 9, § 3, ont été déposées et le numéro de dossier qui leur a été attribué;

8° les droits d'obteneur existants ou tout brevet ayant été accordé, sur le territoire de l'UPOV, pour la variété considérée.

§ 3. L'Office peut demander la fourniture, dans le délai qu'il impartit, de toutes informations et de tous documents nécessaires, ainsi que, le cas échéant, de dessins ou de photographies suffisants pour permettre l'exécution de l'examen technique.

§ 4. Lorsque la variété considérée constitue un organisme génétiquement modifié, l'Office peut demander au demandeur de lui transmettre copie de l'attestation écrite des autorités compétentes confirmant que l'examen technique de la variété en question, tel que prévu à l'article XI.137 du Code de droit économique, ne présente aucun risque pour l'environnement, conformément aux dispositions de ladite directive.

Art. 11. Si le demandeur revendique un droit de priorité au titre d'une demande conformément à l'article XI.134, § 2, du Code de droit économique qui n'est pas la plus ancienne des demandes à signaler conformément à l'article 9, § 3, 1°, du présent arrêté, l'Office indique que seule la plus ancienne de ces demandes peut bénéficier d'une date de priorité.

Si l'accusé de réception délivré par l'Office mentionne la date de dépôt d'une demande qui n'est pas la plus ancienne des demandes à signaler, la date de priorité notifiée est considérée comme nulle.

### Section 3. - Dénomination variétale

**Art. 12.** § 1er. Lorsque la proposition de dénomination variétale n'est pas jointe à la demande de droit d'obtenteur ou que l'Office ne peut approuver la dénomination variétale proposée, l'Office en informe le demandeur, en l'invitant à lui soumettre, selon le cas, une proposition de dénomination variétale ou une nouvelle proposition et en lui précisant les conséquences auxquelles il s'expose s'il ne se conforme pas à cette exigence.

L'absence de dénomination variétale proposée en même temps que le dépôt de la demande donne lieu au paiement par le demandeur d'une redevance à l'Office.

§ 2. Lorsque l'Office constate, le jour où il reçoit le rapport de l'examen technique conformément à l'article XI.138, § 1er, du Code de droit économique, que le demandeur n'a présenté aucune proposition de dénomination variétale, il rejette la demande de droit d'obtenteur, conformément à l'article XI.141, § 1er, 3°, du même Code. L'Office en informe le demandeur.

**Art. 13.** § 1er. Une dénomination variétale est éligible s'il n'existe aucun des obstacles visés aux paragraphes 2 et 3.

§ 2. Il existe un obstacle à l'attribution d'une dénomination variétale :

1° lorsque le droit antérieur d'un tiers s'oppose à son utilisation sur le territoire de la Belgique;

2° lorsque la dénomination variétale peut se révéler d'ordinaire difficile à reconnaître ou à reproduire par ses utilisateurs;

3° lorsqu'elle est identique à une dénomination variétale ou peut être confondue avec une dénomination variétale sous laquelle, dans une Partie contractante, une autre variété de la même espèce ou d'une espèce voisine visée à l'article XI.119, § 3, du Code de droit économique, est inscrite dans un registre officiel des variétés ou sous laquelle du matériel d'une autre variété a été mis sur le marché, à moins que cette autre variété n'existe plus et que sa dénomination n'ait pas acquis de signification particulière;

4° lorsqu'elle est identique à d'autres dénominations ou peut être confondue avec d'autres dénominations couramment utilisées pour la mise sur le marché de marchandises ou qui doivent être réservées en vertu d'une autre législation;

5° lorsqu'elle est contraire à l'ordre public ou aux bonnes moeurs;

6° lorsqu'elle est susceptible d'induire en erreur ou de prêter à confusion quant aux caractères, à la valeur ou à l'identité de la variété ou à l'identité de l'obtenteur ou d'une quelconque autre partie à la procédure.

§ 3. Il existe également un obstacle lorsqu'une variété a déjà été enregistrée :

1° dans une Partie contractante,

ou

2° dans un autre Etat pour lequel il a été établi que les variétés y sont examinées selon des règles équivalentes à celles prévues dans les directives sur les catalogues communs,

dans un registre officiel des variétés végétales et que son matériel y a été mis sur le marché à des fins commerciales, si la dénomination variétale proposée diffère de celle qui y a été enregistrée ou utilisée, à moins que cette dernière constitue un obstacle tel que visé au paragraphe 2.

§ 4. Les espèces considérées comme voisines, visées à l'article XI.119, § 3, du Code de droit économique, sont celles définies comme telles par l'Office communautaire des variétés végétales (OCVV).

### Section 4. - Examen technique et objections

**Art. 14.** Le délai pour consulter le dossier et présenter des observations, visé à l'article XI.138, § 3, du Code de droit économique, est de deux mois à partir de la communication au demandeur du rapport d'examen et des conclusions visés à l'article XI.138, § 2, du même Code.

**Art. 15.** § 1er. Les objections visées à l'article XI.139 du Code de droit économique contiennent les informations suivantes:

1° le nom du demandeur et le numéro de dossier attribué à la demande à l'encontre de laquelle l'objection est formée;

2° la désignation de l'auteur de l'objection en tant que partie à la procédure au sens de l'article XI.129, § 1er, 2°, du même Code;

3° le cas échéant, la mention de la désignation d'un mandataire;

4° une déclaration précisant les motifs sur lesquels se fonde l'objection, tels qu'ils sont énoncés à l'article XI.139, § 3, du même Code, ainsi que les faits, les éléments de preuve et les arguments présentés à l'appui de l'objection.

§ 2. Si plusieurs objections sont formées à l'encontre d'une même demande de droit d'obtenteur, l'Office peut joindre les procédures.

**Art. 16.** Les objections peuvent être présentées:

1° à tout moment après que la demande a été déposée et avant que n'intervienne une décision en application de l'article XI.141 du Code de droit économique ou XI.142 du même Code, dans le cas où l'objection est fondée sur l'article XI.139, § 3, 1°, du même Code;

2° dans un délai de trois mois à compter de la publication, faite conformément à l'article XI.154 du Code de droit économique, de la dénomination variétale proposée, dans le cas où l'objection est fondée sur l'article XI.139, § 3, 2°, du même Code.

[Art. 17.](#) § 1er. Si l'Office constate que l'objection ne satisfait pas aux conditions prévues à l'article XI.139, §§ 1er et 3, du Code de droit économique ou à l'article 15, § 1er, 4°, du présent arrêté, ou qu'elle ne contient pas suffisamment de renseignements permettant d'identifier la demande à l'encontre de laquelle elle est formée, il rejette l'objection comme irrecevable, à moins qu'il ne soit remédié aux irrégularités relevées dans le délai qu'il impartit.

§ 2. Si l'Office constate que l'objection ne remplit pas les autres conditions prévues par le Code de droit économique ou par le présent arrêté, il rejette l'objection comme irrecevable, à moins qu'il ne soit remédié aux irrégularités relevées avant l'expiration des délais de présentation des objections visés à l'article 16.

[Art. 18.](#) Conformément à l'article XI.140 du Code de droit économique, si une objection fondée sur l'article XI.111 du Code de droit économique entraîne le retrait ou le rejet de la demande de droit d'obtenteur et si l'auteur de l'objection dépose, pour la même variété, une demande dans un délai d'un mois à compter du retrait ou de rejet définitif de la demande, ce dernier peut exiger que la date de dépôt de la demande retirée ou rejetée soit considérée comme la date de dépôt de sa demande.

#### [Section 5.](#) - Modification de la dénomination variétale

[Art. 19.](#) § 1er. Lorsque la dénomination variétale doit être modifiée en vertu de l'article XI.147 du Code de droit économique, l'Office informe le titulaire des raisons motivant cette modification, fixe le délai dans lequel le titulaire doit proposer une dénomination variétale modifiée et éligible et précise que, en cas de non-respect de cette exigence, l'Office peut prononcer la déchéance du droit d'obtenteur, en application de l'article XI.123, § 3, 3°, du même Code.

§ 2. Lorsque l'Office ne peut approuver la proposition de dénomination variétale modifiée, il en informe le titulaire, fixe un nouveau délai pour la présentation d'une proposition éligible et précise que, en cas de non-respect de cette exigence, l'Office peut prononcer la déchéance du droit d'obtenteur, conformément à l'article XI.123, § 3, 3°, du Code de droit économique.

Lorsqu'une nouvelle dénomination variétale est proposée, le demandeur paie une redevance à l'Office correspondant à cette nouvelle demande.

§ 3. Les articles 15 et 17 s'appliquent mutatis mutandis à toute objection formée en vertu de l'article XI.147, § 3, du Code de droit économique.

#### [Section 6.](#) - Tenue du registre et inspection publique

[Art. 20.](#) En vertu de l'article XI.152, § 4, du Code de droit économique, sont également mentionnées au registre :

1° la date de publication de la demande, lorsque cette publication est un événement à prendre en considération pour la computation des délais;

2° les objections ainsi que la date à laquelle elles ont été présentées, les nom et adresse de l'auteur de l'objection et, le cas échéant, de son mandataire;

3° les données relatives au droit de priorité;

4° les actions engagées sur la base des articles XI.159 et XI.161 du Code de droit économique, ainsi que les décisions passées en force de chose jugée et les décisions mettant fin, par tout autre moyen, à ces actions;

5° sur demande, la constitution d'une sûreté réelle ou d'un droit réel portant sur un titre de droit d'obtenteur;

6° la levée de la sûreté réelle ou du droit réel visé au point 5°.

[Art. 21.](#) Sans préjudice d'autres dispositions de la loi ou du présent arrêté, toute personne intéressée peut présenter une demande d'inscription au registre ou de radiation d'une inscription du registre. Cette demande est présentée par écrit et accompagnée de pièces justificatives.

[Art. 22.](#) § 1er. Sans préjudice de l'article XI.153, § 4, du Code de droit économique, les demandes de consultation des pièces visées à l'article XI.153, § 3, 1° et 2°, du même Code sont adressées par écrit à l'Office.

§ 2. L'Office délivre, sur demande, des copies de ces pièces.

§ 3. Sur demande, la consultation peut également prendre la forme de la communication par écrit

d'informations extraites des pièces en question.

L'Office peut inviter la personne intéressée à consulter personnellement les pièces intégrales s'il le juge approprié compte tenu de la quantité d'informations à fournir.

[Art. 23.](#) § 1er. Les demandes de consultation de l'examen technique visé à l'article XI.137 du Code de droit économique sont adressées par écrit au service ou à l'institution procédant à l'examen pour que l'accès aux parcelles expérimentales puisse être autorisé. Ledit service ou ladite institution en informe l'Office et lui transmet un rapport de la consultation.

§ 2. Sans préjudice de l'article XI.153, § 4, du Code de droit économique, les dispositions du présent arrêté n'empêchent pas l'ouverture au public des parcelles expérimentales, pour autant que toutes les variétés soient protégées par un code, que des mesures appropriées visant à empêcher tout vol de matériel soient prises par le service ou l'institution procédant à l'examen responsable et soient approuvées par l'Office et que toutes les mesures nécessaires soient prises pour protéger les droits du demandeur ou du titulaire du droit d'obtenteur.

[Art. 24.](#) Pour protéger le caractère confidentiel des informations fournies à l'occasion de la consultation, l'Office peut mettre gratuitement à la disposition du demandeur du droit d'obtenteur des formulaires qui permettent à ce dernier de demander le traitement confidentiel des données relatives aux composants, visées à l'article XI.153, § 4, du Code de droit économique.

[Art. 25.](#) Conformément à l'article XI.154 du Code de droit économique, l'Office publie tous les deux mois un Bulletin des obtentions végétales, ci-après dénommé le Bulletin.

Les informations inscrites au registre conformément à l'article 20, 3°, 4°, et 5°, sont également publiées au Bulletin.

#### [Section 7.](#) - Redevances et taxes

[Art. 26.](#) Le montant des redevances visées à l'article XI.150 du Code de droit économique et le montant des taxes et surtaxes visées à l'article XI.151 du même Code sont fixés conformément au tableau annexé au présent arrêté.

[Art. 27.](#) § 1er. Lorsque l'Office fait appel pour l'examen d'une variété ou pour le contrôle du maintien d'une variété au service d'une Partie contractante ou à une tierce institution, le demandeur doit payer pour cet examen le montant facturé par ce service ou cette institution.

§ 2. Lorsque l'Office demande au service d'une Partie contractante les résultats d'un examen d'une variété effectué dans cette Partie contractante, et pour lesquels le demandeur du droit d'obtenteur a payé les redevances exigibles, ce dernier doit payer le montant de la facture introduite par le service précité pour la communication des résultats de cet examen.

§ 3. L'Office peut obliger le demandeur à payer directement au service de la Partie contractante ou à la tierce institution concernée le montant réclamé par ces derniers.

[Art. 28.](#) Les redevances, taxes annuelles et surtaxes sont payées à l'Office. Elles sont acquittées par virement au compte bancaire de l'Office ou, si l'Office l'autorise, au moyen d'un paiement électronique.

[Art. 29.](#) Tout paiement comporte l'indication du nom de la personne qui l'effectue ainsi que les données nécessaires pour permettre à l'Office d'identifier facilement l'objet du paiement.

Si l'objet du paiement n'est pas facilement identifiable, l'Office invite la personne qui a effectué le paiement à communiquer cet objet par écrit dans un délai de deux mois à compter de la date de la notification. Si la personne ne donne pas suite à cette invitation en temps utile, le paiement est considéré comme nul et non avenue. Il est remboursé.

[Art. 30.](#) § 1er. Si le jour de l'échéance d'une taxe ou d'une taxe supplémentaire est un samedi, un dimanche ou un jour férié légal, l'échéance est reportée au premier jour ouvrable qui suit.

§ 2. Un délai de paiement n'est, en principe, considéré comme respecté que si la totalité du montant de la taxe a été payée dans le délai prévu. Si la totalité de la taxe n'a pas été payée, le montant déjà versé est remboursé après expiration du délai. Toutefois, l'Office peut, pour autant que le délai en cours le permette, donner à la personne qui a effectué le paiement la possibilité de verser ultérieurement le complément.

#### [CHAPITRE 3.](#) - Droit matériel

##### [Section 1re.](#) - Déchéance du droit d'obtenteur

[Art. 31.](#) § 1er. Dans les cas visés à l'article XI.123, § 3, du Code de droit économique, l'Office notifie au

titulaire son intention de prononcer la déchéance du droit d'obtenteur et lui offre la possibilité de présenter ses observations dans un délai de deux mois. La notification est faite par envoi recommandé.

§ 2. Si le titulaire ne donne pas suite à la notification visée au paragraphe 1er, ou si ses observations sont jugées non fondées, l'Office prononce la déchéance du droit d'obtenteur.

§ 3. La décision de l'Office prononçant la déchéance du droit d'obtenteur est notifiée au titulaire par envoi recommandé.

### Section 2. - Transfert de propriété

Art. 32. § 1er. La notification du transfert d'un droit d'obtenteur ou d'une demande de droit d'obtenteur, visé à l'article XI.124, § 4, du Code de droit économique, est accompagnée :

- 1° soit d'une copie de l'acte de cession ou du document officiel constatant la mutation des droits,
- 2° soit d'un extrait de cet acte ou de ce document suffisant pour constater le transfert,
- 3° soit d'une attestation de cession signée par les parties.

La notification contient :

- 1° les noms, prénoms et adresses complètes des parties;
- 2° la date de dépôt de la demande de droit d'obtenteur, la dénomination variétale, le numéro et la date de délivrance du certificat de droit d'obtenteur ou de la demande de droit d'obtenteur.

La notification indique également si la cession fait naître une situation de copropriété.

§ 2. Les notifications sont inscrites au registre dans l'ordre chronologique de leur réception.

### Section 3. - Licences

Art. 33. Toute notification d'une licence contractuelle visée à l'article XI.125, § 3, du Code de droit économique, s'effectue par l'envoi à l'Office d'une attestation signée par les parties.

L'attestation contient :

- 1° les noms, prénoms et adresses complètes des parties;
- 2° la date de dépôt de la demande de droit d'obtenteur, la dénomination variétale, le numéro et la date de délivrance du droit d'obtenteur ou de la demande de droit d'obtenteur;
- 3° une mention selon laquelle la licence est une licence exclusive ou non exclusive;
- 4° la date d'entrée en vigueur de la licence, sa durée, et le territoire sur lequel la licence est d'application.

Art. 34. § 1er. Toute demande de licence obligatoire au titre de l'article XI.126, § 1er, 1° et 2°, du Code de droit économique contient les renseignements suivants :

- 1° la désignation, comme parties à la procédure, du demandeur et du titulaire de la variété concernée qui s'oppose à l'octroi d'une licence;
- 2° la dénomination variétale et l'espèce végétale auxquelles appartiennent la variété ou les variétés concernées;
- 3° une proposition relative au type d'actes à couvrir par la licence obligatoire;
- 4° une déclaration précisant l'intérêt public en jeu, y compris le détail des faits, éléments de preuve et arguments présentés à l'appui de l'intérêt public revendiqué;
- 5° une proposition de rémunération adéquate précisant le mode de calcul utilisé pour sa détermination.

§ 2. Toute demande de licence obligatoire au titre de l'article XI.126, § 1er, 3°, du Code de droit économique contient les renseignements suivants :

- 1° la désignation, comme parties à la procédure, du demandeur titulaire d'un brevet et du titulaire de la variété concernée qui s'oppose à l'octroi d'une licence;
- 2° la dénomination variétale et l'espèce végétale auxquelles appartiennent la variété ou les variétés concernées;
- 3° une copie certifiée du brevet indiquant le numéro et la revendication du brevet relatif à une invention biotechnologique ainsi que le nom de l'autorité ayant délivré ledit brevet;
- 4° une proposition relative au type d'actes à couvrir par la licence obligatoire;
- 5° une proposition de rémunération adéquate précisant le mode de calcul utilisé pour sa détermination;
- 6° une déclaration expliquant en quoi l'invention biotechnologique en cause représente un progrès technique important, d'un intérêt économique considérable, par rapport à la variété protégée, et assortie d'une présentation détaillée des faits, des éléments de preuve et des arguments étayant cette revendication;
- 7° une proposition relative à la validité territoriale de la licence, qui ne peut dépasser celle du brevet visé au 3°.

§ 3. Toute demande de licence réciproque au titre de l'article XI.126, § 1er, 4°, du Code de droit économique contient les renseignements suivants :

- 1° la désignation, comme parties à la procédure, du demandeur titulaire d'un brevet et du titulaire de la variété concernée qui s'oppose à l'octroi d'une licence;
- 2° la dénomination variétale et l'espèce végétale auxquelles appartiennent la variété ou les variétés

concernées;

3° une copie certifiée du brevet indiquant le numéro et la revendication du brevet relatif à une invention biotechnologique ainsi que le nom de l'autorité ayant délivré ledit brevet;

4° un document officiel attestant qu'une licence obligatoire pour une invention biotechnologique brevetée a été accordée au titulaire des droits pour l'obtention végétale concernée;

5° une proposition relative au type d'actes à couvrir par la licence réciproque;

6° une proposition de rémunération adéquate précisant le mode de calcul utilisé pour sa détermination;

7° une proposition relative à la validité territoriale de la licence réciproque, qui ne peut dépasser celle du brevet visé au 3°.

§ 4. Toute demande de licence obligatoire est accompagnée de documents établissant que le demandeur s'est vainement adressé au titulaire du droit d'obtention végétale pour obtenir une licence contractuelle.

§ 5. Est considérée comme vaine, au sens du paragraphe 4, toute demande de licence contractuelle pour laquelle:

1° le titulaire n'a donné aucune réponse définitive, dans un délai raisonnable, au demandeur de la licence; ou

2° le titulaire a refusé d'octroyer une licence contractuelle à l'intéressé; ou

3° le titulaire a proposé une licence à l'intéressé, mais à des conditions manifestement abusives, notamment en ce qui concerne la rémunération à acquitter, ou à des conditions qui sont, dans leur ensemble, manifestement abusives.

[Art. 35.](#) § 1er. La décision relative à la demande de licence obligatoire est signée par le ministre et contient les informations suivantes :

1° une déclaration attestant que la décision est arrêtée par le ministre;

2° la date de la décision;

3° le nom des parties à la procédure et de leurs mandataires éventuels;

4° le renvoi à l'avis de la Commission des licences obligatoires visée à l'article XI.126, § 3, du Code de droit économique;

5° une liste des questions sur lesquelles la Commission précitée était appelée à se prononcer;

6° un résumé des faits;

7° les motifs de la décision;

8° le dispositif de la décision précisant, le cas échéant, les actes couverts par la licence obligatoire, les conditions qui la régissent et la catégorie de personnes à laquelle la licence est accordée, y compris, si nécessaire, les conditions particulières auxquelles cette catégorie de personnes doit répondre.

§ 2. Le ministre notifie sa décision aux intéressés par envoi recommandé.

[Art. 36.](#) § 1er. Toute décision d'octroi d'une licence obligatoire au titre de l'article XI.126, § 1er, 1° et 2°, du Code de droit économique contient une déclaration exposant l'intérêt public en cause.

Les motifs suivants peuvent, notamment, représenter un intérêt public :

1° la protection de la vie ou de la santé humaine, animale ou végétale;

2° la nécessité d'approvisionner le marché en matériel présentant des caractéristiques déterminées;

3° la nécessité de continuer à encourager la sélection constante de variétés améliorées.

§ 2. Toute décision d'octroi d'une licence obligatoire au titre de l'article XI.126, § 1er, 3° et 4°, du Code de droit économique contient une déclaration expliquant en quoi l'invention représente un progrès technique important, d'un intérêt économique considérable.

Les éléments suivants peuvent, notamment, être cités pour justifier que l'invention représente un progrès technique important, d'un intérêt économique considérable, par rapport à l'obtention végétale protégée :

1° l'amélioration des techniques culturales;

2° l'amélioration de l'environnement;

3° l'amélioration des techniques facilitant l'exploitation de la biodiversité génétique;

4° l'amélioration de la qualité;

5° l'amélioration des rendements;

6° le renforcement de la résistance ou de la tolérance;

7° le renforcement des capacités d'adaptation à des conditions climatiques et/ou environnementales spécifiques.

§ 3. La licence obligatoire ne peut être cédée, sauf lorsqu'elle l'est en même temps que la partie de l'entreprise qui exploite la licence ou, dans le cas prévu à l'article XI.126, § 1er, 2°, du Code de droit économique, lorsqu'elle l'est en même temps que le titre de titulaire du droit d'obteneur sur une variété essentiellement dérivée.

#### [CHAPITRE 4.](#) - Dérogation au droit d'obteneur

[Art. 37.](#) § 1er. Le présent chapitre s'applique aux variétés agricoles suivantes :

- 1° Avena sativa - Avoine;
- 2° Hordeum vulgare L. - Orge;
- 3° Triticum spelta L. - Epeautre;
- 4° Solanum tuberosum - Pommes de terre.

§ 2. Le ministre peut toutefois modifier cette liste, après consultation du Conseil du droit d'obtenteur, et sous réserve de la sauvegarde des intérêts légitimes des obtenteurs. A cette fin, le ministre peut notamment prendre en considération les critères suivants :

- 1° les types de variétés auxquels la dérogation visée à l'article XI.115, § 1er, du Code de droit économique serait applicable;
- 2° la superficie consacrée par l'agriculteur à la culture considérée;
- 3° la proportion ou la quantité du produit de la récolte en question qui serait soumise à la dérogation;
- 4° la valeur de la récolte.

Le ministre veille à n'introduire dans la liste visée au paragraphe 1er que les variétés agricoles pour lesquelles, en Belgique, il est courant pour les agriculteurs de conserver tout ou partie du produit de leurs récoltes à des fins de reproduction ou de multiplication.

[Art. 38.](#) § 1er. Pour les variétés agricoles visées à l'article 37, les agriculteurs sont autorisés à accomplir les actes visés à l'article XI.115, § 1er, du Code de droit économique, sur leur propre exploitation moyennant le paiement d'une rémunération équitable au titulaire du droit d'obtenteur.

§ 2. Par dérogation au paragraphe 1er, les petits agriculteurs ne sont pas tenus de payer cette rémunération au titulaire du droit d'obtenteur.

Par " petits agriculteurs ", on entend les petits agriculteurs visés par l'article 14, paragraphe 3, du Règlement (CE) N° 2100/94 du Conseil instituant un régime de protection communautaire des obtentions végétales et par l'article 7 du Règlement (CE) N° 1768/95 de la Commission établissant les modalités d'application de la dérogation prévue à l'article 14, paragraphe 3, du Règlement (CE) n° 2100/94 du Conseil instituant un régime de protection communautaire des obtentions végétales.

[Art. 39.](#) § 1er. L'autorisation et les obligations de l'agriculteur qui découlent des dispositions de l'article XI.115, § 1er, du Code de droit économique, ne peuvent faire l'objet d'un transfert à d'autres personnes. Toutefois, elles font partie des droits et des obligations concernés par le transfert de l'exploitation de l'agriculteur sauf si l'acte de transfert de l'exploitation prévoit d'autres dispositions concernant l'obligation de payer la rémunération équitable visée à l'article 38, § 1er. Le transfert de l'autorisation et des obligations prennent effet en même temps que le transfert de l'exploitation.

§ 2. Est considérée comme " propre exploitation " au sens de l'article XI.115, § 1er, du Code de droit économique, toute exploitation ou toute partie de celle-ci effectivement exploitée par l'agriculteur pour la culture d'espèces végétales, que l'exploitation soit sa propriété ou qu'elle soit dirigée de quelque façon que ce soit sous sa propre responsabilité et à son propre compte, notamment dans le cas de baux. La cession d'une exploitation ou d'une partie de celle-ci en vue de l'exploitation par des tiers sera considérée comme un transfert au sens du paragraphe 1er.

§ 3. La personne propriétaire de l'exploitation concernée au moment où l'exécution d'une obligation est revendiquée sera considérée comme étant l'agriculteur, à moins qu'elle ne fournisse la preuve qu'une autre personne est l'agriculteur tenu de respecter l'obligation au titre des dispositions des paragraphes 1 et 2.

[Art. 40.](#) § 1er. Le montant de la rémunération équitable visée à l'article 38, § 1er, est fixé dans un contrat conclu entre l'agriculteur et le titulaire du droit d'obtenteur dans les douze mois de l'utilisation effective du produit de la récolte à des fins de multiplication. Ce montant ne peut être inférieur à 50% des montants dus pour la production sous licence de matériel de multiplication de la même variété.

§ 2. Sous peine de nullité, le contrat définit également les conditions d'application de la dérogation définie à l'article XI.115 du Code de droit économique, y compris les modalités de fixation et de paiement de la rémunération.

[Art. 41.](#) Le non-respect des conditions d'application de la dérogation prévue à l'article XI.115 du Code de droit économique ou l'absence de contrat conformément à l'article 40 entraîne la perte du bénéfice de cette dérogation.

## [CHAPITRE 5.](#) - Le Conseil du droit d'obtenteur et la Commission des licences obligatoires

### [Section 1.](#) . - Le Conseil du droit d'obtenteur

[Art. 42.](#) Le Conseil du droit d'obtenteur visé à l'article XI.127 du Code de droit économique, ci-après dénommé " le Conseil ", remet à l'attention du ministre, d'initiative après concertation avec l'Office, ou à la demande du ministre, des avis sur les questions relatives à la protection des obtentions végétales.

[Art. 43.](#) § 1er. Le Conseil comprend :

1° douze personnes particulièrement qualifiées en matière de génétique, de botanique ou de phytotechnie, respectivement des plantes agricoles, des légumes et fruits, des produits horticoles non comestibles et des plantes forestières;

2° trois personnes particulièrement qualifiées en droit de la propriété intellectuelle.

§ 2. Le Conseil désigne son président et son vice-président.

§ 3. Les membres du Conseil sont nommés pour un terme de cinq ans; leur mandat est renouvelable.

[Art. 44.](#) § 1er. Le Conseil peut confier l'examen d'une ou plusieurs questions à un groupe de travail ad hoc composé de membres du Conseil et de personnes mentionnées au paragraphe 2.

§ 2. Il est loisible au Conseil d'appeler des experts extérieurs ou toute personne dont la collaboration est utile à ses travaux. La désignation de ces experts ou autres personnes doit faire l'objet d'un consensus au sein du Conseil.

§ 3. Le secrétariat du Conseil est assuré par l'Office.

[Art. 45.](#) Les avis du Conseil sont adoptés par consensus. A défaut de consensus, l'avis reprend les différentes opinions.

Le Conseil décide de la publicité à donner à ses avis.

[Art. 46.](#) Les séances du Conseil ne sont pas publiques.

Les membres du Conseil, les experts et toute autre personne invitée sont tenus au secret pour tout ce qui se rapporte à leur mission. Ils ne peuvent prendre part à la délibération des affaires dans lesquelles ils ont un intérêt.

Le président peut rappeler à l'ordre ou suspendre un membre, après l'avoir entendu.

[Art. 47.](#) Le Conseil établit son règlement d'ordre intérieur, lequel est soumis à l'approbation du ministre.

[Art. 48.](#) Le mandat des membres du Conseil, des experts et personnes visés à l'article 44, § 2, est gratuit. Toutefois, s'ils résident et ont leur activité principale en dehors de Bruxelles-Capitale, ils reçoivent le remboursement des frais de parcours qu'ils ont exposés pour se rendre du lieu de leur résidence à celui de la réunion, y compris s'ils ont utilisés leur véhicule personnel.

Le remboursement des frais de parcours s'effectue conformément aux dispositions de l'arrêté royal du 18 janvier 1965 portant réglementation générale en matière de frais de parcours.

[Section 2.](#) - La Commission des licences obligatoires

[Art. 49.](#) Les modalités de fonctionnement et d'organisation de la Commission des licences obligatoires, visées à l'article XI.128, § 1er, alinéa 9, du Code de droit économique, sont identiques à celles prévues par la réglementation relative aux brevets d'invention.

[CHAPITRE 6.](#) - Dispositions finales

[Art. 50.](#) Sont abrogés le 1er juillet 2015 :

1° la loi du 20 mai 1975 sur la protection des obtentions végétales, modifiée par les lois des 17 mars 1993, 9 mai 2007 et 10 mai 2007;

2° la loi du 10 janvier 2011 sur la protection des obtentions végétales;

3° l'arrêté royal du 22 juillet 1977 sur la protection des obtentions végétales, modifié en dernier lieu par l'arrêté royal du 15 mars 2005;

4° l'arrêté royal du 22 juillet 1977 déterminant les redevances à payer en matière de protection du droit d'obtention végétale, modifié en dernier lieu par l'arrêté royal du 13 juillet 2001;

5° l'arrêté royal du 1er octobre 1993 déterminant les espèces végétales pour lesquelles un certificat d'obtention peut être délivré et fixant la durée de la protection pour ces espèces.

[Art. 51.](#) Le présent arrêté entre en vigueur le 1er juillet 2015.

[Art. 52.](#) Le ministre ayant l'Economie dans ses attributions est chargé de l'exécution du présent arrêté.

[ANNEXE.](#)

[Art. N.](#) Redevances, taxes et surtaxes dues en matière de droit d'obteneur

Redevances, taxes et surtaxes à percevoir Montant en euros	classes		
Pour déterminer le montant des redevances, les espèces végétales sont réparties en trois classes.			
Classe A : blé, orge, avoine, pomme de terre, betterave sucrière;			
Classe B : seigle, épeautre, maïs, graminées, plantes fourragères, plantes oléagineuses et plantes à fibres, rosier, oeillet, chrysanthème, tulipe, freesia, azalée, rhododendron, bégonia, laitue, tomate, chicorée- witloof, pois, haricot, carotte, scorsonère, chou-fleur, oignon, poireau, céleri;			
Classe C : les plantes agricoles exceptées celles mentionnées à la classe A et B, les plantes horticoles et les plantes ornementales exceptées celles mentionnées à la classe B, arbres et arbustes fruitiers, fraisier, arbres ornementaux et forestiers, arbustes ornementaux.			
	A	B	C
I Dépôt et instruction de la demande :			
a) Pour le dépôt et l'inscription de la demande	150	150	150
b) Pour la revendication du droit de priorité	50	50	50
c) Lorsqu'une dénomination variétale n'est pas proposée en même temps que le dépôt de la demande, indépendamment de celle-ci	50	50	50
d) Lorsqu'une nouvelle dénomination est proposée	50	50	50
e) Pour l'examen de la variété (*)			
Pour la première période d'examen	445	345	250
Pour la deuxième période et chaque période suivante d'examen	295	225	150
Pour le contrôle du maintien de la variété	295	225	150
II Maintien de la validité du droit d'obtenteur :			
a) Redevances annuelles :			
Première année	75	75	75
Deuxième année	150	125	100
Troisième année	225	175	125
Quatrième année	295	225	150
Cinquième à vingt-cinquième année	370	275	175
b) Redevance supplémentaire dans le cas d'une redevance annuelle non payée à la date de l'échéance (en % de la redevance annuelle concernée)	20 %	20 %	20 %
III Délivrance et inscription dans le registre des variétés de :			
a) Licences, par dépôt	62	62	62
b) Licences obligatoires	62	62	62
IV Inscription d'une cession du droit d'obtenteur dans le registre des variétés	62	62	62
V Délivrance de :			
a) Copie des inscriptions dans le registre des variétés	37	37	37
b) Copie de la demande de droit d'obtenteur	37	37	37
c) Attestation qu'il n'existe pas d'inscription	37	37	37
VI Toute autre inscription ou radiation dans le registre des demandes ou le registre des variétés, par annotation	62	62	62
VII Restauration des droits suite à l'inobservation d'un délai fixé pour l'accomplissement d'un acte dans une procédure devant l'Office	350	350	350
(*) Lorsque, pour l'examen de la distinction, de l'homogénéité et de la stabilité, il est fait appel à un service étranger, le montant dû est celui facturé par ce service.			

Signatures	<a href="#">Texte</a>	<a href="#">Table des matières</a>	<a href="#">Début</a>
<p>Donné à Bruxelles, le 12 mai 2015.            PHILIPPE            Par le Roi :            Le Ministre de l'Economie,            K. PEETERS</p>			

Préambule	<a href="#">Texte</a>	<a href="#">Table des matières</a>	<a href="#">Début</a>
<p>PHILIPPE, Roi des Belges,            A tous, présents et à venir, Salut.            Vu la Constitution, l'article 108;            Vu le Code de droit économique, les articles XI.104 à XI.162, insérés par la loi du 19 avril 2014;            Vu la loi du 19 avril 2014 portant insertion du livre XI, " Propriété intellectuelle " dans le Code de droit économique et portant insertion des dispositions propres au livre XI dans les livres I, XV et XVII du même Code, l'article 32, § 2, alinéa 2;            Vu la loi du 20 mai 1975 sur la protection des obtentions végétales;            Vu la loi du 10 janvier 2011 sur la protection des obtentions végétales;            Vu l'arrêté royal du 22 juillet 1977 sur la protection des obtentions végétales;            Vu l'arrêté royal du 22 juillet 1977 déterminant les redevances à payer en matière de protection du droit d'obtention végétale;            Vu l'arrêté royal du 1er octobre 1993 déterminant les espèces végétales pour lesquelles un certificat d'obtention peut être délivré et fixant la durée de la protection pour ces espèces;            Vu l'avis de l'Inspecteur des Finances, donné le 15 octobre 2014;            Vu l'avis 57.019/1 du Conseil d'Etat, donné le 20 février 2015, en application de l'article 84, § 1er, alinéa 1er, 2°, des lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973;            Sur la proposition du Ministre de l'Economie,            Nous avons arrêté et arrêtons :</p>			

## CANADA

### Plant Breeders' Rights Act – S.C. 1990 c.20 [in English and French]



CANADA

CONSOLIDATION

CODIFICATION

## Plant Breeders' Rights Act

## Loi sur la protection des obtentions végétales

S.C. 1990, c. 20

L.C. 1990, ch. 20

Current to May 25, 2015

À jour au 25 mai 2015

Last amended on February 27, 2015

Dernière modification le 27 février 2015

Published by the Minister of Justice at the following address:  
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :  
<http://lois-laws.justice.gc.ca>

OFFICIAL STATUS  
OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published  
consolidation is  
evidence

**31.** (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies  
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## NOTE

This consolidation is current to May 25, 2015. The last amendments came into force on February 27, 2015. Any amendments that were not in force as of May 25, 2015 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL  
DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

Codifications  
comme élément  
de preuve

**31.** (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité  
— lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## NOTE

Cette codification est à jour au 25 mai 2015. Les dernières modifications sont entrées en vigueur le 27 février 2015. Toutes modifications qui n'étaient pas en vigueur au 25 mai 2015 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS		TABLE ANALYTIQUE	
Section	Page	Article	Page
An Act respecting plant breeders' rights		Loi concernant la protection des obtentions végétales	
	SHORT TITLE		TITRE ABRÉGÉ
1	Short title	1	Titre abrégé
	INTERPRETATION		DÉFINITIONS
2	Definitions	2	Définitions
	HER MAJESTY		SA MAJESTÉ
3	Act binds Crown	3	Application
	CONDITIONS FOR PROTECTION		CONDITIONS DE PROTECTION
4	Eligible plant varieties	4	Variétés végétales admissibles
	PLANT BREEDER'S RIGHTS		DROITS PROTÉGÉS
5	Nature of plant breeder's rights	5	Droits relatifs à la variété
5.1	Rights respecting harvested materials	5.1	Droits relatifs au produit de la récolte
5.2	Rights respecting certain other varieties	5.2	Droits relatifs à certaines autres variétés
5.3	Non-application of rights	5.3	Non-application
5.4	Non-application of rights	5.4	Non-application
6	Term of plant breeder's rights	6	Période de validité
	APPLICATIONS FOR PLANT BREEDER'S RIGHTS		DEMANDE DE CERTIFICAT D'OBTENTION
7	Application for plant breeder's rights	7	Demande de certificat d'obtention
9	How application to be made	9	Modalités de présentation
10	Filing date of application	10	Date de dépôt
10.1	Priority when breeders breed independently	10.1	Priorité
11	Priority when preceding application in country of Union or agreement country	11	Demande antérieure dans un État de l'Union ou pays signataire
12	Priority conditional on residence, etc.	12	Restriction
13	Priority established over previous grant	13	Annulation : demande non prioritaire
	DENOMINATIONS		DÉNOMINATION
14	Designation of denominations	14	Désignation
15	Approved denomination to be used exclusively	15	Usage obligatoire
16	Prior rights not prejudiced	16	Restriction
16.1	Direction to change denomination	16.1	Ordre de changer la dénomination
	SUMMARY DISPOSITION OF APPLICATIONS		TRAITEMENT DE LA DEMANDE
17	Rejection of application	17	Rejet de la demande
18	Amendment of application	18	Modification de la demande
	PROVISIONAL PROTECTION		PROTECTION PROVISOIRE
19	Applicant's rights	19	Droits du requérant
20	Rights extinguished	20	Extinction des droits

*Plant Breeders' Rights — May 25, 2015*

Section	Page	Article	Page		
21	Filing date — claim respecting priority	13	21	Date de dépôt : revendication de priorité	13
	CONSIDERATION AND DISPOSITION OF APPLICATIONS	14		EXAMEN ET RÉGLEMENT DE LA DEMANDE	14
22	Making objection to application	14	22	Opposition	14
23	Consideration of applications	15	23	Examen de la demande	15
24	Acceptance of foreign results	15	24	Acceptation des résultats obtenus à l'étranger	15
25	Prohibition during pendency of objection	16	25	Restriction	16
26	Abandonment of application	16	26	Désistement	16
	GRANT, REFUSAL AND DISPOSAL OF PLANT BREEDER'S RIGHTS	16		DÉLIVRANCE DU CERTIFICAT D'OBTENTION	16
27	Decision of Commissioner	16	27	Décision du directeur	16
28	Grant to joint applicants	17	28	Cas de demande collective	17
	MAINTENANCE OF PROPAGATING MATERIAL	18		MAINTIEN DU MATÉRIEL DE MULTIPLICATION	18
30	Maintenance of propagating material	18	30	Obligation du titulaire	18
	ASSIGNMENT OF PLANT BREEDER'S RIGHTS	18		CESSION DU CERTIFICAT	18
31	Assignment of plant breeder's rights	18	31	Cession	18
	COMPULSORY LICENCES	19		LICENCE OBLIGATOIRE	19
32	Grant of compulsory licences	19	32	Licence obligatoire	19
33	Concurrent compulsory and other licences permissible	19	33	Non-exclusivité	19
	ANNULMENT AND REVOCATION OF GRANTS	20		ANNULLATIONS ET RÉVOCATIONS	20
34	Annulment of grant	20	34	Pouvoir d'annulation	20
35	Revocation of plant breeder's rights	20	35	Pouvoir de révocation	20
36	Procedure	20	36	Avis d'intention	20
37	Carrying out annulment or revocation	21	37	Annulation ou révocation	21
	SURRENDER OF PLANT BREEDER'S RIGHTS	21		RENONCIATION AU CERTIFICAT	21
38	Surrender of plant breeder's rights	21	38	Renonciation	21
	AGENTS	22		MANDATAIRES	22
39	No residency or establishment	22	39	Pas de résidence ou d'établissement	22
40	Refusal of recognition	23	40	Refus de reconnaître un mandataire	23
	CIVIL REMEDIES	23		MOYENS DE RÉPARATION	23
41	Infringement	23	41	Violation des droits	23
42	Jurisdiction of provincial courts	23	42	Juridiction	23
43	Jurisdiction of Federal Court	24	43	Compétence de la Cour fédérale	24
44	Restriction	25	44	Restriction	25
45	Holder required to take proceedings	25	45	Recours	25
46	Defence	25	46	Défense	25

*Protection des obtentions végétales — 25 mai 2015*

Section	Page	Article	Page		
47	Admissibility of certificates given outside Canada	26	47	Recevabilité des certificats étrangers	26
48	Commissioner's costs	26	48	Frais du directeur	26
49	Recording judicial invalidation	26	49	Dépôt au Bureau d'un jugement d'annulation	26
50	Appeal to Federal Court	26	50	Appel à la Cour fédérale	26
51	Transmission of documents to Federal Court	27	51	Transmission des documents à la Cour fédérale	27
52	Judgments to be filed	27	52	Production des jugements	27
	OFFENCES	28		INFRACTIONS ET PEINES	28
53	Secrecy	28	53	Protection des renseignements	28
54	Certificate of examiner as proof	30	54	Certificat de l'examineur	30
	PLANT BREEDERS' RIGHTS OFFICE	30		BUREAU DE LA PROTECTION DES OBTENTIONS VÉGÉTALES	30
56	Plant Breeders' Rights Office	30	56	Bureau de la protection des obtentions végétales	30
57	Officers and employees not to acquire plant breeder's rights	31	57	Interdiction	31
58	Delegation	31	58	Délégation de pouvoir	31
59	Engagement of services	31	59	Assistance extérieure ou spéciale	31
60	Seal of office	31	60	Sceau du Bureau	31
61	Time limit extended	32	61	Prorogation de délai	32
	RECORDS	32		ARCHIVES	32
62	Index	32	62	Répertoire	32
63	Register	32	63	Registre	32
64	Evidence of registered matters	33	64	Preuve	33
65	Certificate of Commissioner	33	65	Certificat du directeur	33
66	Rectification of errors	33	66	Corrections	33
67	Preservation of documents	34	67	Conservation des documents	34
68	Service of notices, etc.	34	68	Signification	34
69	Defect not to invalidate notices	35	69	Vice de forme dans les avis	35
	PUBLICATION	35		PUBLICATION	35
70	Matters to be published	35	70	Publication dans la Gazette du Canada	35
71	Provision for publication of Plant Varieties Journal	36	71	Publication d'un bulletin des variétés végétales	36
72	Ignorance no defence in the event of publication	36	72	Irrecevabilité de l'argument d'ignorance	36
	ADVISORY COMMITTEE	37		COMITÉ CONSULTATIF	37
73	Constitution	37	73	Constitution	37
74	Committee's advice not binding	37	74	Recommandations du comité	37
	REGULATIONS	38		RÈGLEMENTS	38
75	Regulations	38	75	Règlements	38

*Plant Breeders' Rights — May 25, 2015*

Section	Page	Article	Page
	SEEDS ACT		LOI SUR LES SEMENCES
76	Seeds Act unaffected	76	Restrictions découlant de la Loi sur les semences
	REVIEW OF ACT		EXAMEN DE LA LOI
77	Report	77	Rapport d'application
78	Annual report	78	Rapport annuel
	TRANSITIONAL PROVISIONS		DISPOSITIONS TRANSITOIRES
79	Plant breeders' rights — previously granted	79	Certificats d'obtention
80	Existing applications	80	Demandes en instance
81	Existing proceedings	81	Instances en cours
	COMING INTO FORCE		ENTRÉE EN VIGUEUR
*82	Coming into force	*82	Entrée en vigueur
	RELATED PROVISIONS		DISPOSITIONS CONNEXES
	AMENDMENTS NOT IN FORCE		MODIFICATIONS NON EN VIGUEUR



S.C. 1990, c. 20

L.C. 1990, ch. 20

An Act respecting plant breeders' rights

Loi concernant la protection des obtentions végétales

[Assented to 19th June 1990]

[Sanctionnée le 19 juin 1990]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

**Short title** 1. This Act may be cited as the *Plant Breeders' Rights Act*.

**Titre abrégé** 1. *Loi sur la protection des obtentions végétales*.

INTERPRETATION

DÉFINITIONS

**Definitions** 2. (1) In this Act, "advertise" «publicité» "advertise", in relation to a plant variety, means to distribute to members of the public or to bring to their notice, in any manner whatever, any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention of promoting the sale of any propagating material of the plant variety, encouraging the use thereof or drawing attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise acquired;

**Définitions** 2. (1) Les définitions qui suivent s'appliquent à la présente loi.

«catégorie» S'agissant de plantes, s'entend d'une espèce, d'un ensemble d'espèces ou de toute division d'une espèce.

«certificat d'obtention» Le certificat délivré en vertu de l'article 27 à l'égard d'une variété végétale.

«certificat temporaire» [Abrogée, 2015, ch. 2, art. 2]

«comité consultatif» Le comité établi au titre du paragraphe 73(1).

«date de dépôt» Date figurant dans l'avis visé au paragraphe 10(2)

«directeur» Le directeur du Bureau de la protection des obtentions végétales désigné conformément au paragraphe 56(2) ou, sauf pour les fonctions ou cas prévus à l'article 56, toute personne bénéficiant de la délégation écrite visée à l'article 58.

«document» Tout support sur lequel sont enregistrés ou inscrits des éléments d'information

**"advisory committee" «comité consultatif»** "advisory committee" means such advisory committee as may be constituted pursuant to subsection 73(1);

**"agent" «mandataire»** "agent", in relation to an applicant or a holder of plant breeder's rights, means a person who is duly authorized by the applicant or holder to act, for the purposes of this Act, on behalf of the applicant or holder and to whom as a person so authorized recognition is, consistent with any requirements prescribed therefor, accorded by the Commissioner;

**Titre abrégé**

**Définitions**

«catégorie» "category"

«certificat d'obtention» "plant breeder's right"

«comité consultatif» "advisory committee"

«date de dépôt» "filing date"

«directeur» "Commissioner"

«document» "document"

## Plant Breeders' Rights — May 25, 2015

"agreement country" « pays signataire »	"agreement country" means any of the following entities that is designated by the regulations as an agreement country with a view to the fulfilment of an agreement concerning the rights of plant breeders made between Canada and that entity:	pouvant être compris par une personne ou lus par un ordinateur ou tout autre dispositif.	« État de l'Union » "country of the Union"
	(a) a country, (b) a colony, protectorate or territory subject to the authority of another country or under its suzerainty, (c) a territory over which another country exercises a mandate or trusteeship;	« État de l'Union » Pays ou autre entité partie à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, avec ses modifications successives, ou membre de l'OMC au sens du paragraphe 2(1) de la <i>Loi de mise en oeuvre de l'Accord sur l'Organisation mondiale du commerce</i> .	
"applicant" « requérant »	"applicant" means a person by or on behalf of whom an application for the grant of plant breeder's rights is made pursuant to section 7;	« mandataire » Personne dûment autorisée par un requérant ou un titulaire à agir en son nom dans le cadre de la présente loi et reconnue comme telle par le directeur conformément aux exigences réglementaires.	« mandataire » "agent"
"breeder" « obtenteur »	"breeder", in respect of a plant variety, means (a) any person who originates or who discovers and develops the plant variety, or (b) any person in respect of whom an officer, servant or employee, while acting within the scope of his or her duties as the officer, servant or employee of that person, originates or discovers and develops the plant variety;	« matériel de multiplication » S'entend, outre du matériel de reproduction ou de multiplication végétative d'une variété végétale, des semences ainsi que des plants entiers ou parties de ceux-ci qui peuvent servir à la multiplication.	« matériel de multiplication » "propagating material"
"category" « catégorie »	"category" means, in relation to a plant, a species, a grouping of species or any class within a species;	« ministre » Le ministre de l'Agriculture et de l'Agroalimentaire.	« ministre » "Minister"
"Commissioner" « directeur »	"Commissioner" means the Commissioner of Plant Breeders' Rights designated pursuant to subsection 56(2) and, except in section 56, includes any person acting under a written authorization given pursuant to section 58;	« obtenteur » À l'égard d'une variété végétale, toute personne :	« obtenteur » "breeder"
"country of the Union" « État de l'Union »	"country of the Union" means any country or other entity that is a party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended from time to time, or any WTO Member as defined in subsection 2(1) of the <i>World Trade Organization Agreement Implementation Act</i> ;	a) soit qui crée ou qui découvre et met au point la variété végétale;	
"document" « document »	"document" means anything on which information that is capable of being understood by a person, or read by a computer or other device, is recorded or marked;	b) soit dont l'agent, l'employé ou le préposé, dans l'exercice de ses fonctions, crée ou découvre et met au point la variété végétale.	
"filing date" « date de dépôt »	"filing date" means, in respect of an application, the date specified in the notice given under subsection 10(2);	« obtention végétale » Variété végétale visée au paragraphe 4(3).	« obtention végétale » "new variety"
		« pays signataire » Entité ci-après qui est désignée à ce titre par règlement en vue de l'exécution d'un accord sur la protection des obtentions végétales conclu entre elle et le Canada :	« pays signataire » "agreement country"
		a) un pays; b) une colonie, un protectorat ou un territoire placé sous l'autorité ou la souveraineté d'un autre pays; c) un territoire placé sous mandat ou tutelle d'un autre pays.	
		« personne » S'entend au sens de l'article 2 du <i>Code criminel</i> .	« personne » "person"
		« publicité » Tout procédé consistant à distribuer ou signaler au public, de quelque façon que ce soit, de la documentation notamment écrite, illustrée ou visuelle ou toute déclaration,	« publicité » "advertise"

*Protection des obtentions végétales — 25 mai 2015*

<p><b>"holder"</b> « titulaire »</p>	<p>"holder", in relation to plant breeder's rights, means the person whom the register indicates, with respect to a plant variety, is entitled to the plant breeder's rights respecting that variety by a grant made under section 27 or is an assignee of, or other successor in title to, the rights granted under that section in respect of that variety;</p>	<p>communication, représentation ou mention visant à stimuler la vente du matériel de multiplication d'une variété végétale, à en favoriser l'usage ou à en faire connaître la nature, les propriétés, les avantages, les usages, ou encore les modalités d'acquisition.</p>	<p>« registre » "register"</p>
<p><b>"index"</b> « répertoire »</p>	<p>"index" means the index prepared pursuant to section 62;</p>	<p>« registre » Le registre tenu en application de l'article 63.</p> <p>« répertoire » Le répertoire tenu en application de l'article 62.</p>	<p>« registre » "register"</p> <p>« répertoire » "index"</p>
<p><b>"infringement"</b> « violation »</p>	<p>"infringement", in relation to plant breeder's rights, means the doing, without authority under this Act, of anything that the holder of those rights has the right to do under any of sections 5 to 5.2;</p>	<p>« représentant légal » S'entend, outre de l'exécuteur testamentaire de l'obteneur d'une variété végétale, de tout cessionnaire ou autre ayant cause devenu titulaire du certificat d'obtention pour la variété végétale.</p>	<p>« représentant légal » "legal representative"</p>
<p><b>"legal representative"</b> « représentant légal »</p>	<p>"legal representative", in respect of a breeder of a plant variety, includes the breeder's executor or administrator and any assignee of, or other successor in title to, the rights of the breeder in respect of the plant variety;</p>	<p>« requérant » La personne qui dépose ou au nom de qui est déposée une demande de certificat d'obtention en conformité avec l'article 7.</p>	<p>« requérant » "applicant"</p>
<p><b>"Minister"</b> « ministre »</p>	<p>"Minister" means the Minister of Agriculture and Agri-Food;</p>	<p>« titulaire » La personne à laquelle, selon le registre, a été délivré en vertu de l'article 27 un certificat d'obtention, ou la personne qui est inscrite au registre à titre d'ayant cause, notamment de cessionnaire, en ce qui concerne ce certificat.</p>	<p>« titulaire » "holder"</p>
<p><b>"new variety"</b> « obtention végétale »</p>	<p>"new variety" means a plant variety that is described in subsection 4(3);</p>	<p>« variété végétale » Ensemble végétal d'un taxon botanique du rang le plus bas connu — qu'il réponde ou non pleinement aux exigences pour la délivrance d'un certificat d'obtention — qui, à la fois :</p> <p>a) peut être défini par l'expression des caractères résultant d'un certain génotype ou d'une certaine combinaison de génotypes;</p> <p>b) peut se distinguer de tout autre ensemble végétal par l'expression d'au moins un de ces caractères;</p> <p>c) peut être considéré comme une entité eu égard à son aptitude à être reproduit conforme.</p>	<p>« variété végétale » "plant variety"</p>
<p><b>"person"</b> « personne »</p>	<p>"person" has the same meaning as in section 2 of the <i>Criminal Code</i>;</p>	<p>« vente » Sont assimilés à la vente l'acceptation ou l'offre de vente et la publicité, la garde, l'exposition, la transmission, l'expédition, le transport ou la livraison en vue de la vente, ainsi que le fait d'accepter d'échanger ou d'aliéner à titre onéreux.</p>	<p>« vente » "sell"</p>
<p><b>"plant breeder's rights"</b> « certificat d'obtention »</p>	<p>"plant breeder's rights", in relation to a plant variety, means the rights that are granted under section 27;</p>	<p>« violation » Le fait d'exercer, sans y être autorisé sous le régime de la présente loi, l'un des droits visés aux articles 5 à 5.2 et conférés au titulaire d'un certificat d'obtention.</p>	<p>« violation » "infringement"</p>
<p><b>"plant variety"</b> « variété végétale »</p>	<p>"plant variety" means any plant grouping within a single botanical taxon of the lowest known rank that, whether or not the conditions for the grant of plant breeder's rights are fully met, is capable of being</p> <p>(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,</p> <p>(b) distinguished from any other plant grouping by the expression of at least one of those characteristics, and</p> <p>(c) considered as a unit with regard to its suitability for being reproduced unchanged;</p>		
<p><b>"prescribed"</b> Version anglaise seulement</p>	<p>"prescribed" means prescribed by regulation;</p>		
<p><b>"propagating material"</b> « matériel de multiplication »</p>	<p>"propagating material" means any reproductive or vegetative material for propagation, whether by sexual or other means, of a plant variety,</p>		

*Plant Breeders' Rights — May 25, 2015*

	and includes seeds for sowing and any whole plant or part thereof that may be used for propagation;		
	"protective direction" [Repealed, 2015, c. 2, s. 2]		
"register" «registre»	"register" means the register kept pursuant to section 63;		
"sell" «vendre»	"sell" includes agree to sell, or offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or agree to exchange or to dispose of to any person in any manner for a consideration.		
	(2) [Repealed, 2015, c. 2, s. 2]	(2) [Abrogé, 2015, ch. 2, art. 2]	
	1990, c. 20, s. 2; 1994, c. 38, s. 25; 1997, c. 6, s. 75; 2015, c. 2, s. 2.	1990, ch. 20, art. 2; 1994, ch. 38, art. 25; 1997, ch. 6, art. 75; 2015, ch. 2, art. 2.	
	HER MAJESTY	SA MAJESTÉ	
Act binds Crown	<b>3.</b> This Act is binding on Her Majesty in right of Canada or a province.	<b>3.</b> La présente loi lie Sa Majesté du chef du Canada ou d'une province.	Application
	CONDITIONS FOR PROTECTION	CONDITIONS DE PROTECTION	
Eligible plant varieties	<b>4.</b> (1) Plant breeder's rights may not be granted except in respect of a plant variety that belongs to a prescribed category and meets all of the conditions set out in subsection (2).	<b>4.</b> (1) Le certificat d'obtention ne peut être délivré que pour la variété végétale qui appartient à une catégorie réglementaire et qui répond à chacun des critères énoncés au paragraphe (2).	Variétés végétales admissibles
Conditions	(2) Plant breeder's rights may be granted in respect of a plant variety if it (a) is a new variety; (b) is, by reason of one or more identifiable characteristics, clearly distinguishable from all varieties whose existence is a matter of common knowledge at the filing date of the application for the grant of plant breeder's rights respecting that plant variety; (c) is stable in its essential characteristics in that after repeated propagation or, if the applicant has defined a particular cycle of propagation, at the end of each cycle it remains true to its description; and (d) is, having regard to the particular features of its sexual reproduction or vegetative propagation, a sufficiently homogeneous variety.	(2) Peut faire l'objet d'un certificat d'obtention la variété végétale qui répond aux critères suivants: a) elle est une obtention végétale; b) elle se distingue nettement, par un ou plusieurs caractères identifiables, de toutes les autres variétés notoirement connues à la date de dépôt de la demande du certificat d'obtention la visant; c) elle est stable dans ses caractères essentiels, c'est-à-dire qu'elle reste conforme à sa description après des multiplications successives ou, dans le cas où le requérant a défini un cycle particulier de multiplication, à la fin de chaque cycle; d) elle est suffisamment homogène, eu égard aux particularités de sa reproduction sexuée ou de sa multiplication végétative.	Critères
New variety	(3) A plant variety is a new variety if the propagating or harvested material of that variety has not been sold by, or with the concur-	(3) Une variété végétale est une obtention végétale si ni l'obteneur de la variété végétale ni son représentant légal n'a vendu le matériel	Obtention végétale

*Protection des obtentions végétales — 25 mai 2015*

rence of, the breeder of that variety or the breeder's legal representative

(a) in Canada, before

(i) the prescribed period preceding the filing date of the application for the grant of plant breeder's rights, in the case of a variety belonging to a recently prescribed category, and

(ii) the period of one year before the filing date of the application for the grant of plant breeder's rights, in the case of any other variety; and

(b) outside Canada, before

(i) the period of six years before the filing date of the application for the grant of plant breeder's rights, in the case of a tree or vine, and

(ii) the period of four years before the filing date of the application for the grant of plant breeder's rights, in any other case.

Definition of "sufficiently homogeneous variety"

(4) For the purposes of paragraph (2)(d), "sufficiently homogeneous variety" means a variety for which, in the event of its sexual reproduction or vegetative propagation in substantial quantity, any variations in characteristics of the plants so reproduced or propagated are predictable, capable of being described and commercially acceptable.

Regulations

(5) The Governor in Council may make regulations prescribing classes of sales that are not to be considered sales for the purposes of subsection (3).

1990, c. 20, s. 4; 2015, c. 2, s. 3.

**PLANT BREEDER'S RIGHTS**

Nature of plant breeder's rights

5. (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right

(a) to produce and reproduce propagating material of the variety;

(b) to condition propagating material of the variety for the purposes of propagating the variety;

(c) to sell propagating material of the variety;

de multiplication de celle-ci ou le produit de sa récolte ou n'a consenti à leur vente :

a) au Canada :

(i) avant la période réglementaire précédant la date de dépôt de la demande de certificat d'obtention, dans le cas d'une variété végétale appartenant à une catégorie établie depuis peu par règlement,

(ii) avant la période de un an précédant cette date, dans tout autre cas;

b) à l'étranger :

(i) avant la période de six ans précédant la date de dépôt de la demande de certificat d'obtention, dans le cas des arbres ou des vignes,

(ii) avant la période de quatre ans précédant cette date, dans tout autre cas.

Définition de « suffisamment homogène »

(4) Pour l'application de l'alinéa (2)d), « suffisamment homogène » s'entend à l'égard d'une variété dont les variations de caractères, lors de sa reproduction sexuée ou de sa multiplication végétative en quantité considérable, sont prévisibles, susceptibles d'être décrites et commercialement acceptables.

Règlement

(5) Le gouverneur en conseil peut, par règlement, préciser les catégories de ventes qui ne constituent pas des ventes pour l'application du paragraphe (3).

1990, ch. 20, art. 4; 2015, ch. 2, art. 3.

**DROITS PROTÉGÉS**

Droits relatifs à la variété

5. (1) Sous réserve des autres dispositions de la présente loi et des règlements, le titulaire a, à l'égard de la variété végétale faisant l'objet du certificat d'obtention, les droits exclusifs suivants :

a) produire et reproduire le matériel de multiplication de cette variété végétale,

b) conditionner son matériel de multiplication aux fins de sa multiplication;

c) vendre son matériel de multiplication,

d) exporter ou importer son matériel de multiplication;

*Plant Breeders' Rights — May 25, 2015*

	<p>(d) to export or import propagating material of the variety;</p> <p>(e) to make repeated use of propagating material of the variety to produce commercially another plant variety if the repetition is necessary for that purpose;</p> <p>(f) in the case of a variety to which ornamental plants belong, if those plants are normally marketed for purposes other than propagation, to use any such plants or parts of those plants as propagating material for the production of ornamental plants or cut flowers;</p> <p>(g) to stock propagating material of the variety for the purpose of doing any act described in any of paragraphs (a) to (f); and</p> <p>(h) to authorize, conditionally or unconditionally, the doing of any act described in any of paragraphs (a) to (g).</p>	<p>e) faire de son matériel de multiplication l'emploi répété nécessaire à la production commerciale d'une autre variété végétale;</p> <p>f) s'il s'agit de plantes ornementales qui sont normalement commercialisées à d'autres fins que la multiplication, les utiliser — ainsi que leurs parties — comme matériel de multiplication en vue de la production de plantes ornementales ou de fleurs coupées;</p> <p>g) stocker son matériel de multiplication en vue d'exercer les droits exclusifs énoncés aux alinéas a) à f);</p> <p>h) accorder, avec ou sans condition, l'autorisation d'exercer les droits exclusifs énoncés aux alinéas a) à g).</p>	
<p>Royalty</p>	<p>(2) Without prejudice to any rights or privileges of the Crown, an authorization conferred under paragraph 1(h) may be subject to a condition to pay royalty to the holder of the plant breeder's rights whether or not the holder is Her Majesty in right of Canada or a province.</p> <p>1990, c. 20, s. 5; 2015, c. 2, s. 5.</p>	<p>(2) Il demeure entendu que, sans préjudice des droits ou privilèges de la Couronne, toute autorisation accordée au titre de l'alinéa (1)h) peut emporter l'obligation de payer des redevances au titulaire, même si celui-ci est Sa Majesté du chef du Canada ou d'une province.</p> <p>1990, ch. 20, art. 5; 2015, ch. 2, art. 5.</p>	<p>Redevances</p>
<p>Rights respecting harvested materials</p>	<p><b>5.1</b> Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(a) to (h) in respect of any harvested material, including whole plants or parts of plants, that is obtained through the unauthorized use of propagating material of the plant variety, unless the holder had reasonable opportunity to exercise his or her rights under section 5 in relation to that propagating material and failed to do so before claiming rights under this section.</p> <p>2015, c. 2, s. 5.</p>	<p><b>5.1</b> Sous réserve des autres dispositions de la présente loi et des règlements, le titulaire a les droits exclusifs visés aux alinéas 5(1)a) à h) à l'égard du produit de la récolte — plantes entières ou parties de celles-ci — obtenu par l'utilisation non autorisée de matériel de multiplication de la variété végétale faisant l'objet du certificat d'obtention, sauf si, avant de revendiquer ses droits en vertu du présent article, il a eu l'occasion d'exercer au préalable les droits visés à l'article 5 à l'égard du matériel de multiplication et a omis de le faire.</p> <p>2015, ch. 2, art. 5.</p>	<p>Droits relatifs au produit de la récolte</p>
<p>Rights respecting certain other varieties</p>	<p><b>5.2</b> (1) Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(a) to (h) in respect of</p> <p>(a) any other plant variety that is essentially derived from the plant variety if the plant variety is not itself essentially derived from another plant variety;</p>	<p><b>5.2</b> (1) Sous réserve des autres dispositions de la présente loi et des règlements, le titulaire a, à l'égard des variétés végétales ci-après, les droits exclusifs visés aux alinéas 5(1)a) à h) :</p> <p>a) les variétés végétales essentiellement dérivées de la variété végétale faisant l'objet du certificat d'obtention, pour autant que celle-ci ne soit pas elle-même une variété végétale essentiellement dérivée d'une autre;</p>	<p>Droits relatifs à certaines autres variétés</p>

*Protection des obtentions végétales — 25 mai 2015*

	<p>(b) any other plant variety that is not clearly distinguishable from the plant variety; and</p> <p>(c) any other plant variety whose production requires the repeated use of the plant variety.</p>	<p>b) celles qui ne se distinguent pas nettement de la variété végétale faisant l'objet du certificat d'obtention;</p> <p>c) celles dont la production nécessite l'emploi répété de la variété végétale faisant l'objet du certificat d'obtention.</p>	
Meaning of essentially derived	<p>(2) For the purpose of paragraph (1)(a), a plant variety is essentially derived from another plant variety (in this subsection referred to as the "initial variety") if</p> <p>(a) it is predominantly derived from the initial variety or from a plant variety that is itself predominantly derived from the initial variety and it retains the essential characteristics that result from the genotype or combination of genotypes of the initial variety;</p> <p>(b) it is clearly distinguishable from the initial variety; and</p> <p>(c) 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 that result from its derivation from the initial variety.</p> <p>2015, c. 2, s. 5.</p>	<p>(2) Pour l'application de l'alinéa (1)a), une variété végétale est essentiellement dérivée d'une autre variété végétale (appelée « variété initiale » au présent paragraphe) si les conditions ci-après sont réunies :</p> <p>a) elle est principalement dérivée de la variété initiale, ou d'une variété végétale qui est elle-même principalement dérivée de la variété initiale, tout en conservant les expressions des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale;</p> <p>b) elle se distingue nettement de la variété initiale;</p> <p>c) sauf en ce qui concerne les différences résultant de la dérivation, elle est conforme à la variété initiale dans l'expression des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale.</p> <p>2015, ch. 2, art. 5.</p>	Définition de « essentiellement dérivée »
Non-application of rights	<p><b>5.3</b> (1) The rights referred to in sections 5 to 5.2 do not apply to any act done</p> <p>(a) privately and for non-commercial purposes;</p> <p>(b) for experimental purposes; or</p> <p>(c) for the purpose of breeding other plant varieties.</p>	<p><b>5.3</b> (1) Les droits visés aux articles 5 à 5.2 ne s'appliquent pas aux actes accomplis :</p> <p>a) dans un cadre privé à des fins non commerciales;</p> <p>b) à des fins expérimentales;</p> <p>c) aux fins d'obtenir d'autres variétés végétales.</p>	Non-application
Farmers' privilege	<p>(2) The rights referred to in paragraphs 5(1)(a) and (b) and — for the purposes of exercising those rights and the right to store — the right referred to in paragraph 5(1)(g) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer's holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety.</p> <p>2015, c. 2, s. 5.</p>	<p>(2) Les droits visés aux alinéas 5(1)a) et b) et — en vue de l'exercice de ceux-ci et du droit d'entreposer — le droit visé à l'alinéa 5(1)g) ne s'appliquent pas au produit de la récolte d'une variété végétale qui est cultivé et utilisé par un agriculteur, sur son exploitation, uniquement aux fins de multiplication de la variété végétale.</p> <p>2015, ch. 2, art. 5.</p>	Privilège accordé aux agriculteurs
Non-application of rights	<p><b>5.4</b> (1) The rights referred to in sections 5 to 5.2 do not apply to any act done in relation to material of a plant variety after the material</p>	<p><b>5.4</b> (1) Les droits visés aux articles 5 à 5.2 ne s'appliquent pas aux actes accomplis à l'égard du matériel d'une variété végétale dès lors que celui-ci a été vendu au Canada, par le</p>	Non-application

*Plant Breeders' Rights — May 25, 2015*

	<p>has been sold in Canada by the holder or with the holder's consent, unless that act involves</p> <p>(a) the further propagation of the plant variety; or</p> <p>(b) the export of material of the plant variety to a country that does not protect varieties of the plant genus or species to which the exported plant variety belongs if the exported material is not intended for consumption.</p>	<p>titulaire ou avec son consentement, sauf si ces actes impliquent :</p> <p>a) une nouvelle multiplication de la variété végétale en cause,</p> <p>b) l'exportation du matériel de la variété végétale en cause vers un pays qui ne protège pas les variétés du genre végétal ou de l'espèce végétale à laquelle appartient la variété végétale, le matériel exporté n'étant pas destiné à la consommation.</p>	
Definition of "material"	<p>(2) For the purpose of subsection (1), "material" means propagating material and harvested material, including whole plants and parts of plants.</p> <p>2015, c. 2, s. 5.</p>	<p>(2) Pour l'application du paragraphe (1), « matériel » s'entend du matériel de multiplication ou du produit de la récolte, notamment les plantes entières ou les parties de celles-ci.</p> <p>2015, ch. 2, art. 5.</p>	Définition de « matériel »
Term of plant breeder's rights	<p>6. (1) The term of the grant of plant breeder's rights, subject to earlier termination under this Act, shall be a period of 25 years in the case of a tree, a vine or any category specified by the regulations and 20 years in any other case. The period begins on the day on which the certificate of plant breeder's rights is issued.</p>	<p>6. (1) La période de validité d'un certificat d'obtention est — à moins qu'il n'y soit mis fin plus tôt en conformité avec la présente loi — de vingt-cinq ans dans le cas des arbres, des vignes et de toute catégorie précisée par règlement, et de vingt ans dans tout autre cas. Elle se calcule à compter du jour de la délivrance du certificat d'obtention.</p>	Période de validité
Payment of annual fee	<p>(2) A holder of plant breeder's rights shall, during the term of the grant of those rights, pay to the Commissioner, within the prescribed time, the prescribed annual fee.</p> <p>1990, c. 20, s. 6, 2015, c. 2, s. 5.</p>	<p>(2) Pendant toute la période de validité du certificat d'obtention, le titulaire est tenu de verser au directeur, dans le délai réglementaire, les droits réglementaires annuels.</p> <p>1990, ch. 20, art. 6, 2015, ch. 2, art. 5.</p>	Versement annuel
APPLICATIONS FOR PLANT BREEDER'S RIGHTS		DEMANDE DE CERTIFICAT D'OBTENTION	
Application for plant breeder's rights	<p>7. (1) A breeder or the breeder's legal representative may make an application to the Commissioner for the grant of plant breeder's rights respecting a plant variety if, in the case of an individual, the breeder or legal representative is a citizen of, or is resident in, Canada, a country of the Union or an agreement country or, in the case of a person that is not an individual, the breeder or legal representative has an establishment in Canada, a country of the Union or an agreement country.</p>	<p>7. (1) L'obteneur ou son représentant légal peut présenter au directeur une demande de certificat d'obtention à l'égard d'une variété végétale si, dans le cas d'une personne physique, il est citoyen ou résident du Canada, d'un État de l'Union ou d'un pays signataire ou, dans le cas de toute autre personne, il y a son établissement.</p>	Demande de certificat d'obtention
If two or more breeders	<p>(2) If a plant variety is bred by two or more breeders otherwise than independently of each other, the persons entitled to make an application for the grant of plant breeder's rights respecting that variety may make an application jointly and, if any of those persons refuses to do so or information regarding their whereabouts cannot be obtained through diligent in-</p>	<p>(2) Dans le cas d'une variété végétale obtenue collectivement par au moins deux obteneurs, les personnes habilitées à demander le certificat d'obtention à l'égard de la variété peuvent présenter une demande conjointe, même si l'une d'entre elles s'y refuse ou de-</p>	Cas de plusieurs obteneurs

*Protection des obtentions végétales — 25 mai 2015*

	<p>quiry, the remainder of those persons may make an application for that grant 1990, c. 20, s. 7; 2015, c. 2, s. 6.</p> <p><b>8.</b> [Repealed, 2015, c. 2, s. 6]</p>	<p>meure introuvable malgré des recherches diligentes 1990, ch. 20, art. 7; 2015, ch. 2, art. 6.</p> <p><b>8.</b> [Abrogé, 2015, ch. 2, art. 6]</p>	
How application to be made	<p><b>9.</b> (1) An application for the grant of plant breeder's rights must</p> <p>(a) include the prescribed information and be made in the prescribed manner;</p> <p>(b) be accompanied by the prescribed fee;</p> <p>(c) be supported by the prescribed documents and any other prescribed material; and</p> <p>(d) in the case where the applicant wishes to request that those rights be exempted from compulsory licensing under subsection 32(1), include the request and his or her reasons for it.</p>	<p><b>9.</b> (1) Les demandes de certificat d'obtention:</p> <p>a) contiennent les renseignements réglementaires et sont présentées selon les modalités réglementaires;</p> <p>b) sont accompagnées des droits réglementaires;</p> <p>c) sont accompagnées des documents et autres éléments réglementaires;</p> <p>d) contiennent toute demande particulière motivée du requérant portant qu'il souhaite que les droits qui lui seront conférés soient exemptés de la licence obligatoire visée au paragraphe 32(1).</p>	Modalités de présentation
Agent required for non-resident applicant	<p>(2) An applicant that, in the case of an individual, is not resident in Canada and, in the case of a person that is not an individual, does not have an establishment in Canada shall submit the application through an agent resident in Canada. 1990, c. 20, s. 9; 2015, c. 2, s. 7.</p>	<p>(2) Les personnes physiques ne résidant pas au Canada ou les personnes autres que les personnes physiques qui n'y ont pas leur établissement doivent présenter leurs demandes de certificat d'obtention par l'entremise d'un mandataire résidant au Canada. 1990, ch. 20, art. 9; 2015, ch. 2, art. 7.</p>	Non-résidents
Filing date of application	<p><b>10.</b> (1) Subject to subsection 11(1), the filing date of an application for the grant of plant breeder's rights is the date on which the Commissioner has received, in respect of the application, all of the information, fees, documents and other materials that are required by subsection 9(1).</p>	<p><b>10.</b> (1) Sous réserve du paragraphe 11(1), la date de dépôt d'une demande de certificat d'obtention est la date à laquelle le directeur a reçu, à l'égard de la demande, tous les renseignements, droits, documents et autres éléments prévus au paragraphe 9(1).</p>	Date de dépôt
Notice of filing date	<p>(2) The Commissioner shall send to the applicant a notice specifying the filing date. 1990, c. 20, s. 10; 2015, c. 2, s. 7.</p>	<p>(2) Le directeur est tenu d'envoyer au requérant un avis précisant la date de dépôt. 1990, ch. 20, art. 10; 2015, ch. 2, art. 7.</p>	Avis de dépôt
Priority when breeders breed independently	<p><b>10.1</b> In the case of two or more applications respecting a plant variety whose breeders bred it independently of each other, priority shall be given to the application with the earliest filing date. If the filing dates of the applications are the same, priority shall be given to the application pertaining to the breeder that was first in a position to apply for the plant breeder's rights respecting the variety or that would have been first in the position to do so if the provisions under this Act for so doing had always been in force. 2015, c. 2, s. 7.</p>	<p><b>10.1</b> Lorsqu'une même variété végétale obtenue séparément par plusieurs obtenteurs fait l'objet de plusieurs demandes de certificat d'obtention, la priorité va à la demande ayant la plus ancienne date de dépôt. Dans le cas de demandes ayant la même date de dépôt, la priorité va à celle qui concerne l'obteneur qui était le premier en mesure de présenter la demande ou l'aurait été si les dispositions applicables de la présente loi avaient alors été en vigueur. 2015, ch. 2, art. 7.</p>	Priorité

*Plant Breeders' Rights — May 25, 2015*

Priority when preceding application in country of Union or agreement country	<p><b>11. (1)</b> If an application made under section 7 is preceded by another application made in a country of the Union or an agreement country for protection in respect of the same plant variety and the same breeder, the filing date of the application made under section 7 is deemed to be the date on which the preceding application was made in that country of the Union or agreement country and, consequently, the applicant is entitled to priority in Canada despite any intervening use, publication or application respecting the variety if</p> <p>(a) the application is made in the prescribed form within 12 months after the date on which the preceding application was made in that country of the Union or agreement country; and</p> <p>(b) the application is accompanied by a claim respecting the priority and by the prescribed fee.</p>	<p><b>11. (1)</b> Lorsqu'une demande est présentée, en vertu de l'article 7, après la présentation d'une demande de protection relative à la même variété végétale et à l'égard du même obtenteur, dans un État de l'Union ou un pays signataire, sa date de dépôt est réputée être la date à laquelle la première demande a été présentée dans cet État de l'Union ou ce pays signataire, et le requérant a en conséquence au Canada un droit de priorité, malgré tout fait — usage, publication ou demande relatifs à la variété végétale — survenu dans l'intervalle, si :</p> <p>a) sa demande est présentée, en la forme réglementaire, dans les douze mois suivant la date à laquelle la première demande a été présentée dans l'État de l'Union ou le pays signataire;</p> <p>b) le requérant y revendique le bénéfice de la priorité et acquitte les droits réglementaires.</p>	Demande antérieure dans un État de l'Union ou pays signataire
Confirmation of claim to priority	<p>(2) A claim respecting priority based on a preceding application made in a country of the Union or an agreement country shall not be allowed unless, within three months after the date that would be the filing date of the application if there were no claim respecting priority, the claim is confirmed by filing with the Commissioner a copy, certified as correct by the appropriate authority in that country of the Union or agreement country and accompanied by an English or French translation of the certified copy, if made in any other language, of each document that constituted the preceding application.</p>	<p>(2) À l'appui de sa revendication du bénéfice de priorité, le requérant est tenu de fournir au directeur, dans les trois mois suivant la date qui serait la date de dépôt de la demande n'était la revendication, une copie — certifiée exacte par les autorités compétentes de l'État de l'Union ou du pays signataire en cause et accompagnée de sa traduction française ou anglaise lorsqu'elle est libellée dans une autre langue — des documents constituant la première demande présentée dans l'État de l'Union ou le pays signataire.</p>	Documente à l'appui
Supporting evidence	<p>(3) An applicant that is given priority shall provide, within a period of three years after the date on which the preceding application was made in the country of the Union or agreement country, evidence that the applicant has begun the tests and trials with the plant variety referred to in subsection 23(2).</p>	<p>(3) Le requérant prioritaire bénéficie d'un délai de trois ans suivant la date à laquelle la première demande a été présentée dans l'État de l'Union ou le pays signataire pour fournir la preuve que les essais et épreuves visés au paragraphe 23(2) ont débuté.</p>	Complément à la demande
Two or more preceding applications	<p>(4) If an application made under section 7 is preceded by two or more applications made in different countries of the Union or agreement countries for protection in respect of the same plant variety and the same breeder, only the first of those preceding applications is to be taken into account for the purposes of subsection (1).</p>	<p>(4) Dans le cas où, relativement à la même variété végétale et à l'égard du même obtenteur, plusieurs demandes de protection sont présentées dans différents États de l'Union ou pays signataires préalablement à la demande présentée en vertu de l'article 7, seule la première d'entre elles est prise en considération pour l'application du paragraphe (1).</p>	Pluralité de demandes antérieures
	1990, c. 20, s. 11; 2015, c. 2, s. 7.	1990, ch. 20, art. 11; 2015, ch. 2, art. 7.	

*Protection des obtentions végétales — 25 mai 2015*

Priority conditional on residence, etc.	<p><b>12.</b> (1) No claim referred to in paragraph 11(1)(b) shall be based on any preceding application unless it was made by a person who, at the time of the application, was entitled to make an application under subsection 7(1).</p>	<p><b>12.</b> (1) Seul le requérant qui, à l'époque de sa demande antérieure, était habilité aux termes du paragraphe 7(1) à présenter une demande, peut revendiquer le bénéfice de la priorité au titre de l'alinéa 11(1)b).</p>	Restriction
When previous application disregarded	<p>(2) For the purposes of subsection 11(1), no account shall be taken of an application that was made in a country outside Canada at a time when the plant variety to which the application relates did not belong to a prescribed category.</p> <p>1990, c. 20, s. 12; 2015, c. 2, s. 8.</p>	<p>(2) Il n'est pas tenu compte, pour l'application du paragraphe 11(1), des demandes faites alors que la variété végétale en faisant l'objet ne faisait partie d'aucune catégorie réglementaire.</p> <p>1990, ch. 20, art. 12; 2015, ch. 2, art. 8.</p>	Appartenance à une catégorie réglementaire
Priority established over previous grant	<p><b>13.</b> Where priority for an application is established pursuant to this Act, the Commissioner shall refuse any application against which the priority is established or, if the priority against it is established after granting on it any plant breeder's rights, the Commissioner shall annul the grant and section 36 and paragraph 70(3)(b) apply, with such modifications as the circumstances require, in respect of the annulment.</p>	<p><b>13.</b> Une fois le droit de priorité établi, le directeur refuse toute demande non prioritaire ou annule tout certificat d'obtention délivré antérieurement sur la base d'une telle demande; le cas échéant, l'article 36 et le paragraphe 70(3) s'appliquent, compte tenu des adaptations de circonstance, à l'annulation.</p>	Annulation demande non prioritaire
<b>DENOMINATIONS</b>		<b>DÉNOMINATION</b>	
Designation of denominations	<p><b>14.</b> (1) A plant variety in respect of which an application for the grant of plant breeder's rights is made shall be designated by means of a denomination proposed by the applicant and approved by the Commissioner.</p>	<p><b>14.</b> (1) Toute variété végétale faisant l'objet d'une demande de certificat d'obtention est désignée, sous réserve de l'approbation du directeur, par la dénomination que propose le requérant.</p>	Désignation
Rejection of proposed denomination	<p>(2) Where a denomination is proposed pursuant to subsection (1), the Commissioner may, during the pendency of the application referred to in that subsection, reject the proposed denomination, if considered unsuitable for any reasonable cause by the Commissioner, and direct the applicant to submit a suitable denomination instead.</p>	<p>(2) Avant la délivrance du certificat d'obtention, le directeur peut refuser, avec des motifs valables, la dénomination proposée et exiger que le requérant en propose une qui soit acceptable.</p>	Rejet de dénomination
Suitable denomination	<p>(3) A denomination, in order to be suitable pursuant to this section, must conform to the prescribed requirements and must not be such as to be likely to mislead or to cause confusion concerning the characteristics, value or identity of the variety in question or the identity of its breeder.</p>	<p>(3) Pour être acceptable, la dénomination doit satisfaire aux conditions réglementaires et ne pas être susceptible d'induire en erreur ou de prêter à confusion sur les caractères ou la valeur de la variété en cause, sur la variété elle-même, ou sur l'identité de l'obteneur.</p>	Conditions
International uniformity of denomination	<p>(4) A denomination that the Commissioner approves for any plant variety in respect of which protection has been granted by, or an application for protection has been submitted to, the appropriate authority in a country of the Union or an agreement country must, subject to subsections (2), (3) and (5), be the same as the</p>	<p>(4) Sous réserve des paragraphes (2), (3) et (5), la dénomination que le directeur approuve doit être la même que celle qui est utilisée pour la même variété végétale faisant l'objet de la protection octroyée par les autorités compétentes d'un État de l'Union ou d'un pays signa-</p>	Dénomination internationale

*Plant Breeders' Rights — May 25, 2015*

	denomination with reference to which that protection has been granted or that application submitted.	taire ou visée par la demande de protection qui leur a été présentée.	
Change of denomination	(5) A denomination approved by the Commissioner pursuant to this section may be changed with the Commissioner's approval in the prescribed circumstances and manner.	(5) La dénomination approuvée peut toutefois être changée avec l'approbation du directeur dans les circonstances et selon les modalités réglementaires.	Changement de dénomination
Denomination must be recognizable	(6) Where a trade-mark, trade name or other similar indication is used in association with a denomination approved by the Commissioner pursuant to this section, the denomination must be easily recognizable. 1990, c. 20, s. 14; 2015, c. 2, s. 10.	(6) Toute dénomination, approuvée par le directeur, doit être facilement reconnaissable si une marque de commerce, un nom commercial ou telle autre marque est utilisé relativement à celle-ci. 1990, ch. 20, art. 14; 2015, ch. 2, art. 10.	Identification
Approved denomination to be used exclusively	<b>15.</b> After the grant of plant breeder's rights respecting any plant variety, and even after the expiry of the term of the grant of those rights, every person who is designating the variety for the purposes of the sale of propagating material of the variety shall use the denomination approved by the Commissioner. 1990, c. 20, s. 15; 2015, c. 2, s. 11.	<b>15.</b> Toute personne qui désigne une variété végétale pour la vente de son matériel de multiplication est tenue d'utiliser, après la délivrance du certificat d'obtention s'y rapportant et même après expiration de celui-ci, la dénomination approuvée par le directeur. 1990, ch. 20, art. 15; 2015, ch. 2, art. 11.	Usage obligatoire
Prior right not prejudiced	<b>16.</b> Nothing in section 14 or 15 authorizes or requires any person to use, or the Commissioner to approve any person's use of, a denomination to the prejudice of any prior right of another person to the use of any designation.	<b>16.</b> Les articles 14 ou 15 n'ont pas pour effet de permettre ou d'imposer l'utilisation d'une dénomination à laquelle sont opposables des droits antérieurs à l'utilisation d'une désignation, non plus que l'approbation par le directeur d'une telle utilisation.	Restriction
Direction to change denomination	<b>16.1</b> If, after the grant of plant breeder's rights respecting any plant variety, the Commissioner has reasonable grounds to believe that the use of the denomination is unsuitable or that the prior rights of another person are prejudiced by its use, the Commissioner may direct the holder to change the denomination, subject to the Commissioner's approval of the new denomination. 2015, c. 2, s. 12.	<b>16.1</b> S'il a des motifs raisonnables de croire, après avoir délivré le certificat d'obtention, que l'utilisation de la dénomination n'est pas acceptable ou qu'elle porte atteinte aux droits antérieurs d'une autre personne, le directeur peut exiger du titulaire qu'il change sa dénomination et soumette la nouvelle dénomination à son approbation. 2015, ch. 2, art. 12.	Ordre de changer la dénomination
SUMMARY DISPOSITION OF APPLICATIONS		TRAITEMENT DE LA DEMANDE	
Rejection of application	<b>17.</b> (1) The Commissioner may reject an application for the grant of plant breeder's rights if the application is not consistent with any provision of this Act or the regulations, including if the plant variety in respect of which the application is made is not a new variety or if the applicant is not entitled to apply under section 7.	<b>17.</b> (1) Le directeur peut rejeter toute demande de certificat d'obtention non conforme aux dispositions de la présente loi ou des règlements, notamment lorsque la variété végétale en faisant l'objet n'est pas une obtention végétale ou lorsque le requérant n'est pas habilité, aux termes de l'article 7, à présenter une telle demande.	Rejet de la demande

*Protection des obtentions végétales — 25 mai 2015*

Opportunity for representations before application rejected	<p>(2) The Commissioner shall not reject the application of a person for the grant of plant breeder's rights without first giving the person notice of the objections to it and of the grounds for those objections as well as a reasonable opportunity to make representations with respect thereto.</p> <p>1990, c. 20, s. 17; 2015, c. 2, s. 13.</p>	<p>(2) Avant de rejeter définitivement une demande de certificat d'obtention, le directeur donne au requérant un avis motivé de son refus et lui accorde la possibilité de présenter ses observations à cet égard.</p> <p>1990, ch. 20, art. 17; 2015, ch. 2, art. 13.</p>	Droit de se faire entendre
Amendment of application	<p><b>18.</b> An applicant may, within the period prescribed for so doing, or with leave given by the Commissioner at the applicant's request after the expiry of that period, add to or alter the denomination proposed by that applicant under section 14 or the description of the plant variety for the purposes of the application.</p> <p>1990, c. 20, s. 18; 2015, c. 2, s. 14.</p>	<p><b>18.</b> Le requérant peut, dans le délai réglementaire — ou postérieurement avec l'autorisation du directeur — compléter ou modifier la description de la variété végétale ou sa dénomination proposée conformément à l'article 14.</p> <p>1990, ch. 20, art. 18; 2015, ch. 2, art. 14.</p>	Modification de la demande
PROVISIONAL PROTECTION			
Applicant's rights	<p><b>19.</b> (1) Subject to subsection (2), an applicant for the grant of plant breeder's rights in respect of a plant variety has, as of the filing date of the application, the same rights in respect of the variety that he or she would have under sections 5 to 5.2 if plant breeder's rights were to be granted.</p>	<p><b>19.</b> (1) Sous réserve du paragraphe (2), le requérant a, à l'égard de la variété végétale qui fait l'objet de la demande de certificat d'obtention — et ce à partir de la date de dépôt — les droits visés aux articles 5 à 5.2 comme si le certificat d'obtention lui était délivré.</p>	Droits du requérant
When rights in effect	<p>(2) If the applicant is granted plant breeder's rights, the applicant is, in respect of the period beginning on the filing date and ending on the date on which the plant breeder's rights are granted, entitled to equitable remuneration from any person who, having been notified in writing by the applicant that the application for those rights has been filed under this Act, carried out acts that require the authorization of the applicant.</p> <p>1990, c. 20, s. 19; 2015, c. 2, s. 14.</p>	<p>(2) Si le certificat d'obtention lui est délivré, le requérant a droit — à l'égard de la période commençant à la date de dépôt de sa demande de certificat d'obtention et se terminant à la date de délivrance de celui-ci — à une rémunération équitable de la part de toute personne qui, alors qu'elle a été avisée par écrit par le requérant du dépôt de sa demande, accomplit des actes nécessitant l'autorisation du requérant.</p> <p>1990, ch. 20, art. 19; 2015, ch. 2, art. 14.</p>	Exécution des droits
Rights extinguished	<p><b>20.</b> (1) The rights granted under section 19 cease if the application is withdrawn by the applicant, is rejected or refused or is deemed to have been abandoned under section 26.</p>	<p><b>20.</b> (1) Les droits que l'article 19 confère s'éteignent si la demande est rejetée ou encore si le requérant est réputé s'être désisté conformément à l'article 26 ou retire sa demande.</p>	Extinction des droits
Reinstatement of application	<p>(2) Despite subsection (1), if an application that is deemed to have been abandoned is subsequently reinstated, the rights granted under section 19 are deemed never to have ceased.</p> <p>1990, c. 20, s. 20; 2015, c. 2, s. 14.</p>	<p>(2) Toutefois, lorsque le requérant est réputé s'être désisté de sa demande mais que celle-ci est réactivée, les droits que lui confère l'article 19 sont réputés ne s'être jamais éteints.</p> <p>1990, ch. 20, art. 20; 2015, ch. 2, art. 14.</p>	Rétablissement
Filing date — claim respecting priority	<p><b>21.</b> For the purposes of sections 19 and 20, with respect to an applicant that has made a claim respecting priority under section 11, the filing date is the date that would be the filing</p>	<p><b>21.</b> Pour l'application des articles 19 et 20, lorsqu'une demande de certificat d'obtention fait l'objet d'une revendication du bénéfice de priorité au titre de l'article 11, la date de dépôt</p>	Date de dépôt; revendication de priorité

*Plant Breeders' Rights — May 25, 2015*

date of the application if there were no claim respecting priority.

1990, c. 20, s. 21; 2015, c. 2, s. 14.

## CONSIDERATION AND DISPOSITION OF APPLICATIONS

Making objection to application

**22.** (1) A person who considers that an application in respect of which particulars have been published under section 70 ought to be refused on any ground that constitutes a basis for rejection under section 17 or that a request in the application for an exemption from compulsory licensing ought to be refused, may, on payment of the prescribed fee, file with the Commissioner, within the prescribed period beginning on the date of publication, an objection specifying that person's reasons. The prescribed fees are not required in the case of an objection made for the purpose of this subsection under the authority of the Minister of Industry after notice under subsection 70(2).

Copy of objection to be sent to applicant

(2) As soon as practicable after the filing of an objection pursuant to subsection (1), the Commissioner shall send a copy of the objection to the person in respect of whose application the objection is filed, unless the Commissioner rejects the objection in accordance with subsection (3).

Rejection of objection

(3) Where it appears to the Commissioner that there is good reason for rejecting an objection referred to in subsection (2), the Commissioner shall give the person making the objection a reasonable opportunity to show cause why the objection should not be rejected and, if the person shows the Commissioner no such cause, the Commissioner shall reject the objection and give notice accordingly to the person.

Representations by objector and applicant

(4) If the objection is not rejected in accordance with subsection (3), the Commissioner shall give the person making the objection and the person in respect of whose application the objection is filed a reasonable opportunity to make representations with respect to the objection and shall take those representations into account before making the decision to refuse the application or to grant plant breeder's rights with or without an exemption from compulsory licensing.

est la date qui serait la date de dépôt de la demande n'était la revendication.

1990, ch. 20, art. 21; 2015, ch. 2, art. 14.

## EXAMEN ET RÈGLEMENT DE LA DEMANDE

Opposition

**22.** (1) La personne qui estime qu'une demande de certificat d'obtention ayant fait l'objet de la publication prévue à l'article 70 devrait être rejetée pour l'un des motifs énoncés à l'article 17, ou qu'une exemption à la licence obligatoire qui y est sollicitée ne devrait pas être accordée, peut déposer auprès du directeur — dans le délai réglementaire commençant le jour de la publication — une opposition motivée accompagnée des droits réglementaires. Il y a toutefois dispense des droits réglementaires dans le cas d'une opposition présentée au titre du présent paragraphe sous l'autorité du ministre de l'Industrie après avis donné en application du paragraphe 70(2).

Copie de l'opposition

(2) Dans les meilleurs délais après le dépôt d'une opposition autre que celle qu'il rejette au titre du paragraphe (3), le directeur adresse à la personne ayant déposé la demande de certificat d'obtention en cause copie de l'opposition.

Rejet de l'opposition

(3) S'il estime l'opposition non fondée, le directeur accorde à son auteur la possibilité de la justifier; faute d'une justification valable, il la rejette et avise ce dernier en conséquence.

Audition de l'opposant et du requérant

(4) S'il ne rejette pas l'opposition au titre du paragraphe (3), le directeur accorde à l'opposant et à la personne ayant déposé la demande de certificat d'obtention en cause la possibilité de présenter leurs observations quant à l'opposition. Il tient compte de ces observations avant de délivrer le certificat d'obtention, avec ou sans une exemption à la licence obligatoire, ou de le refuser.

## Protection des obtentions végétales — 25 mai 2015

Upholding objection	(5) Where the Commissioner upholds an objection made under this section, the Commissioner shall refuse the application or request therein for exemption accordingly. 1990, c. 20, s. 22; 1995, c. 1, s. 52; 2015, c. 2, s. 15.	(5) S'il fait droit à l'opposition, le directeur rejette soit la demande de certificat d'obtention, soit la demande d'exemption y afférente. 1990, ch. 20, art. 22; 1995, ch. 1, art. 52; 2015, ch. 2, art. 15.	Suite donnée à l'opposition
Consideration of applications	23. (1) After the publication under section 70 of the particulars of an application, the Commissioner shall, in order to ascertain whether it conforms to this Act, consider the application and all documents and any other material that are submitted to the Commissioner in connection with the application.	23. (1) Après la publication visée à l'article 70, le directeur procède à l'examen de la demande, ainsi que des documents ou autres éléments à l'appui, pour déterminer sa conformité avec la présente loi.	Examen de la demande
Tests and trials	(2) For the purpose of determining if the plant variety to which the application relates meets the requirements set out in section 4, the Commissioner shall require the performance of any tests and trials with the plant variety, under any conditions, as the Commissioner considers necessary.	(2) Pour établir si la variété végétale faisant l'objet de la demande est conforme aux exigences de l'article 4, le directeur fait pratiquer, dans les conditions qu'il juge indiquées, les essais et épreuves qu'il estime utiles.	Essais et épreuves
Fee and materials	(3) The person on whose part material is submitted for consideration under subsection (1) shall, without prejudice to the requirements of subsection 9(1) and at the time and place that the Commissioner directs,  (a) pay the appropriate prescribed examination fee;  (b) provide any of the following that the Commissioner considers necessary for the purposes of carrying out or evaluating the results of tests and trials with the plant variety in question:  (i) propagating materials,  (ii) information, whether by way of photographs, drawings, documentation or otherwise, respecting the plant variety, and  (iii) specimens of the plant variety or of parts of it; and  (c) provide any prescribed information, documents or materials. 1990, c. 20, s. 23; 2015, c. 2, s. 16.	(3) Sans préjudice des dispositions du paragraphe 9(1), la personne dont la demande est examinée en application du paragraphe (1) doit, au lieu et à la date fixés par le directeur :  a) acquitter les droits réglementaires pour l'examen de sa demande;  b) si le directeur l'estime nécessaire en l'occurrence, fournir, pour l'exécution ou l'évaluation des essais et épreuves, tout matériel de multiplication ainsi que tout renseignement sur la variété végétale — sous forme de photographies, de dessins, de documents ou autre — et tout spécimen de celle-ci ou de ses éléments;  c) fournir tout renseignement, document ou autre élément réglementaires. 1990, ch. 20, art. 23; 2015, ch. 2, art. 16.	Droits à acquitter
Acceptance of foreign results	24. (1) If the Commissioner obtains from an appropriate authority in any country of the Union or agreement country the official results of tests and trials referred to in subsection 23(2) and the Commissioner considers them to be acceptable, the Commissioner may rely on those results. The person on whose part material is submitted for consideration under subsection	24. (1) À son appréciation, le directeur peut se satisfaire des résultats officiels qu'il obtient éventuellement des autorités compétentes d'un État de l'Union ou d'un pays signataire pour les essais et épreuves visés au paragraphe 23(2), auquel cas la personne dont la demande de certificat d'obtention est examinée en application	Acceptation des résultats obtenus à l'étranger

*Plant Breeders' Rights — May 25, 2015*

Submission to foreign tests and trials	<p>23(1) shall pay the costs incurred in obtaining those results.</p> <p>(2) The Commissioner may submit to the appropriate authority in a country of the Union or an agreement country, in order that any necessary tests and trials may be undertaken in that country with the plant variety in question, anything furnished in support, as required by subsection 9(1), of an application or in compliance with subsection 23(3) and the Commissioner may accept such results of any of the tests and trials as are furnished by that authority.</p> <p>1990, c. 20, s. 24; 2015, c. 2, s. 17.</p>	<p>du paragraphe 23(1) est tenue de payer les frais occasionnés par l'obtention de ces résultats.</p> <p>(2) En vue des essais et épreuves à y effectuer sur la variété en cause, le directeur peut transmettre aux autorités compétentes d'un État de l'Union ou d'un pays signataire tous les documents ou éléments fournis soit à l'appui de la demande aux termes du paragraphe 9(1), soit en application du paragraphe 23(3), et accepter les résultats que lui communiquent ensuite ces autorités.</p> <p>1990, ch. 20, art. 24; 2015, ch. 2, art. 17.</p>	Essais et épreuves exécutés à l'étranger
Prohibition during pendency of objection	<p>25. Subject to the regulations, where an objection to an application has been filed under section 22, the Commissioner shall not, before disposal of the objection, carry out in respect of the application any functions of the Commissioner under section 23 or 24.</p>	<p>25. Sous réserve des règlements, tant qu'il n'a pas statué sur une opposition déposée en application de l'article 22, le directeur ne peut exercer, à l'égard de la demande en faisant l'objet, les pouvoirs que lui confèrent les articles 23 et 24.</p>	Restriction
Abandonment of application	<p>26. (1) An application shall be deemed to have been abandoned on failure of the applicant to prosecute the application, whether in default of compliance with subsection 23(3) or of payment of any fee pursuant to subsection 27(3) or otherwise, within the prescribed period after the taking on the part of the Commissioner, with respect to the application, of any action of which the Commissioner gives notice to the applicant.</p>	<p>26. (1) S'il omet de donner suite, dans le délai réglementaire, à l'avis que lui adresse le directeur après toute mesure prise par ses services au sujet de la demande de certificat d'obtention, le requérant est réputé s'être désisté, notamment s'il y a eu de sa part inobservation du paragraphe 23(3) ou non-paiement des droits prévus au paragraphe 27(3).</p>	Désistement
Reinstatement of abandoned application	<p>(2) An application deemed abandoned pursuant to subsection (1) may be reinstated</p> <p>(a) within the prescribed time and on payment of the prescribed fee, or</p> <p>(b) on petition presented to the Commissioner within the prescribed time subsequent to the time referred to in paragraph (a) and on payment of the prescribed fee if the petitioner satisfies the Commissioner that the failure to prosecute the application was not reasonably avoidable.</p> <p>1990, c. 20, s. 26; 2015, c. 2, s. 18(F).</p>	<p>(2) Le requérant réputé s'être désisté peut réactiver sa demande, selon le cas :</p> <p>a) sur paiement des droits et pendant le délai réglementaires;</p> <p>b) sur requête présentée au directeur dans le délai ultérieur prévu par règlement et sur paiement des droits réglementaires, s'il convainc par ailleurs celui-ci qu'il n'était vraiment pas en mesure de donner suite à sa demande.</p> <p>1990, ch. 20, art. 26; 2015, ch. 2, art. 18(F).</p>	Réactivation de la demande
	<p>GRANT, REFUSAL, AND DISPOSAL, OF PLANT BREEDER'S RIGHTS</p>	<p>DÉLIVRANCE DU CERTIFICAT D'OBTENTION</p>	
Decision of Commissioner	<p>27. (1) If the Commissioner approves a denomination proposed by an applicant under section 14 and, after consideration of the application in accordance with subsection 23(1) and evaluation of the results of any tests and trials carried out with the plant variety to which the</p>	<p>27. (1) Une fois approuvée la dénomination proposée au titre de l'article 14 et après examen de la demande de certificat d'obtention conformément au paragraphe 23(1), d'une part, et des résultats des essais et des épreuves exécutés sur la variété végétale objet de celle-ci, d'autre</p>	Décision du directeur

*Protection des obtentions végétales — 25 mai 2015*

	<p>application relates, the Commissioner is satisfied that the plant variety meets the requirements set out in section 4 and that the application otherwise conforms to this Act, the Commissioner shall grant plant breeder's rights in accordance with subsection (3).</p>	<p>part, le directeur délivre au requérant un certificat d'obtention pour cette variété végétale en application du paragraphe (3) s'il est convaincu que la demande vise une variété végétale qui est conforme aux exigences de l'article 4 et est par ailleurs conforme à la présente loi.</p>	
<b>Refusal</b>	<p>(2) If the Commissioner is not satisfied as described in subsection (1), the Commissioner shall refuse the application.</p>	<p>(2) Il rejette la demande de certificat d'obtention s'il n'en vient pas à la conclusion énoncée au paragraphe (1).</p>	<b>Rejet</b>
<b>Request for exemption</b>	<p>(2.1) In the case where the applicant for plant breeder's rights has requested that those rights be exempted from compulsory licensing under subsection 32(1), the Commissioner may, at the time of the grant of those rights, approve that request if the Commissioner is satisfied with the reasons given by the applicant for that request.</p>	<p>(2.1) Lorsque le requérant a demandé que les droits qui lui seront conférés soient exemptés de la licence obligatoire visée au paragraphe 32(1), le directeur peut accéder à cette demande au moment de la délivrance du certificat d'obtention, s'il est convaincu que les raisons fournies par le requérant à l'appui de sa demande le justifient.</p>	<b>Demande d'exemption</b>
<b>Rights granted by issuance of certificate</b>	<p>(3) The Commissioner shall, on payment of the prescribed fee,</p> <p>(a) enter in the register the particulars required by section 63 in relation to the plant variety in respect of which the plant breeder's rights are to be granted; and</p> <p>(b) make the grant by issuing a certificate of plant breeder's rights in respect of the plant variety to the applicant.</p>	<p>(3) Sur paiement des droits réglementaires exigibles pour la délivrance du certificat d'obtention, le directeur inscrit au registre les renseignements énumérés à l'article 63 relatifs à la variété végétale et délivre au requérant le certificat d'obtention.</p>	<b>Délivrance du certificat d'obtention</b>
<b>Opportunity for representations before refusal of grant</b>	<p>(4) The Commissioner shall not refuse the application of a person for the grant of plant breeder's rights without first giving the person notice of the objections to it and of the grounds for those objections as well as a reasonable opportunity to make representations with respect thereto.</p>	<p>(4) Le paragraphe 17(2) s'applique, compte tenu des adaptations de circonstance, à la demande.</p>	<b>Droit de se faire entendre</b>
<b>Destroyed or lost certificates</b>	<p>(5) If a certificate of plant breeder's rights issued under paragraph (3)(b) is destroyed or lost, a certified copy may be issued in lieu of that certificate on payment of the prescribed fee.</p> <p>1990, c. 20, s. 27; 2015, c. 2, s. 19.</p>	<p>(5) Une copie certifiée conforme peut, sur paiement des droits réglementaires, être délivrée en remplacement de tout certificat d'obtention détruit ou perdu.</p> <p>1990, ch. 20, art. 27; 2015, ch. 2, art. 19.</p>	<b>Perte ou destruction de certificat</b>
<b>Grant to joint applicants</b>	<p><b>28.</b> If the Commissioner grants plant breeder's rights to joint applicants as described in subsection 7(2), the grant shall be in the names of all those joint applicants.</p> <p>1990, c. 20, s. 28; 2015, c. 2, s. 20.</p> <p><b>29.</b> [Repealed, 2015, c. 2, s. 20]</p>	<p><b>28.</b> Le certificat d'obtention délivré par le directeur dans le cas d'une demande conjointe présentée sous le régime du paragraphe 7(2) doit porter le nom de tous les requérants.</p> <p>1990, ch. 20, art. 28; 2015, ch. 2, art. 20.</p> <p><b>29.</b> [Abrogé, 2015, ch. 2, art. 20]</p>	<b>Cas de demande collective</b>

*Plant Breeders' Rights — May 25, 2015*

	<p><b>MAINTENANCE OF PROPAGATING MATERIAL</b></p>	<p><b>MAINTIEN DU MATÉRIEL DE MULTIPLICATION</b></p>	
<p>Maintenance of propagating material</p>	<p><b>30.</b> (1) A holder of the plant breeder's rights respecting a plant variety shall</p> <p>(a) ensure that he or she is in a position, throughout the period of his or her registration as the holder, to furnish the Commissioner, on request, with propagating material of that variety that is capable of reproducing that variety so that its identifiable characteristics correspond with those taken into account for the purpose of granting those rights; and</p> <p>(b) provide the Commissioner at the Commissioner's request with such facilities, free of charge, and with such information as the Commissioner deems necessary in order to be satisfied that the holder is causing the propagating material to be maintained and is otherwise complying with paragraph (a).</p>	<p><b>30.</b> (1) Le titulaire doit :</p> <p>a) être en mesure de présenter au directeur, sur demande et à tout moment, le matériel de multiplication permettant de reproduire la variété végétale faisant l'objet du certificat d'obtention avec ses caractères tels qu'ils y ont été définis;</p> <p>b) fournir au directeur, sur demande, les renseignements et mettre gratuitement à sa disposition les moyens que celui-ci estime utiles pour se convaincre qu'il veille au maintien du matériel de multiplication et se conforme aux exigences de l'alinéa a).</p>	<p>Obligation du titulaire</p>
<p>Inspection</p>	<p>(2) Facilities requested under paragraph (1) (b) may include facilities for inspection and the Commissioner has power to undertake the inspection accordingly for the purposes of that paragraph.</p> <p>1990, c. 20, s. 30; 2015, c. 2, s. 21.</p>	<p>(2) Les moyens mentionnés à l'alinéa (1)b) peuvent viser l'inspection à laquelle peut procéder le directeur pour l'application de cet alinéa.</p> <p>1990, ch. 20, art. 30; 2015, ch. 2, art. 21.</p>	<p>Inspection</p>
	<p><b>ASSIGNMENT OF PLANT BREEDER'S RIGHTS</b></p>	<p><b>CESSION DU CERTIFICAT</b></p>	
<p>Assignment of plant breeder's rights</p>	<p><b>31.</b> (1) The Commissioner shall be, in the prescribed manner and within the prescribed period after the holder of plant breeder's rights has assigned them,</p> <p>(a) informed of the name and address of the assignee; and</p> <p>(b) furnished with such proof of service of a notice of the assignment on any person granted any of those rights by licence under section 32 as is prescribed or as the Commissioner, in the absence or in lieu of anything so prescribed or in addition thereto, requires.</p>	<p><b>31.</b> (1) En cas de cession du certificat d'obtention par son titulaire, le directeur doit, dans le délai et selon les modalités réglementaires ou, dans le cas de l'alinéa b), celles qu'il fixe :</p> <p>a) être informé du nom et de l'adresse du cessionnaire;</p> <p>b) recevoir la preuve réglementaire — ou celle qu'il peut exiger, à défaut ou en sus — de la signification de l'avis de cession à tout attributaire d'une licence octroyée à l'égard de ce certificat en application de l'article 32.</p>	<p>Cession</p>
<p>Default precluding registration</p>	<p>(2) An assignee who has not complied with subsection (1) may not be registered as the holder of the plant breeder's rights.</p>	<p>(2) Le cessionnaire qui ne se conforme pas au paragraphe (1) ne peut être inscrit au registre en tant que titulaire.</p>	<p>Manquement du cessionnaire</p>
<p>Unregistered assignment void against subsequent assignee</p>	<p>(3) An assignment of plant breeder's rights is void against a subsequent assignee thereof for valuable consideration without notice who is registered as the holder of the rights unless, before the subsequent assignee is so registered,</p>	<p>(3) À défaut d'enregistrement, la cession de droits protégés par un certificat d'obtention est inopposable à tout cessionnaire ultérieur à titre onéreux qui n'en était pas informé et qui est</p>	<p>Impossibilité de la cession</p>

*Protection des obtentions végétales — 25 mai 2015*

the person to whom that assignment is made is registered as holder of the rights.

dûment enregistré comme titulaire de ces droits.

**COMPULSORY LICENCES**

**LICENCE OBLIGATOIRE**

Grant of compulsory licence

**32.** (1) Subject to subsections (2) to (6) and the regulations and if the Commissioner considers that it is appropriate to do so, the Commissioner may, on application by any person, authorize the doing of any act described in any of paragraphs 5(1)(a) to (g) by granting the person a compulsory licence.

**32.** (1) Sous réserve des autres dispositions du présent article et des règlements et s'il l'estime indiqué, le directeur peut autoriser l'exercice de tout droit visé aux alinéas 5(1)a) à g) en octroyant une licence obligatoire à la personne qui en fait la demande.

Licence obligatoire

Objectives on granting compulsory licence

(2) In disposing of an application for, and settling the terms of, a compulsory licence pursuant to this section in relation to any plant variety, the Commissioner shall endeavour to secure that

(2) Dans la décision qu'il rend sur une demande de licence obligatoire concernant une variété donnée, ainsi que pour les modalités dont il l'assortit, le directeur tient compte des objectifs suivants : commercialisation à des prix raisonnables, distribution à grande échelle, maintien de la qualité, enfin juste rémunération du titulaire du certificat d'obtention en cause, y compris éventuellement sous forme de redevances.

Facteurs à considérer

- (a) the plant variety is made available to the public at reasonable prices, is widely distributed and is maintained in quality; and
- (b) there is reasonable remuneration, which may include royalty, for the holder of the plant breeder's rights respecting the plant variety.

Precision as regards propagating material

(3) A compulsory licence under this section may include terms requiring the holder of the plant breeder's rights affected by the licence to make propagating material available to the holder of the compulsory licence.

(3) La licence obligatoire peut comporter une clause obligeant le titulaire du certificat d'obtention à mettre le matériel de multiplication à la disposition de l'attributaire de la licence.

Clause particulière

Variation and revocation of licence

(4) The Commissioner may at any time, on representations made by any interested person, extend, limit, vary or revoke a compulsory licence granted pursuant to this section.

(4) Le directeur peut modifier ou révoquer la licence obligatoire à la suite des observations que lui présente toute personne intéressée.

Modification et révocation de la licence

Representations by persons adversely affected

(5) The Commissioner shall not dispose of any application for, or settle the terms of, a compulsory licence pursuant to this section or exercise jurisdiction pursuant to subsection (4) without giving interested persons who will be adversely affected by the Commissioner's decision a reasonable opportunity to make representations with respect thereto pursuant to such notice as the Commissioner deems it appropriate to give.

(5) Avant d'accepter ou de rejeter une demande de licence obligatoire, d'en fixer les modalités, ou encore de la modifier ou de la révoquer, le directeur doit accorder aux personnes intéressées qui subiront un préjudice de ce fait la possibilité de présenter leurs observations conformément à l'avis qu'il estime utile de leur donner.

Observation : cas de préjudice

Compulsory licence not to be exclusive

(6) No compulsory licence that is an exclusive licence shall be granted pursuant to this section.

(6) Il ne peut être délivré de licence exclusive au titre du présent article.

Restriction

1990, c. 20, s. 32; 2015, c. 2, s. 22.

1990, ch. 20, art. 32; 2015, ch. 2, art. 22.

Concurrent compulsory and other licences permissible

**33.** (1) A person applying for a compulsory licence may be granted it pursuant to section 32, whether or not that or any other person has

**33.** (1) L'octroi d'une licence obligatoire est indépendant du fait que le demandeur ou toute autre personne soit attributaire d'une li-

Non-exclusivité

*Plant Breeders' Rights — May 25, 2015*

	<p>a licence, including an exclusive licence granted by the holder, in relation to the plant breeder's rights that the compulsory licence affects.</p>	<p>cence, y compris une licence exclusive délivrée par le titulaire, relative au certificat d'obtention en cause.</p>	
No contracting out	<p>(2) An agreement is invalid to the extent that it purports to bind any person not to apply for a compulsory licence or to apply for a grant thereof on any particular terms.</p>	<p>(2) Est nulle toute stipulation obligeant une personne à ne pas demander une licence obligatoire ou à en demander la délivrance à certaines conditions.</p>	Statut
	<p>ANNULMENT AND REVOCATION OF GRANTS</p>	<p>ANNULLATIONS ET RÉVOCATIONS</p>	
Annulment of grant	<p><b>34.</b> The Commissioner may, before the end of the term fixed by subsection 6(1) for a grant of plant breeder's rights, annul the grant if the Commissioner is satisfied that, at the time of the grant of those rights, the requirements set out in section 4 or the conditions set out in subsection 7(1) were not fulfilled or the holder was otherwise not entitled under this Act to the grant.</p> <p>1990, c. 20, s. 34; 2015, c. 2, s. 23.</p>	<p><b>34.</b> Le directeur peut annuler la délivrance de tout certificat d'obtention avant l'expiration de la période de validité prévue au paragraphe 6(1) s'il est convaincu que, au moment de la délivrance du certificat, les exigences énoncées à l'article 4 ou au paragraphe 7(1) n'ont pas été respectées ou que le titulaire n'avait pas autrement droit au certificat en vertu de la présente loi.</p> <p>1990, ch. 20, art. 34; 2015, ch. 2, art. 23.</p>	Pouvoir d'annulation
Revocation of plant breeder's rights	<p><b>35.</b> (1) The Commissioner may, prior to the end of the term fixed by subsection 6(1) for a grant of any plant breeder's rights, revoke the rights if the Commissioner is satisfied that</p> <p>(a) their holder has failed to comply with paragraph 30(1)(a);</p> <p>(b) their holder has failed, within the prescribed period, to comply with any request of the Commissioner referred to in section 30;</p> <p>(c) their holder has failed to comply with a direction under section 16.1 to change the denomination of the plant variety to which the rights relate;</p> <p>(d) their holder has failed, within the prescribed period, to pay the fee required under subsection 6(2); or</p> <p>(e) the plant variety which is the subject of those rights no longer meets the conditions described in paragraph 4(2)(c) or (d).</p> <p>(2) [Repealed, 2015, c. 2, s. 24]</p> <p>1990, c. 20, s. 35; 2015, c. 2, s. 24.</p>	<p><b>35.</b> (1) Le directeur peut révoquer un certificat d'obtention avant son expiration normale s'il est convaincu que, selon le cas, son titulaire :</p> <p>a) n'a pas satisfait aux exigences de l'alinéa 30(1)a);</p> <p>b) n'a pas donné suite, dans le délai réglementaire, à une demande qu'il lui a présentée au titre de l'article 30;</p> <p>c) n'a pas changé la dénomination de la variété végétale en cause comme l'avait exigé le directeur en vertu de l'article 16.1;</p> <p>d) n'a pas acquitté, dans le délai réglementaire, les droits prévus au paragraphe 6(2);</p> <p>e) a des droits à l'égard de la variété végétale qui fait l'objet du certificat alors qu'elle n'est plus conforme aux critères énoncés aux alinéas 4(2)c) ou d).</p> <p>(2) [Abrogé, 2015, ch. 2, art. 24]</p> <p>1990, ch. 20, art. 35; 2015, ch. 2, art. 24.</p>	Pouvoir de révocation
Procedure	<p><b>36.</b> (1) The Commissioner shall, before annulling a grant of plant breeder's rights or revoking those rights, give notice in writing that the Commissioner proposes to annul the grant or revoke the rights and the grounds on which the Commissioner proposes to do so to</p> <p>(a) the holder of those rights;</p>	<p><b>36.</b> (1) Le directeur donne au titulaire du certificat d'obtention, ainsi qu'à tout attributaire d'une licence obligatoire ou à toute personne qui lui semble suffisamment intéressée par ailleurs, un avis motivé de son intention d'annuler la délivrance du certificat ou de le révoquer.</p>	Avis d'attention

*Protection des obtentions végétales — 25 mai 2015*

Objection	<p>(b) any person licensed under section 32 to exercise any of those rights; and</p> <p>(c) any person who appears to the Commissioner to be otherwise sufficiently interested in any of those rights.</p> <p>(2) Within</p> <p>(a) the prescribed period after the date on which notice is given under subsection (1), or</p> <p>(b) such further period as the Commissioner may allow,</p> <p>any interested person may file with the Commissioner an objection against the intended annulment or revocation to which the notice relates.</p>	<p>(2) Toute personne intéressée peut faire opposition auprès du directeur dans le délai réglementaire commençant à la date de l'avis prévu au paragraphe (1) ou dans le délai supplémentaire qu'il accorde.</p>	Opposition
Representations to be taken into account	<p>(3) Where, under subsection (2), an interested person files an objection against any intended annulment or revocation, the Commissioner shall not carry out the intention or otherwise dispose of the objection unless the Commissioner has taken into account any representations made by interested persons with respect to the matters in question.</p>	<p>(3) Le directeur tient compte des observations qui lui sont présentées par les personnes intéressées avant d'annuler ou de révoquer le certificat d'obtention.</p>	Examen des observations
Opportunity to object and make representations	<p>(4) Interested persons having objections to file in accordance with subsection (2) or representations to make for the purposes of subsection (3) shall be given a reasonable opportunity to do so pursuant to such notice as the Commissioner deems appropriate, but nothing in this subsection prejudices the requirements of subsection (1).</p> <p>1990, c. 20, s. 36; 2015, c. 2, s. 25(F).</p>	<p>(4) Par l'avis qu'il juge indiqué, le directeur donne aux personnes intéressées au titre des paragraphes (2) ou (3) la possibilité de faire opposition ou de lui présenter leurs observations, les dispositions du paragraphe (1) continuant toutefois à s'appliquer.</p> <p>1990, ch. 20, art. 36; 2015, ch. 2, art. 25(F).</p>	Droit de se faire entendre
Carrying out annulment or revocation	<p><b>37.</b> The Commissioner's intention to annul the grant of plant breeder's rights pursuant to section 34 or to revoke them pursuant to section 35 shall be carried out on the grounds set out in the notice referred to in subsection 36(1) unless the grounds are shown to be false or, in the case of grounds specified in paragraphs 35(1)(b) to (e), any other cause considered by the Commissioner to be sufficient for abandoning that intention is shown.</p>	<p><b>37.</b> Le directeur procède à l'annulation ou à la révocation pour les motifs énoncés dans l'avis, sauf s'il est établi qu'ils ne sont pas fondés ou, dans les cas visés aux alinéas 35(1)b) à e), s'il estime que d'autres objections valables ont été soulevées.</p>	Annulation ou révocation
<p><b>SURRENDER OF PLANT BREEDER'S RIGHTS</b></p>		<p><b>RENONCIATION AU CERTIFICAT</b></p>	
Surrender of plant breeder's rights	<p><b>38.</b> (1) The holder of the plant breeder's rights respecting a plant variety may surrender those rights by giving the Commissioner notice to that effect and, in the case of rights affected</p>	<p><b>38.</b> (1) Le titulaire d'un certificat d'obtention peut y renoncer par avis adressé au directeur. S'il y a lieu, il doit aussi faire la preuve, auprès de ce dernier, de l'envoi d'une copie de</p>	Renonciation

*Plant Breeders' Rights — May 25, 2015*

	by a compulsory licence granted under section 32, by satisfying the Commissioner that a copy of the notice has been given to the holder of that licence.	cet avis à l'attributaire de toute licence obligatoire octroyée en l'espèce.	
Fee due not affected	(2) No surrender of plant breeder's rights shall affect any liability for any fee due and payable in respect of those rights before the surrender. 1990, c. 20, s. 38, 2015, c. 2, s. 26(F).	(2) Le titulaire demeure responsable du paiement des droits afférents à son certificat d'obtention pour la période allant jusqu'à la renonciation. 1990, ch. 20, art. 38, 2015, ch. 2, art. 26(F).	Paiement des droits
	<b>AGENTS</b>	<b>MANDATAIRES</b>	
No residency or establishment	<b>39.</b> (1) If a holder of plant breeder's rights, in the case of an individual, is not resident in Canada or, in the case of a person that is not an individual, does not have an establishment in Canada, the holder shall have an agent in respect of those rights who is resident in Canada.	<b>39.</b> (1) Le titulaire qui ne réside pas au Canada ou n'y a pas d'établissement, selon qu'il s'agit d'une personne physique ou non doit être représenté, pour tout ce qui concerne le certificat d'obtention, par un mandataire résidant au Canada.	Pas de résidence ou d'établissement
Where agent lacking	(2) Notwithstanding anything in this Act, where an applicant or a holder of plant breeder's rights fails to (a) comply with subsection 9(2) or subsection (1), or (b) furnish the Commissioner, in writing, with the name and address of a new agent or with a new and correct address, as the case may require, on notice from the Commissioner that (i) the agent of the applicant or holder has died or, pursuant to section 40, is refused continued recognition by the Commissioner, or (ii) a letter sent by ordinary mail to the agent of the applicant or holder at the agent's address of which the Commissioner last had notice has been returned undelivered, the Commissioner or the Federal Court may, without requirement of service on the applicant or holder, dispose of any proceedings under this Act after the continuance of that failure for the prescribed period or any further period allowed by the Commissioner or the Federal Court, as the case may be.	(2) Par dérogation aux autres dispositions de la présente loi, le directeur ou la Cour fédérale peuvent, si le requérant ou le titulaire, selon le cas, commet l'un des manquements suivants et n'y remédie pas dans le délai réglementaire ou tout délai supplémentaire qu'ils allouent, connaître de toute procédure engagée sous le régime de la présente loi sans obligation de signification au requérant ou titulaire : a) défaut de conformité au paragraphe (1) ou au paragraphe 9(2); b) défaut de communication par écrit au directeur, à sa demande, des nom et adresse d'un nouveau mandataire ou des corrections à apporter aux nom et adresse du mandataire actuel, selon que : (i) le mandataire est décédé ou n'est plus reconnu comme tel par le directeur en application de l'article 40, (ii) il y a eu retour à l'expéditeur d'une lettre destinée au mandataire et envoyée, au tarif ordinaire d'affranchissement postal, à la dernière adresse connue du directeur.	Défaut
Other consequences not affected	(3) Nothing in subsection (2) affects any consequences, other than those for which that subsection provides, that the applicant or holder may, at law, suffer as a result of any failure described in paragraph (2)(a) or (b). 1990, c. 20, s. 39, 2015, c. 2, s. 27.	(3) Le paragraphe (2) n'a pas pour effet de soustraire le requérant ou le titulaire aux autres conséquences juridiques auxquelles son manquement peut l'exposer. 1990, ch. 20, art. 39, 2015, ch. 2, art. 27.	Autres conséquences

*Protection des obtentions végétales — 25 mai 2015*

Refusal of recognition	<p><b>40.</b> The Commissioner may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Commissioner to be sufficient, refuse to recognize, or to continue to recognize, any person as authorized by an applicant or a holder of plant breeder's rights to act in the capacity of agent.</p>	<p><b>40.</b> Pour faute grave ou pour tout autre motif prévu par règlement ou qu'il juge suffisant, le directeur peut refuser ou cesser de reconnaître à une personne sa qualité de mandataire du requérant ou du titulaire.</p>	Refus de reconnaître un mandataire
<p><b>CIVIL REMEDIES</b></p>			
Infringement	<p><b>41.</b> (1) A person who infringes plant breeder's rights is liable to the holder thereof and to all persons claiming under the holder for all damages that are, by reason of the infringement, sustained by the holder or any of those persons and, unless otherwise expressly provided, the holder shall be made a party to any action for the recovery of those damages.</p>	<p><b>41.</b> (1) Toute personne qui porte atteinte aux droits du titulaire d'un certificat d'obtention est responsable, envers lui et tout ayant droit, du préjudice subi par lui ou cet ayant droit, sauf entente contraire, le titulaire est partie à toute action visant le recouvrement des dommages.</p>	Violation des droits
Relief in the event of infringement	<p>(2) In an action for infringement of plant breeder's rights that is before a court of competent jurisdiction, the court or a judge thereof may make any interim or final order sought by any of the parties and deemed just by the court or judge, including provision for relief by way of injunction and recovery of damages and generally respecting proceedings in the action and, without limiting the generality of the foregoing, may make an order</p> <p>(a) for restraint of such use, production or sale of the subject-matter of those rights as may constitute such an infringement and for punishment in the event of disobedience of the order for that restraint,</p> <p>(b) for compensation of an aggrieved person,</p> <p>(c) for and in respect of inspection or account, and</p> <p>(d) with respect to the custody or disposition of any offending material, products, wares or articles.</p>	<p>(2) Le tribunal compétent, ou un juge de celui-ci, saisi d'une action en violation des droits d'un titulaire peut, sur demande d'une partie, rendre toute ordonnance ou injonction qu'il estime juste visant le recouvrement de dommages-intérêts ou les procédures en cause, et notamment :</p> <p>a) restreindre toute utilisation, production ou vente de la variété végétale en cause et fixer la peine en cas de contravention;</p> <p>b) accorder des dommages-intérêts au poursuivant;</p> <p>c) requérir une inspection ou reddition de comptes;</p> <p>d) statuer sur la garde, l'aliénation ou l'élimination du matériel et des autres objets ayant donné lieu à la violation.</p>	Réparation
Appeals	<p>(3) An appeal lies from any order under subsection (2) under the same circumstances and to the same court as from other judgments or orders of the court in which the order is made.</p> <p>1990, c. 20, s. 41; 2015, c. 2, s. 28(F).</p>	<p>(3) Les ordonnances et injonctions rendues en application du paragraphe (2) sont susceptibles d'appel, dès lors elles sont assujetties aux mêmes règles en matière d'appel que les autres jugements du tribunal en cause.</p> <p>1990, ch. 20, art. 41; 2015, ch. 2, art. 28(F).</p>	Appel
Jurisdiction of provincial courts	<p><b>42.</b> (1) An action for infringement of plant breeder's rights may be brought in the court of record that, in the province in which the infringement is alleged to have occurred, has ju-</p>	<p><b>42.</b> (1) L'action peut être exercée devant la juridiction d'archives, dans la province du lieu de l'acte reproché, qui est compétente selon le montant des dommages-intérêts réclamés et qui</p>	Jurisdiction

*Plant Breeders' Rights — May 25, 2015*

	<p>risdiction pecuniarily to the amount of the damages claimed and that, in relation to other courts of the province, holds its sittings nearest to the place of residence or place of business of the defendant.</p>	<p>tient ses audiences le plus près du lieu de la résidence ou de l'établissement du défendeur.</p>	
Proof of jurisdiction	<p>(2) The court in which an action is brought in accordance with subsection (1) shall decide the action and determine costs, and assumption of jurisdiction by the court is of itself sufficient proof of jurisdiction.</p>	<p>(2) Le tribunal juge la cause et statue sur les frais, l'appropriation de compétence étant en soi une preuve suffisante de juridiction.</p>	Preuve de compétence
Section 43 not impaired	<p>(3) Nothing in this section impairs the jurisdiction of the Federal Court under section 43.</p>	<p>(3) Le présent article n'a pas pour effet de restreindre la compétence que l'article 43 confère à la Cour fédérale.</p>	Restriction
Jurisdiction of Federal Court	<p><b>43.</b> (1) The Federal Court has jurisdiction to entertain an action or proceeding, other than the prosecution of an offence, for the enforcement of a provision of this Act or a right or remedy conferred or defined thereby.</p>	<p><b>43.</b> (1) La Cour fédérale a compétence pour connaître de toute action ou procédure liée à l'application de la présente loi, à l'exception des poursuites pour infraction à celle-ci.</p>	Compétence de la Cour fédérale
Idem	<p>(2) Subject to section 44, the Federal Court has exclusive original jurisdiction, on the application of the Commissioner or of any interested person, to order that any entry in the register be struck out or amended on the ground that, at the date of that application, the entry as it appears on the register does not indicate with accuracy, to the extent of any requirement thereof by virtue of section 63, existing rights of the person appearing to be the registered holder of the plant breeder's rights to which that entry relates.</p>	<p>(2) Sous réserve de l'article 44, la Cour fédérale a compétence exclusive en première instance, sur demande du directeur ou de toute personne intéressée, pour ordonner la suppression au registre, ou la modification, de toute inscription non conforme aux exigences de l'article 63.</p>	Compétence de la Cour fédérale : registre
Invalidation by Federal Court	<p>(3) Subject to section 44, plant breeder's rights may, at the instance of the Attorney General of Canada or an interested person, be declared invalid by the Federal Court, but only on the following grounds:</p> <p>(a) a condition specified in paragraph 4(2) (a) or (b) was not fulfilled; or</p> <p>(b) the holder has not complied with paragraph 30(1)(a).</p> <p>(c) [Repealed, 2015, c. 2, s. 29]</p>	<p>(3) Sous réserve de l'article 44, la Cour fédérale peut, sur demande du procureur général du Canada ou de toute personne intéressée, annuler un certificat d'obtention dans les cas suivants:</p> <p>a) les critères énoncés aux alinéas 4(2)a) ou b) n'ont pas été respectés;</p> <p>b) le titulaire ne s'est pas conformé à l'alinéa 30(1)a).</p> <p>c) [Abrogé, 2015, ch. 2, art. 29]</p>	Annulation par la Cour fédérale
Declaration	<p>(4) A person who has reasonable cause to believe that any thing done or proposed to be done by that person might be alleged by the holder of plant breeder's rights to constitute an infringement of those rights may, subject to subsection (5), bring an action in the Federal Court against the holder for a declaration that the thing so done or proposed to be done does not or would not constitute an infringement.</p>	<p>(4) Toute personne qui a des motifs valables de croire que le titulaire alléguera en l'occurrence une violation de ses droits peut, sous réserve du paragraphe (5), demander à la Cour fédérale de statuer par déclaration sur la question de savoir si la mesure qu'il a prise ou entend prendre constitue effectivement une violation.</p>	Déclaration

## Protection des obtentions végétales — 25 mai 2015

Proceedings not to be taken without giving security	(5) A plaintiff, except the Attorney General of Canada or the attorney general of a province, in an action referred to in subsection (4) shall, before proceeding therein, give security for the costs of the holder in such sum as the Court may direct.	(5) Le demandeur est tenu au versement d'une caution fixée par le tribunal, pour les frais du défendeur. Cette obligation ne s'applique toutefois pas au procureur général du Canada ou d'une province.	Caution
Defendant not required to give security	(6) A defendant in an action for infringement of plant breeder's rights is not required to give any security for the purpose of obtaining a declaration under subsection (4). 1990, c. 20, s. 43; 2015, c. 2, s. 29.	(6) Le défendeur à une action pour violation n'est pas tenu au versement d'une caution s'il cherche à obtenir la déclaration visée au paragraphe (4). 1990, ch. 20, art. 43; 2015, ch. 2, art. 29.	Exception
Restriction	<b>44.</b> No person who has actual notice of a decision given by the Commissioner and a right to its review pursuant to any regulations made under paragraph 75(1)(m) or a right of appeal from that decision or any decision given on its review is entitled to institute any proceeding under subsection 43(2) or (3) calling into question the decision given by the Commissioner or on the review.	<b>44.</b> Ne peuvent se prévaloir des recours prévus aux paragraphes 43(2) ou (3) les personnes qui reçoivent avis d'une décision du directeur ou qui peuvent demander l'examen prévu par l'alinéa 75(1)m) et qui sont habilitées à interjeter appel contre l'une ou l'autre de ces décisions.	Restriction
Holder required to take proceedings	<b>45.</b> (1) A person who has been granted, in respect of plant breeder's rights, an authorization described in paragraph 5(1)(h) or a compulsory licence under subsection 32(1) may, subject to any agreement between that person and the holder of the rights,  (a) call on the holder to take proceedings for infringement of the rights; and  (b) where the holder refuses or neglects to take proceedings within the prescribed period after being called on under paragraph (a) to do so, institute in the name of that person, making the holder a defendant, proceedings for infringement as if that person were the holder.	<b>45.</b> (1) Toute personne autorisée à exercer des droits au titre d'une autorisation accordée en vertu de l'alinéa 5(1)h) ou d'une licence obligatoire octroyée en vertu du paragraphe 32(1) peut, sous réserve d'un accord conclu avec le titulaire :  a) requérir ce dernier d'intenter une action pour violation de ses droits;  b) à défaut par le titulaire de donner suite à leur requête dans le délai réglementaire, y procéder eux-mêmes comme s'ils étaient le titulaire, en nommant ce dernier défendeur.	Recours
Holder not liable for costs	(2) A holder who is made a defendant pursuant to paragraph (1)(b) is not liable for any costs unless the holder takes part in the proceedings. 1990, c. 20, s. 45; 2015, c. 2, s. 30.	(2) Dans le cas visé à l'alinéa (1)b), le titulaire ne peut supporter les frais que s'il est partie à l'instance. 1990, ch. 20, art. 45; 2015, ch. 2, art. 30.	Absence de frais pour le titulaire
Defence	<b>46.</b> A defendant in an action for infringement of plant breeder's rights may plead as a matter of defence any of the following grounds but no others, in relation to the invalidity of the plant breeder's rights:  (a) that a condition specified in paragraph 4(2)(a) or (b) was not fulfilled; or  (b) that the holder has not complied with paragraph 30(1)(a).	<b>46.</b> Le défendeur dans une action en violation des droits d'un titulaire ne peut opposer que les motifs d'annulation suivants :  a) les critères énoncés aux alinéas 4(2)a) ou b) n'ont pas été respectés,  b) le titulaire ne s'est pas conformé à l'alinéa 30(1)a).	Défense

*Plant Breeders' Rights — May 25, 2015*

	(c) [Repealed, 2015, c. 2, s. 31] 1990, c. 20, s. 46; 2015, c. 2, s. 31.	c) [Abrogé, 2015, ch. 2, art. 31] 1990, ch. 20, art. 46; 2015, ch. 2, art. 31.	
Admissibility of certificates given outside Canada	<b>47.</b> In an action or proceeding respecting plant breeder's rights that is authorized to be had or taken before a court in Canada pursuant to this Act, a document purporting to be a certificate of the grant of protection of a plant variety by the appropriate authority in a country of the Union or an agreement country or to be a certified copy of an official document relating to any such protection, if the certificate respecting the grant or copy purports to be signed by the proper officer of the government of the country, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document. 1990, c. 20, s. 47; 2015, c. 2, s. 32(F).	<b>47.</b> Le document relatif à l'octroi de la protection d'une variété végétale paraissant délivré par l'autorité compétente d'un État de l'Union ou d'un pays signataire et paraissant signé par cette autorité ou en son nom, ainsi que toute copie certifiée conforme, est admissible en preuve devant le tribunal saisi du litige sur les droits de l'obteneur sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire. 1990, ch. 20, art. 47; 2015, ch. 2, art. 32(F).	Recevabilité des certificats étrangers
Commissioner's costs	<b>48.</b> The costs of the Commissioner in proceedings before any court under this Act are in the discretion of the court but the Commissioner shall not be ordered to pay the costs of any other of the parties.	<b>48.</b> Le tribunal fixe les frais du directeur, mais celui-ci ne peut être tenu de supporter ceux des autres parties.	Frais du directeur
Recording judicial invalidation	<b>49.</b> (1) A certificate of a decision of the Federal Court, the Federal Court of Appeal or the Supreme Court of Canada holding plant breeder's rights to be invalid shall, at the instance of the person filing it to make it of record in the Plant Breeders' Rights Office, be noted in relation to those rights in the register.	<b>49.</b> (1) Le certificat d'une décision de la Cour fédérale, de la Cour d'appel fédérale ou de la Cour suprême du Canada annulant un certificat d'obtention est, à la demande de toute personne qui en fait la production pour dépôt au Bureau, consigné au regard du certificat d'obtention.	Dépôt au Bureau d'un jugement d'annulation
Appeal from decision re validity	(2) A decision holding or refusing to hold plant breeder's rights invalid is subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which that decision was made. 1990, c. 20, s. 49; 2002, c. 8, s. 158; 2015, c. 2, s. 33(F).	(2) Appel peut être interjeté de la décision d'un tribunal annulant ou refusant d'annuler un certificat d'obtention auprès de la juridiction d'appel compétente. 1990, ch. 20, art. 49; 2002, ch. 8, art. 158; 2015, ch. 2, art. 33(F).	Appel du refus ou de l'annulation
Appeal to Federal Court	<b>50.</b> (1) An appeal lies to the Federal Court from a decision on review under any regulations made pursuant to paragraph 75(1)(m) or from a decision of the Commissioner, other than a decision subject to review under any such regulations, where the decision on review is given in respect of, or the Commissioner's decision is, a decision (a) disposing of an application for the grant of plant breeder's rights, an objection filed under section 22 or a petition presented under paragraph 26(2)(b);	<b>50.</b> (1) Appel peut être interjeté auprès de la Cour fédérale de la décision rendue au titre de l'examen réglementaire prévu par l'alinéa 75(1)m) ainsi que des décisions du directeur non assujetties à un tel examen et portant sur : a) une demande de certificat d'obtention, une opposition visée à l'article 22 ou une requête présentée en application de l'alinéa 26(2)b); b) la nécessité d'annuler, au titre de l'article 13, un certificat d'obtention; c) la fixation des modalités prévues au paragraphe 32(2) ou de la rémunération ou sur	Appel à la Cour fédérale

*Protection des obtentions végétales — 25 mai 2015*

	<p>(b) determining whether or not annulment of the grant of plant breeder's rights is required by section 13;</p> <p>(c) settling terms referred to in subsection 32(2) or determining remuneration or any other matter in disposing of an application for a compulsory licence;</p> <p>(d) determining whether or not to extend, limit, vary or revoke such a licence or determining the extent or manner of any such extension, limitation or variation;</p> <p>(e) determining whether or not to carry out any intention referred to in section 37 or subsection 66(3); or</p> <p>(f) exercising any authority conferred on the Commissioner by section 40.</p>	<p>tout aspect touchant le prononcé d'une décision relativement à une demande de licence obligatoire;</p> <p>d) la modification d'une telle licence, notamment le prolongement de sa durée, sa révocation ou son assujettissement à des restrictions;</p> <p>e) l'annulation ou la révocation d'un certificat d'obtention au titre de l'article 37 ou la prise d'une mesure visée au paragraphe 66(3);</p> <p>f) le refus de reconnaître un mandataire au titre de l'article 40.</p>	
Limitation	<p>(2) An appeal under subsection (1) shall be brought within two months after the date on which the decision is made or within such further time as the Federal Court may allow, either before or after the expiration of the two months.</p> <p>1990, c. 20, s. 50; 2015, c. 2, s. 34.</p>	<p>(2) L'appel doit être interjeté dans les deux mois suivant la date du prononcé de la décision en cause ou dans le délai supplémentaire que la Cour fédérale accorde avant ou après l'expiration du premier délai.</p> <p>1990, ch. 20, art. 50; 2015, ch. 2, art. 34.</p>	Déai d'appel
Transmission of documents to Federal Court	<p><b>51.</b> (1) If any proceedings have been instituted in the Federal Court under this Act, the Commissioner shall, at the request of any party to the proceedings and on payment of the prescribed fee, transmit to the Court all records and documents on file in the Plant Breeders' Rights Office that relate to the matters in question in the proceedings.</p>	<p><b>51.</b> (1) En cas de saisine de la Cour fédérale en application de la présente loi, le directeur lui transmet, sur demande d'une partie et sur acquittement des droits réglementaires, les dossiers et documents afférents déposés au Bureau.</p>	Transmission des documents à la Cour fédérale
Idem	<p>(2) Transmission to the Federal Court by the Commissioner of certificates of entries, certified copies or certified extracts made under the authority of the Commissioner and admissible pursuant to subsection 60(2) or 64(2) or section 65, to the extent that the contents of those records or documents are composed of the entries or shown in the copies or extracts, satisfies the requirements of subsection (1).</p> <p>1990, c. 20, s. 51; 2015, c. 2, s. 35.</p>	<p>(2) Aux fins du paragraphe (1), le directeur peut transmettre à la Cour fédérale soit une copie certifiée conforme du dossier et des documents en cause ou des extraits voulus, soit une attestation quant à leur contenu et admissibles en vertu des paragraphes 60(2) ou 64(2) ou de l'article 65.</p> <p>1990, ch. 20, art. 51; 2015, ch. 2, art. 35.</p>	Idem
Judgments to be filed	<p><b>52.</b> A certified copy of every judgment or order made by the Federal Court or the Supreme Court of Canada in relation to any plant breeder's rights that are recorded or to be recorded on the register or for which an application is pending shall be filed with the Com-</p>	<p><b>52.</b> Le greffe de la Cour fédérale transmet au directeur une copie certifiée de tout jugement ou ordonnance rendu par cette cour ou par la Cour suprême du Canada relativement à une variété végétale faisant l'objet d'un certificat d'obtention ou d'une demande d'un tel certificat.</p> <p>1990, ch. 20, art. 52; 2015, ch. 2, art. 36(F).</p>	Production des jugements

*Plant Breeders' Rights — May 25, 2015*

missioner by an officer of the registry of the Federal Court.

1990, c. 20, s. 52; 2015, c. 2, s. 36(F).

## OFFENCES

Secrecy

**53.** (1) Every person commits an offence who knowingly discloses any information with regard to any variety in respect of which an application for plant breeder's rights is made or with regard to the business affairs of the applicant that was acquired by that person in performing any functions under this Act except if the information is disclosed

(a) to the Minister, the advisory committee or the Commissioner or to any other person for the purposes of the performance by that other person of any functions pursuant to this Act or of any duties in an official capacity for enforcement of this Act; or

(b) in compliance with any requirements imposed by or under this Act or by virtue of any power lawfully exercised in the course or for the purposes of any judicial proceedings.

Offences respecting denominations and sales

(2) Every person commits an offence who

(a) knowingly contravenes section 15;

(b) for the purpose of selling any propagating material, knowingly designates the material by reference to

(i) a denomination different from any denomination registered in respect of the plant variety of which the material is propagating material,

(ii) a denomination registered in respect of a plant variety of which the material is not propagating material, or

(iii) a denomination corresponding so closely to a registered denomination as to mislead; or

(c) knowingly, for the purpose of selling any propagating material, represents falsely that the material is propagating material of, or is derived from, a plant variety in respect of which plant breeder's rights are held or have been applied for

Falsification in relation to administration

(3) Every person commits an offence who, in relation to the administration of this Act, knowingly

## INFRACTIONS ET PEINES

Protection des renseignements

**53.** (1) Commet une infraction la personne qui révèle sciemment un renseignement recueilli dans l'exercice des fonctions que lui confère la présente loi et concernant soit une variété objet d'une demande de certificat d'obtention, soit la situation d'affaires d'un requérant, sauf si, selon le cas :

a) le destinataire en est le ministre, le comité consultatif, le directeur ou toute autre personne agissant dans l'exercice de ses fonctions en vertu de la présente loi ou agissant à titre officiel en vue de l'exécution de celle-ci;

b) la présente loi l'exige ou la communication s'effectue en vertu d'un pouvoir légitimement exercé dans le cadre d'une procédure judiciaire.

(2) Commet une infraction la personne qui, sciemment :

a) contrevient à l'article 15;

b) désigne, en vue de le vendre, du matériel de multiplication sous une dénomination :

(i) différente de celle sous laquelle il est inscrit au registre pour la variété végétale à laquelle il se rapporte,

(ii) correspondant dans le registre à une variété végétale à laquelle il ne se rapporte pas,

(iii) assez proche d'une dénomination inscrite au registre pour induire en erreur,

c) présente faussement, en vue de le vendre, du matériel de multiplication comme étant du matériel de multiplication d'une variété végétale faisant l'objet d'un certificat d'obtention ou faisant l'objet d'une demande d'un tel certificat ou du matériel de multiplication provenant d'une telle variété.

Infractions : dénomination et vente

(3) Commet une infraction la personne qui, sciemment, dans le cadre de l'application de la présente loi :

Infractions : faux

*Protection des obtentions végétales — 25 mai 2015*

	<p>(a) makes any false representation;</p> <p>(b) makes or causes to be made any false entry in the register or any record;</p> <p>(c) makes or causes to be made any false document or any alteration, false in a material respect, in the form of a copy of any document, or</p> <p>(d) produces or tenders any document containing false information.</p>	<p>a) fait de fausses déclarations;</p> <p>b) porte ou fait porter une fausse inscription dans un registre ou dossier;</p> <p>c) contrefait, dans le fond ou la forme, un document quelconque ou sa copie ou voit à sa contrefaçon;</p> <p>d) produit ou offre de produire un document contenant de faux renseignements.</p>	
<b>Punishment of individuals</b>	<p>(4) An individual who commits an offence under subsection (1), (2) or (3)</p> <p>(a) is liable on summary conviction to a fine of not more than five thousand dollars; or</p> <p>(b) is liable on conviction on indictment to a fine of not more than fifteen thousand dollars or to imprisonment for a term not exceeding three years, in the case of an offence under subsection (1) or (2), or five years, in the case of an offence under subsection (3), or to both.</p>	<p>(4) La personne physique reconnue coupable d'une infraction prévue au paragraphe (1), (2) ou (3) encourt, sur déclaration de culpabilité :</p> <p>a) par procédure sommaire, une amende maximale de cinq mille dollars;</p> <p>b) par mise en accusation, une amende maximale de quinze mille dollars et un emprisonnement maximal de trois ans, dans le cas du paragraphe (1) ou (2), et de cinq ans, dans le cas du paragraphe (3), ou l'une de ces peines.</p>	<b>Peines: personne physique</b>
<b>Punishment of corporations</b>	<p>(5) A corporation that commits an offence under subsection (1), (2) or (3)</p> <p>(a) is liable on summary conviction to a fine of not more than twenty-five thousand dollars; or</p> <p>(b) is liable on conviction on indictment to a fine the amount of which is in the discretion of the court.</p>	<p>(5) La personne morale reconnue coupable d'une infraction prévue au paragraphe (1), (2) ou (3) encourt, sur déclaration de culpabilité :</p> <p>a) par procédure sommaire, une amende maximale de vingt-cinq mille dollars;</p> <p>b) par mise en accusation, une amende dont le montant est laissé à la discrétion du tribunal.</p>	<b>Peines: personne morale</b>
<b>Definition of "representation"</b>	<p>(6) In this section, "representation" includes any manner of express or implied representation, by whatever means it is made.</p>	<p>(6) Pour l'application du présent article, « déclaration » s'entend de tout mode tacite ou implicite d'expression.</p>	<b>« déclaration »</b>
<b>Limitation period</b>	<p>(7) A prosecution for a summary conviction offence under this Act may be instituted at any time within two years after the day on which the subject matter of the prosecution becomes known to the Commissioner.</p>	<p>(7) Les poursuites visant une infraction à la présente loi punissable sur déclaration de culpabilité par procédure sommaire se prescrivent par deux ans à compter de la date à laquelle le directeur a eu connaissance des éléments constitutifs de l'infraction.</p>	<b>Prescription</b>
<b>Commissioner's certificate</b>	<p>(8) A document purporting to have been issued by the Commissioner, certifying the day on which the subject matter of any prosecution became known to him or her, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is evidence of the matters asserted in it.</p> <p>1990, c. 20, s. 53; 1997, c. 6, s. 76; 2015, c. 2, s. 37.</p>	<p>(8) Le certificat paraissant délivré par le directeur et attestant la date à laquelle ces éléments sont venus à sa connaissance est admissible en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ni la qualité officielle du signataire; sauf preuve contraire, il fait foi de son contenu.</p> <p>1990, ch. 20, art. 53; 1997, ch. 6, art. 76; 2015, ch. 2, art. 37.</p>	<b>Certificat du directeur</b>

*Plant Breeders' Rights — May 25, 2015*

Certificate of examiner as proof	<p><b>54.</b> A certificate purporting to be signed by an officer of the Plant Breeders' Rights Office who is appointed or designated a principal examiner, stating that a substance or a sample submitted to that examiner by any other officer of that Office has been examined by that examiner and stating the result of the examination is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate.</p> <p>1990, c. 20, s. 54; 2015, c. 2, s. 38(F).</p>	<p><b>54.</b> Le certificat paraissant signé par l'agent nommé ou désigné comme examinateur en chef du Bureau, où il est déclaré que celui-ci a étudié telle substance ou tel produit et où sont donnés ses résultats, est admissible en preuve dans les poursuites engagées pour infraction à la présente loi sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire; sauf preuve contraire, le certificat fait foi de son contenu.</p> <p>1990, ch. 20, art. 54; 2015, ch. 2, art. 38(F).</p>	Certificat de l'examinateur
<b>PLANT BREEDERS' RIGHTS OFFICE</b>		<b>BUREAU DE LA PROTECTION DES OBTENTIONS VÉGÉTALES</b>	
<b>55.</b> [Repealed, 1997, c. 6, s. 77]		<b>55.</b> [Abrogé, 1997, ch. 6, art. 77]	
Plant Breeders' Rights Office	<p><b>56.</b> (1) The Plant Breeders' Rights Office is part of the Canadian Food Inspection Agency established by the <i>Canadian Food Inspection Agency Act</i>.</p>	<p><b>56.</b> (1) Le Bureau de la protection des obtentions végétales — appelé le « Bureau » dans la présente loi — fait partie de l'Agence canadienne d'inspection des aliments constituée aux termes de la <i>Loi sur l'Agence canadienne d'inspection des aliments</i>.</p>	Bureau de la protection des obtentions végétales
Commissioner	<p>(2) The President of the Canadian Food Inspection Agency shall designate a Commissioner of Plant Breeders' Rights.</p>	<p>(2) Le président de l'Agence canadienne d'inspection des aliments désigne le directeur du Bureau.</p>	Directeur du Bureau
Employees	<p>(3) The President of the Canadian Food Inspection Agency has the authority to appoint the employees of the Plant Breeders' Rights Office.</p>	<p>(3) Le président de l'Agence canadienne d'inspection des aliments nomme les employés du Bureau.</p>	Pouvoir de nomination
Functions of Commissioner	<p>(4) The Commissioner shall receive all applications, fees, documents and materials submitted for plant breeders' rights, shall do all things necessary for the granting of plant breeders' rights and for the exercise of all other powers conferred, and the discharge of all other duties imposed, on the Commissioner under this Act and shall have the charge and custody of the register and any other documents or materials belonging to the Plant Breeders' Rights Office.</p>	<p>(4) Le directeur reçoit les demandes de certificat d'obtention ainsi que les droits, documents ou éléments y afférents et prend les mesures voulues pour la délivrance du certificat et l'exercice des attributions que lui confère la présente loi. Il a la garde du registre, des autres documents et du matériel appartenant au Bureau.</p>	Attributions du directeur
Absence, etc., of Commissioner	<p>(5) Where the Commissioner is absent or unable to act or the office of Commissioner is vacant, such other officer as may be designated by the President of the Canadian Food Inspection Agency shall, in the capacity of Acting Commissioner, exercise the powers and perform the duties of the Commissioner.</p> <p>1990, c. 20, s. 56; 1997, c. 6, s. 78; 2015, c. 2, s. 39.</p>	<p>(5) En cas d'absence ou d'empêchement du directeur du Bureau ou de vacance de son poste, le président de l'Agence canadienne d'inspection des aliments peut désigner un autre fonctionnaire pour assumer la direction.</p> <p>1990, ch. 20, art. 56; 1997, ch. 6, art. 78; 2015, ch. 2, art. 39.</p>	Absence

## Protection des obtentions végétales — 25 mai 2015

Officers and employees not to acquire plant breeder's rights	<p><b>57.</b> A person who has been appointed as an officer or employee of the Plant Breeders' Rights Office may not, during the period for which the person holds the appointment and for one year thereafter, apply for the grant of any plant breeder's rights or acquire directly or indirectly, except under a will or on an intestacy, any right or interest in any such grant.</p>	<p><b>57.</b> Il est interdit à tout membre du personnel du Bureau de faire, pendant qu'il y exerce ses fonctions, de même qu'au cours de l'année qui suit leur cessation, une demande de certificat d'obtention ou d'acquies directement ou indirectement, sauf par voie de succession testamentaire ou <i>ab intestat</i>, des droits à la délivrance d'un tel certificat.</p>	Interdiction
Delegation	<p><b>58.</b> (1) The Commissioner may in writing authorize, either generally or particularly, such officers or employees of the Plant Breeders' Rights Office as the Commissioner deems fit to exercise and perform, subject to any general or special directions given or conditions attached by the Commissioner, all or any of the powers conferred and duties imposed on the Commissioner by or pursuant to this or any other Act.</p>	<p><b>58.</b> (1) Le directeur peut, par écrit, déléguer à tout autre membre du personnel qu'il juge apte tout ou partie des pouvoirs et fonctions qui lui sont attribués par la présente loi ou par toute autre loi et assortir cette délégation, générale ou spécifique, de certaines instructions ou conditions.</p>	Délégation de pouvoir
Presumption of authority	<p>(2) Every person purporting to act pursuant to any authorization under this section shall, in the absence of evidence to the contrary, be presumed to be acting in accordance with the terms of the authorization.</p>	<p>(2) Jusqu'à preuve du contraire, l'action exercée en vertu de la délégation est présumée être conforme à celle-ci.</p>	Présomption
Engagement of services	<p><b>59.</b> (1) The Commissioner</p> <p>(a) for the purposes of carrying out and evaluating the results of tests and trials referred to in section 23, may engage the services of persons other than employees of the Canadian Food Inspection Agency and pay to those persons fees in accordance with a scale determined by the Minister, with the approval of the Treasury Board, in respect of their services; and</p> <p>(b) may constitute panels of persons, composed of employees of the Agency or persons appointed or engaged pursuant to paragraph (a), which have the function of conducting examinations for purposes described in that paragraph and of advising the Commissioner as to</p> <p>(i) the examinations necessary or expedient for those purposes, and</p> <p>(ii) the results of those examinations.</p>	<p><b>59.</b> (1) Pour l'exécution et l'évaluation des essais et épreuves visés à l'article 23, le directeur peut :</p> <p>a) engager des spécialistes qui ne sont pas employés par l'Agence canadienne d'inspection des aliments et leur verser les honoraires correspondants, selon le barème fixé par le ministre, avec l'agrément du Conseil du Trésor;</p> <p>b) constituer, avec de tels spécialistes ou du personnel régulier, des comités chargés de procéder aux examens voulus et de le conseiller quant au choix et aux résultats de ces examens.</p>	Assistance extérieure ou spéciale
Discretion unaffected	<p>(2) Nothing in subsection (1) prejudices any discretion exercisable by the Commissioner.</p> <p>1990, c. 20, s. 59; 1997, c. 6, s. 79.</p>	<p>(2) Le paragraphe (1) n'a pas pour effet de porter atteinte à l'exercice du pouvoir discrétionnaire du directeur en l'espèce.</p> <p>1990, ch. 20, art. 59; 1997, ch. 6, art. 79.</p>	Pouvoir discrétionnaire
Seal of office	<p><b>60.</b> (1) The Commissioner shall cause a seal to be made for the purposes of this Act and each certificate of plant breeder's rights issued</p>	<p><b>60.</b> (1) Pour l'application de la présente loi, le directeur fait graver un sceau dont il doit revêtir chaque certificat d'obtention qu'il délivre</p>	Sceau du Bureau

*Plant Breeders' Rights — May 25, 2015*

	<p>under paragraph 27(3)(b) to be sealed with that seal. The Commissioner may also cause any other instrument or copy of any document issuing from the Plant Breeders' Rights Office to be sealed with that seal.</p>	<p>en application du paragraphe 27(3); le sceau peut être également apposé sur les autres documents délivrés.</p>	
Notice of seal and other documents	<p>(2) Every court, judge and person shall take notice of the seal of the Plant Breeders' Rights Office and shall admit impressions of the seal in evidence without proof thereof and shall take notice of and admit in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal to be copies of or extracts from documents on file in that Office.</p> <p>1990, c. 20, s. 60, 2015, c. 2, s. 40(E).</p>	<p>(2) Les tribunaux, juges et autres personnes admettent d'office le sceau du Bureau et en admettent les empreintes en preuve. Il en va de même, sans autre justification et sans production des originaux, pour toutes les copies ou extraits certifiés, sous le sceau, être des copies ou extraits conformes de documents déposés au Bureau.</p> <p>1990, ch. 20, art. 60; 2015, ch. 2, art. 40(A).</p>	Preuve du sceau
Time limit extended	<p><b>61.</b> Where any time limit or period of limitation specified by or under this Act expires on a day when the Plant Breeders' Rights Office is closed for business, that time limit or period of limitation shall be deemed to be extended to the next day when that Office is open for business.</p>	<p><b>61.</b> Tout délai qui expire un jour où le Bureau est fermé est réputé expirer le jour ouvrable suivant.</p>	Prorogation de délai
	<b>RECORDS</b>	<b>ARCHIVES</b>	
Index	<p><b>62.</b> The Commissioner may prepare an index of names, together with descriptions comprising particulars of distinguishing identifiable characteristics, of such plant varieties in each of the prescribed categories as are ascertainable by the Commissioner to exist as a matter of fact within common knowledge.</p>	<p><b>62.</b> Le directeur peut établir un répertoire des noms et des descriptions, notamment quant à leurs caractères distinctifs identifiables, des variétés végétales de chaque catégorie réglementaire dont il constate qu'elles sont notoirement connues.</p>	Répertoire
Register	<p><b>63.</b> The Commissioner shall keep a register of plant breeders' rights and, subject to the payment of any fee required under this Act to be paid in the case of any entry in the register, the Commissioner shall enter in it</p> <p>(a) in relation to each plant variety that is the subject of those rights, the prescribed category to which it belongs;</p> <p>(b) the denomination of the variety, and any change to that denomination;</p> <p>(c) the full name and address of the breeder of that variety;</p> <p>(d) the name and address of the person whom the Commissioner is satisfied, in the manner provided by or under this Act, ought to be registered as the holder of the plant breeder's rights respecting that variety;</p> <p>(e) the date of the grant of plant breeder's rights respecting that variety;</p>	<p><b>63.</b> Le directeur tient un registre des certificats d'obtention dans lequel il consigne, sous réserve du paiement des droits d'inscription au registre prévus par la présente loi, les renseignements suivants :</p> <p>a) la catégorie réglementaire à laquelle appartient chaque variété végétale faisant l'objet d'un certificat d'obtention;</p> <p>b) la dénomination de la variété végétale ainsi que toute modification de celle-ci;</p> <p>c) les nom, prénom et adresse de l'obteneur;</p> <p>d) les nom et adresse de la personne qui, sur la base de la conviction qu'il a acquise en conformité avec les modalités prévues par la présente loi, devrait être enregistrée en tant que titulaire du certificat d'obtention;</p> <p>e) la date de prise d'effet du certificat d'obtention;</p>	Registre

## Protection des obtentions végétales — 25 mai 2015

	<p>(f) the date of, and the reason for, any termination or invalidation of plant breeder's rights;</p> <p>(g) if plant breeder's rights are the subject of a compulsory licence under section 32, a statement to that effect;</p> <p>(h) the prescribed particulars of each application for the grant of plant breeder's rights and of any abandonment or withdrawal of the application; and</p> <p>(i) the prescribed particulars, subject to the provisions of this Act and the regulations, that are considered by the Commissioner to be appropriate for entry in the register.</p> <p>1990, c. 20, s. 63; 2015, c. 2, s. 41.</p>	<p>f) la date et les motifs de résiliation ou d'invalidation du certificat d'obtention;</p> <p>g) le cas échéant, la mention du fait que le certificat d'obtention fait l'objet d'une licence obligatoire délivrée conformément à l'article 32;</p> <p>h) les détails réglementaires devant figurer au registre relativement à chaque demande de certificat d'obtention, ainsi que ceux concernant tout désistement ou retrait dont elle a fait l'objet, le cas échéant;</p> <p>i) les autres renseignements réglementaires, sous réserve des autres dispositions de la présente loi et de ses règlements, qu'il juge utiles d'y consigner.</p> <p>1990, ch. 20, art. 63; 2015, ch. 2, art. 41.</p>	
Evidence of registered matters	<p><b>64.</b> (1) The register is evidence of all matters entered in it as directed or authorized by this Act.</p>	<p><b>64.</b> (1) Le registre fait foi des inscriptions qui y sont portées en application de la présente loi.</p>	Preuve
Certified copy or extract	<p>(2) A document purporting to be a copy of any entry in, or an extract of any contents of, the register and to be certified by the Commissioner to be a true copy or extract is evidence of the entry or contents without further proof or production of the register.</p> <p>1990, c. 20, s. 64; 2015, c. 2, s. 42(F).</p>	<p>(2) Les documents paraissant constituer des extraits du registre et être certifiés conformes par le directeur font foi de leur contenu sans autre preuve.</p> <p>1990, ch. 20, art. 64; 2015, ch. 2, art. 42(F).</p>	Extraits certifiés conformes
Certificate of Commissioner	<p><b>65.</b> A certificate purporting to be made by the Commissioner to the effect that an entry has or has not been made in the register or that any other thing authorized by or under this Act to be done in the course of the administration of this Act has or has not been done is evidence of the matters specified in that certificate.</p> <p>1990, c. 20, s. 65; 2015, c. 2, s. 43(F).</p>	<p><b>65.</b> Fait foi de son contenu le certificat paraissant établi par le directeur pour constater qu'une inscription au registre a été faite ou non ou qu'une mesure autorisée par la présente loi a été prise ou non.</p> <p>1990, ch. 20, art. 65; 2015, ch. 2, art. 43(F).</p>	Certificat du directeur
Rectification of errors	<p><b>66.</b> (1) Subject to subsection (2), the Commissioner may, on such terms, if any, as the Commissioner deems proper, authorize</p> <p>(a) the correction of any clerical error or error in translation appearing in a certificate of plant breeder's rights issued under paragraph 27(3)(b), in an application for plant breeder's rights, in any document filed for the purposes of such an application or in the register or index;</p> <p>(b) the amendment of any document that belongs to the Plant Breeders' Rights Office and in respect of which no express provision for its amendment is made in this Act; and</p>	<p><b>66.</b> (1) Sous réserve du paragraphe (2), le directeur peut autoriser, aux conditions qu'il estime indiquées :</p> <p>a) la correction de toute erreur d'écriture ou de traduction dans le texte d'un certificat d'obtention, d'une demande de délivrance d'un tel certificat ou encore de tout document afférent à cette demande, ainsi que dans toute inscription au registre ou au répertoire;</p> <p>b) la modification de tout document appartenant au Bureau pour lequel la présente loi ne prévoit pas expressément la procédure de modification;</p>	Corrections

*Plant Breeders' Rights — May 25, 2015*

	(c) the condonation or correction of any procedural irregularity in any proceedings subject to the authority of the Commissioner.	e) la ratification ou la correction de toute irrégularité dans une procédure de sa compétence.	
When rectification permissible	(2) Any power conferred by subsection (1) may, of the Commissioner's own motion or on request in writing, be exercised if, but only if, that exercise of the power is in the interests of the due administration of this Act and is not prejudicial to the interests of justice.	(2) Le directeur ne procède, de son propre chef ou sur demande écrite, à l'une des mesures visées au paragraphe (1) que si elle favorise la bonne application de la présente loi et ne porte pas atteinte à l'intérêt de la justice.	Restrictions
Opportunities for representations by interested persons	(3) The Commissioner, if intending to exercise any power pursuant to subsection (1), shall give notice of the intention to each person appearing to the Commissioner to have an interest in the matter and shall not carry out the intention without first giving that person a reasonable opportunity to make representations with respect thereto. 1990, c. 20, s. 66; 2015, c. 2, s. 44(E).	(3) Avant d'exercer l'un des pouvoirs prévus au paragraphe (1), le directeur notifie son intention aux personnes qui lui semblent être concernées et leur donne la possibilité de présenter leurs observations. 1990, ch. 20, art. 66; 2015, ch. 2, art. 44(A).	Avis et observations
Preservation of documents	<b>67.</b> (1) An application for the grant of plant breeder's rights and other documents filed with the Commissioner in connection with any such rights shall, subject to subsection (3), be preserved for the prescribed periods.	<b>67.</b> (1) Sous réserve du paragraphe (3), les demandes de certificat d'obtention et les documents afférents sont conservés pendant les périodes fixées par règlement.	Conservation des documents
Public accessibility	(2) The Commissioner shall make the following accessible to the public on the Internet and, if the Commissioner considers it appropriate, by any other means: (a) the register; (b) the index; and (c) any documents referred to in subsection (1) that are prescribed and any other documents that should, in the Commissioner's opinion, be made accessible to the public.	(2) Le directeur rend accessibles au public par Internet et, s'il l'estime indiqué, par tout autre moyen, le registre, le répertoire et les documents visés au paragraphe (1) qui sont désignés par règlement ou autres documents qui, selon lui, devraient être mis à la disposition du public.	Accessibilité du public
Withdrawn application papers to be returned	(3) Where an application for plant breeder's rights has been withdrawn, the Commissioner shall return to the applicant at the address indicated in the application all the papers and other material submitted in connection with the application but, to any extent to which it is impracticable for the Commissioner to do so, and on the expiration of the prescribed period for so doing, the Commissioner shall destroy the material.  (4) [Repealed, 2015, c. 2, s. 45] 1990, c. 20, s. 67; 2015, c. 2, s. 45.	(3) Après le retrait d'une demande de certificat d'obtention, le directeur retourne au requérant, à l'adresse inscrite sur la demande, les documents et éléments afférents à celle-ci. Si toutefois cela s'avère impossible au cours de la période que prévoient les règlements pour le faire, le directeur les détruit.  (4) [Abrogé, 2015, ch. 2, art. 45] 1990, ch. 20, art. 67; 2015, ch. 2, art. 45.	Retour des documents
Service of notices, etc.	<b>68.</b> (1) A notice or other document required to be given or transmitted to any person pursuant to this Act may be given or transmitted	<b>68.</b> (1) La remise ou la transmission de tout avis ou autre document prescrit par la présente loi s'effectue :	Signification

*Protection des obtentions végétales — 25 mai 2015*

	<p>(a) by delivering it to the person;</p> <p>(b) by sending it by registered mail addressed to the person at any place pursuant to notice thereof given by the person or, if no such notice is given, at the person's usual or latest known address in Canada; or</p> <p>(c) in any other manner prescribed.</p>	<p>a) par signification à personne;</p> <p>b) par courrier recommandé à l'adresse donnée par la personne en cause ou, en l'absence de cette indication, à son adresse habituelle ou à sa dernière adresse connue au Canada;</p> <p>c) de toute autre manière prévue par règlement.</p>	
<p>Deemed delivery</p>	<p>(2) Where any notice or other document is sent by registered mail pursuant to subsection (1), it shall, in the absence of evidence to the contrary, be deemed to be given or transmitted at the time at which the registered letter containing it would be delivered in the ordinary course of post.</p> <p>1990, c. 20, s. 68; 2015, c. 2, s. 46(F).</p>	<p>(2) Dans le cas visé à l'alinéa (1)b), la remise ou la transmission est, jusqu'à preuve du contraire, réputée faite à la date qui serait celle de la livraison dans le cours normal de la poste.</p> <p>1990, ch. 20, art. 68; 2015, ch. 2, art. 46(F).</p>	<p>Date de la remise</p>
<p>Defect not to invalidate notices</p>	<p>69. A defect in a notice given pursuant to this Act, if the notice is such as to intelligibly and substantially effect the required notification, shall not render unlawful any administrative action executed in respect of the matter to which the notice relates and shall not be a ground for exception to any legal proceeding that may be taken in respect of that matter.</p>	<p>69. Un vice de forme dans un avis remplissant par ailleurs sa finalité de notification n'invalide pas les mesures administratives en découlant. Il ne peut de plus servir à fonder une opposition à des poursuites judiciaires relatives à l'objet de l'avis.</p>	<p>Vice de forme dans les avis</p>
<p>Matters to be published</p>	<p>PUBLICATION</p> <p>70. (1) The Commissioner shall cause to be published in the <i>Canada Gazette</i> such particulars of the following as are prescribed:</p> <p>(a) every application that is not rejected pursuant to section 17;</p> <p>(b) every request included pursuant to subsection 9(1) in an application that is not rejected pursuant to section 17;</p> <p>(c) and (d) [Repealed, 2015, c. 2, s. 47]</p> <p>(e) every grant or refusal to grant plant breeder's rights;</p> <p>(f) every assignment of plant breeder's rights of which the Commissioner is informed;</p> <p>(g) every application for a compulsory licence;</p> <p>(h) every grant or refusal to grant a compulsory licence and every thing done under subsection 32(4) with respect to a compulsory licence; and</p> <p>(i) every surrender of plant breeder's rights.</p>	<p>PUBLICATION</p> <p>70. (1) Le directeur fait publier dans la <i>Gazette du Canada</i> les renseignements réglementaires suivants :</p> <p>a) ceux qui figurent dans les demandes de certificat d'obtention, en autant qu'elles n'ont pas été rejetées au titre de l'article 17;</p> <p>b) ceux qui figurent dans les demandes particulières jointes à celles-ci en application du paragraphe 9(1), en autant qu'elles n'ont pas été rejetées au titre de l'article 17;</p> <p>c) et d) [Abrogés, 2015, ch. 2, art. 47]</p> <p>e) ceux relatifs à la délivrance ou au rejet du certificat d'obtention;</p> <p>f) ceux relatifs aux cessions qui sont portées à sa connaissance;</p> <p>g) ceux relatifs aux demandes de licence obligatoire;</p> <p>h) ceux relatifs à la délivrance ou au rejet de toute licence obligatoire, ainsi qu'à toute mesure prise à leur égard au titre du paragraphe 32(4);</p> <p>i) ceux relatifs à toute renonciation.</p>	<p>Publication dans la <i>Gazette du Canada</i></p>

*Plant Breeders' Rights — May 25, 2015*

Notice to Department of Industry	(2) The Commissioner shall, on causing particulars of a request referred to in paragraph (1) (b) to be published, give notice of the request to the Department of Industry.	(2) Au moment de la publication des renseignements visés à l'alinéa (1)b), le directeur donne avis de la demande au ministère de l'Industrie.	Avis au ministère de l'Industrie
Matters to be published	(3) In addition to the matters referred to in subsection (1), the Commissioner shall cause to be published in the <i>Canada Gazette</i> (a) such other matters as the Commissioner considers appropriate for public information; and (b) a notice of every annulment under section 34 or revocation under section 35.  1990, c. 20, s. 70; 1995, c. 1, s. 53; 2015, c. 2, s. 47.	(3) Le directeur fait en outre publier dans la <i>Gazette du Canada</i> tous renseignements qu'il juge utile de porter à la connaissance du public et les avis de toute annulation ou révocation effectuée en application des articles 34 ou 35.  1990, ch. 20, art. 70; 1995, ch. 1, art. 53; 2015, ch. 2, art. 47.	Autre publication
Provision for publication of Plant Varieties Journal	<b>71.</b> (1) Where the volume of matters to be published in the <i>Canada Gazette</i> pursuant to section 70 is such as to warrant their inclusion wholly or partly in a separate journal, the Commissioner may cause to be published periodically a journal, to be called the Plant Varieties Journal, containing such of those matters as the Commissioner, subject to any regulations made pursuant to paragraph 75(1)(g), considers expedient.	<b>71.</b> (1) Si le volume de l'information à faire paraître dans la <i>Gazette du Canada</i> justifie une publication distincte, le directeur peut faire publier périodiquement, dans le Bulletin des variétés végétales, les renseignements qu'il estime indiqués, sous réserve des règlements pris en application de l'alinéa 75(1)g).	Publication d'un bulletin des variétés végétales
Notice of intention to publish Journal	(2) The Commissioner shall, by publication in the <i>Canada Gazette</i> , at least twenty-eight days before commencing the issue of the Plant Varieties Journal, give notice of intention to do so.	(2) Le directeur donne un avis préalable d'au moins vingt-huit jours, dans la <i>Gazette du Canada</i> , de son intention de faire publier le bulletin.	Avis
Cessation of publication of Journal	(3) If at any time the volume of matters for the publication of which the Plant Varieties Journal is available ceases to be such as described in subsection (1), the Commissioner may cause the issuing of the Plant Varieties Journal to cease but, at least twenty-eight days before doing so, the Commissioner shall, by publication in that Journal, give notice of intention to do so.	(3) Lorsque la publication du bulletin ne se justifie plus aux termes du paragraphe (1), le directeur y met fin après un avis préalable d'au moins vingt-huit jours.	Cessation
Publication in Journal to be deemed publication in <i>Canada Gazette</i>	(4) For the purposes of this Act other than of subsections (2) and 75(2), publication in the Plant Varieties Journal pursuant to this Act shall be deemed to be publication in the <i>Canada Gazette</i> and references in this Act to the <i>Canada Gazette</i> shall be construed accordingly.	(4) Pour l'application de la présente loi, mais non pour celle des paragraphes (2) et 75(2), la publication dans le bulletin vaut publication dans la <i>Gazette du Canada</i> et toute mention de celle-ci, dans la présente loi, doit être interprétée en conséquence.	Effet de la publication dans le bulletin
Ignorance no defence in the event of publication	<b>72.</b> (1) Where in any civil, criminal or other proceedings a person's knowledge or notice, at any time, of any matter is relevant for the purpose of determining any question whether, pursuant to this Act, liability has been incurred,	<b>72.</b> (1) Nul ne peut arguer, dans le cadre d'une procédure, de son ignorance d'éléments utiles à l'appréciation, au regard de la présente loi, de l'existence d'un droit ou d'une obligation ou de la régularité d'un acte, si ces élé-	Irrecevabilité de l'argument d'ignorance

*Protection des obtentions végétales — 25 mai 2015*

	<p>any right has been acquired or any thing has been duly done, the person shall, for that purpose, be deemed to have had the relevant knowledge or notice at that time if, prior thereto, the matter or notice thereof is published in the <i>Canada Gazette</i>.</p>	<p>ments ont déjà fait l'objet d'une publication ou d'un avis dans la <i>Gazette du Canada</i>.</p>	
Knowledge or notice, otherwise attributable, unaffected	<p>(2) Nothing in subsection (1) prevents any question referred to therein from being determined on the ground that the person had the relevant knowledge or notice, if lawfully attributable to the person, apart from that subsection.</p> <p>1990, c. 20, s. 72; 2015, c. 2, s. 48(F).</p>	<p>(2) Il est entendu que, pour l'appréciation visée au paragraphe (1), la connaissance des éléments en cause par la personne intéressée peut être établie par tout moyen de droit.</p> <p>1990, ch. 20, art. 72; 2015, ch. 2, art. 48(F).</p>	Preuve de la commission
	<p>ADVISORY COMMITTEE</p>	<p>COMITÉ CONSULTATIF</p>	
Constitution	<p><b>73.</b> (1) The Minister shall constitute an advisory committee on any terms and conditions determined by the Minister.</p>	<p><b>73.</b> (1) Le ministre constitue, aux conditions qu'il estime indiquées, un comité consultatif.</p>	Constitution
Composition	<p>(2) The advisory committee shall be composed of persons appointed by the Minister from among representatives of organizations of breeders of plant varieties, dealers in seeds, growers of seeds, farmers, horticulturists and of any other interested persons considered appropriate by the Minister.</p>	<p>(2) Le comité est composé de membres que le ministre choisit parmi les représentants des groupes ou organismes d'obteneurs, de marchands ou producteurs de semence, d'agriculteurs, des horticulteurs et de toute autre personne intéressée qu'il estime indiquée.</p>	Composition
Function	<p>(3) The function of the advisory committee is to assist the Commissioner in the application of this Act, including</p> <p>(a) the manner in which the Act is to be applied in respect of each category;</p> <p>(b) the requirements applicable in respect of each category, including those requirements relating to licensing; and</p> <p>(c) the interpretation of the expressions "reasonable prices", "widely distributed" and "reasonable remuneration" for the purposes of section 32.</p>	<p>(3) Le comité a pour mission d'assister le directeur en vue de l'application de la présente loi notamment sur les points suivants :</p> <p>a) la mise en oeuvre de la loi pour telle ou telle catégorie;</p> <p>b) les obligations préalables applicables à chaque catégorie, y compris celles visant les licences;</p> <p>c) l'interprétation à donner, pour l'application de l'article 32, aux termes « prix raisonnables », « distribution à grande échelle » et « juste rémunération ».</p>	Mission
Remuneration	<p>(4) No terms or conditions determined under subsection (1) shall provide for any remuneration to be payable to any of the persons acting on the advisory committee, but those persons may be paid any reasonable travel and living expenses incurred by them when engaged on the business of the committee while absent from their ordinary places of residence.</p> <p>1990, c. 20, s. 73; 2015, c. 2, s. 49(F).</p>	<p>(4) Les membres ne reçoivent aucune rémunération; néanmoins, ils ont droit aux frais de déplacement et autres entraînés par l'accomplissement de leurs fonctions, pour l'exercice de leurs fonctions hors du lieu de leur résidence habituelle.</p> <p>1990, ch. 20, art. 73; 2015, ch. 2, art. 49(F).</p>	Indemnités
Committee's advice not binding	<p><b>74.</b> Nothing in this Act or the regulations shall be construed to impose any obligation to</p>	<p><b>74.</b> La présente loi et ses règlements n'ont pas pour effet de rendre obligatoires les recommandations du comité consultatif.</p>	Recommandations du comité

*Plant Breeders' Rights — May 25, 2015*

conform to the advice of the advisory committee.

## REGULATIONS

Regulations

**75.** (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

(a) fixing the fees that a person may be required to pay in respect of any services provided by the Commissioner or by any person authorized by the Commissioner and providing for the time and manner in which the fees are to be paid and the circumstances in which the fees may be refunded in whole or in part;

(b) limiting, extending or providing for the extension, whether before or after the expiration, of the period for doing anything pursuant to this Act;

(c) defining the meanings of the words and expressions "commercially acceptable", "description", "designation", "identifiable characteristics", "reasonably priced", "recently prescribed category", "representations", "tree", "vine" and "widely distributed" for the purposes of this Act;

(c.1) prescribing, for the purposes of paragraph 5(1)(b), any acts that are to be considered as the conditioning of propagating material;

(c.2) specifying categories for the purposes of subsection 6(1);

(d) respecting the publication in the *Trade Marks Journal* of information relating to proposals, approvals and changes of denominations;

(e) establishing principles to be observed by the Commissioner in disposing of applications for compulsory licences and, particularly, in complying with subsection 32(2);

(f) designating any entity as an agreement country for the purposes of any of the provisions of this Act or the regulations, with a view to the fulfilment of an agreement concerning the rights of plant breeders made between Canada and that entity, and, despite

## RÈGLEMENTS

Règlements

**75.** (1) Le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application de la présente loi et, notamment :

a) fixer les droits exigibles pour les services fournis par le directeur ou son délégué et prévoir les modalités de leur acquittement et les circonstances permettant leur remboursement total ou partiel;

b) raccourcir les délais prévus par la présente loi ou les proroger, même après leur expiration;

c) définir, pour l'application de la présente loi, les expressions « arbre », « caractère identifiable », « catégorie établie depuis peu par règlement », « commercialement acceptable », « description », « désignation », « distribution à grande échelle », « prix raisonnable », « observations » et « vigne »;

c.1) prévoir, pour l'application de l'alinéa 5(1)b), les actes qui constituent du conditionnement de matériel de multiplication;

c.2) préciser toute catégorie pour l'application du paragraphe 6(1);

d) régir la publication, dans le *Journal des marques de commerce*, de renseignements relatifs aux propositions, approbations ou changements de dénomination;

e) établir les principes à appliquer par le directeur pour accorder ou refuser une licence obligatoire et notamment pour tenir compte des objectifs énumérés au paragraphe 32(2);

f) désigner toute entité comme pays signataire, pour l'application de toute disposition de la présente loi ou des règlements et en vue de mettre à exécution un accord sur la protection des obtentions végétales conclu entre cette entité et le Canada et, malgré les autres dispositions de la présente loi, modifier ou restreindre les droits ou avantages prévus par la présente loi;

g) déterminer l'information à publier en application du paragraphe 71(1);

h) fixer les attributions des personnes employées par l'Agence canadienne d'inspec-

*Protection des obtentions végétales — 25 mai 2015*

anything in this Act, qualifying or restricting any rights or other benefits under this Act;

(g) distinguishing the kind of matters to be published in any of the ways contemplated by subsection 71(1);

(h) assigning powers or duties to persons employed by the Canadian Food Inspection Agency or designated by the President of the Agency to administer or enforce this Act or appointed or engaged pursuant to subsection 59(1);

(i) providing for the organization, including fixing the times of operation and closure, of the Plant Breeders' Rights Office, panels constituted under paragraph 59(1)(b) and the business thereof;

(j) specifying or defining methods, procedural requirements or conditions that shall be observed or may, at the discretion of the Commissioner, be adopted or imposed for the purpose or in the course of instituting, proceeding on, dealing with or disposing of any applications, objections, requests, representations, examinations, tests, trials or matters involving investigation or requiring determination by or under the authority of the Commissioner;

(k) respecting the granting of plant breeder's rights with an exemption, under subsection 27(2.1), from compulsory licensing, including the circumstances in which the exemption may be given or revoked by the Commissioner, the terms and conditions on which the exemption may be given and the factors that are to be taken into account before the exemption is revoked;

(l) prescribing

(i) the information to be entered in, and the forms of, the register, the index, applications for plant breeders' rights and any other record, instrument or document to be kept, made or used for the purposes of this Act, and

(ii) the means, factors or criteria for determining whether the existence of a plant variety is a matter of common knowledge for the purposes of paragraph 4(2)(b) or section 62;

tion des aliments ou désignées par le président de celle-ci pour assurer ou contrôler l'application de la présente loi et des personnes visées au paragraphe 59(1);

i) régir l'organisation et le fonctionnement — notamment quant aux heures d'ouverture et à la charge de travail — du Bureau et des comités établis en vertu de l'alinéa 59(1)b);

j) déterminer les méthodes, la procédure et les conditions — ainsi que leur caractère obligatoire ou facultatif — à appliquer ou à respecter, selon le cas, par le directeur, ou en son nom, pour toute mesure ou décision relevant de son autorité;

k) régir la délivrance de certificats d'obtention comportant une exemption, accordée au titre du paragraphe 27(2.1), à la licence obligatoire, notamment les circonstances dans lesquelles l'exemption peut être accordée ou révoquée, les modalités auxquelles elle peut être assujettie et les facteurs dont le directeur doit tenir compte pour la révoquer;

l) prévoir :

(i) la forme des documents à tenir ou à fournir en application de la présente loi, notamment le registre, le répertoire, les demandes de certificats d'obtention, ainsi que les renseignements à y porter;

(ii) les moyens, facteurs ou critères à utiliser pour établir si une variété végétale est notoirement connue pour l'application de l'alinéa 4(2)b) ou de l'article 62;

L1) régir les catégories d'agriculteurs ou les types de variétés végétales auxquels le paragraphe 5.3(2) ne s'applique pas;

L2) régir l'utilisation du produit de la récolte aux termes du paragraphe 5.3(2), notamment les circonstances dans lesquelles cette utilisation est restreinte ou interdite et les conditions auxquelles elle est assujettie;

m) prévoir l'examen de toute affaire mettant en jeu une décision prise par le directeur en application de la présente loi;

n) prendre toute mesure d'ordre réglementaire prévue par la présente loi.

*Plant Breeders' Rights — May 25, 2015*

	<p>(l.1) respecting any classes of farmers or plant varieties to which subsection 5.3(2) is not to apply;</p> <p>(l.2) respecting the use of harvested material under subsection 5.3(2), including any circumstances in which that use is restricted or prohibited and any conditions to which that use is subject;</p> <p>(m) respecting the procedure for review of cases involving decisions given by the Commissioner pursuant to any provision of this Act; and</p> <p>(n) prescribing any matter required or authorized by this Act to be prescribed.</p>		
Publication of proposed regulations	<p>(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make pursuant to this Act shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.</p>	<p>(2) Sous réserve du paragraphe (3), les projets de règlement sont publiés dans la <i>Gazette du Canada</i>, les personnes intéressées se voyant accorder la possibilité de présenter leurs observations à cet égard.</p>	Publication préalable des règlements
Exemptions	<p>(3) Subsection (2) does not apply in respect of a proposed regulation that</p> <p>(a) has been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection; or</p> <p>(b) makes no material substantive change in an existing regulation.</p> <p>1990, c. 20, s. 75; 1997, c. 6, s. 80; 2015, c. 2, s. 50.</p>	<p>(3) Ne sont toutefois pas visés les projets de règlement :</p> <p>a) déjà publiés dans les conditions prévues au paragraphe (2), même s'ils ont été modifiés à la suite d'observations présentées conformément à ce paragraphe;</p> <p>b) qui n'apportent pas de modification notable à la réglementation en vigueur.</p> <p>1990, ch. 20, art. 75; 1997, ch. 6, art. 80; 2015, ch. 2, art. 50.</p>	Exceptions
	SEEDS ACT	LOI SUR LES SEMENCES	
Seeds Act unaffected	<p><b>76.</b> (1) Nothing provided or granted by or under this Act shall be construed as conferring authority for</p> <p>(a) any seed to be sold, imported, exported or advertised, or</p> <p>(b) any name, mark or label to be applied in connection with any seed,</p> <p>contrary to the <i>Seeds Act</i> or any regulations thereunder.</p>	<p><b>76.</b> (1) La présente loi n'a pas pour effet de déroger à la <i>Loi sur les semences</i> ou ses règlements en ce qui concerne le pouvoir :</p> <p>a) de vendre, d'importer ou d'exporter une semence, ou d'en faire la publicité;</p> <p>b) d'utiliser, pour une semence, un nom, une marque ou une étiquette.</p>	Restrictions découlant de la Loi sur les semences
Definition of "seed"	<p>(2) In subsection (1), "seed" has the meaning assigned to that expression by section 2 of the <i>Seeds Act</i>.</p>	<p>(2) Au paragraphe (1), « semence » s'entend au sens de l'article 2 de la <i>Loi sur les semences</i>.</p>	« semence »
	REVIEW OF ACT	EXAMEN DE LA LOI	
Report	<p><b>77.</b> (1) As soon as practicable after the expiration of the period of ten years beginning on</p>	<p><b>77.</b> (1) À l'expiration de la dixième année suivant l'entrée en vigueur de la présente loi, le</p>	Rapport d'application

*Protection des obtentions végétales — 25 mai 2015*

Contents of report	<p>the day of the coming into force of this Act, the Minister shall prepare a report with respect to the administration of this Act during the period and shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after it is completed.</p>	<p>ministre établit dans les meilleurs délais un rapport sur l'application de celle-ci au cours de cette période et le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant son achèvement.</p>	Contenu
	<p>(2) The report prepared pursuant to subsection (1) shall indicate whether the operation of this Act</p> <p>(a) results in</p> <p>(i) the stimulation of investment in businesses involving the breeding of plant varieties in respect of which protection afforded by plant breeders' rights is applicable,</p> <p>(ii) any improvement in facilities to obtain foreign varieties of plants in the interests of agriculture in Canada,</p> <p>(iii) protection abroad, for commercial purposes, of Canadian plant varieties,</p> <p>(iv) improvement of plant varieties to the public benefit, and particularly, to the benefit of farmers and nurserymen, and</p> <p>(v) any other public advantage.</p> <p>(b) has some but not all of the results described in paragraph (a),</p> <p>(c) has all or any of those results but is, in any respect, not in the public interest, or</p> <p>(d) is, in the total absence of those results, not in the public interest,</p> <p>as the case may be, and particulars of anything so indicated shall be furnished in the report.</p>	<p>(2) Le rapport doit indiquer, avec détails à l'appui, si, selon le cas, l'application de la présente loi :</p> <p>a) a eu pour résultat :</p> <p>(i) de stimuler les investissements en matière de sélection de variétés végétales pouvant faire l'objet de la protection conférée par les certificats d'obtention,</p> <p>(ii) d'améliorer les moyens permettant d'obtenir des variétés végétales étrangères au profit de l'agriculture au Canada,</p> <p>(iii) d'assurer la protection à l'étranger, sur le plan commercial, des variétés végétales canadiennes,</p> <p>(iv) d'améliorer des variétés végétales, dans l'intérêt du public et plus particulièrement des agriculteurs et des horticulteurs,</p> <p>(v) de favoriser de toute autre manière l'intérêt public;</p> <p>b) a permis d'atteindre seulement certains des résultats mentionnés à l'alinéa a),</p> <p>c) a permis d'atteindre tout ou partie de ces résultats, tout en étant défavorable, à certains égards, à l'intérêt public;</p> <p>d) n'est pas favorable à l'intérêt public, parce qu'elle n'a permis d'atteindre aucun de ces résultats.</p>	
Annual report	<p><b>78.</b> The Minister shall each year prepare a report with respect to the administration of this Act during the preceding calendar year and shall lay it before Parliament on any of the first fifteen days that either House of Parliament is sitting after he completes it.</p>	<p><b>78.</b> Le ministre établit chaque année un rapport sur l'application de la présente loi au cours de la précédente année civile et le dépose devant le Parlement dans les quinze premiers jours de séance de l'une ou l'autre chambre suivant son achèvement.</p>	Rapport annuel
Plant breeders' rights — previously granted	<p style="text-align: center;"><b>TRANSITIONAL PROVISIONS</b></p> <p><b>79.</b> This Act, as it reads on or after the day on which this section comes into force, does not apply with respect to plant breeders' rights granted before that day, but this Act, as it read</p>	<p style="text-align: center;"><b>DISPOSITIONS TRANSITOIRES</b></p> <p><b>79.</b> La présente loi ne s'applique pas au certificat d'obtention qui a été délivré avant la date d'entrée en vigueur du présent article mais la</p>	Certificats d'obtention

*Plant Breeders' Rights — May 25, 2015*

	immediately before that day, continues to apply with respect to those rights. 1990, c. 20, s. 79; 2015, c. 2, s. 51.	présente loi, dans sa version antérieure à cette date, continue de s'appliquer à celui-ci. 1990, ch. 20, art. 79; 2015, ch. 2, art. 51.	
Existing applications	<b>80.</b> An application for the grant of plant breeder's rights that was made before the day on which this section comes into force and that was not disposed of before that day is to be dealt with and disposed of in accordance with this Act. However, if plant breeder's rights are granted to the applicant, sections 19 to 21, as they read immediately before the day on which this section comes into force, continue to apply with respect to those rights. 1990, c. 20, s. 80; 2015, c. 2, s. 51.	<b>80.</b> La demande de certificat d'obtention qui a été présentée avant la date d'entrée en vigueur du présent article et à l'égard de laquelle aucune décision n'a été prise avant cette date est traitée en conformité avec la présente loi. Toutefois, si un certificat d'obtention est délivré, les articles 19 à 21, dans leur version antérieure à l'entrée en vigueur du présent article, continuent de s'appliquer au certificat. 1990, ch. 20, art. 80; 2015, ch. 2, art. 51.	Demandes en instance
Existing proceedings	<b>81.</b> A proceeding commenced under this Act before the day on which this section comes into force that, on that day, is pending before a court and in respect of which no decision has been made shall be dealt with and disposed of in accordance with this Act as it read immediately before that day. 1990, c. 20, s. 81; 2015, c. 2, s. 51.	<b>81.</b> La procédure qui a été intentée sous le régime de la présente loi avant la date d'entrée en vigueur du présent article et qui est toujours pendante à cette date est continuée sous le régime de cette loi, dans sa version antérieure à cette date. 1990, ch. 20, art. 81; 2015, ch. 2, art. 51.	Instances en cours
	<b>COMING INTO FORCE</b>	<b>ENTRÉE EN VIGUEUR</b>	
Coming into force	<b>82.</b> This Act comes into force on a day to be fixed by order of the Governor in Council. * [Note: Act in force August 1, 1990, see SI/90-99.]	<b>82.</b> La présente loi entre en vigueur à la date fixée par décret du gouverneur en conseil. * [Note : Loi en vigueur le 1 <sup>er</sup> août 1990, voir TR/90-99.]	Entrée en vigueur

*Protection des obtentions végétales — 25 mai 2015***RELATED PROVISIONS**

— 1997, c. 6, s. 76(2)

Transitional

(2) For greater certainty, the two year limitation period provided for in subsection 53(7) of the Act, as amended by subsection (1), only applies in respect of offences committed after the coming into force of that subsection.

**DISPOSITIONS CONNEXES**

— 1997, ch. 6, par. 76(2)

Application

(2) Il demeure entendu que la prescription de deux ans prévue au paragraphe 53(7) de la même loi, dans sa version édictée par le paragraphe (1), ne s'applique qu'à l'égard des infractions commises après l'entrée en vigueur de ce paragraphe.

*Plant Breeders' Rights — May 25, 2015*

## AMENDMENTS NOT IN FORCE

— 2014, c. 20, s. 366(1)

Remplacement  
de «trade-mark» in  
other Acts

**366. (1) Unless the context requires otherwise, “trade-mark”, “trade-marks”, “Trade-mark”, “Trade-marks”, “trade mark” and “trade marks” are replaced by “trademark”, “trademarks”, “Trademark” or “Trademarks”, as the case may be, in the English version of any Act of Parliament, other than this Act and the *Trade-marks Act*.**

## MODIFICATIONS NON EN VIGUEUR

— 2014, ch. 20, par. 366(1)

Remplacement  
de «trade-mark»  
dans les autres  
lois fédérales

**366. (1) Sauf indication contraire du contexte, dans la version anglaise des lois fédérales, à l'exception de la présente loi et de la *Loi sur les marques de commerce*, «trade-mark», «trade-marks», «Trade-mark», «Trade-marks», «trade mark» et «trade marks» sont remplacés par «trademark», «trademarks», «Trademark» ou «Trademarks», selon le cas.**

## CHINA

### **Regulations of the People's Republic of China on the Protection of New Varieties of Plants, as amended in 2013**

#### CHAPTER I

##### GENERAL PROVISIONS

###### Article 1

These Regulations are formulated to protect the rights in new varieties of plants, to encourage the breeding and use of new varieties of plants, and to promote the development of agriculture and forestry.

###### Article 2

The new plant variety referred to in these Regulations means a cultivated plant variety, or a developed one based on a discovered wild plant, which is new, distinct, uniform and stable, and whose denomination is adequately designated.

###### Article 3

The administrative departments of agriculture and forestry under the State Council (both referred to hereinafter as the "examining and approving authorities") are jointly responsible, according to the division of their job responsibilities, for the receipt and examination of applications for rights in new varieties of plants, and for the grant of rights in new varieties of plants (hereinafter referred to as "variety rights") in respect of those new varieties of plants that conform to the provisions of these Regulations.

###### Article 4

The people's governments at county level or above or other relevant departments shall reward the entity which or the person who has accomplished the breeding of a new plant variety that has a bearing on the national or the public interest, and is of great value for use.

###### Article 5

The production, sale and dissemination of a new plant variety in respect of which variety rights have been granted (hereinafter referred to as the "protected variety") is subject to review and approval under the provisions of relevant national laws and regulations on seeds.

#### CHAPTER II

##### CONTENT AND OWNERSHIP OF VARIETY RIGHTS

###### Article 6

The entity which or the person who has accomplished the breeding has an exclusive right in their protected variety. Except otherwise provided in these Regulations, no other entity or person shall, without the consent of the holder of the variety rights (hereinafter referred to as the "variety rights holder"), produce or sell for commercial purposes the propagating material of the said protected variety, or use for commercial purposes the propagating material of the protected variety in a repeated manner in the production of the propagating material of another variety.

###### Article 7

In the case of job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs, or primarily by using the facilities of that entity, the right to file an application for variety rights in respect of the new plant variety shall belong to the entity in question; for breeding that is not job-related, the right to file such an application shall belong to the person accomplishing the breeding. Upon approval of the application, the variety rights shall belong to the applicant.

For commissioned breeding or jointly-conducted breeding, the ownership of the variety rights shall be agreed upon by the parties in a contract; failing such an event, the variety rights shall belong to the entity or person commissioned to conduct or jointly conducting the breeding.

#### Article 8

One new plant variety shall be granted only one set of variety rights. If two or more applicants apply separately for variety rights in respect of the same new plant variety, the variety rights shall be granted to the person who applies first; in the case of a simultaneous application, the variety rights shall be granted to the person who has first accomplished the breeding of the new plant variety concerned.

#### Article 9

The right to file an application for variety rights in respect of a new plant variety and the variety rights may be assigned in accordance with the law.

If a Chinese entity or person wishes to assign to a foreigner the right to file an application or the variety rights in respect of a new plant variety bred in China, such assignment shall be approved by the examining and approving authorities.

In the case of an assignment within China of the right to file an application or of the variety rights by a State-owned entity, it shall be submitted in accordance with the relevant national regulations for approval by the competent administrative departments concerned.

The parties involved in the assignment of the right to file an application or of the variety rights shall conclude a written contract, and shall register the assignment before the examining and approving authorities, which in turn shall published the assignment.

#### Article 10

Without prejudice to other rights of the variety rights holder under these Regulations, the exploitation of the protected variety shall not require authorization from, or payment of royalties to, the variety rights holder for the following purposes:

- (i) exploitation of the protected variety for breeding and other scientific research activities;
- (ii) the use for propagating purposes by farmers, on their own holdings, of the propagating material of the protected variety harvested on their own holdings.

#### Article 11

The examining and approving authorities may, in the national or the public interest, decide to grant a compulsory license to exploit new plant varieties, which should be subsequently registered and published.

The entity which or the person who is granted a compulsory license for exploitation shall pay the variety rights holder a reasonable exploitation fee, the amount of which shall be fixed by consultation between the two parties. Where the parties fail to reach an agreement, the examining and approving authorities shall adjudicate.

Where the variety rights holder is not satisfied with the decision to grant a compulsory license or is not satisfied with the adjudication regarding the fee payable for exploitation, he or it may, within three months from the date of receiving the notification, file a suit with the People's Court.

#### Article 12

Regardless of whether or not the term of the protection of the protected variety has expired, the denomination of the protected variety as used in its registration must be used for sales thereof.

### CHAPTER III

#### CONDITIONS FOR THE GRANT OF VARIETY RIGHTS

#### Article 13

The new plant variety in respect of which variety rights have been applied for shall be part of the botanical genera and species included in the national list of protected plant varieties. This list of protected plant varieties shall be determined and published by the examining and approving authorities.

#### Article 14

Any plant variety in respect of which variety rights are granted shall have the characteristic of novelty. Novelty means that the propagating material of the new plant variety in respect of which variety rights are applied for has not been sold prior to the filing date of the application, or has not been for sale, with the consent of the breeder, for more than one year within the territory of China; the propagating material

of vines, forest trees, fruit trees and ornamental plants must not have been for sale for more than six years, or the propagating material of other plant varieties for more than four years, in a foreign territory.

#### Article 15

Any plant variety in respect of which variety rights are granted shall have the characteristic of distinctness. Distinctness means that the plant variety in respect of which variety rights are applied for must noticeably distinguish it from any other plant variety known prior to the filing of the application.

#### Article 16

Any plant variety in respect of which variety rights are granted shall have the characteristic of uniformity. Uniformity means that the plant variety in respect of which variety rights are applied for is uniform, subject to the variation that may be expected, in its relevant features or characteristics after propagation.

#### Article 17

Any plant variety in respect of which variety rights are granted shall have the characteristic of stability. Stability means that the plant variety in respect of which variety rights are applied for keeps its relevant features or characteristics unchanged after repeated propagation or at the end of a particular cycle of propagation.

#### Article 18

Any plant variety in respect of which variety rights are granted shall have an adequate denomination, which shall be distinguishable from that for any other known plant variety of the same or similar botanical genus or species. The denomination, after its registration, shall be the generic designation of the new plant variety in question.

The following shall be avoided in the selection of a denomination for a new variety:

- (a) those consisting of only numbers;
- (b) those violating social morals;
- (c) those that are liable to mislead as to the features or characteristics of the new plant variety, or the identity of the breeder.

### CHAPTER IV

#### APPLICATION FOR VARIETY RIGHTS AND RECEIPT THEREOF

#### Article 19

Where Chinese entities and persons apply for variety rights, they may file an application with the examining and approving authorities directly or through a representative agency commissioned for the purpose.

Where the new plant variety in respect of which Chinese entities and persons apply for variety rights involves national security or major interests and therefore needs to be kept confidential, it shall be dealt with in accordance with the relevant national regulations.

#### Article 20

If a foreigner, a foreign enterprise or any other foreign institution files an application for variety rights in China, the application shall be handled under these Regulations in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international convention to which both countries are party, or on the basis of the principle of reciprocity.

#### Article 21

For the purposes of applying for variety rights, an application and specification conforming to the prescribed forms as well as a photograph of the variety shall be submitted to the examining and approving authorities.

The application documents shall be written in Chinese.

## Article 22

The date on which the examining and approving authorities receive the variety rights application documents shall be the filing date of the application. Where the application documents are filed by mail, the postmark date shall be the filing date of the application.

## Article 23

Where, within 12 months from the date on which any applicant has first filed an application for variety rights in a foreign country, the said applicant files an application for variety rights in China in respect of the same new plant variety, he or it may, in accordance with any agreement concluded between the said foreign country and the People's Republic of China or any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

Any applicant who claims the right of priority shall make a written statement when the application is filed, and shall submit, within three months, a copy of the variety rights application documents that were first filed, as confirmed by the original receiving authority; if the applicant fails to make the written statement or fails to submit a copy of the variety rights application documents under the provisions of these Regulations, the claim to the right of priority shall be deemed not to have been made.

## Article 24

Where the variety rights application conforms to Article 21 of the Regulations, the examining and approving authorities shall accept it, assign the filing date and a filing number and serve notice on the applicant within one month from the receipt of the application to pay an application fee.

Where the variety rights application does not, or after amendment still does not, conform to Article 21 of the Regulations, the examining and approving authorities shall not accept it and shall notify the applicant accordingly.

## Article 25

An applicant may amend or withdraw his or its variety rights application at any time before the variety rights are granted.

## Article 26

Any application filed by a Chinese entity or person with a foreign country for variety rights in respect of a new plant variety that has been bred in China shall be registered before the examining and approving authorities.

## CHAPTER V

## EXAMINATION AND APPROVAL OF VARIETY RIGHTS

## Article 27

Upon payment of the application fee, the examining and approving authorities shall carry out a preliminary examination on the variety rights application to determine the following:

- (a) whether it is part of the botanical genera or species included in the list of protected plant varieties;
- (b) whether it conforms to the provisions of Article 20 of the Regulations;
- (c) whether it conforms to the provisions on novelty;
- (d) whether the denomination of the new plant variety is adequate.

## Article 28

The examining and approving authorities shall complete the preliminary examination within six months after the variety rights application is formally received. Where the variety rights application is found acceptable on preliminary examination, the examining and approving authorities shall have it published and serve notice on the applicant to pay the examination fee within three months.

Where the variety rights application is found unacceptable on preliminary examination, the examining and approving authorities shall invite the applicant to state his observations or make amendments; where an applicant fails to respond within the time limit or the application is still unacceptable after amendment, the application shall be refused.

## Article 29

After the applicant has paid the prescribed examination fee, the examining and approving authorities shall carry out a substantive examination of the distinctness, uniformity and stability of the variety in respect of which variety rights are applied for.

Where the applicant has not paid the prescribed examination fee, the variety rights application shall be deemed to have been withdrawn.

## Article 30

The examining and approving authorities shall conduct the substantive examination on the basis of application documents and other relevant written information. Where they deem it necessary, the examining and approving authorities may entrust a designated testing institution with undertaking tests or with inspecting the results of growing tests or other trials that have already been carried out.

For the purposes of examination, the applicant shall, at the request of the examining and approving authorities, furnish necessary information and the propagating material of the new plant variety in question.

## Article 31

Where the variety rights application is found to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall take a decision to grant the variety rights, issue the new variety rights title, and have it registered and published.

Where the variety rights application is found not to be in conformity with the provisions of these Regulations on substantive examination, the examining and approving authorities shall refuse the application and notify the applicant accordingly.

## Article 32

The examining and approving authorities shall set up a Re-Examination Board for New Varieties of Plants.

Where any applicant is not satisfied with the decision of the examining and approving authorities refusing a variety rights application, that applicant may, within three months from the date of receiving the notification, request the Re-Examination Board for New Varieties of Plants to carry out a re-examination. The Re-Examination Board for New Varieties of Plants shall, within six months from the date of receiving the request for re-examination, take a decision and notify the applicant accordingly.

Where any applicant is not satisfied with the re-examination decision of the Re-Examination Board for New Varieties of Plants, that applicant may, within 15 days from the date of receiving the notification, file a suit with the People's Court.

## Article 33

After the variety rights have been granted, for the period beginning on the date on which an acceptable application is published on preliminary examination and ending on the date of grant of variety rights, the variety rights holder is entitled to claim compensation from an entity which, and a person who, has produced or sold the propagating material of the protected variety in question for commercial purposes without his consent.

## CHAPTER VI

## TERM, TERMINATION AND INVALIDITY

## Article 34

The term of protection of variety rights, counted from the date of grant thereof, shall be 20 years for vines, forest trees, fruit trees and ornamental plants and 15 years for other plants.

## Article 35

The variety rights holder shall pay annual fees from the year in which the variety rights are granted, and shall furnish propagating material of the protected variety for the purposes of control as required by the examining and approving authorities.

## Article 36

Variety rights shall be terminated prior to the expiration of the term thereof in any of the following cases:

- (a) where the variety rights holder makes a written statement renouncing his variety right;
- (b) where the variety rights holder has not paid the annual fees as prescribed;
- (c) where the variety rights holder has not furnished, in the manner required by the examining and approving authorities, such propagating material of the protected variety necessary for control;
- (d) where, on control, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted.

The termination of the variety rights shall be registered and published by the examining and approving authorities.

#### Article 37

From the date on which the examining and approving authorities publish the grant of variety rights, the Re-Examination Board for New Varieties of Plants may, ex officio or on the basis of a written request made by any entity or person, revoke the variety rights in any variety that is not in conformity with the provisions of Articles 14, 15, 16 and 17 of these Regulations, or change the denomination of any variety that is not in conformity with the provisions of Article 18 of these Regulations. The decision to revoke variety rights and the decision to change the denomination shall be registered and published by the examining and approving authorities, and shall be communicated to the parties concerned.

Where any party is not satisfied with the decision of the Re-Examination Board for New Varieties of Plants, he or it may, within three months from the date of receiving such communication, file a suit with the People's Court.

#### Article 38

The variety rights that have been revoked shall be deemed non-existent from the outset.

The decision to revoke variety rights shall have no retroactive effect on any judgment or ruling pronounced and enforced by the People's Court concerning the infringement of a new plant variety, or on any decision made and enforced by the administrative departments of agriculture and forestry of the People's Governments at provincial level or above concerning the infringement of a new plant variety, or on any executed license contract for exploitation of a new plant variety or any executed contract of assignment of the rights in a new plant variety. However, any damage caused to any other person due to bad faith on the part of the variety rights holder shall be equitably compensated.

If no repayment of the fees for the exploitation of the new plant variety or of the price for the assignment of the variety rights, pursuant to the provisions of the preceding paragraph, is made by the variety rights holder or the assignor of the variety rights to the licensee or the assignee, and if this is obviously contrary to the principle of equity, the variety rights holder or the assignor of the variety rights shall repay the whole or part of the fees for the exploitation of the variety or of the price for assignment of the variety rights to the licensee or the assignee.

### CHAPTER VII

#### PENALTY PROVISIONS

#### Article 39

Where the propagating material of the protected variety is produced or sold for commercial purposes without the consent of the variety rights holder, the variety rights holder or the party having an interest therein may request the administrative departments of agriculture and forestry of the People's Governments at provincial level or above to handle it in accordance with their respective competence, or directly file a suit with the People's Court.

The administrative departments of agriculture and forestry of the People's Governments at provincial level or above may, according to their respective competence and based on the principle of free will of the parties, mediate the compensation of damages caused by the infringement. Where accord has been reached through mediation, it should be executed by the parties concerned; where no accord has been reached through mediation, the variety rights holder or the party having an interest therein may file a suit with the People's Court according to civil action procedures.

In handling cases of infringement of variety rights in accordance with their respective competence, the administrative departments of agriculture and forestry of the People's Governments at provincial level or above may, for the purposes of safeguarding the public interest of the society, order the infringer to stop the infringing act, confiscate the unlawful earnings and the propagating material of plant variety, and

punish him with a fine at least one but not exceeding five times more than the value of goods where the value of goods over 50,000 Yuan; according to the seriousness of circumstances of the case, punish him with a fine not exceeding 250,000 Yuan where the value of goods not below 50,000 Yuan or without any value.

#### Article 40

Where any new plant variety is counterfeited, the administrative departments of agriculture and forestry of the People's Governments at county level or above shall order the party concerned to stop the counterfeiting act, confiscate the unlawful earnings and the propagating material of the plant variety ; and punish him with a fine at least one but not exceeding five times more than the value of goods where the value of goods over 50,000 Yuan; according to the seriousness of circumstances of the case, punish him with a fine not exceeding 250,000 Yuan where the value of goods not below 50,000 Yuan or without any value; where the circumstances of the case are so serious as to constitute a crime, the party concerned shall be subjected to criminal liability investigation in accordance with the law.

#### Article 41

Both the administrative departments of agriculture and forestry of the People's Governments at provincial level or above in handling cases concerning infringement of variety rights in accordance with their respective competence, and the administrative departments of agriculture and forestry of the People's Governments at county level or above in handling cases concerning counterfeited variety rights in accordance with their respective competence, may, as appropriate, seal up or detain the propagating material of the plant variety relevant to the cases, have access to, make copies of and seal up contracts, account books and other relevant documents related to the cases.

#### Article 42

Where the protected variety is sold without using the denomination as used in its registration, the administrative departments of agriculture and forestry of the People's Governments at county level or above shall, in accordance with their respective competence, order a correction within a specified time limit, and may impose a fine not exceeding 1,000 yuan.

#### Article 43

Where disputes arise as to the right to apply for a new variety of plant and the ownership of the variety rights, the parties concerned may file a suit with the People's Court.

#### Article 44

Where any staff member of the administrative departments of agriculture and forestry of the People's Governments at county level or above and of other departments abuses his power, neglects his duty, engages in any malpractice for private gain, or extorts or receives bribes, that staff member shall be subjected to criminal liability investigation in accordance with the law if the case constitutes a crime; or he shall be punished with administrative sanctions in accordance with the law if it does not constitute a crime.

### CHAPTER VIII

#### SUPPLEMENTARY PROVISIONS

#### Article 45

The examining and approving authorities may provide for flexible provisions on novelty requirement for the genera or species first included in the list of protected plant varieties before the entry into force of these Regulations and that for the genera or species included in the list of protected plant varieties after the entry into force of the Regulations.

#### Article 46

These Regulations shall enter into force as from October 1, 1997.

## GERMANY

### Plant Variety Protection Act (Sortenschutzgesetz), as last amended in 2013

**Version:** revised by the promulgation of 19 December 1997 I 3164;

most recently amended by Art. 4 para. 85 of the Act of 7 August 2013 I 3154

#### Division 1 Conditions for and scope of plant variety protection

##### Section 1 Conditions for plant variety protection

(1) Plant variety protection shall be granted for a plant variety (variety) if it is

1. distinct,
2. uniform,
3. stable,
4. new, and
5. designated by a registrable variety denomination.

(2) Protection shall not be granted in accordance with the present Act for a variety that is the subject matter of a Community plant variety right.

##### Section 2 Definitions

With the meaning of the present Act,

1. species shall be plant species as well as groupings and subdivisions of plant species,
- 1a. variety shall be a grouping of plants or parts of plants where complete plants can be obtained therefrom, within a single taxon of the lowest known rank, which, irrespective of whether it satisfies the conditions for the grant of a plant variety right ,
  - a) can be defined by the expression of the characteristics resulting from a specific genotype or from a specific combination of genotypes,
  - b) can be distinguished from any other grouping of plants or parts of plants by the expression of at least one of these characteristics, and
  - c) can be considered as a unit with regard to its suitability for being propagated unchanged,
2. propagating material shall be plants and parts of plants, including seeds, which are intended for the production of plants or otherwise for growing,
3. placing on the market shall be the offering, holding in stock for delivery, offering for sale and any kind of delivery to others,
4. application date shall be the date on which the plant variety protection application is received by the Federal Plant Variety Office,
5. contracting state shall be a state that is a Contracting Party of the Agreement on the European Economic Area,
6. member of the Union shall be a state or intergovernmental organisation that is a member of the International Union for the Protection of New Varieties of Plants.

### Section 3 Distinctness

(1) A variety shall be deemed to be distinct if it is clearly distinguishable in the expression of at least one relevant characteristic from any other variety that is a matter of common knowledge on the date of application. The Federal Plant Variety Office shall communicate on request for each species those characteristics that it deems to be relevant to the distinctness of the varieties of this species; it must be possible to recognise and describe the characteristics precisely.

(2) A variety shall be deemed to be a matter of common knowledge in particular if

1. it has been entered in an official register of plant varieties,
2. its entry in an official register of plant varieties has been applied for and the application is granted, or
3. propagating material or harvested material of the variety has already been placed on the market for commercial purposes.

### Section 4 Uniformity

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

### Section 5 Stability

A variety shall be deemed to be stable if it remains unchanged in terms of the expression of the characteristics that are relevant to its distinctness after each instance of propagation or, in the case of a propagation cycle, after each propagation cycle.

### Section 6 Novelty

(1) A variety shall be deemed to be new if, at the date of filing the application, plants or parts of plants of the variety have not been disposed to others for commercial purposes with the consent of the party entitled or of his/her legal predecessor, or only within the following periods:

1. one year within the European Union,
2. four years outside the European Union, or six years in the case of vine (*vitis* L.) and tree species.

(2) Disposal

1. to an official body on the basis of statutory provisions,
2. to third parties on the basis of a contract existing between them and the party entitled or other legal relationship exclusively for the production, propagation, conditioning or storage on behalf of the party entitled,
3. between companies or firms within the meaning of Article 54 para. 2 of the Treaty on the Functioning of the European Union if one of them completely belongs to the other or both completely belong to a third company or firm of this type; this shall not apply to cooperatives,
4. to third parties if the plants or parts of plants have been obtained for experimental purposes or for the breeding of new varieties and no reference is made to the variety at the time of disposal,
5. for the purpose of display at an official or officially-recognised exhibition within the meaning of the Convention relating to International Exhibitions of 22 November 1928 (Act of 5 May 1930, Reich Law Gazette [RGBL.] 1930 Part II p. 727), or at an exhibition that is officially recognised as equivalent by a Contracting Party on its territory, or delivery that is related to such exhibitions,

shall not be deemed to be deleterious to novelty.

(3) Propagating material of a variety that is continuously used for the production of another variety shall not be deemed to have been delivered within the meaning of subsection (1) until plants or parts of plants of the other variety have been delivered.

### **Section 7 Variety denomination**

(1) A variety denomination shall be deemed to be registrable if there is no object of impediment pursuant to subsection (2) or (3).

(2) There is an object of impediment if the variety denomination

1. is not suitable to identify the variety, particularly for linguistic reasons,
2. is not distinctive,
3. consists exclusively of numbers where it is not used for a variety that is exclusively intended for the continuous production of another variety,
4. is identical to or may be confused with a variety denomination under which a variety of the same or of a related species is or was entered in an official register of varieties in a contracting state or by another member of the Union, or propagating material of such a variety has been placed on the market, unless the variety is no longer entered and no longer cultivated and its variety denomination has not assumed any greater significance,
5. may be misleading, especially when it is likely to cause confusion as to the origin, the characteristics or the value of the variety, or as to the original breeder, discoverer or other entitled party,
6. may cause a public nuisance.

The Federal Plant Variety Office shall notify which species it regards as being related within the meaning of No. 4.

(3) If the variety has already been entered in an official register of varieties or if its entry in such a register has been applied for

1. in another contracting state or by another member of the Union, or
2. in another state which, according to a finding ascertained in legal acts of the European Communities or of the European Union, which is to be notified by the Federal Plant Variety Office, evaluates varieties in accordance with rules that correspond to the directives on the common catalogues of varieties of agricultural plant species,

only the variety denomination registered or stated therein shall be registrable. This shall not apply if there is an object of impediment pursuant to subsection (2) or where the applicant makes a plausible case that a third-party right opposes it.

### **Section 8 Entitlement to plant variety protection**

(1) The person who bred or discovered the variety or his/her successor in title shall be entitled to plant variety protection. If more than one party has bred or discovered the variety jointly, they shall be jointly entitled.

(2) The applicant shall be deemed to be the party entitled in the proceedings before the Federal Plant Variety Office unless the Federal Plant Variety Office becomes aware that he/she is not entitled to plant variety protection.

### **Section 9 Unauthorized applicant**

(1) If an unauthorized party has filed a plant variety protection application, the party entitled may require the applicant to transfer to him/her the claim to the grant of plant variety protection.

(2) If plant variety protection has been granted to an unauthorized party, the party entitled may require the holder of the plant variety right to transfer the plant variety protection to him/her. Such claim shall expire five years after notification of the entry in the Plant Variety Protection Register unless the holder of the plant variety right did not act in good faith when obtaining plant variety protection.

### **Section 10 Effect of plant variety protection**

(1) Subject to the provisions of sections 10a and 10b, plant variety protection shall have the effect that only the holder of the plant variety right shall be entitled

1. a) to produce, to condition for purposes of propagation, to place on the market, to import or export propagating material of the protected variety, or  
b) to store propagating material of the protected variety for one of the purposes designated at (a),
2. to carry out acts in accordance with No. 1 with other plants or parts of plants, or products obtained directly therefrom, if propagating material was used in their production without the consent of the holder of the plant variety right, and the holder of the plant variety right did not have an opportunity to exercise his/her variety protection right with regard to this utilisation.

(2) The effect of plant variety protection in accordance with subsection (1) shall also cover varieties which

1. are essentially derived from the protected variety (initial variety), if the initial variety itself is not an essentially derived variety,
2. are not clearly distinguishable from the protected variety, or
3. the production of which requires the repeated use of the protected variety.

(3) A variety shall be deemed to be an essentially derived variety if

1. the initial variety or another variety that itself is derived from the initial variety has been predominantly used as the basic material in its breeding or discovery,
2. it is clearly distinct, and
3. except for differences resulting from the derivation method used, it essentially conforms to the initial variety in the expression of the characteristics that result from the genotype or the combination of genotypes of the initial variety.

#### **Section 10a Restriction of the effect of plant variety protection**

(1) The effect of plant variety protection shall not extend to acts in accordance with section 10 subsection (1)

1. in the private domain for non-commercial purposes,
2. for experimental purposes relating to the protected variety,
3. for the purpose of breeding new varieties as well as acts referred to in section 10 subsection (1) with these varieties, with the exception of the varieties in accordance with section 10 subsection (2).

(2) The effect of plant variety protection shall furthermore not encompass harvested material which a farmer has obtained by planting, on his/her own holding, propagating material of a protected variety of the species contained in the list in the Annex, with the exception of hybrids or synthetic varieties, and has been used there as propagating material (farm-saved seed) where the farmer complies with his/her obligations as stipulated in subsections (3) and (6). For the purpose of farm-saved seed, the harvested material may be conditioned by the farmer or by an undertaking (conditioner) commissioned by him/her to do so.

(3) A farmer who makes use of the possibility of using farm-saved seed shall be required to pay a suitable remuneration to the holder of the plant variety right. Remuneration shall be deemed to be suitable if it is considerably lower than the amount that is agreed for the production of propagating material of the same variety in the same territory on the basis of an exploitation right in accordance with section 11.

(4) Agreements between holders of the plant variety right and farmers regarding the suitable amount of remuneration may be based on corresponding agreements between the professional organisations. They may not preclude competition in the seed sector.

(5) The requirement to pay in accordance with subsection (3) shall not apply to small farmers within the meaning of Article 14 para. 3, third indent, of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227 p. 1).

(6) Farmers who make use of farm-saved seed and any conditioners commissioned by them, shall be required to provide the holders of plant variety right with information as to the volume of farm-saved seed.

(7) The Federal Ministry of Food, Agriculture and Consumer Protection is herewith empowered to amend the list of species that are cited in the annex by means of an ordinance where this is necessary in order to adapt it to list for Community plant variety rights.

### **Section 10b Exhaustion of plant variety protection**

Plant variety protection shall not extend to acts which are carried out with plants or parts of plants or products directly obtained therefrom (material) of the protected variety or of a variety to which plant variety protection in accordance with section 10 subsection (1) No. 1 also extends that has been placed on the market by the holder of the plant variety right or with his/her consent, unless such acts

1. involve further production of propagating material without the aforementioned material having been intended for that purpose on delivery, or
2. involve the export of material of the variety which permits propagation of the variety to a country which does not protect varieties of the species to which the variety belongs; this shall not apply if the exported material is intended for growing.

### **Section 10c Suspension of plant variety protection**

If the holder of the plant variety right that has been granted in accordance with the present Act obtains a Community plant variety right for the same variety, the rights from the plant variety protection that has been granted in accordance with the present Act may not be asserted for the duration of the Community plant variety right.

### **Section 11 Legal succession, exploitation rights**

(1) The right to plant variety protection, the claim to the granting of plant variety protection, and the plant variety protection, shall be transferable to natural and legal persons or to commercial partnerships satisfying the requirements in accordance with section 15.

(2) Plant variety protection may be in full or in part the subject of exclusive or non-exclusive exploitation rights.

(3) If a party entitled to exploit contravenes a limitation of the exploitation right in accordance with subsection (2), plant variety protection may be invoked against him/her.

### **Section 12 Compulsory exploitation right**

(1) Where it is justified in the public interest, taking into account economic acceptability for the holder of the plant variety right, the Federal Plant Variety Office may on request grant a compulsory exploitation right to plant variety protection with regard to the entitlements in accordance with section 10, under reasonable conditions, if the holder of the plant variety right does not grant exploitation rights, or grants insufficient exploitation rights. When granting the compulsory exploitation right, the Federal Plant Variety Office shall determine the conditions thereof, particularly the amount of the remuneration to be paid to the holder of the plant variety right.

(2) Any of those concerned may request renewed determination of the conditions on expiry of one year after the grant of the compulsory exploitation right. The request may be repeated on expiry of each year; it may only be based on the circumstances that are decisive for the determination having changed considerably in the ensuing period.

(3) The Federal Plant Variety Office is to hear the professional associations concerned prior to the decision on granting a compulsory exploitation right and on a new determination.

(4) If a compulsory exploitation right has been granted for a variety belonging to a species that is subject to the Seed Trade Act (*Saatgutverkehrsgesetz*), the holder of the plant variety right may require information from the responsible authority regarding

1. who has applied for seed certification for propagating material of the protected variety,
2. what size of the multiplication field has been stated in the request for certification,
3. what weight or quantity has been stated in respect of the lots.

### **Section 12a Compulsory exploitation right with biotechnological inventions**

(1) If the holder of a patent for a biotechnological invention (section 1 subsection (2) of the German Patent Act [*Patentgesetz*]) is not able to exploit the invention without violating a previously granted plant variety protection right, the Federal Plant Variety Office shall on request grant a compulsory exploitation right in accordance with subsections (3) and (4) to plant variety protection with regard to the entitlements in accordance with section 10 on suitable conditions.

(2) The holder of the plant variety right may demand that the patent holder grant to him/her a mutual licence on suitable conditions.

(3) The patent holder must prove that

1. he/she has approached the plant variety protection holder in vain in order to obtain a contractual exploitation right,
2. the invention constitutes significant technical progress of considerable economic interest vis-à-vis the protected plant variety.

(4) Where the compulsory exploitation right is granted, the Federal Plant Variety Office shall set the conditions, in particular the amount of the remuneration payable to the plant variety protection holder. Section 12 subsections (2) and (4) shall apply *mutatis mutandis*.

### **Section 13 The duration of plant variety protection**

Plant variety protection shall extend to the end of the twenty-fifth calendar year or, in the case of hop, potato, grapevine and tree species, until the end of the thirtieth calendar year following the grant.

### **Section 14 Use of the variety denomination**

(1) Except in the private domain and for non-commercial purposes, propagating material of a protected variety may only be placed on the market if the variety denomination is stated in so doing; where it is stated in writing, it must be easily recognisable and clearly legible. This shall also apply once variety protection has expired.

(2) A right to a designation that is identical to the variety denomination may not be used to prohibit the use of the variety denomination for the variety. Prior third-party rights shall remain unaffected.

(3) The variety denomination of a protected variety or of a variety for which a breeders right has been granted by another member of the Union, or a denomination which may be confused with it, may not be used for another variety of the same species or of a related species.

### **Section 15 Personal scope**

(1) Only the following shall be entitled to the rights from the present Act

1. Germans within the meaning of Article 116 para. 1 of the Basic Law (*Grundgesetz*), as well as natural and legal persons and commercial partnerships that are domiciled or established in Germany,
2. nationals of another contracting state or of a state that is a member of the Union, as well as natural and legal persons and commercial partnerships that are domiciled or established in such state, and
3. other natural and legal persons and commercial partnerships where corresponding protection is afforded to German nationals or persons domiciled or established in Germany in the state to which they belong or in which they are domiciled or established according to a notification from the Federal Ministry of Food, Agriculture and Consumer Protection in the Federal Law Gazette.

(2) Whoever is neither domiciled nor established in a contracting state may only participate in a procedure regulated by the present Act and assert rights in accordance with the present Act if he/she has appointed a representative (procedural representative) who is domiciled or has business premises in a contracting state.

## **Division 2 The Federal Plant Variety Office**

### **Section 16 Status and tasks**

(1) The Federal Plant Variety Office is an autonomous higher federal authority within the portfolio of the Federal Ministry for Food, Agriculture and Consumer Protection.

(2) The Federal Plant Variety Office is responsible for the granting of plant variety protection and for matters related thereto. It shall keep the Plant Variety Protection Register and shall verify the continued existence of the protected varieties.

### **Section 17 Members**

(1) The Federal Plant Variety Office shall consist of the President and of further members. They must have special expertise in the field of plant varieties (expert members) or be qualified to hold judicial office in accordance with the German Judiciary Act (*Deutsches Richtergesetz*) (legal members). They shall be appointed by the Federal Ministry for Food, Agriculture and Consumer Protection for the duration of their work with the Federal Plant Variety Office.

(2) As a rule, only persons are to be appointed as expert members who, having taken a course of studies in natural sciences that is beneficial to their activity at the Federal Plant Variety Office, have passed a state or academic examination at a university in Germany or a final examination abroad that is recognised as equivalent, and have also worked for at least three years in the corresponding specialist area and have the necessary legal knowledge.

(3) If there is a need that is likely to be temporary, the President may appoint persons as assistant members to carry out the duties of members of the Federal Plant Variety Office. Such appointments may be for a specific period or for the duration of the requirement, and shall not be revocable during such period. Furthermore, the regulations regarding members shall also apply to assistant members.

### **Section 18 Examination Boards and Appeal Committees**

(1) The following shall be established within the Federal Plant Variety Office

1. Examination Boards,
2. Appeal Committees for variety protection matters.

The President shall determine their number and shall decide on the allocation of responsibilities.

(2) The Examination Boards shall be responsible for decisions on

1. plant variety protection applications,
2. objections in accordance with section 25,
3. change of the variety denomination in accordance with section 30,
4. (repealed)
5. the grant of a compulsory exploitation right and the determination of the conditions,
6. withdrawal and annulment of the grant of plant variety protection.

(3) The Appeal Committees shall be responsible for decisions on appeals against decisions of the Examination Boards.

### **Section 19 Composition of the Examination Boards**

(1) Each Examination Board shall consist of one expert member of the Federal Plant Variety Office designated by the President.

(2) Decisions in cases under section 18 subsection (2) Nos. 2, 5 and 6, shall be taken by the Examination Board composed of three members of the Federal Plant Variety Office who shall be designated by the President, one of whom must have legal expertise.

## **Section 20 Composition of the Appeal Committees**

(1) Each Appeal Committee shall be comprised of the President or of another member of the Federal Plant Variety Office designated by the President as Chairman, of two further members of the Federal Plant Variety Office designated by the President as assessors and of two honorary assessors. Two of the members of the Federal Plant Variety Office shall have technical expertise, and one shall have legal expertise.

(2) The honorary assessors shall be appointed for six years by the Federal Ministry of Food, Agriculture and Consumer Protection; they may be reappointed. Where an honorary assessor retires prematurely, his/her replacement shall be appointed for the remaining term of office. The honorary assessors are to have special expertise in plant varieties. Owners or employees of breeding establishments or employees of breeders' associations are not to be appointed. A deputy shall be appointed for each honorary assessor; sentences 1 to 4 shall apply *mutatis mutandis*.

(3) The Appeal Committees shall be quorate if attended by the Chairman and one assessor, one of whom must have legal expertise, and one honorary assessor.

## **Division 3 Proceedings before the Federal Plant Variety Office**

### **Section 21 Formal administrative procedure**

The provisions contained in sections 63 to 69 and 71 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) on formal administrative procedures shall apply to proceedings before the Examination Boards and the Appeal Committees.

### **Section 22 Plant variety protection application**

(1) The applicant shall state the name of the original breeder or breeders or discoverer or discoverers of the variety in the plant variety protection application and shall certify that, to the best of his knowledge, no further persons have been involved in the breeding or discovery of the variety. If the applicant is not the original breeder or discoverer, or is not the only original breeder or discoverer, he shall state how the variety came into his possession. The Federal Plant Variety Office shall not be obliged to verify this information.

(2) The applicant shall specify the variety denomination. For the procedure for granting plant variety protection, he may state a provisional denomination with the consent of the Federal Plant Variety Office.

### **Section 23 Priority of the plant variety protection application**

(1) The priority of the plant variety protection application shall be determined, in cases of doubt, by the sequence of the entries in the register of items received at the Federal Plant Variety Office.

(2) If the applicant has already applied for a breeders' right for the variety in another member of the Union, he/she shall be entitled, within one year of the first application having been properly filed, to enjoy the date of that application as priority for the plant variety protection application. Priority may only be claimed in the application for variety protection. It shall lapse if the applicant does not submit copies of the documents of the first application that have been certified by the authority that is responsible for this application to the Federal Plant Variety Office within three months of the filing date.

(3) If the variety denomination has been entered as a trademark for the applicant in the Trademark Register at the Patent Office, or if the entry has been applied for, for goods which include propagating material of the variety, he/she shall be entitled to enjoy the date of the trademark application as priority for the variety denomination. Priority shall lapse if the applicant does not submit to the Federal Plant Variety Office a certificate issued by the Patent Office concerning the entry or application of the trademark within three months of stating the variety denomination. Sentences 1 and 2 shall apply *mutatis mutandis* to marks which are registered in accordance with the Madrid Agreement of 14 April 1891 Concerning the International Registration of Trademarks, in its currently applicable version, and which enjoy protection in Germany.

### **Section 24 Publication of the plant variety protection application**

(1) The Federal Plant Variety Office shall publish the plant variety protection application, stating the species, the stated variety denomination or provisional denomination, the filing date and the name and address of the applicant, of the original breeder or discoverer and of a procedural representative.

(2) If the application has been withdrawn subsequent to its publication, if it has been deemed in accordance with section 27 subsection (2) not to have been filed on grounds of failure to comply, or if the grant of plant variety protection has been rejected, these circumstances shall equally be published by the Federal Plant Variety Office.

### **Section 25 Objections**

(1) Anyone may lodge written objections to the Federal Plant Variety Office against the grant of plant variety protection.

(2) Objections may only be based on the allegation that

1. the variety is not distinct, not uniform, not stable or not new,
2. the applicant is not entitled, or
3. the variety denomination is not registrable.

(3) The time limit for objections shall be as follows

1. in accordance with subsection (2) No. 1, until the granting of plant variety protection,
2. in accordance with subsection (2) No. 2, until three months after publication of the plant variety protection application,
3. in accordance with subsection (2) No. 3, until three months after publication of the stated variety denomination.

(4) Objections shall be reasoned. The facts and evidence justifying the assertion in accordance with subsection (2) shall be provided in detail. If this information is not already contained in the written objection, it must be provided before the expiry of the time limit for objections.

(5) If an objection in accordance with subsection (2) No. 2 leads to the withdrawal of the plant variety protection application or to refusal to grant plant variety protection, and if the objecting party files an application for variety protection within one month following withdrawal, or following the date on which the rejection becomes final for the same variety, he/she may demand that the date of the prior application be deemed to be the filing date of his/her application.

### **Section 26 Examination**

(1) When examining whether the variety satisfies the requirements for the grant of plant variety protection, the Federal Plant Variety Office shall grow the variety or shall undertake the necessary other investigations. It may refrain from doing so if it already has earlier examination results of its own at its disposal.

(2) The Federal Plant Variety Office may have the growing or the other necessary investigations carried out by other technically qualified agencies, including abroad, and may take into account the results of growing trials or other investigations carried out by such agencies.

(3) The Federal Plant Variety Office shall request the applicant to submit to it or to the agency which it designates the necessary propagating material and other material and the necessary further documents within a specified time limit, to provide the necessary information and to permit its verification.

(4) If the applicant claims priority in accordance with section 23 subsection (2), he/she shall submit the necessary propagating material and other material and the necessary further documents within four years of the expiry of the priority period. He/she may not submit further propagating material or further other material after submission. If the first application is withdrawn, or if the grant of breeders rights is refused, before the expiry of the four-year period, the Federal Plant Variety Office may require the applicant to submit the propagating material and other material in time for the next growing period, and to submit the other documents within a specified period.

(5) The Federal Plant Variety Office may supply authorities and agencies abroad with information on examination results where this is necessary for mutual information.

(6) The Federal Plant Variety Office shall require the applicant to submit in writing within a specified period

1. a variety denomination if he has stated a provisional denomination,
2. another variety denomination if the denomination that has been stated is not registrable.

Sections 24 and 25 shall apply *mutatis mutandis*.

### **Section 27 Failure to comply**

(1) If the applicant fails to comply with a request of the Federal Plant Variety Office within the time limit notified to him/her

1. to submit the necessary propagating material or other material or the necessary further documents,
2. to state a variety denomination, or
3. to pay examination fees that are due,

the Federal Plant Variety Office may reject the plant variety protection application if it has indicated this consequence of failure to comply when setting the time limit.

(2) If an applicant or appellant fails to pay the fee due for the decision on a plant variety protection application or on an appeal, the application shall be deemed not to have been filed or the appeal not to have been lodged if the fee is not paid within one month of the Federal Plant Variety Office having notified the fee decision and thereby having indicated this consequence of failure to comply.

### **Section 28 Plant Variety Protection Register**

(1) The following shall be entered in the Plant Variety Protection Register once the grant of plant variety protection has become final

1. the species and the variety denomination,
2. the determined expressions of the characteristics that are relevant for distinctness; with varieties the plants of which are produced by crossing specific parental components, also the reference thereto,
3. the name and address
  - a) of the original breeder or discoverer,
  - b) of the holder of the plant variety right,
  - c) of the procedural representatives,
4. the time at which plant variety protection begins and ends, as well as the reason for termination,
5. an exclusive exploitation right, including the name and address of its holder,
6. a compulsory exploitation right and the conditions determined therefor.

(2) The entry of the determined expressions of characteristics that are relevant for distinctness and the entry of the conditions for a compulsory exploitation right may be replaced by a reference to documents of the Federal Plant Variety Office. The entry may be amended *ex officio* with regard to the number and type of characteristics as well as to the determined expressions of those characteristics where this is necessary in order to render the description of the variety comparable with the descriptions of other varieties.

(3) Amendments to the identity of the holder of the plant variety right or of a procedural representative shall only be entered if they are documented. The holder of the plant variety right or procedural representative shall remain entitled and obliged in accordance with the present Act until the amendment is registered.

(4) The Federal Plant Variety Office shall publish the entries.

### Section 29 Inspection

(1) Anyone shall be entitled to inspect

1. the Plant Variety Protection Register,
2. the documents
  - a) in accordance with section 28 subsection (2), sentence 1,
  - b) of a published plant variety protection application and granted variety protection,
3. the growing
  - a) for examining a variety,
  - b) for varifying the continued existence of a variety.

(2) With varieties the plants of which are produced by crossing specific parental components, details of the parental components shall be excluded from inspection at the request of the party who has filed the plant variety protection application. The request may only be made until the decision on the plant variety protection application has been taken.

### Section 30 Amendment of the variety denomination

(1) A variety denomination designated on the grant of plant variety protection shall be amended if

1. a ground for exclusion in accordance with section 7 subsection (2) or (3) existed on registration and continues to exist,
2. a ground for exclusion in accordance with section 7 subsection (2) No. 5 or 6 has been subsequently entered,
3. a plausible case is made in favour of a conflicting right and the holder of the plant variety right consents to the registration of another variety denomination,
4. the holder of the plant variety right has been prohibited by a final legal decision from using the variety denomination, or
5. a party otherwise obliged to use the variety denomination in accordance with section 14 subsection (1) has been prohibited from using the variety denomination by a final decision, and the holder of the plant variety right is a subsidiary party to the legal dispute or was informed of the dispute, insofar as he was not prevented from asserting his rights by circumstances designated in section 68, second clause, of the German Code of Civil Procedure (*Zivilprozeßordnung*).

In the event of an amendment being made to the variety denomination in accordance with sentence 1 No. 1, there shall be no claim to compensation for a financial disadvantage in accordance with section 48 subsection (3) of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

(2) The Federal Plant Variety Office shall require the holder of the plant variety right to propose another variety denomination within a specific time if it finds that there are grounds for an amendment in accordance with subsection (1). If the deadline passes without result, it may stipulate a variety denomination *ex officio*. At the request of the the holder of the plant variety right or of a third party, the Federal Plant Variety Office shall stipulate a variety denomination if the applicant can prove a legitimate interest. Sections 24, 25 and 28 subsection (1) No. 1 and subsection (4) shall apply *mutatis mutandis* to the determination of the other variety denomination and its notification.

### Section 31 Termination of plant variety protection

(1) Plant variety protection shall expire if the holder of the plant variety right has waived it in writing vis-à-vis the Federal Plant Variety Office.

(2) The grant of plant variety protection shall be withdrawn if it emerges that the variety was not distinct or was not new when plant variety protection was granted. There shall be no claim to compensation for economic disadvantage in accordance with section 48 subsection (3) of the Administrative Procedure Act. A withdrawal on other grounds shall not be permissible.

(3) The grant of plant variety protection shall be revoked if it emerges that the variety is not uniform or is not stable.

(4) The grant of plant variety protection may only be revoked in other respects if the holder of the plant variety right

1. has failed to comply with a request in accordance with section 30 subsection (2) to state another variety denomination,
2. despite a reminder has failed to comply with an obligation given rise to by an ordinance in accordance with section 32 No. 1 with regard to verification of the continued existence of the variety, or
3. has failed to pay annual fees that are due within an additional time limit.

### **Section 32 Powers to issue procedural regulations**

The Federal Ministry for Food, Agriculture and Consumer Protection is herewith empowered by means of an ordinance

1. to regulate the details of the procedure before the Federal Plant Variety Office, including the definition of the characteristics that are relevant for distinctness, the determination of the scope of the examination and the subsequent verification of the continued existence of the protected variety,
2. to determine the gazette for notifications of the Federal Plant Variety Office.

### **Section 33 Fees and expenses**

(1) The Federal Plant Variety Office shall charge fees and expenses for its individually-attributable official acts under the present Act and for the examination of plant varieties at the request of foreign or supranational entities and an annual fee for each commenced year of the duration of variety protection (protection year).

(2) The Federal Ministry for Food, Agriculture and Consumer Protection is herewith empowered, in agreement with the Federal Ministries of Finance and of Economics and Technology, to determine by means of an ordinance the acts for which fees are due and the fee rates, and in so doing to provide for fixed rates or basic rates and determine the time for the generation and collection of fees. The significance, economic value or other benefit ensuing from the individually attributable official act, including for breeding and for the general public, shall be suitably taken into account. The expenses to be refunded may be determined in derogation from the Federal Act on Fees (*Bundesgebührengesetz*).

(3) A different regulation may be provided by a special fee code of the Federal Ministry for Food, Agriculture and Consumer Protection in accordance with section 22 subsection (4) of the Federal Act on Fees for the domain of the federal administration at the time of the incurrence and of the collection of the fee.

(4) No reduction in accordance with section 15 subsection (2) of the Administrative Expenses Act (*Verwaltungskostengesetz*) in the version applicable until 14 August 2013 shall be granted for fees for the examination of a variety and for the rejection of an application for variety protection.

(5) The objection fee shall be refunded in the case of a successful objection. The appeals fee shall be refunded on request in the case of a successful appeal to the Patent Court or of a successful legal appeal. The appropriate part of the appeals fee shall be refunded in the case of partial success. However, the refund can be fully or partly omitted if the decision is based on facts that could have been asserted or proven earlier. Sentences 1 to 4 shall apply *mutatis mutandis* to expenditure in appeals procedures. There shall be no entitlement to a refund of costs in accordance with section 80 of the Administrative Procedure Act.

## **Division 4 Court proceedings**

### **Section 34 Appeal**

- (1) Appeals shall be available to the Patent Court against the orders of the Appeal Committees.
- (2) An appeal fee shall be payable in accordance with the Patent Cost Act (*Patentkostengesetz*) within the time limit for appeals; if it is not paid, the appeal shall be deemed not to have been lodged.

(3) An appeal against the registration of a variety denomination in accordance with section 30 subsection (2) and against a decision for which immediate enforcement has been ordered shall have no suspensory effect.

(4) The President of the Federal Plant Variety Office may accede to the appeal proceedings.

(5) A Chamber of Appeal shall rule on appeals. In the cases falling under section 18 subsection (2) Nos. 3 and 4, it shall rule composed of three legal members and in other cases composed of one legal member as chairman, a further legal member and two technical members.

### **Section 35 Appeal on points of law**

(1) Appeals on points of law against the ruling of the Chamber of Appeal shall be available to the Federal Court of Justice if the Chamber of Appeal has admitted this in its ruling.

(2) Section 34 subsection (3) shall apply *mutatis mutandis*.

### **Section 36 Application of the Patent Act (*Patentgesetz*)**

Unless otherwise stipulated in sections 34 and 35, the provisions of the Patent Act on appeals proceedings before the Patent Court and proceedings for appeals on points of law before the Federal Court of Justice, as well as concerning legal aid, shall apply *mutatis mutandis* in these proceedings.

### **Division 5 Rights violations**

#### **Section 37 Right to forbearance, damages and remuneration**

(1) Action may be taken by the violated party against anyone who, without the consent of the holder of the plant variety right,

1. uses material that is subject to plant variety protection to commit one of the acts referred to in section 10 subsection (1), or
2. uses the variety denomination of a protected variety or a designation that may be confused with it for a different variety of the same or of a related species,

to have them remedy the damage, and should there be a danger of a repeat action, to forego such action. The entitlement shall also exist if a violation is imminent for the first time.

(2) Anyone who acts intentionally or negligently shall be liable to provide compensation to the violated party for the damage ensuing therefrom. The profit which the violating party obtained by violating the right may also be taken into account when assessing the compensation. The damage claim may also be calculated on the basis of the amount which the violator would have had to pay as a suitable remuneration if he/she had obtained permission to use the variety.

(3) The holder of the plant variety right may require appropriate remuneration from the party who has carried out one of the acts designated in section 10 subsection (1) with material that is subject to variety protection between publication of the application and grant of variety protection.

(4) (repealed)

#### **Section 37a Right to destruction and recall**

(1) In cases falling under section 37 subsection (1), the violated party may demand the destruction of material which is the subject of the infringing act and which is in the possession or ownership of the violating party. Sentence 1 shall apply *mutatis mutandis* to any equipment belonging to the violating party and which has been primarily used for the production of this material.

(2) The violated party may take action against the violating party in cases falling under section 37 subsection (1) to have a recall of material that has been unlawfully produced or disseminated, or that is intended for unlawful dissemination, or for its final removal from the distribution channels.

(3) Claims in accordance with subsections (1) and (2) shall be ruled out if the measure is disproportionate in individual cases. The legitimate interests of third parties shall also be taken into account when examining proportionality.

### Section 37b Right to information

(1) The violated party may take action against the violating party in cases falling under section 37 subsection (1) in order to obtain information without delay on the origin and distribution channel of the material that violates the right.

(2) In cases in which the violation of the right is evident, or in cases in which the violated party has filed an action against the violating party, the claim shall also exist regardless of subsection (1) against a person who, on a commercial scale,

1. was in possession of material that was in breach of a right,
2. made use of services that were in breach of a right,
3. provided services that were used for activities that were in breach of a right, or
4. according to information from a person designated in accordance with No. 1, 2 or No. 3, was involved in the manufacture, production or distribution of such material

unless the person would have been entitled to refuse to testify in the proceedings against the violating party in accordance with sections 383 to 385 of the Code of Civil Procedure (*Zivilprozessordnung*). Should the claim in accordance with sentence 1 be asserted in court, the court may suspend the legal dispute that is pending against the violating party on request until the legal dispute being pursued in respect of the right to information has been dealt with. The party that is obliged to provide information may demand from the violated party compensation for the expenditure necessary to provide the information.

(3) The person required to provide information shall provide information on

1. the name and address of the producers, suppliers and other previous owners of the material or services, as well as of the commercial customers and points of sale for which they were intended, and
2. the quantity of the material that has been produced, delivered, received or ordered, as well as on the prices that were paid for the material or services in question.

(4) The claims in accordance with subsections (1) and (2) shall be ruled out if the assertion of the claim is disproportionate in an individual case.

(5) If the party obliged to provide the information provides incorrect or incomplete information, intentionally or with gross negligence, he/she shall be obliged to compensate for the damage ensuing therefrom.

(6) Anyone who has provided true information without having been obliged to do so in accordance with subsection (1) or subsection (2) shall only be liable vis-à-vis third parties if he/she knew that he/she was not obliged to provide the information.

(7) In cases in which the violation is evident, the obligation to provide information may be ordered by an interim injunction in accordance with sections 935 to 945 of the Code of Civil Procedure.

(8) The information may only be used as evidence in criminal proceedings or in proceedings in accordance with the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) in respect of an offence committed against the party obliged to provide information prior to the giving of information or against a family member designated in section 52 subsection (1) of the Code of Criminal Procedure with the consent of the party obliged.

(9) If the information can only be provided using traffic data (section 3 No. 30 of the Telecommunications Act [*Telekommunikationsgesetz*]), a prior court order on the permissibility of the utilisation of the traffic data, for which the violated party shall apply, shall be required for it to be provided. The Regional Court in whose district the party obliged to provide information is resident, domiciled or established shall have exclusive jurisdiction for issuing this order regardless of the value at dispute. The decision shall be taken by the civil chamber. The provisions contained in the Act on Procedure in Family Matters and Non-Contentious Matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) shall apply *mutatis mutandis* to the proceedings. The violated party shall pay the costs of the court order. A complaint shall be admissible against the ruling of the Regional Court. The complaint shall be submitted within a period of two weeks. The provisions on the protection of personal data shall remain unaffected in other respects.

(10) Subsection (2) in conjunction with subsection (9) shall restrict the fundamental right to the privacy of telecommunications (Article 10 of the Basic Law).

### **Section 37c Rights of submission and inspection**

(1) Where sufficient probability exists of a violation of rights within the meaning of section 37 subsection (1), the right holder or another party entitled may take action against the alleged violating party for submission of a title or inspection of a thing which is at his/her disposal if this is necessary in order to justify his/her claims. In cases of a rights violation that has been committed on a commercial scale, the right shall also extend to the submission of banking, financial or commercial documents. Where the alleged violating party claims the information to be confidential, the court shall take the necessary action in order to ensure the protection that is necessary in individual cases.

(2) The right in accordance with subsection (1) shall be ruled out if the claim is disproportionate in an individual case.

(3) The obligation to submit a title or to tolerate the inspection of a thing may be ordered by means of an injunction in accordance with sections 935 to 945 of the Code of Criminal Procedure. The court shall take the necessary measures in order to ensure the protection of confidential information. This shall apply in particular in cases in which the injunction is issued without previously hearing the respondent.

(4) Section 811 of the German Civil Code (*Bürgerliches Gesetzbuch*) as well as section 37b subsection (8) shall apply *mutatis mutandis*.

(5) If there was no violation, or no immanent violation, the alleged violating party may demand from the party which requested submission or inspection in accordance with section (1) compensation for the damage which he/she incurred by virtue of the request.

### **Section 37d Security in respect of damage claims**

(1) The violated party may also claim against the violating party in case of a rights violation that has been committed on a commercial scale in cases falling under section 37 subsection (2) to submit bank, financial or commercial documents or for suitable access to the documents in question which are at the disposal of the violating party and are needed in order to enforce the damage claim if it is questionable whether the damage claim can be met without such submission. Where the violating party asserts that such information is confidential, the court shall take the necessary action in order to ensure the protection that is required in the individual case.

(2) The claim in accordance with subsection (1), sentence 1, shall be ruled out if the claim is disproportionate in the individual case.

(3) The obligation to submit the documents designated in subsection (1) may be ordered by means of an injunction in accordance with sections 935 to 945 of the Code of Civil Procedure if the damage claim is evident. The court shall take the requisite action in order to ensure the protection of confidential information. This shall apply in particular in cases in which the injunction is handed down without a prior hearing of the respondent.

(4) Section 811 of the Civil Code, as well as 37b subsection (8), shall apply *mutatis mutandis*.

### **Section 37e Promulgation of the judgment**

If an action had been lodged on the basis of the present Act, the winning party may be awarded the power in the judgment to publish the judgment at the expense of the losing party if it shows that it has a legitimate interest. The nature and extent of the notification shall be determined in the judgment. The power shall expire if it has not been taken up within three months of the judgment becoming final. The finding in accordance with sentence 1 shall not be provisionally enforceable.

### **Section 37f Lapse**

The provisions contained in Division 5 of Book 1 of the Civil Code shall apply *mutatis mutandis* to lapse of the claims for violation of a right that is protected in accordance with the present Act. Section 852 of the Civil Code shall apply *mutatis mutandis* if the party obliged has obtained something by virtue of the violation at the expense of the party entitled.

### Section 37g Claims from other statutory provisions

Claims from other statutory provisions shall remain unaffected.

### Section 38 Court proceedings on plant variety protection

(1) The Regional Courts shall have exclusive jurisdiction for all actions whereby a claim is asserted from one of the legal relationships regulated by the present Act (court proceedings litigation on plant variety protection) regardless of the value at dispute.

(2) The *Land* Governments are herewith empowered to allot by means of an ordinance the plant variety protection matters for the districts of several Regional Courts to one of them where this serves the practical furtherance or more rapid conclusion of the proceedings. The *Land* Governments may transfer this empowerment to the *Land* Ministries of Justice. The *Länder* may furthermore agree to completely or partly transfer tasks that are incumbent on the courts of one *Land* to the court of another *Land* that has jurisdiction.

(3) Of the costs arising from the collaboration of a patent attorney, the fees in accordance with section 13 of the Lawyers Remuneration Act (*Rechtsanwaltsvergütungsgesetz*) and the necessary expenses of the patent attorney shall be refunded.

(4) Subsections (1) to (3) shall also apply to all actions by means of which a claim is asserted from one of the legal relationships regulated in Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ L 227 p. 1) in its respectively applicable version.

### Section 39 Criminal provisions

(1) Anyone who

1. in contravention of section 10 subsection (1), including in conjunction with subsection (2), produces, conditions for the purposes of propagation, places on the market, imports, exports or stores propagating material of a variety that is protected in accordance with the present Act, a plant, a part of a plant or a product, or
2. in contravention of Article 13 para. 1, in conjunction with para. 2, sentence 1, including in conjunction with para. 4, sentence 1, or para. 5, of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ L 227 p. 1) propagates, conditions for the purpose of propagation, offers for sale, places on the market, imports, exports or stores material of a variety protected by a Community plant variety right

shall be punished with up to three years' imprisonment or a fine.

(2) Where the offender acts on a commercial basis, the punishment shall be up to five years' imprisonment or a fine.

(3) The attempt shall be punishable.

(4) In cases falling under subsection (1), the offence shall only be prosecuted on request unless the criminal prosecution authority considers *ex officio* intervention to be required because of the particular public interest in criminal prosecution.

(5) Objects to which the criminal offence is related may be confiscated. Section 74a of the German Criminal Code (*Strafgesetzbuch*) shall be applied. The provisions on confiscation shall not be applied where the claims designated in section 37a are admitted in proceedings in accordance with the provisions contained in the Code of Criminal Procedure with regard to the compensation of the violated party (sections 403 to 406c).

(6) In the event of a conviction, it shall be ordered that the sentence be published on request if the violated party so moves and puts forward a legitimate interest therein. The nature of the publication shall be laid down in the judgment.

### **Section 40 Provisions on regulatory fines**

(1) Anyone who, intentionally or negligently,

1. places propagating material of a variety protected in accordance with the present Act on the market if the variety denomination is not stated therein, or not in the prescribed manner, in contravention of section 14 subsection (1),
2. uses a variety denomination of a variety protected in accordance with the present Act or a designation that may be confused with it for another variety of the same or of a related species, in contravention of section 14 subsection (3), or
3. fails to use the denomination of a variety protected by a Community plant variety right, fails to use it correctly, completely or in the prescribed manner, in contravention of Article 17 para. 1, including in conjunction with para. 3, of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ EC L227 p. 1)

shall be deemed to have committed an offence.

(2) The regulatory offence may be punished with a fine of up to five thousand Euro.

(3) Objects to which the regulatory offence refers may be confiscated. Section 23 of the Regulatory Offences Act shall be applied.

(4) The Federal Plant Variety Office shall be the administrative authority within the meaning of section 36 subsection (1) No. 1 of the Act on Regulatory Offences.

### **Section 40a Provisions on Measures by the Customs Authority**

(1) Material that is the subject of a violation of plant variety protection granted in Germany or in accordance with Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ EC L 227 p. 1) in the respectively valid version shall be subject, unless Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ EU L 196 p. 7), in the respectively valid version, applies, on request by the holder of the plant variety right and on provision of security by him/her, to seizure by the customs authorities, on its import or export where the rights violation is evident. This shall only apply in trade with other contracting states where controls are carried out by the customs authorities.

(2) Where the customs authority orders a seizure, it shall promptly notify the person entitled to dispose and the applicant. The applicant shall be informed of the origin, quantity and place of storage of the material, together with the name and address of the person entitled to dispose; the privacy of correspondence and posts (Article 10 of the Basic Law) shall be restricted in that respect. The applicant shall be afforded the opportunity to inspect the material where such inspection does not constitute a breach of commercial or operational secrets.

(3) Where no objection is made to the seizure at the latest within two weeks of service of the notification in accordance with subsection (2), sentence 1, the customs authority shall order the confiscation of the seized material.

(4) If the person entitled to dispose objects to the seizure, the customs authority shall promptly inform the applicant thereof. The latter shall be required to promptly state to the customs authority whether he/she is upholding the request under subsection (1) in respect of the seized material.

1. The customs authority shall promptly suspend the seizure if the applicant withdraws the request.
2. The customs authority shall take the necessary measures if the applicant upholds the request and submits an executable court ruling ordering the impounding of the seized material or the limitation of the right to dispose thereof.

Where neither of the cases referred to in Nos. 1 and 2 is applicable, the customs authority shall suspend the seizure on expiry of two weeks after service of the notification on the applicant in accordance with sentence 1; if the applicant proves that the court ruling in accordance with No. 2 has been applied for but that he/she has not yet received it, the seizure shall be upheld for a further two weeks at most.

(5) If the seizure proves to have been unjustified from the outset, and if the applicant has upheld the request in accordance with subsection (1) with regard to the seized material, or has not made a prompt declaration (subsection (4), sentence 2), he/she shall be obliged to compensate for the damage that seizure has caused to the person entitled to dispose.

(6) The application in accordance with subsection (1) shall be submitted to the Federal Finance Office, and shall be effective for one year unless a shorter period of validity is applied for; it may be repeated. The cost of official acts related to the application shall be collected from the applicant in accordance with section 178 of the German Fiscal Code (*Abgabenordnung*).

(7) Seizure and confiscation may be challenged with the legal remedies that are allowed for the regulatory fine procedure under the Regulatory Offences Act against seizure and confiscation. The applicant shall be heard in the appeal proceedings. An immediate complaint shall be available against the ruling of the Local Court; it shall be ruled on by the Higher Regional Court.

### **Section 40b Procedure in accordance with Regulation (EC) No. 1383/2003**

(1) If the competent customs authority in accordance with Article 9 of Regulation (EC) No. 1383/2003 suspends the release of the goods or detains them, it shall promptly inform the right-holder, as well as the applicant or the possessor or owner of the goods, thereof.

(2) In cases falling under subsection (1), the right-holder may apply to have the goods destroyed in the simplified procedure described below within the meaning of Article 11 of Regulation (EC) No. 1383/2003.

(3) The application must be made in writing to the customs authority within ten working days, or within three working days in the case of perishable goods, of receipt of the notification in accordance with subsection (1). It must contain the information that the goods forming the subject-matter of the proceedings violate a right that is protected in accordance with the present Act. The written consent of the applicant, of the possessor or of the owner of the goods, to their destruction shall be enclosed. In derogation from sentence 3, the applicant, the possessor or the owner of the goods may submit their written declaration directly to the customs authority as to whether or not they consent to the destruction. The period designated in sentence 1 may be extended prior to its expiry by ten working days at the request of the right-holder.

(4) Consent to destruction shall be deemed to have been granted if the applicant, the possessor or the owner of the goods have not objected to destruction within ten working days, or within three working days in the case of perishable goods, of receipt of the notification in accordance with subsection (1). This fact shall be referred to in the notification in accordance with subsection (1).

(5) The destruction of the goods shall be carried out at the expense and under the responsibility of the right-holder.

(6) The customs authority may take on the organisation of the destruction. Subsection (5) shall remain unaffected thereby.

(7) The storage period in accordance with Article 11 para. 1 second indent of Regulation (EC) No. 1383/2003 shall be one year.

(8) Section 40a shall apply *mutatis mutandis* in other respects unless Regulation (EC) No. 1383/2003 contains provisions which preclude this.

## **Division 6 Final provisions**

### **Section 41 Transitional provisions**

(1) The provisions of the present Act shall apply in respect of varieties for which, on entry into force of the present Act, variety protection

1. still exists in accordance with the Seed Act (*Saatgutgesetz*) in the consolidated version published in the Federal Law Gazette, Part III, classification number 7822-1, most recently amended by the Act of 23 December 1966 (Federal Law Gazette I, p. 686), in conjunction with section 52 subsection (1) of the Plant Variety Protection Act of 20 May 1968 (Federal Law Gazette, Part I p. 429), in the version promulgated on 4 January 1977 (Federal Law Gazette Part I, pp. 105 and 286), or

2. has been granted or applied for in accordance with the Plant Variety Protection Act of 20 May 1968, in the applicable version,

subject to the proviso that, in cases falling under No. 1, a grant of plant variety protection can only be withdrawn in accordance with section 31 subsection (2) if it emerges that the requirements of section 2 subsection (2) of the Seed Act were not satisfied when plant variety protection was granted.

(2) Where a patent has been granted or applied for regarding a variety or a process for its breeding prior to the date on which this Act became applicable to the species concerned, the applicant, or his legal successor, may uphold the patent application, or the holder of the patent may uphold the patent or apply for the grant of plant variety protection for the variety. If he/she applies for the grant of plant variety protection, he/she shall be entitled to enjoy the date of the patent application as priority for the plant variety protection application; section 23 subsection (2) sentence 3 shall apply *mutatis mutandis*. The duration of the plant variety protection that has been granted shall be reduced by the number of full calendar years that have elapsed between the filing of the patent application and the filing date. Once the grant of variety protection has become final, rights arising from the patent or from the patent application may no longer be asserted for the variety; pending patent grant procedures shall not be continued.

(3) If a Community plant variety right has been granted for a variety and has been terminated by waiver without there being any grounds for a declaration of nullity or cancellation, an application for the grant of variety protection in accordance with the present Act may be filed within three months of the waiver taking effect. For this application, the holder of the Community plant variety right or his legal successor shall be entitled to enjoy the date of the application for the grant of the Community plant variety right as priority for the variety protection application in accordance with the present Act. The priority shall expire if the applicant does not file the documents concerning the application for the grant of the Community plant variety right, its grant and the relinquishment within the above period. If plant variety protection in accordance with the present Act is granted for the variety, the duration of the protection that has been granted shall be reduced by the number of full calendar years that have passed between the grant of the Community plant variety right and the grant of variety protection in accordance with the present Act.

(4) Varieties for which the application for protection was filed up to one year after the date on which the present Act became applicable to the species in question shall be deemed to be new if propagating material or harvested material of the variety was placed on the market for commercial purposes with the consent of the party entitled or of his legal predecessor more than four years or, in the case of vine and tree species, more than six years prior to the said date. Where variety protection is granted in application of sentence 1, its duration shall be reduced by the number of full calendar years that have passed between the beginning of placing on the market and the filing date.

(5) By derogation from section 6 subsection (1), a variety shall also be deemed to be new if plants or parts of plants of the variety have not been placed on the market for commercial purposes with the consent of the party entitled or of his/her legal predecessor prior to the filing date, or only within the following periods:

1. one year in Germany,
2. four years or, for vine (*vitis* L.) and tree species, six years outside the country,

if the filing date is not later than one year after the entry into force of Article 1 of the Act of 17 July 1997 (Federal Law Gazette Part I p. 1854).

(6) The provision contained in section 10 subsection (1) shall not apply to essentially derived varieties for which plant variety protection has been applied or granted prior to the entry into force of Article 1 of the Act of 17 July 1997 (Federal Law Gazette Part I p. 1854).

(7) Article 229 para. 6 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) shall apply *mutatis mutandis* subject to the proviso that section 37c in the version applicable until 1 January 2002 is deemed to be equivalent to the provisions of the Civil Code on lapse in the version applicable until 1 January 2002.

## Section 42

(Entry into force)

**Annex**

Source of the original text: Federal Law Gazette Part I 1997, 3176

Species from which propagating material may be saved:

1.	Cereals	
1.1	<i>Avena sativa</i> L.	Oats
1.2	<i>Hordeum vulgare</i> L. sensu lato	Barley
1.3	<i>Secale cereale</i> L.	Rye
1.4	<i>x Triticosecale</i> Wittm.	Triticale
1.5	<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Wheat
1.6	<i>Triticum durum</i> Desf.	Durum wheat
1.7	<i>Triticum spelta</i> L.	Spelt wheat
2.	Fodder plants	
2.1	<i>Lupinus luteus</i> L.	Yellow lupin
2.2	<i>Medicago sativa</i> L.	Lucerne
2.3	<i>Pisum sativum</i> L. (partim)	Field pea
2.4	<i>Trifolium alexandrinum</i> L.	Berseem/Egyptian clover
2.5	<i>Trifolium resupinatum</i> L.	Persian clover
2.6	<i>Vicia faba</i> L. (partim)	Field bean
2.7	<i>Vicia sativa</i> L.	Common vetch
3.	Oil and fibre plants	
3.1	<i>Brassica napus</i> L. (partim)	Swede Rape
3.2	<i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	Turnip rape
3.3	<i>Linum usitatissimum</i> L.	Linseed, except fibre flax
4.	Potatoes	
4.1	<i>Solanum tuberosum</i> L.	Potato

## LATVIA

### Plant Varieties Protection Law <sup>3</sup>

Text consolidated by Valsts valodas centrs (State Language Centre) with amending laws of:

17 November 2005 [shall come into force from 21 December 2005];

21 December 2006 [shall come into force from 1 January 2007];

17 June 2010 [shall come into force from 1 July 2010];

16 December 2010 [shall come into force from 31 December 2010].

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>4</sup> has adopted and the President has proclaimed the following Law:

#### Plant Varieties Protection Law

##### Chapter I General Provisions

#### Section 1. Purpose of this Law

The purpose of this Law is to specify the procedures for granting the breeder's right and to ensure the protection of breeder's rights.

#### Section 2. Scope of Application of this Law

(1) The Law shall be applied to all varieties of plant genus and species (including hybrids).

(2) A variety is an aggregate of cultivated plants which is included in the last position within the limits of a botanical taxon (botanical system) irrespective of whether the requirements for granting the breeder's right have been fully complied with. It may be defined as a manifestation characterising a genetic type or a combination of genetic types, as an aggregate that differs from any another aggregate of plants with at least one specific characteristic. A variety shall be regarded as a unit that remains constant when propagated.

#### Section 3. Conditions for Granting the Breeder's Right

(1) Breeder's right shall be granted if a variety is:

- 1) new;
- 2) distinct;
- 3) uniform;
- 4) stable.

(2) In order to grant the breeder's right, a variety shall be assigned a denomination in accordance with the provisions of Section 20 of this Law. A breeder or his or her authorised representative shall comply with the procedures provided for in this Law. No other conditions shall be set for the granting of the breeder's right.

#### Section 4. Novelty of a Variety

A variety shall be deemed to be new if a breeder or his or her authorised representative, or someone else with his or her permission has not sold, or in any other way transferred the seeds, planting stock, propagating material (hereinafter – propagating material) or the harvest product of

---

<sup>3</sup> Translation © 2013 Valsts valodas centrs (State Language Centre).

<sup>4</sup> The Parliament of the Republic of Latvia.

the variety to a third party for commercial use prior to the day of registration of an application for granting the breeder's right (hereinafter – application):

- 1) in Latvia – earlier than one year before the registration of an application;
- 2) outside of Latvia – earlier than six years before the registration of an application in relation to vines and tree varieties;
- 3) outside of Latvia – earlier than four years before the registration of an application in respect of other plants which are not referred to in Clause 2 of this Section.

### **Section 5. Distinctness of a Variety**

(1) A variety shall be deemed to be distinct if it clearly differs from any other variety that has become a matter of common knowledge before the date of registration of the application.

(2) In particular, a variety shall be deemed to be a matter of common knowledge if an application for granting the breeder's right or for inclusion of the variety in the official catalogue of varieties has been registered in any state and if according to such application the breeder's right have been granted or the variety has been included in the official catalogue of varieties. A variety shall be deemed to be a matter of common knowledge as of the date of registration of an application.

### **Section 6. Uniformity of a Variety**

A variety shall be deemed to be uniform if plants thereof, which have been propagated observing the particular features of the variety propagation, are sufficiently uniform in respect of the characteristic features of the variety.

### **Section 7. Stability of a Variety**

A variety shall be deemed to be stable if after the repeated propagation or at the end of each propagation cycle (if a special propagation cycle is utilised) the characteristic features of the variety do not substantially change.

### **Section 8. Breeder**

(1) In accordance with this Law the following persons are breeders:

- 1) a natural person who has derived or isolated the relevant variety;
- 2) an employer or a commissioning party who has entered into a contract with a person referred to in Clause 1 of this Section regarding the derivation or isolation of the relevant variety;
- 3) a successor to the rights of persons referred to in Clauses 1 and 2 of this Section.

(2) If a variety has been derived as a result of the joint activities of several breeders, they shall have joint breeder's right which have been specified by a written agreement. If an agreement has not been entered into, each of them is entitled to exercise breeder's right at his or her own discretion, with the exception of the granting of a licence, as well as of transferring the breeder's right to another person. The joint owners of the breeder's right shall carry out such activities only by mutual agreement or in accordance with a court adjudication.

### **Section 9. Owner of Breeder's Right**

A person referred to in Section 8 of this Law who has acquired the breeder's right in accordance with the procedures specified in this Law is an owner of breeder's right.

### **Section 10. Authorised Representative**

The State Plant Protection Service shall register an authorised representative based on the authorisation of a breeder.

*[17 November 2005;]*

### **Section 11. Personal Rights of a Breeder**

(1) A breeder (a natural person), irrespective of who is the owner of breeder's right, has personal rights, which shall not be transferred to other persons and inherited. These are rights:

1) to be mentioned in materials and publications regarding the relevant variety, as well as the certificate regarding the granting of a breeder's right;

2) to submit a proposal for the denomination of a variety;

3) to apply for an equitable remuneration for the utilisation of a variety in cases provided for in a contract entered into with an employer.

(2) The rights specified in Paragraph one of this Section in case of violation thereof may be protected in a court in accordance with the same procedures by which copyright is protected.

*[17 November 2005]*

## **Section 12. Tasks of the State Plant Protection Service in the Field of Protection of Plant Varieties**

(1) The State Plant Protection Service shall:

1) examine applications regarding granting of the breeder's right and take a decision on the granting, extension, loss of effect and cancellation of the breeder's right;

2) approve the results of a variety examination conducted in Latvia;

3) recognise the results of a variety distinctness, uniformity and stability examination (hereinafter – variety examination) conducted in the Member States of the International Union for the Protection of New Varieties of Plants (UPOV) in accordance with the regulatory enactments regarding a variety distinctness, uniformity and stability examination;

4) supervise and control a variety examination in Latvia;

5) register licence agreements for the transfer of the breeder's right;

6) administer and maintain the Latvian State Register of Protected Plant Varieties of the State Information System for Supervision of Cultivated Plants;

7) in conformity with its competence co-operate with international organisations;

8) perform other functions provided for in this Law;

9) perform all activities in conformity with the legal acts of the European Union regarding plant variety protection.

*[16 December 2010]*

## **Section 13. The Latvian State Register of Protected Plant Varieties**

(1) The Latvian State Register of Protected Plant Varieties (hereinafter – Register) shall include information on applications and protected varieties.

(2) The following information regarding applications shall be included in the Register:

1) the registration number and date of the application;

2) the name and address of the breeder;

3) if it is an authorised representative – the name and address of the authorised representative, the date, number and term of validity of the authorisation;

4) the proposed denomination of a variety or temporary designation;

5) the description of the variety technical form registration number and date or the official description of the variety registration number and date that is prepared after the performance of a variety examination (hereinafter – description of the variety);

6) the variety examination report registration number and date;

7) the date of publication of the registered application;

8) the date of publication of the applied for and registered variety denomination;

9) the priority date;

10) information regarding the course of the examination of the application.

(3) The following information regarding protected varieties shall be included in the Register:

1) the number by which the variety has been included in the Register;

2) the name and address of the owner of breeder's right, breeder, and authorised representative;

3) the denomination of the variety;

4) the description of the variety;

5) a reference to the components of the variety if they are utilised for the propagation of the variety;

6) the date of the granting of the breeder's right, the time period for which the breeder's right has been granted, loss of effect of the breeder's rights and cancellation thereof;

- 7) the information regarding compulsory licences, registered licences and registered licence contracts issued;
  - 8) information regarding the change of the name of the owner of a licence;
  - 9) information regarding the payment of the State fee for protection of breeder's rights.
- (4) The applicant and the owner of breeder's rights shall be liable for the provision of information to be included into the Register, the veracity, amendment and alteration thereof.  
*[17 November 2005]*

## **Chapter II**

### **Application for Granting the Breeder's Right and Examination Thereof**

#### **Section 14. Application for Granting the Breeder's Right**

- (1) A breeder or his or her authorised representative (hereinafter – applicant) shall submit an application to the State Plant Protection Service. The Cabinet shall determine the procedures for acceptance and examination and registration of an application.
- (2) The date on which the State fee was paid shall be indicated in an application. The following documents shall be appended to the application:
  - 1) a description of the variety;
  - 2) an authorisation if the applicant is not the breeder;
  - 3) the documents referred to in Section 15 of this Law if a convention priority has been requested.
- (3) An application shall be registered if a description of the variety technical form has been submitted and the following information has been provided in the application form and a copy of the payment document regarding the examination of the application:
  - 1) the name and address of the applicant;
  - 2) the name and address of the breeder if the applicant is not the breeder;
  - 3) the submitted denomination of the variety;
  - 4) the State in which the application has been registered and the registration date if a convention priority is requested;
  - 5) the person referred to in Section 8, Paragraph two, Clause 1 of this Law if the breeder is the person referred to in Section 8, Paragraph two, Clause 2 of this Law.
- (4) An application form shall be completed in the Latvian language. If documents appended to the application are completed in any foreign language, the State Plant Protection Service has the right to request their translation into the Latvian language.
- (5) If a variety has been derived utilising other varieties (components), the applicant has the right to request that the information regarding the components of the variety be regarded as restricted access information.
- (6) After the registration of an application the variety shall be deemed to be a matter of common knowledge and temporary protection shall be applied thereto.  
*[17 November 2005; 17 June 2010]*

#### **Section 15. Convention Priority**

- (1) An applicant who in accordance with specified procedures has submitted an application to another Member State of the International Union for the Protection of New Varieties of Plants (UPOV) has the right within 12 months to submit an application in Latvia in relation to the same variety utilising the priority of the first application. The specified time period of 12 months shall be calculated from the day of registration of the first application.
- (2) In order to certify the priority, an applicant shall, within three months after the registration of the application with the State Plant Protection Service, submit a copy of the registered application certifying the priority date.
- (3) An applicant within three years after the priority date has the right to submit to the State Plant Protection Service additional information, documents or materials necessary for the evaluation of the application and the examination of the variety.
- (4) The registration of another application regarding the variety referred to in the first application, the utilisation of such variety or publication of information thereof shall not be a reason for rejection of the second application. The referred to activities shall not be a basis for the arising of any rights for a third party to the variety.

[17 November 2005]

### **Section 16. Examination of Applications**

(1) Within a month from the day of registration of an application, the State Plant Protection Service shall:

1) examine the right of the applicant to submit an application and the conformity of the variety to the provisions of Section 4 of this Law;

2) inform the applicant in writing regarding the necessity to supplement the registered application with the documents referred to in Section 14, Paragraph two of this Law and to submit a translation into the Latvian language of the documents appended, as well as regarding the procedures for the examination of the variety.

(2) If during the examination of an application the State Plant Protection Service determines that the variety does not comply with the provisions of Paragraph one, Clause 1 of this Section, it shall reject the application informing the applicant in writing thereof.

### **Section 17. Submission of Objections**

(1) Interested persons have the right within three months after information regarding the application has been published to submit objections to the State Plant Protection Service. Objections may relate to the novelty, distinctness, uniformity, and stability of a variety or to the right to submit an application. Objections shall be submitted in writing, adding the documentary justification thereto.

(2) An applicant shall, within two months after the receipt of objections, provide an explanation regarding the objections. If an applicant does not provide an explanation, the State Plant Protection Service shall reject the application.

(3) If the objections relate to the distinctness, uniformity and stability of a variety, the State Plant Protection Centre has the right to request a repeat examination of the variety.

### **Section 18. Variety Examination and Issue of a Permit for a Variety Examination**

(1) A variety examination shall be performed by the following authorities:

1) in Latvia – the authority to which the State Plant Protection Service has issued a permit for the performance of a variety examination in accordance with the procedures specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety;

2) outside Latvia – one of the following variety examination authorities:

a) the official authority of other European Union Member State which has entered into an agreement regarding performance of a variety examination in accordance with Article 15 of Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office,

b) the authority of the Member State of the International Union for the Protection of New Varieties of Plants (UPOV), if the referred to state is the Member State of the European Free Trade Association (EFTA) and performs a variety examination for the particular species.

(2) A permit for the performance of a variety examination shall be issued by the State Plant Protection Service in accordance with the procedures specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety. A permit shall be issued within two months from the day when a submission for permission to perform a variety examination has been lodged.

(3) A variety examination shall be performed in accordance with:

1) variety examination protocols (available in electronic format on the website of the State Plant Protection Service) of the Community Plant Variety Office (CPVO) specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety;

2) the guidelines for a variety examination (available in electronic format on the website of the State Plant Protection Service) of the International Union for the Protection of New Varieties of Plants (UPOV) specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety, if variety examination protocol of the Community Plant Variety Office (CPVO) has not been specified for the relevant genus, species or variety group;

3) the regulatory enactments regarding the methodology for examination of distinctness, uniformity and stability of a variety, if neither variety examination protocol of the Community Plant Variety Office (CPVO), nor guidelines for a variety examination of the International Union for the

Protection of New Varieties of Plants (UPOV) have been specified for the relevant genus, species or variety group in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety.

(4) If neither variety examination protocol of the Community Plant Variety Office (CPVO), nor guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) have been developed for the relevant genus, species or variety group and a variety examination is not performed in Latvia, the examination for such varieties shall be performed in any of the examination authorities referred to in Paragraph one, Clause 2 of this Section, taking into account the requirements of the regulatory enactments of the relevant country.

(5) The Cabinet shall issue regulations for examination of distinctness, uniformity and stability of a variety in which the following shall be determined:

1) the variety examination protocols of the Community Plant Variety Office (CPVO) and the guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) in compliance with which a variety examination shall be performed;

2) the requirements for performers of a variety examination;

3) the procedures for the issue and cancellation of a permit for the performance of a variety examination;

4) the requirements for the collection of sample varieties necessary for a variety examination and approval procedures;

5) the provisions and procedures for the supervision of a performer of a variety examination;

6) the provisions and procedures for a variety examination;

7) the procedures for organisation of a variety examination;

8) the provisions and procedures for the approval of the results of a variety examination;

9) the requirements for recognition of the results of a variety examination.

(6) The Cabinet shall issue regulations regarding the methodology for the variety examination of cultivated plant species for which variety examination protocols of the Community Plant Variety Office (CPVO) or guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) have not been developed.

*[16 December 2010]*

### **Section 19. Decision Regarding Granting of the Breeder's Right**

(1) After completion of the examination of the variety (if such was required), the State Plant Protection Service shall send a notification on the results of the examination to an applicant. Within two months an applicant has the right to submit objections regarding the examination of the variety performed to the State Plant Protection Service.

(2) The breeder's right shall be granted:

1) if a fully completed application form has been submitted and the documents referred to in Section 14, Paragraph two of this Law have been appended;

2) in accordance with the provisions specified in Sections 3, 4, 5, 6 and 7 of this Law.

(3) The breeder's right shall be granted by a decision of the State Plant Protection Service that comes into force on the day of the taking thereof. The State Plant Protection Service shall inform an applicant in writing regarding the referred to decision, issue a certificate regarding the granting of the breeder's right and include the variety in the Register.

*[17 November 2005]*

### **Section 20. Denomination of a Variety and Procedures for Registration Thereof**

(1) The denomination of a variety shall be applied for by submitting an application. If a variety is a matter of common knowledge, it shall be applied for with a denomination previously used. If an application has been concurrently submitted in several states, the applicant shall use the same denomination of the variety. The registered denomination of the variety shall be used after the granting of the breeder's right and the expiry of the protection of the variety.

(2) The denomination of a variety shall conform to the requirements of the International Union for the Protection of New Varieties of Plants (UPOV) and of regulatory enactments of the European Union.

(3) The State Plant Protection Service shall examine the conformity of the denomination applied for to the provisions of Paragraphs one and two of this Section. If an applicant applies for denomination:

1) conforms, it shall be published. Interested persons have the right to submit objections to the State Plant Protection Service regarding the applicant's denomination of a variety within three

months from the day of publication thereof. The State Plant Protection Service shall inform the applicant regarding the objections received and if they are justified, shall act in accordance with Clause 2 of this Paragraph. The State Plant Protection Service shall inform regarding a decision, which is taken in relation to the objections, to the submitter of the objection and member states of UPOV and the European Union;

2) does not conform, the applicant shall, within a month, submit a proposal regarding a new denomination of the variety. If the applicant does not submit a proposal, the application shall be rejected and the applicant informed in writing thereof.

(4) The denomination of a variety shall be registered concurrently with the granting of the breeder's right or by a separate decision.

(5) The State Plant Protection Service shall recognise the denomination of a variety as unsuitable if:

1) the denomination has been registered without complying with the provisions of Paragraphs one and two of this Section;

2) a written request of the owner of the breeder's right has been received;

3) a relevant decision of a higher institution or an adjudication of a court has been received.

(6) The denomination of a variety, which has been recognised as unsuitable, shall be cancelled and a new denomination shall be registered.

[17 November 2005; 17 June 2010]

### **Section 21. Publications**

(1) The State Plant Protection Service shall publish the following information in the newspaper *Latvijas Vēstnesis* [the official Gazette of the Government of Latvia]:

1) registered, recalled and rejected applications;

2) denominations of varieties proposed and changes of denominations of protected varieties;

3) granting, loss of effect or cancellation of the breeder's right;

4) change of the breeder, owner of breeder's right or authorised representative;

5) other notices associated with this Law.

(2) The State Plant Protection Service shall publish the information referred to in Paragraph one of this Section also in the periodical publication "*Latvijas Augu Šķirņu Biļetens*" [Latvian Plant Variety Bulletin], which shall be sent to all member states of UPOV and the European Union.

[17 November 2005]

### **Section 22. State Fee**

The State fee shall be paid according to the procedures and in the amount specified by the Cabinet:

1) by a submitter – for the granting of the breeder's right and extension thereof;

2) an owner of breeder's right or an authorised representative thereof – for the protection of breeder's right;

3) an owner of the licence – for the registration of the licence in the State Plant Protection Service;

4) a variety examination authority – for the issue of a permit for performance of a variety examination.

[17 November 2005; 21 December 2006; 17 June 2010; 16 December 2010]

## **Chapter III Breeder's Right**

### **Section 23. Scope of Application of the Breeder's Right**

(1) No other person shall turn a variety into a source of income without a permit (licence contract) from an owner of the breeder's right. In compliance with the provisions of Section 24 of this Law a permit from the owner of the breeder's rights shall be necessary for the performance of the following activities related to the propagating material of a variety:

1) production and propagation;

2) preparation in conformity with sowing requirements in order to propagate the variety;

3) offer for sale;

4) sale or other type of marketing;

5) exportation and importation;

6) storage for the purposes referred to in Clauses 1, 2, 3, 4 and 5.

(2) In compliance with the provisions of Section 24 of this Law, a permit from the owner of the breeder's right for the activities referred to in Paragraph one, Clauses 1, 2, 3, 4, 5 and 6 of this Section with the harvested product (including entire plant and parts of the plant) obtained by unauthorised utilisation of the propagating material of a protected variety is required unless he or she has had no opportunity to exercise his or her rights in relation to the referred to propagating material of the variety.

(3) The provisions of Paragraphs one and two of this Section shall also apply to such a plant variety:

1) which is essentially derived from the protected variety if this protected variety is not itself essentially derived in such manner;

2) which, in compliance with the provisions of Section 5 of this Law, insufficiently differs from the protected variety;

3) in the production of which the protected variety must be repeatedly utilised.

(4) The variety referred to in Paragraph three, Clause 1 of this Section shall be deemed to be essentially derived from another (initial) variety, if it:

1) is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety, while retaining the essential characteristics the origin of which has been determined by the genotype or combination of genotypes of the initial variety;

2) is clearly distinguishable from the initial variety;

3) conforms to the essential characteristics of the initial variety the origin of which has been determined by the genotype or combination of genotypes of the initial variety, except for the differences that have arisen during the process of derivation.

(5) A variety may essentially be derived by selecting natural or induced mutants, somaclonal variants or individuals that differ from the initial variety, as well as by utilising backcrossing or transformation by genetic engineering or other methods.

#### **Section 24. Restrictions of the Breeder's Right**

(1) In order to ensure agricultural production, the producers of agricultural products have the right without the permission of the owner of the breeder's right to utilise for propagation of harvested products, which are acquired in the fields in his or her ownership or possession from a variety protected in Latvia that they have sown themselves (which is not a hybrid or synthetic variety), if the following plant species are grown: yellow lupine (*Lupinus luteus* L.), lucerne (*Medicago sativa* L.), peas (*Pisum sativum* L.), field beans (*Vicia faba* L.), common vetch (*Vicia sativa* L.), oats (*Avena sativa* L.), barley (*Hordeum vulgare* L.), rye (*Secale cereale* L.), triticale (*x Triticosecale Wittm.*), soft wheat (*Triticum aestivum* L. *emend. Fiori et Paol.*), potatoes (*Solanum tuberosum* L.), turnip rape [*Brassica napus* L. (*partim*)], flax (*Linum usitatissimum* L.), except for fibre flax.

(2) The producers of agricultural products, who have small holdings, may utilise the plant species referred to in Paragraph one of this Section for the propagation of harvested products in their own holdings without paying a reimbursement to the owners of breeder's rights.

(3) A small holding within the meaning of this Law is such a holding in which ownership or possession the total area of the plant species referred to in Paragraph one of this Section (except for potatoes) does not exceed 20 hectares, but for potatoes – three hectares.

(4) If other producers of agricultural products without the permission of the owner of the breeder's right utilise for propagation the plant species referred to in Paragraph one of this Section, they shall pay remuneration in the amount of 50 per cent from the remuneration for a licensed propagating material of the same variety for the same area.

[17 November 2005]

#### **Section 25. Exceptions of the Breeder's Right**

Breeder's right shall not apply to operations:

1) which have been performed privately and for non-commercial purposes;

2) which have been carried out for experimental purposes;

3) the objective of which is to derive new varieties, except in cases where the provisions of Section 23, Paragraph three of this Law are applied in respect of the operations with varieties referred to in Section 23, Paragraphs one and two of this Law;

4) with the propagating material of the protected variety, the harvested product (including entire plant and parts of the plant) and any material acquired from the harvested product or varieties referred to in Section 23, Paragraph three of this Law if the breeder has sold or otherwise put into circulation (or if such has taken place with his or her consent) such material or varieties, unless any of the following operations have been performed:

- a) further propagation of the protected variety,
- b) exportation of the propagating material of the protected variety, harvested product (including entire plant and parts of the plant) and any material acquired from the harvested product, which would provide an opportunity to propagate the variety in a state which does not protect varieties of the genera and species to which the referred to variety belongs, except in cases where such material to be exported is intended for final consumption.

### **Section 26. Term of Validity of the Breeder's Right**

(1) Breeder's rights shall be acquired on the day when a decision on the granting of the breeder's rights is taken and shall be in effect until the end of the twenty-fifth calendar year, but for potatoes and with respect to the species of vine and tree varieties, until the end of the thirtieth calendar year from the year of granting the right.

(2) After the receipt of a reasoned application from the owner of the breeder's right, the State Plant Protection Service has the right to extend the term referred to in Paragraph one of this Section for another five years.

*[17 November 2005]*

### **Section 27. Transfer of the Breeder's Right**

(1) An owner of the breeder's right is entitled to transfer the granted breeder's right:

- 1) fully – to a successor to the breeder's right;
- 2) in part – with an authorisation or a licence contract in accordance with the provisions of Section 28 of this Law.

(2) The breeder's right shall be transferred in writing and they shall be in effect from the day of registration in the State Plant Protection Service.

### **Section 28. License Contract**

(1) An owner of the breeder's right may transfer his or her right to utilise the protected variety as a source of income to another person upon mutual agreement entering into a non-exclusive licence contract or an exclusive licence contract, or by announcing the free right of use.

(2) A licence (also compulsory licence) contract and the change of the owner of the license shall be registered in the State Plant Protection Service by making an entry in the Register. The licence contract shall be registered by the State Plant Protection Service if a copy of the document regarding the payment of the State fee has been submitted. An unregistered licence contract shall not be valid. If the operation of a licence is terminated, the relevant entry shall be made in the Register. Upon registration of the compulsory licence, the State fee shall not be paid.

*[21 December 2006]*

### **Section 29. Non-exclusive License**

In issuing a non-exclusive licence, that is, in granting the right to utilise a variety to a owner of a licence (licensee), an issuer of a license (licensor) shall retain the right to grant a licence for the same variety to third parties. The licensee is not entitled to transfer his or her rights to another person unless such agreement is provided for in the licence.

### **Section 30. Exclusive License**

Upon receiving an exclusive licence, the licensee shall acquire exclusive rights to utilise a variety in accordance with the provisions provided for in a licence contract. The licensor shall retain the right to utilise the variety to the extent provided for in the agreement.

### **Section 31. Free Right of Use**

(1) An owner of the breeder's right upon an agreement with the State Plant Protection Service has the right to publish a notice that any person for an appropriate remuneration is entitled to utilise a variety from the day the owner of the breeder's right has been informed in writing thereof and the licence contract has been registered in the State Plant Protection Service.

(2) If the free right of use has been announced, the fee for the protection of a plant variety shall be reduced by 50 per cent starting with 1 January of the following year.

(3) Based on an application of an owner of the breeder's right and after receiving the consent of all owners of free right of use, the State Plant Protection Service is entitled to cancel the operation of the free right of use.

### **Section 32. Compulsory License**

(1) If the market is not provided with propagating material of a protected variety that is significant for the State economy or the interests of the public, any person who wishes to produce and sell such a variety in Latvia, has the right to bring an action in a court for the granting of a compulsory licence. The compulsory licence shall also include the right to receive the propagating material from the owner of the breeder's right.

(2) The State Plant Protection Service shall issue a compulsory licence on the basis of a court adjudication and make a relevant entry in the Register thereof. The court shall also determine the level of utilisation of the variety and other licensing provisions. The remuneration for utilisation of a variety shall be the same as for a non-exclusive licence for the relevant species. Depending on the circumstances of the case, the court may cancel the compulsory licence or determine new licensing provisions.

### **Section 32.<sup>1</sup> Implementation of Breeder's Rights if a Biotechnological Invention is Protected by a Patent**

(1) If a breeder wants to acquire breeder's rights to a plant variety or to utilise it using a protected biotechnological invention, he or she shall obtain a licence for the utilisation of the biotechnological invention and pay remuneration for this.

(2) A breeder may apply for a compulsory licence for the non-restricted utilisation of an invention protected by a patent if:

1) the acquisition of an ordinary licence from the owner of the patent has not been successful;

2) he or she can prove that the protected variety constitutes significant technical progress of considerable economic importance compared with the invention claimed in the patent.

(3) If the owner of the patent utilises a variety protected with a breeder's right, the owner of the breeder's right has the right to apply for a cross-licence and remuneration.

*[17 November 2005]*

### **Section 33. Certification or Conformity Assessment of Propagating Material**

The certification or conformity assessment of the propagating material of varieties for which the breeder's right has been granted in Latvia or they are protected by European Union breeder's rights shall be carried out if the grower or the processor of the propagating material is an owner of breeder's right or he or she has a licence contract registered with the State Plant Protection Service.

*[17 November 2005]*

### **Section 34. Examination of Variety during Protection Period Thereof**

(1) In order to examine the uniformity and stability of a variety during its protection period, the State Plant Protection Service has the right to request that the owner of breeder's right provides the propagating material, documentation and other information that is necessary for the performance of an examination.

(2) *[17 November 2005]*

*[17 November 2005]*

**Section 35. Provision of Information regarding the Use of a Protected Variety**

- (1) Upon the request of the owner of breeder's right or authorised representative thereof, agricultural production producers or processors of seed shall provide him or her with the information regarding the production, propagation, processing and sale of the propagating material of a protected variety.
- (2) The State Plant Protection Service, upon the request of the owner of breeder's right or authorised representative thereof, shall provide information regarding the quantity of propagating material of a protected variety prepared for sale.
- (3) The Rural Support Service, upon the request of the owner of breeder's right or authorised representative thereof, shall provide information regarding the area of agricultural production of the species referred to in Section 24, Paragraph one of this Law.
- [17 June 2010]

**Section 35.<sup>1</sup> Co-operation of Agricultural Societies in the Field of Breeders' Right Protection**

The owner of breeder's right or authorised representative thereof shall determine the remuneration for annual use of a protected variety upon mutual agreement with the agricultural associations.

[17 June 2010]

**Chapter IV  
Loss of Effect and Cancellation of Breeder's Right****Section 36. Loss of Effect of Breeder's Right**

- (1) Breeder's right shall lose effect if at least one of the following circumstances arise:
- 1) the owner of breeder's right has not paid the State fee in accordance with Section 22 of this Law.
  - 2) the owner of breeder's right does not provide the propagating material, documentation or other materials that are necessary for the examination and maintenance of a variety;
  - 3) provisions of Sections 6 or 7 of this Law are no longer complied with;
  - 4) the owner of breeder's right himself or herself notifies in writing that he or she waives the breeder's right;
  - 5) the State Plant Protection Service has recognised the denomination of a variety as unsuitable and the owner of breeder's right within three months has not proposed a new denomination conforming to the provisions of Section 20 of this Law.
- (2) If there is a legal basis to construe that the breeder's right has lost effect, the State Plant Protection Service prior to taking the decision shall notify the owner of breeder's right thereof by specifying the reason of such an action, as well as by providing a time period for the rectification of the circumstances referred to in Paragraph one of this Section.

**Section 37. Cancellation of Breeder's Right**

The breeder's right shall be cancelled in any of the following cases:

- 1) in taking a decision on the granting of the breeder's right the provisions of Sections 4 or 5 of this Law have not been complied with;
- 2) the granting of the breeder's right has been mainly based on the information and documents provided by a breeder, but in taking a decision on granting the breeder's right the provisions of Sections 6 or 7 of this Law have not been complied with;
- 3) the breeder's right has been granted to a person who has no legal rights thereto.

## **Chapter V**

### **Liability for Infringement of Breeder's Right**

#### **Section 37.<sup>1</sup> Right to Submit an Application to the Court Regarding Infringement of Breeder's Right**

An owner of breeder's right, a successor of rights or an authorised representative thereof (hereinafter – claimant) may submit to the court an application regarding infringement of breeder's right. The owner of the licence is entitled to submit the application regarding infringement of breeder's right with the consent of the owner of breeder's right. The consent of the owner of breeder's right shall not be necessary if the right of the owner of the licence to submit independently to the court the application regarding infringement of breeder's right has been determined in the contract or the owner of breeder's right does not submit the application, even though the owner of the licence has invited him in writing to do it. Any owner of the licence is entitled to intervene into the matter and to claim a compensation for the losses incurred by him or her due to an illegal use of the variety referred to in the licence contract.

*[21 December 2006]*

#### **Section 38. Procedures for Determination of the Amount of the Compensation for Losses and Moral Injury**

(1) If infringement of breeder's right has happened due to the fault of a person, the claimant is entitled to request a compensation for losses and moral injury caused.

(2) The amount of the compensation for losses and moral injury shall be determined in accordance with the Civil Law. The unfairly obtained profit of such person may be taken into consideration when determining the amount of the compensation for losses, who has used breeder's right illegally.

(3) If, in accordance with Paragraph two of this Section the amount of actual losses may not be determined, the amount of the compensation for losses shall be determined in keeping with the sum which the claimant might receive if a person who has used breeder's rights illegally had paid reimbursement for the use of propagating material.

*[21 December 2006]*

#### **Section 39. Compensation for Losses Caused in Relation to the Temporary Protection of a Variety**

If a third party utilises a propagating material of a variety, provisions of this Law in relation to the infringement of the breeder's right shall be applied from the day of publication of the application. In such case, only such losses shall be compensated as relate to the remuneration for the utilisation of a variety, unless the owner of the breeder's right has warned the relevant persons of the registration of the application prior to its publication. The losses shall be compensated from the day of receipt of the warning, but not earlier than from the day of registration of the application in the State Plant Protection Service.

#### **Section 40. Liability for Infringement of Breeder's Right**

Persons who have infringed the breeder's right shall be held liable in accordance with the procedures prescribed by law.

### Transitional Provisions

1. The Law On the Protection of Plant Varieties (*Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1993, No. 18; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 1995, No. 22; 1999, No. 23) is repealed.

[17 November 2005]

2. The Cabinet shall:

- 1) by 1 January 2006 issue the regulation referred to in Section 18, Paragraph one of this Law;
- 2) by 1 June 2006 issue the regulation referred to in Section 14, Paragraph one of this Law; and
- 3) by 1 December 2007 issue the regulation referred to in Section 18, Paragraph two of this Law.

[17 November 2005]

3. The provisions of Section 33 of this Law in relation to the conformity assessment of propagation materials shall come into force on 1 April 2006.

4. Section 37.<sup>1</sup> and the new version of Section 38 of this Law shall come into force on 1 March 2007.

[21 December 2006]

5. The Cabinet shall, by 1 April 2011, issue the regulation referred to in Section 18, Paragraph five of this Law. Until the day of coming into force of the relevant Cabinet regulation, but not longer than until 1 April 2011 the Cabinet Regulation No. 243 of 28 March 2006, Procedures for Organisation or Performance of a Variety Examination and Taking of Decisions Regarding Recognition of the Results of a Variety Examination, shall be applied, in so far as it is not in contradiction with this Law.

[16 December 2010]

6. A variety examination that has been commenced before 1 July 2010 shall be completed in accordance with those regulatory enactments that were in force at the time of commencing the variety examination.

[17 June 2010]

7. Amendments to Section 22, Clause 1 of this Law in respect of the State fee for extension of breeder's right shall come into force on 1 December 2011.

[17 June 2010]

8. The Cabinet shall, by 1 April 2011, issue the regulation referred to in Section 18, Paragraph six of this Law regarding the methodology for examination of distinctness, uniformity and stability of Japanese (flowering) quince. Until the coming into force of the relevant Cabinet regulation, but not longer than until 1 April 2011 the Cabinet Regulation No. 126 of 9 February 2010, Methodology for Examination of Distinctness, Uniformity and Stability of Japanese (Flowering) Quince, shall be applied, in so far as it is not in contradiction

[16 December 2010]

9. The Cabinet shall, by 1 December 2012, issue the regulation referred to in Section 18, Paragraph six of this Law, except the regulation provided for in Paragraph 8 of these Transitional Provisions regarding the methodology for distinctness, uniformity and stability of cultivated plants.

[17 June 2010; 16 December 2010]

10. Until 1 January 2012 a performer of a variety examination in Latvia, who in accordance with the Cabinet Regulation No. 243 of 28 March 2006, Procedures for Organisation or Performance of a Variety Examination and Taking of Decisions Regarding Recognition of the Results of a Variety Examination, has entered into an agreement with the State Plant Protection Service regarding performance of a variety examination, shall perform a variety examination in conformity with the provisions of the agreement, taking into account the requirements of Section 18, Paragraph three of this Law.

[16 December 2010]

11. A variety examination that has been commenced before 1 January 2011 shall be completed in accordance with those regulatory enactments that were in force at the time of commencing the variety examination.

*[16 December 2010]*

12. Section 18, Paragraph one, Clause 1 and Paragraph two, as well as Section 22, Clause 4 of this Law shall come into force from 1 January 2012.

*[16 December 2010]*

### **Informative Reference to European Union Directives**

The Law contains legal norms arising from:

- 1) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions; and
- 2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

*[17 November 2005; 21 December 2006]*

This Law has been adopted by the *Saeima* on 2 May 2002.

President

V. V. Vīķe-Freiberga

Rīga, 17 May 2002

## MONTENEGRO

### Law on protection of plant varieties of August 11, 2008

Official Journal of the Republic of Montenegro No. 48/07, 48/08 and 40/11

#### I. GENERAL PROVISIONS

##### Subject-matter of the Law

###### Article 1

This Law shall govern the terms and the procedure for the protection of plant varieties (hereinafter referred to as: varieties) as well as rights and obligations of holders of the breeder's rights.

This Law shall apply to all plant genera and species.

###### Article 2

For the purposes of this Law, the terms used shall have the following meaning:

**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 breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered a unit with regard to its suitability for being propagated unchanged;

**Protected variety** shall mean a variety protected in accordance with the provisions of this Law;

**Breeder** shall mean:

the person who bred or discovered and developed a new variety,

the person who is the employer of the aforementioned person referred to in indent 1 of this item, or the person who has commissioned the latter's work; or

the successor in title of the person referred to in first or second indent of this item, as the case may be;

**Breeder's right** shall mean the right of the breeder acknowledged by registration of the protected variety into the Register of Protected Varieties, in accordance with this Law;

**Breeder's right holder** shall mean a person who has been granted a breeder's right in accordance with provisions of this Law, or his successor in title or heir;

**Register of Applications for variety protection** shall mean the register into which duly filed applications for protection of a plant variety are recorded (hereinafter referred to as: Register of Applications);

**Register of Protected Varieties** shall mean a register into which protected varieties are recorded;

**UPOV** means the International Union for the Protection of New Varieties of Plants.

#### Rights of Foreign Persons

###### Article 3

Foreign legal and natural persons shall enjoy the rights identical to those of domestic persons with respect to variety protection in Montenegro.

###### Article 4

In the proceedings before the competent authority, any foreign legal and natural person shall be represented by a local representative.

#### II. VARIETY PROTECTION

## **1. CONDITIONS AND DURATION**

### **Conditions**

#### **Article 5**

A variety shall be protected in accordance with this Law provided that it is new, distinct, uniform, stable and designated by an appropriate denomination.

### **Period of protection**

#### **Article 6**

The period of protection of a variety shall expire after twenty five years, and in the case of trees and vines it shall expire thirty five years from the day of the grant of the breeder's right.

## **2. NEW VARIETY**

### **Article 7**

A variety shall be considered new if, at the date of filing of the application for a variety protection, the 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 the purpose of exploitation of the variety in Montenegro for the period longer than one year or in a territory other than Montenegro for the period longer than four years or, in the case of trees and vines, longer than six years from the said date.

The variety referred to in the paragraph 1 of this Article shall also be considered new in cases when it is disposed of to others in one of the following ways:

By a contract on the transfer of the breeder's right;

By a contract on the basis of which the propagating material of the variety is multiplied on behalf of the holder of the breeder's right, provided that the propagating material multiplied is returned to the holder of the breeder's right and that the propagating material multiplied is not used for production of another variety;

By a contract on the basis of which researches are made in the experimental field and in laboratories, for the purpose of variety evaluation.

## **3. DISTINCTNES**

### **Article 8**

The 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.

In particular, the filing of an application for granting of a breeder's right or for entering of another variety into an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety into the official register of varieties, as the case may be.

The methods for checking the distinctness of a variety shall be laid down by the Ministry responsible of agriculture (hereinafter referred to as: Ministry).

## **4. UNIFORMITY**

### **Article 9**

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 sufficiently uniform in its relevant characteristics.

The methods for checking the uniformity of a variety shall be laid down by the Ministry.

## **5. STABILITY**

### **Article 10**

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.

The methods for checking the stability of a variety shall be laid down by the Ministry.

## **6. VARIETY DENOMINATION**

### **Variety**

### **Article 11**

The variety denomination may be a word, a combination of words, a combination of words and numbers or a combination of letters and numbers, meaningful or meaningless, provided that the designation enables the variety to be identified.

Where a variety denomination has already been used in Montenegro or some other country or where an application is filed or the denomination already registered in Montenegro or some other country, only the variety denomination which has been proposed may be used in the protection procedure before the competent authority.

Where a variety denomination proposed is inappropriate for use in Montenegro, the breeder shall propose another denomination which, if it is appropriate, shall be registered in the Register of Applications and the Register of Protected Varieties.

A variety denomination may not consist solely of figures unless this is an established practice for designating specific varieties. A variety denomination may not mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. A variety denomination shall be different from any other denomination used on the territory of UPOV Members for designation of existing variety of the same plant species or a closely related species.

Any person who markets or advertises the propagating material of a variety protected shall use the registered variety denomination.

The obligation concerning the use of the registered variety denomination shall not expire even after the expiration of the period of variety protection referred to under the Article 6 of this Law, except where, in accordance with the provisions of paragraph 8 of this Article, prior rights prevent such use.

When a variety is marketed or advertised, a trademark, trade name or other similar indication may be associated with the registered variety denomination, provided that the variety denomination is easily distinguishable.

Where use of a variety denomination is forbidden to a person who is bound to use it, for reasons of any of the prior rights of a third person, the competent authority in responsible for plant variety protection (hereinafter referred to as: competent authority) shall request from the breeder to propose another denomination for the variety.

### **Denomination Proposal**

### **Article 12**

The applicant shall propose a variety denomination in the application.

The applicant may temporarily postpone the proposal of a denomination, but not longer than 30 days from the day of filing the application. If the applicant fails to submit the proposal in due time, the competent authority shall reject the application.

An interested person may, within the period of 60 days from the date of publication of the proposed denomination, file an objection to the proposed denomination.

The competent authority shall notify the applicant of the objection referred to in paragraph 3 of this Article and invite him to submit a reply to the objection within the period of 30 days from the day of the receipt of the notification.

In his reply to the objection, the applicant may propose a new denomination for the variety.

In case the denomination proposed does not comply with this Law, the competent authority shall order the applicant to file a proposal for a new denomination of the variety within the period of 60 days from the day of the receipt of the notification.

If the applicant fails to submit the proposal of the new denomination within the prescribed period of time, the competent authority shall reject the application.

The variety denomination is granted by the competent authority in the decision on variety protection.

### **Reasons for Rejection of Denomination Proposed**

#### **Article 13**

The competent authority shall reject the proposal of a variety denomination, which:

Is inappropriate for a variety identification;

Consists solely of signs or indications that may serve for indication of a variety, kind, quality, quantity, intended objective, value geographic origin or time of production;

Is contrary to Article 11 of this Law;

The Ministry shall prescribe which species are to be deemed closely related.

### **Denomination Cancellation**

#### **Article 14**

The competent authority shall cancel a variety denomination under the circumstances referred to in Article 13 paragraph 1 of this Law, or on the basis of a court decision prohibiting the use of the denomination.

The competent authority shall issue a notification on cancellation of the variety denomination and invite the holder of the breeder's right to propose a new denomination within the period of 30 days from the day of receipt of the notification.

## **III VARIETY PROTECTION PROCEDURE**

### **1. APPLICATION**

#### **Article 15**

The procedure for protection of a variety instigated by the filing of an application filed to the competent authority by the breeder or his representative.

The form and contents of the application referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

### **Additional Information**

#### **Article 16**

The application referred to in Article 15, paragraph 1 of this Law shall be supplemented by the information, documents and material necessary for examination purposes.

The method of submission of the information documents and material referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

### **Examination of the Application**

#### **Article 17**

The competent authority shall examine whether the application is complete, i.e. whether it meets the requirements as laid down by this law.

If the application is found not to be complete, the competent authority shall, stating the reasons, invite the applicant to correct the deficiencies identified within the period of 30 days from the day of receipt of the notification.

If the applicant does not correct deficiencies within the period referred to in paragraph 2 of this Article, the competent authority shall reject the application.

### **Entry into the Register of Applications**

#### **Article 18**

Where it is established that the application meets the requirements, the competent authority shall register it into the Register of Applications.

The contents of the Register of Applications shall be prescribed by the Ministry.

The Register of Applications shall be kept by the competent authority.

## **2. RIGHT OF PRIORITY**

#### **Article 19**

Any breeder who has duly filed an application for the protection of a variety with the competent authority of another UPOV member for the grant of a breeder's right shall enjoy a right of priority for a period of twelve months from the day of filing the application.

If two or more breeders have independently bred or discovered and developed a new variety, the right of priority shall be enjoyed by the breeder who was the first to file an application for the variety protection to the competent authority.

In order to avail himself of the right of priority, the breeder shall furnish the competent authority with the evidence on the priority date within a period of three months.

If the competent authority accepts the evidence on the priority date, the application shall be deemed as filed on the priority day.

The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the competent authority, any necessary information, document or material required for the purpose of the examination of the application.

The appropriate time referred to in paragraph 5 of this Article shall be prescribed by the Ministry shall.

## **3. VARIETY EXAMINATION**

### **Examination**

#### **Article 20**

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

### **Examiner**

#### **Article 21**

Examination of a variety may be carried out by a natural or legal person that meets the requirements for carrying out such examination in terms of human resources, facilities and equipment (hereinafter referred to as: examiner).

Requirements that need to be met by the examiner shall be prescribed by the Ministry.

Compliance with requirements referred to in paragraph 2 of this Article shall be prescribed by the competent authority.

## **Processing of Examination Results**

### **Article 22**

The competent authority shall conclude the contract with the examiner on the basis of public announcement procedure.

The competent authority shall process the examination results obtained from the examiner.

The Ministry shall prescribe the methods for processing of the results referred to in paragraph 2 of this Article.

## **4. DECISION ON VARIETY PROTECTION AND GRANT OF BREEDER'S RIGHT**

### **Article 23**

Based on examination results, the competent authority shall issue a decision on protection of the variety or refusal of the application for the protection of the variety, as the case may be.

Based on the decision on protection of the variety, the variety shall be registered into the Register of Protected Varieties.

The applicant shall have the right to lodge an appeal to the Ministry against the decision on refusal of the variety protection.

In the appeal procedure, the examination of the variety in the examination field and the laboratory for the purpose of the supervision shall be conferred to another examiner.

When the supervision results confirm that the variety meets the requirements for protection and entry into the Register of Protected Varieties, the supervision costs shall be borne by the examiner who initially presented the examination results.

When the supervision results confirm the initial examination results, the supervision costs shall be borne by the applicant who has lodged the appeal.

The contents of the Register of Protected Varieties shall be prescribed by the Ministry.

The Register of Protected Varieties shall be kept by the competent authority.

The information on the variety protection, including the variety denomination and information on the breeder, the holder of the right and their domicile or corporate domicile, as the case may be, shall be published in the "Official Journal of Montenegro of Montenegro", within the period of 30 days from the day of entry in the Register of Protected Varieties.

## **Availability of Information and Confidentiality**

### **Article 24**

Any interested person may peruse the following:

- the Register of Applications for Variety Protection;
- the results of variety examination in the protection procedure;
- the Register of Protected Varieties.

When a variety production requires repeated use of another variety (component), the applicant may request in his application that the documents and results of component examination be treated as confidential.

## **5. Appeal**

### **Right to Appeal**

### **Article 25**

Any interested person who alleges that the applicant is not entitled to the breeder's right or that he does not have the right of priority or that conditions for protection of a variety under this Law have not been complied with, may lodge an appeal to the Ministry with respect to the entry of the application into the Register of Application or to the entry of the variety into the Register of Protected Varieties within the period of 60 days from the day of publicizing the information on the entry.

The appeal shall be lodged in writing, accompanied with the appropriate evidence.

The appeal referred to in paragraph 1 of this Article shall be forwarded to the applicant or holder of the right, together with an invitation to provide a reply to the appeal within the period of 15 days from the date of the receipt of the complaint.

### **Decision on the Appeal to the Entry into the Register of Applications**

#### **Article 26**

If the applicant fails to present a reply to the appeal within the period prescribed, the application shall be deemed withdrawn.

If the applicant presents a reply to the appeal and demands the decision on his application, with or without amendments, the decision on the application and the appeal shall be made concurrently.

### **Appeal to Registration in the Register of Protected Varieties**

#### **Article 27**

The appeal to registration in the Register of Protected Varieties may be submitted by a person who alleges that the variety is not new, distinct, uniform or stable.

The appeal referred to in paragraph 1 of this Article shall be lodged to the Ministry.

Additional examination of the variety may be ordered in the appeal procedure in order to verify the statements of the appeal.

At the request of the body that decides the appeal, the person who has lodged the appeal shall present, within the period of 15 days, the additional information and documents to substantiate the appeal or reproduction material necessary for the examination.

When the person who lodged the appeal fails to act in compliance with paragraph 3 of this Article, the appeal shall be rejected.

Based on the findings in the proceedings initiated upon the appeal, the appeal may be either accepted, thus canceling the entry into the Register of Protected Varieties, or dismissed.

## **IV. THE RIGHTS AND OBLIGATIONS OF THE BREEDER**

### **1. Rights**

#### **Scope of the Breeder's Right**

#### **Article 28**

The holder of the breeder's rights shall be entitled to indication of his name and the denomination in acts, registers, documents and publications.

The propagating material of a protected variety shall be used only with authorization of the holder of the breeder's right, who sets the conditions for granting the authorization.

Subject to Articles 29 and 30 of this Law, the following acts in respect of the propagating material of a protected variety shall require the authorization of the breeder:

- Production or reproduction (multiplication) of the variety protected;
- Conditioning for the purpose of propagation of the protected variety;
- Offering the protected variety for sale;
- Selling or other marketing of the protected variety;
- Exporting or importing of the protected variety;
- Stocking for any of the purposes referred to in items 1 to 5 of the paragraph 3 of this Article.

Subject to Articles 29 and 30 of this Law, acts referred to in the paragraph 3 items 1 to 6 of this Article, in respect of the harvested material, including whole plants and parts of plants obtained through the unauthorized use of the propagating material of the protected variety shall require the authorization of

the holder of the breeder's right, unless the holder has had reasonable opportunity to exercise his right in relation to the propagating material concerned.

The authorization of the holder of the breeder's right shall also be required for the acts referred to in paragraphs 3 and 4 of this Article for a variety:

Which is essentially derived from the protected variety where the protected variety is not in itself an essentially derived variety;

Which is not clearly distinguishable from the protected variety; and

Whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from the initial variety when:

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 resulting from the genotype or combination of genotypes of the initial variety;

It is clearly distinguishable from the initial variety; and

With the exception of the differences resulting from the act of derivation, it 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.

For the purpose of paragraph 5, subparagraph 1 and paragraph 6 of this Article, an essentially derived variety may be obtained, for example, by 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.

### **Exceptions to the Breeder's Right**

#### **Article 29**

Authorization of the holder of the breeder's right shall not be required for the acts undertaken for:

Personal use and for non-commercial purposes;

Experimental purposes;

For the purpose of breeding other varieties, and, except where the provisions of Article 28 paragraph 5 apply, acts referred to in Article 28 paragraphs 3 and 4 of this Law, in respect of such other varieties.

The Ministry may, taking into account the need for safeguarding the breeder's rights, restrict within reasonable limits the breeder's right, subject to remuneration that shall not be lower than the market one, in relation to selected agricultural crops to allow farmers to use for propagation purposes, on their own holdings, the harvested material obtained by planting the protected variety on their own holdings.

The Ministry shall prescribe the list of agricultural crops referred to in paragraph 2 of this Article.

The exception referred to in paragraph 1 and 2 of this Article shall not apply to fruits, ornamentals and vegetables.

### **Exhaustion of the Breeder's Right**

#### **Article 30**

The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 28, paragraph 5 of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Montenegro, or any material derived from the said material, unless such acts:

Involve further propagation of the variety in question, or

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.

For the purposes of paragraph 1 of this Article, "material" shall mean, in relation to a variety:

Propagating material of any kind,

Harvested material, including entire plants and parts of plants, and

Any product made directly from the harvested material.

### **Provisional Protection**

#### **Article 31**

During the period between publication of the application for the grant of the variety protection and the granting of the right on the variety protection, the holder of the breeder's right shall be entitled to equitable compensation from any person who, during the period concerned, has carried out acts which, once the right is granted, require the authorization of the holder of the breeder's right, as provided in Article 28 of this Law.

### **Several Breeders, Breeder and Employer**

#### **Article 32**

If two or more persons have jointly bred or discovered and developed a variety, they shall have equal rights to protection. The rights and obligations of such persons may be regulated by a contract.

When a variety is bred or discovered and developed during the employment, the rights of the employee who bred, discovered or developed the variety concerned and the rights of the employer shall be laid down by this Law, general legal acts and a contract between the employer and the employee or their representatives, as the case may be.

## **2. Obligations**

### **Maintenance of the Protected Variety**

#### **Article 33**

The holder of the breeder's right shall ensure maintenance of the protected variety unchanged during the period of protection.

### **Monitoring of Variety Maintenance**

#### **Article 34**

The competent authority shall issue a decision on cancellation of the breeder's right if it is established that the holder of the breeder's right has failed to maintain the variety.

### **Providing Samples of the Variety**

#### **Article 35**

At the request of the competent authority, the holder of a breeder's right shall provide an appropriate quantity of samples of the propagating material of the protected variety deemed necessary for verifying the maintenance of the variety.

At the request of the competent authority, the holder of the breeder's right shall maintain or keep the sample of the variety.

## **V. LICENSES**

### **Transfer and Licensing of Breeder's Right**

#### **Article 36**

A holder of the breeder's right may transfer his right to a protected variety as a whole, or license some of his rights to another person.

The transfer of right and granting the license shall be made by a written contract, which shall include provisions on the following: the scope of right, the period of time for which the right is transferred and the fee for use of the right, if any.

For the purpose of entry into the Register of Protected Varieties, the holder of the breeder's right shall inform the competent authority of any transfer or license of rights. The information shall include the

particulars of the transferee or the licensee, scope of right, and the period of time for which the right is transferred or licensed.

### **Compulsory License**

#### **Article 37**

When the holder of the breeder's right refuses to transfer his right of economic use of the variety protected to other persons, or when he sets unjustified conditions for such transfer, the competent authority may grant the compulsory license, provided that the use is of public interest for development of plant production, for protection and development of the environment or for a specific economic branch.

Prior to filing the request referred to in paragraph 1 of this Article, the interested person shall have to provide evidence on his attempt to obtain the authorization from the holder of the breeder's right for the acts referred to in Article 28 of this Law under reasonable economic conditions, and the evidence that the authorization was not granted to him within the reasonable period of time.

The compulsory license referred in paragraph 1 of this Article shall be granted only to the interested person who proves its capability and capacity required for the economic use of the protected plant variety.

### **Time Limit for Requesting the Compulsory license**

#### **Article 38**

The request for grant of the compulsory license may not be filed earlier than four years from the date of filling the application, or three years from the date of grant of the breeder's right, whichever expires later.

The compulsory license shall not be granted if the holder of the breeder's right proves that there are reasons justifying his refusal to grant the authorization for use of the protected variety or conditions for such a use.

### **Compulsory License Fee**

#### **Article 39**

The holder of the compulsory license shall pay the holder of the breeder's right the fee mutual agreed. In the absence of the agreement on the amount and method of paying the fee, the amount of the fee shall be set by the competent court, taking into account the circumstances of each individual case and the economic value of the compulsory license.

### **Scope and Duration of the Compulsory License**

#### **Article 40**

The scope and the duration of the compulsory license shall be limited to the purpose it was granted for.

The compulsory license shall not be exclusive.

The compulsory license may be transferred only together with the company or part of the company in which it is used, as the case may be.

The compulsory license shall be granted primarily for the purposes of supplying the domestic market.

The compulsory license may be cancelled if and when the circumstances that have led to its grant cease to exist and if it is unlikely that they will reoccur. Upon the substantiated request, the competent authority shall review the existence of such circumstances.

The compulsory license may also be cancelled when the competent authority establishes that the person to whom it was granted fails to meet the conditions under which it was granted.

### **Obligation to Supply Propagating Material**

#### **Article 41**

The holder of the breeder's right shall, at the request of the competent authority and subject to payment of the appropriate remuneration, supply the propagating material necessary for utilization of the compulsory license to the person to whom the compulsory license has been granted.

## **VI. TERMINATION OF BREEDER'S RIGHT**

### **Reasons for Termination of Breeder's Right**

#### **Article 42**

The breeder's right shall terminate before the term referred to under the Article 6 of this Law if:

The right holder informs the competent authority in writing form that he wants to terminate the breeder's right, effective as of the date stated or as of the filing date;

The holder of the breeder's right dies or ceases to exist without a heir or successor in rights, on the date of death or cessation;

The decision on termination of the breeder's right shall be made by the competent authority which shall enter it into the Register of Protected Varieties.

#### **Nullity**

#### **Article 43**

The competent authority may declare null and void the decision on protection of the variety throughout the period of protection, *ex officio* or at the proposal of an interested person if:

It is established that the variety was neither new nor distinct at the time of the grant of the breeder's right;

It is established that the decision on granting the breeder's right has been essentially based upon information and documents furnished by the applicant, while conditions of stability and uniformity were not complied with at the time of the grant of the breeder's right;

The breeder's right has been granted to a person who is not entitled to it, except in the case where, in the meantime, it has been transferred to the person who is so entitled.

The decision referred to in paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall delete the variety from the Register of the Protected Varieties.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry.

### **Cancellation of the Decision**

#### **Article 44**

The competent authority shall cancel the decision on protection of the variety if:

It is established that the variety is no longer uniform or stable;

The holder of the breeder's right fails to furnish the competent authority with information, documents or material deemed necessary for verification of the variety maintenance;

The holder of the breeder's right fails to propose another denomination for the variety if the variety denomination has been cancelled after the grant of the right;

The breeder fails to pay the fee for maintenance of the breeder's right;

The annual costs of variety protection have not been paid on the due date.

The decision referred to in paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall delete the variety from the Register of the Protected Varieties.

## **VII. COSTS**

#### **Article 45**

The costs of variety examination in the examination field and the laboratory and annual costs of variety protection shall be borne by the applicant or the holder of the breeder's right, as the case may be.

The amount of the costs referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

### **VIII. CIVIL LAW PROTECTION**

#### **Article 46**

The holder of the breeder's right or his successor in rights or heir, as the case may be, shall be entitled to file a civil action against the person infringing his right through actions referred to under the Article 28 paragraph 2, 3 and 4 of this Law without authorization, and shall have the right to claim the following:

Ascertaining of infringement of the breeder's right;

Prohibition of actions infringing the breeder's right;

compensation for damages caused by infringement, including direct damages, lost profits and justifiable legal costs and expenses;

Publicizing of the court decision at the expense of the defendant;

Forfeiture or destruction, without compensation of any sort, of the items and equipment predominantly used for infringement of the breeder's right;

Forfeiture or destruction, without compensation of any sort, of infringing products.

General regulations on compensation of damages shall be applied to issues related to compensation of the damage done by infringement of the breeder's right that have not been provided for by this law.

If a violation of rights has been committed intentionally or out of gross negligence, the plaintiff may, instead of the amount of compensation referred to paragraph 1, item 3 of this Article, claim an amount equal to the threefold amount of remuneration that would have been paid had the use of the right been lawful.

#### **Statute of Limitations**

#### **Article 47**

The action referred to in Article 46, paragraph 1 of this Law may be filed within a period of three years from the date of obtaining information of the infringement and the offender, but not later than five years from the date on which the infringement has been committed.

Proceedings for the violation of breeder's right shall be administered in an expedited manner.

#### **Provisional Measures**

#### **Article 48**

At the request of a right holder who makes it credible that his right has been infringed, or that such infringement is imminent, the court may order a provisional measure involving the seizure or removal from the market of the object with which the infringement has been made and/or a provisional measure involving a prohibition against the acts under way, which could be conducive to violation.

#### **Securing of Evidence**

#### **Article 49**

At the request of the right holder who makes it credible that his/her right has been violated, or that such violation is imminent or that irreparable harm is likely to occur, or that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, depositions of witnesses and expert witnesses.

The court decision ordering measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

## **Request for Provisional Measures**

### **Article 50**

Measures referred to in Articles 48 and 49 of this Law may be requested even before filing an action.

In the case referred to in Paragraph 1 of this Article, decision establishing the measure shall contain the period in which the action has to be filed, which shall not be shorter than 30 days from the execution of the measure.

An appeal lodged against a decision ordering a provisional measure shall not stay the execution of the decision.

## **Obligation of the Defendant to Furnish the Information**

### **Article 51**

The court may order the defendant to furnish information about third parties related to the violation or hand over documents relating to the violation.

The person failing to meet the obligation referred to in paragraph 1 of this Article liable shall be liable for any damages thus incurred.

## **IX. INSPECTORIAL SUPERVISION**

### **Article 52**

For the purpose of protection of breeder's rights granted under this Law, inspectorial supervision over the enforcement of this Law shall be performed by the competent authority through a phytosanitary inspector, in compliance with the law.

Any provisions of other laws or regulations that regulate the production, certification and marketing of material of varieties or the importing or exporting of such material, shall not affect the application of the provisions of this Law.

### **1. POWERS OF A PHYTOSANITARY INSPECTOR**

#### **Article 53**

A phytosanitary inspector shall perform inspectorial supervision particularly in regard to:

Examination of distinctness, stability or uniformity of varieties in the experimental field or laboratory of the examiner;

Examiner's compliance with the conditions for examination of varieties in the experimental field or laboratory;

Unauthorized acts in relation to the protected variety referred to in Article 28 of this Law;

Use of the protected variety denomination;

Sampling of propagating material, free of charge, for the purpose of establishing the compliance with the conditions prescribed by this Law.

### **2. ADMINISTRATIVE MEASURES AND ACTIONS**

#### **Article 54**

In cases where a breach of law or other regulation has been established, a phytosanitary inspector shall, in addition to administrative measures and actions laid down by the law governing the inspectorial supervision, undertake the following administrative measures and actions:

Prohibit placing on the market, import or export of propagating material of varieties if it is established that the propagating material fails to meet the conditions prescribed by this Law, or that the right of the holder of the breeder right has been infringed;

Prohibit the examiner the examination of varieties in the experimental field or in the laboratory if he fails to remove the deficiencies in regard of conditions laid down by this Law.

## **X. PENAL PROVISIONS**

### **Article 55**

A legal person shall be fined by a fine amounting to between EUR 700 and EUR 25,000, if it:

Uses the variety denomination not granted by the decision of the competent authority (Article 12 paragraph 8);

Without authorization by the holder of the breeder's right, produces or reproduces, conditions for the purpose of propagation of the protected variety, offers for sale, sells or markets in any other way, exports or imports, or stocks for any of the said purposes the protected variety (Article 28, paragraph 3).

For a violation under the first paragraph of this Article, a natural person and the responsible person of the legal entity shall be fined by a fine amounting to between EUR 100 and EUR 3,000.

For infringement under the first paragraph of this Article, an entrepreneur shall be fined by a fine amounting to between EUR 300 and EUR 8,000.

For the offence referred to in paragraph 1 of this Article, in addition to the fine, a measure of prohibition of activity ranging from one to six months, may be imposed on the company, other legal person or entrepreneur.

### **Article 56**

A legal person shall be fined by a fine amounting to between EUR 500 and EUR 20,000, if it at the request of the competent authority fails to supply to the person to whom the compulsory licence was granted the appropriate quantity of propagating material necessary for use of the compulsory licence (Article 41).

For a violation under the first paragraph of this Article, a natural person and the responsible person of the legal entity shall be fined by a fine amounting to between EUR 50 and EUR 2,000.

For infringement under the first paragraph of this Article, an entrepreneur shall be fined by a fine amounting to between EUR 200 and EUR 6,000.

## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Protection of Known Varieties**

#### **Article 57**

Notwithstanding Article 7 of this Law, the competent authority may grant the breeder's right for the variety that is not new on the day this Law enters into force when:

The application has been filed no later than 12 months from the day this Law entered into force; and

The variety is:

Registered in the appropriate variety register recognized by the competent authority;

The subject of the breeder's right in a UPOV member state, or the subject of the application in a UPOV member state, where the application leads to grant of the breeder's right; or

The subject of the evidence on the date when the variety ceased to be new in accordance with Article 7 of this Law, which the competent authority finds acceptable.

Duration of the breeder's right granted under paragraph 1 of this Article shall starts from the date of:

Registration referred to under the paragraph 1, item 2, indent 1 of this Article;

Grant of the breeder's right referred to under the paragraph 1, item 2, indent 2 of this Article; or

When the variety ceased to be new in accordance with paragraph 1, item 2, indent 3 of this Article.

When relevant to the decision of the competent authority, the earliest of the dates referred to in paragraph 2 of this Article shall apply.

When the breeder's right is granted under paragraph 1 of this Article, the holder of the right shall grant a license under reasonable terms in order to provide for the use of the variety that the third party began in good faith prior to filing of the application for the grant of the right under paragraph 1 of this Article.

#### **Article 57a**

Provisions of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights ("Official Gazette of the Republic of Montenegro", No. 45/2005) and the Regulation on Actions of the Customs Authority Applicable To Goods Suspected Of Infringement Of Intellectual Property Rights ("Official Gazette of the Republic of Montenegro", No. 25/2005) shall apply *mutatis mutandis* to breeders' rights established by this Law.

#### **Article 58**

Bylaws for implementation of this Law shall be adopted within the period of one year from the day this Law enters into force.

Pending the adoption of the regulations based on this Law the regulations adopted under the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) provided that they not in the contravention of this Law.

#### **Article 59**

On the day this Law enters into force, the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) shall cease to be effective.

#### **Entering into force**

#### **Article 60**

This Law shall enter into force on the eighth day after its publishing in the Official Journal of the Republic of Montenegro.

**REPUBLIC OF MOLDOVA****Law on the Protection of Plant Varieties, as last amended in 2015**

Official Gazette No. 99-101/364 of 06.06.2008

**PARLIAMENT OF THE REPUBLIC OF MOLDOVA****LAW  
on the Protection of Plant Varieties****No. 39-XVI of 02.29.2008***Official Gazette No. 99-101/364 of 06.06.2008*

\*\*\*

**CONTENTS****Chapter I  
GENERAL PROVISIONS**

- Article 1.** Scope and Purpose of the Law  
**Article 2.** Legal framework  
**Article 3.** Definitions  
**Article 4.** Legal Protection of a Variety  
**Article 5.** Authorities Responsible for the Legal Protection of Varieties

**Chapter II  
SUBSTANTIVE PATENT LAW****Part 1  
Patentability of a Variety**

- Article 6.** Conditions for Patentability of a Variety  
**Article 7.** Distinctness  
**Article 8.** Uniformity  
**Article 9.** Stability  
**Article 10.** Novelty

**Part 2  
Entitlement to Apply For and Obtain a Patent**

- Article 11.** Right to a Patent  
**Article 12.** Varieties Bred or Discovered and Developed by Employees  
**Article 13.** Entitlement to File a Patent Application  
**Article 14.** Patent Application Filed by a Non-Entitled Person

**Part 3  
Effects of Patent Protection**

- Article 15.** Rights of the Patent Owner  
**Article 16.** Limitation of Patent Owner's Rights  
**Article 17.** Exhaustion of Patent Owner's Rights  
**Article 18.** Use of a Variety Denomination  
**Article 19.** Limitation of Use of a Variety Denomination

**Part 4  
Term of Validity and Termination of Patent Protection**

- Article 20.** Term of Patent Protection  
**Article 21.** Nullity of the Patent  
**Article 22.** Nullity Action

- Article 23.** Effects of Nullity  
**Article 24.** Forfeiture of Patent Owner's Rights  
**Article 25.** Surrender of Patent

**Part 5**  
**Patent Application and Patent as an Object of Property**

- Article 26.** Rights Conferred by a Patent Application after Publication  
**Article 27.** Transfer of Rights  
**Article 28.** Real Rights  
**Article 29.** License Contracts  
**Article 30.** Co-ownership  
**Article 31.** Compulsory Licenses

**Chapter III**  
**PATENT APPLICATION**

**Part 1**  
**Requirements for Filing a Patent Application**

- Article 32.** Filing of an Application  
**Article 33.** Requirements to Be Met by a Patent Application  
**Article 34.** Language of Procedure  
**Article 35.** Filing Date of the Application  
**Article 36.** Variety Denomination

**Part 2**  
**Priority**

- Article 37.** Right of Priority  
**Article 38.** Claiming Priority  
**Article 39.** Re-Establishment of Priority Right  
**Article 40.** Effect of the Right of Priority

**Chapter IV**  
**PROCEDURE FOR GRANT OF A PATENT**

**Part 1**  
**Examination Up to Grant of a Patent**

- Article 41.** Examination of Application  
**Article 42.** Examination as to Form  
**Article 43.** Preliminary Examination  
**Article 44.** Publication of an Application  
**Article 45.** Substantive Examination  
**Article 46.** Technical Examination of a Variety  
**Article 47.** Conduct of Technical Examination  
**Article 48.** Technical Examination Report  
**Article 49.** Objections to a Patent Application  
**Article 50.** AGEPI Decisions  
**Article 51.** Motivation of Decisions  
**Article 52.** Publication of a Decision  
**Article 53.** Withdrawal of Patent Application

**Part 2**  
**Appeals Procedure**

- Article 54.** Requirements for Filing an Appeal  
**Article 55.** Examination of an Appeal  
**Article 56.** Decision on Appeal  
**Article 57.** Means of Appealing the Decisions of the Board of Appeals

**Chapter V**  
**PROCEDURE FOR ISSUANCE AND**  
**MAINTENANCE IN FORCE OF A PATENT**

- Article 58.** Issuance of Patent  
**Article 59.** Maintenance of Patent  
**Article 60.** Patent Granted to a Non-Entitled Person  
**Article 61.** Effects of Change of the Patent Owner  
**Article 62.** Change of Variety Denomination  
**Article 63.** Technical Inspection  
**Article 64.** Technical Inspection Report

**Chapter VI**  
**INFORMATION OF PUBLIC**

- Article 65.** Information  
**Article 66.** Registers  
**Article 67.** Public Inspection  
**Article 68.** Periodicals  
**Article 69.** Warning Mark

**Chapter VII**  
**ENSURING OBSERVANCE OF RIGHTS**

- Article 70.** Proceedings for Infringement of Rights  
**Article 71.** Proceedings Preceding the Grant of a Patent  
**Article 72.** Right to Bring Proceedings for Infringement of Rights  
**Article 73.** Measures to Preserve Evidence up to Institution of Proceedings  
**Article 74.** Preservation of Evidence in Urgent Cases  
**Article 75.** Nullity of Measures to Preserve Evidence  
**Article 76.** Presentation and Preservation of Evidence in Proceedings for Infringement of Rights  
**Article 77.** Right to Information  
**Article 78.** Measures to Ensure the Proceedings for Infringement of Rights  
**Article 79.** Corrective Measures  
**Article 80.** Enforcement of a Court Decision  
**Article 81.** Alternative Measures  
**Article 82.** Damages  
**Article 83.** Publication of Court Decisions

**Chapter VIII**  
**COMMON PROVISIONS**

- Article 84.** Extension of Time Limits and Re-establishment of Time Limit  
**Article 85.** Re-Establishment of Rights (*restitutio in integrum*)  
**Article 86.** Right of Subsequent User  
**Article 87.** Representation  
**Article 88.** Ex Officio Examination  
**Article 89.** Oral Proceedings  
**Article 90.** Taking of Evidence  
**Article 91.** Suspension of Proceedings in Court  
**Article 92.** Fees  
**Article 93.** Protection and Testing of Varieties Abroad  
**Article 94.** Competence in Settlement of Disputes  
**Article 95.** Use of Varieties for Production Purposes  
**Article 96.** National Treatment

**Chapter IX**  
**FINAL AND TRANSITIONAL PROVISIONS**

- Article 97.** Entry into Force  
**Article 98.** Organization of Enforcement

The Parliament hereby adopts this organic Law.

This Law establishes the necessary legal framework for the application of 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 Council Regulation (EC) No. 2100/94 of July 27, 1994 on the Establishment of a Community Policy for the Protection of Plant Varieties, as published in the Official Journal of the European Union No. L 227 of September 1, 1994, the Council Regulation (EC) No. 2470/96 of December 17, 1996 on the Extension of Time Limits for Community Protection of Plant Varieties for the Potato, as published in the Official Journal of the European Union No. L 335 of December 24, 1996, the Directive No. 98/44/EC of the European Parliament and of the Council of July 6, 1998 on the Legal Protection of Biotechnological Inventions, as published in the Official Journal of the European Union No. L 213 of July 30, 1998, the Directive No. 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the Enforcement of Intellectual Property Rights, as published in the Official Journal of the European Union No. L 157 of April 30, 2004, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), concluded on April 15, 1994.

## **Chapter I GENERAL PROVISIONS**

### **Article 1.** Scope and Purpose of the Law

(1) This Law shall govern the relations arising out of the creation, legal protection and use of plant varieties of any genera and species.

(2) The purpose of this Law shall be the establishment of a legal framework for the organization and functioning of the system of protection of plant varieties.

### **Article 2.** Legal Framework

(1) The relations arising out of the creation, legal protection and use of plant varieties shall be governed by the [Constitution of the Republic of Moldova](#), the [Civil Code](#), the [Code on Science and Innovations](#), the [Customs Code](#), the international treaties to which the Republic of Moldova is a party, this Law and other normative acts.

(2) If an international treaty to which the Republic of Moldova is a party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

### **Article 3.** Definitions

For the purposes of this Law, the terms and expressions below are defined as follows:

"*breeder*" means a person who has bred, or discovered and developed, a variety;

"*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 breeder's right are fully met, can be

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

"*categories of a variety*" means clone, line, or hybrid;

"*material of a variety*" means seeds, whole plants or various parts of plants which are capable of reproducing the whole plants;

"*applicant*" means a natural person or legal entity who applies for the grant of a variety patent;

"*patent owner*" means a natural person or legal entity to whom a plant variety patent belongs;

"*genetically modified organism*" means any living organism which has a new combination of genetic material obtained with the assistance of contemporary biotechnology.

### **Article 4.** Legal Protection of a Variety

(1) Rights in a variety shall be obtained and protected on the territory of the Republic of Moldova by means of a plant variety patent (hereinafter referred to as "*patent*"), granted by the State Agency on Intellectual Property in accordance with this Law and sub-regulatory normative acts, and with the international treaties to which the Republic of Moldova is a party.

(2) The scope of the legal patent protection shall be determined by the sum of essential characteristics of the variety, as specified in the official description thereof.

### **Article 5.** Authorities Responsible for the Legal Protection of Varieties

(1) The authorities implementing the state policy in the field of legal protection of varieties are the State Agency on Intellectual Property (hereinafter referred to as *AGEPI*) and the State Commission

for Plant Varieties Testing (hereinafter referred to as *State Commission*). State policy on the use of new varieties in breeding shall be implemented by the State Commission.

(2) AGEPI is the national office in the intellectual property protection field and is the sole authority in the Republic of Moldova that provides for the legal protection of new varieties of plants.

(3) AGEPI:

a) develops drafts of legislative and other normative acts in the field of protection of plant varieties and ratifies acts of a procedural nature which are essential for it to perform functions established by Law;

b) registers and examines patent applications, grant and issue patents on behalf of the State, publishes official data in the Official Bulletin of Industrial Property of the Republic of Moldova (hereinafter referred to as *BOPI*);

c) maintains and administers the National Collection of Plant Variety Patents and exchanges information with international organizations and administrations for the protection of plant varieties of other countries;

d) keeps the National Register of Plant Variety Patent Applications (hereinafter referred to as "*the National Register of Applications*") and the National Register of Plant Variety Patents (hereinafter referred to as "*the National Register of Patents*"), establishes and approves the procedure by which they are to be maintained.

(4) AGEPI and State Commission shall represent the Republic of Moldova in the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "*UPOV*"), as well as in other international and intergovernmental organizations for the protection of plant varieties, shall maintain relations of bilateral and multilateral cooperation with them in this field.

(5) The State Commission is the authority which carries out the testing of plant varieties in its variety testing centers, experimental stations, specialized institutions and laboratories applying methodologies and within the time limits prescribed by international standards, in order to determine their compliance with the conditions of patentability, namely distinctness, uniformity and stability, and also the testing of varieties in order to determine their agronomical value. The State Commission maintains the Catalogue of Plant Varieties, including varieties approved for production and sale in the Republic of Moldova.

[Art. 5 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012].

## Chapter II SUBSTANTIVE PATENT LAW

### Part 1 Patentability of a Variety

#### **Article 6.** Conditions for Patentability of a Variety

(1) The plant variety shall be patentable only where it is:

- a) distinct;
- b) uniform;
- c) stable, and
- d) new

(2) The variety shall be designated by a denomination in accordance with the provisions of Article 36.

#### **Article 7.** Distinctness

(1) The variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one or more relevant features stipulated by a certain genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the date of registration of the patent application with the AGEPI, or at the date of the claimed priority, as the case may be.

(2) The distinctness of a variety shall be determined by features which can be recognized and described precisely.

(3) The variety shall be deemed to be notorious if at date of filing of the application:

- (a) it is protected in the Republic of Moldova or in another country and has been entered into an official register of protected varieties;
- (b) it has been entered in the Catalog of Plant Varieties of the Republic of Moldova or in similar registers and catalogs of other countries;
- (c) a registered application exists in the Republic of Moldova for the grant of protection for the variety or for its entry in the Catalog of Plant Varieties, provided that the application leads to the granting of protection or to the entering in the catalog;

(d) a registered application exists in another state for the grant of protection for the variety or for its entry in a catalog of plant varieties, provided that the application leads to the granting of protection or to the entering in the catalog.

[Art. 7 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]

#### **Article 8. Uniformity**

The variety shall be deemed to be uniform if, taking into account the differences that may be expected from the particular features of its propagation, plants of the variety remain sufficiently uniform in the expression of characteristics included in the examination of distinctness of the variety, and also of other characteristics used to describe the variety.

#### **Article 9. Stability**

The variety shall be deemed to be stable if its relevant characteristics for the determination of its distinctness and any other features used to describe the variety remain unchanged after repeated propagation or at the end of each cycle of propagation.

#### **Article 10. Novelty**

(1) A variety shall be deemed to be new if, at the date of filing of the patent application with the AGEPI or at the date of the claimed priority, propagating or harvested material of the variety has not been sold or otherwise disposed of to third parties, by or with the consent of the breeder, for purposes of exploitation of the variety:

- a) in the territory of the Republic of Moldova – earlier than one year before the filing date of the patent application;
- b) in the territory of other States, – earlier than four years before the filing date of the patent application, and in the case of trees and of vines – earlier than six years before the filing date of the patent application.

(2) The following shall have no bearing on the novelty of a variety, within the meaning of paragraph (1), if:

- a) the material of the variety is disposed of to an official body in the context of certain legal obligations or third parties on the basis of an agreement, or in the context of any other legal relations, for the purposes of production, reproduction, propagation, conditioning or storing, provided that the breeder is not deprived of the exclusive right to dispose of the material of the variety and provided that the material of the variety has not been disposed of for commercial purposes previously, except where such material of the variety was used repeatedly to obtain hybrids and if the material of the hybrid and the harvested material of the hybrid were sold;
- b) the material of the variety is disposed of by a company or firm to another company or firm of which it is a subsidiary, or if both companies or firms are wholly owned by a third company or firm, provided that there was no earlier disposal;
- c) are disposed of without reference to the variety, the material of the variety or the harvested material of the variety, obtained from plants which have been cultivated for experimental purposes or for the purpose of creation or discovery and development of a variety and which have not been used for the purpose of a new reproduction or propagation;
- d) the material of the variety is disposed of with the view of presentation of the variety by the breeder in an exhibition which is officially recognized in accordance with the Convention on International Exhibitions;
- e) the material of the variety is disposed of in an agreement between the breeder and a third party, according to which the breeder authorizes the production of propagating material under his supervision.

### **Part 2**

#### **Entitlement to Apply For and Obtain a Patent**

#### **Article 11. Right to a Patent**

(1) The right to a patent shall belong to the breeder or his successor-in-title.

(2) Where the variety has been bred or discovered and developed jointly by two or more breeders, the right to a patent shall belong to them all or to their successors-in-title. The mode of exercising the rights in the variety shall be determined by a written contract between the breeders. This provision shall also be applied in cases where one or more breeders discovered the variety, but others developed said variety.

(3) The right to a patent shall likewise belong jointly to a breeder and any person (or any persons) if the breeder and person (or persons) have declared in writing that they have agreed to share such a joint right.

(4) Where the right to a patent belongs jointly to two or more persons, in accordance with paragraphs (2) and (3), one person or several of the said persons may, by means of a written statement, entitle the other person to apply for the grant of a patent.

(5) If two or more persons have bred or discovered and developed the same variety independently of each other, the right to a patent shall belong to the person whose patent application has the earlier date of filing or priority, assuming it has been recognized. This provision shall only be applied in the case where the first application has been published in accordance with Article 44.

(6) In the procedures conducted before the AGEPI, the applicant shall be the person who exercises or is entitled to exercise the right to a patent.

*[Art.11 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

**Article 12.** Varieties Bred or Discovered and Developed by Employees:

(1) The right to a patent for a variety bred or discovered and developed by a breeder in the accomplishment of his duties, in the exercise of an employment contract or a research contract, shall belong to the employer, unless otherwise provided by the contract between the breeder and the employer, the breeder shall be entitled to an equitable remuneration, as prescribed by the contract. The amount of remuneration shall be determined on the basis of the profit obtained from the use of the variety during the term of the patent, as well as the economic value of the variety, and may not be less than 15 per cent from the profit derived from the use of the variety, including returns derived from the sale of licenses.

(2) A variety shall be deemed to have been bred in the accomplishment of duties if, in breeding the variety, the breeder:

- a) carried out duties entrusted to him by virtue of his position;
- b) carried out duties specifically entrusted to him for the purpose of breeding a new variety;
- c) made use of material or financial means made available to him by the employer or a person who commissioned the breeding of the variety, as well as of knowledge and expertise gained during the employment.

(3) Where the employer, within 60 days after having been notified by the breeder of the breeding of the new variety, has not filed an application for a patent, has not assigned his right to file an application to another person or has not instructed the breeder in writing to keep the newly bred variety secret, the breeder shall acquire the right to file a patent application and to obtain a patent in his own name. The employer shall in that case have a preferential right to a non-exclusive license to use the variety.

(4) Where the employer has obtained a patent for a variety bred in accordance with paragraph (1), the employee shall have a preferential right to a non-exclusive license to use the variety.

(5) If the parties fail to reach agreement on the amount of the remuneration due to the employee or on the price of the license, the amounts shall be determined by the courts, depending on the contribution made by each party to the breeding of the variety and on its commercial value.

(6) The procedure for the breeding and use of varieties by the employees shall be established by the [Regulations on Industrial Property Objects Created in the Accomplishment of Duties](#), as approved by the Government.

**Article 13.** Entitlement to File a Patent Application

(1) The following shall be entitled to file a patent application:

- a) natural and legal persons domiciled or with a place of business in the Republic of Moldova;
- b) natural and legal persons domiciled or with a place of business on the territory of a State Member of the international treaties to which the Republic of Moldova is a party;
- c) natural and legal persons of any other country, provided that said country grants natural and legal persons domiciled or with a place of business in the Republic of Moldova, a protection for varieties of the same botanical taxon which is equivalent to the protection granted by this Law.

(2) A patent application may be filed jointly by two or more persons complying with the requirements stipulated in paragraph (1). The refusal of one or more breeders to obtain a patent shall produce no effects on others, where they have acted in accordance with this Law.

**Article 14.** Patent Application Filed by a Non-Entitled Person

(1) Where, prior to the granting by the AGEPI of a patent, it is adjudged by a final court decision that a person other than the applicant is entitled to the right of a patent, in accordance with Article 11 paragraph (1), that person may:

- a) continue, within a period of 3 months after the decision has become final, the prosecution of the patent application as his own application in place of the applicant;
- b) if the patent application has been withdrawn or refused, file, within one month as from the date of withdrawal or refusal of the application, a new patent application in respect of the same variety, while preserving the filing date of the original application;
- c) request that the patent application be refused.

(2) A copy of the court decision shall be submitted to the AGEPI by the interested party. The court's decision shall be entered in the National Register of Applications and shall be published in BOPI.

### **Part 3** **Effects of Patent Protection**

#### **Article 15. Rights of the Patent Owner**

(1) The patent owner shall have the exclusive right in the patent and in the variety protected by the patent, including the right to exploit the variety, the right to dispose of the patent and variety, and the right to prevent third parties from performing, without his authorization, the following acts in respect of the material of the variety or the harvested 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 purposes mentioned in items (a) to (f).

(2) The provisions of paragraph (1) shall apply in respect of harvested material of the protected variety only where it has been obtained through the unauthorized use of material of the protected variety, unless the patent owner has had reasonable opportunity to exercise his right in relation to the said material.

(3) The provisions of paragraphs (1) shall also apply in respect of products made directly from the material of the protected variety, if these products have been obtained through the unauthorized use of the propagating material of the protected variety and if the patent owner has not had the opportunity to exercise his right in relation to the said propagating material.

(4) The provisions of paragraphs (1)-(3) shall also apply in relation to:

- a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety;
- c) varieties whose production requires the repeated use of the protected variety.

(5) For the purposes of subparagraph (a) of paragraph (4), a variety shall be deemed to be essentially derived from another variety (hereinafter referred to as "*the initial variety*") when:

- a) it is predominantly derived from the initial variety, or from a variety that is, in turn, predominantly derived from the initial variety;
- b) it is clearly distinguishable from the initial variety in accordance with Article 7;
- 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.

(6) Where there are several owners of the same patent, their mutual relations in relation to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the patent owners shall be fully entitled to use the variety at his own discretion and to institute patent infringement proceedings against any person who uses the variety without the authorization of the patent co-owners, but shall not be entitled to surrender the patent without notification of same, or to enter without their consent into license or assignment agreements.

(7) The exercise of the patent owner's rights may not infringe any provisions of public authorities, adopted for reasons of morality and public order, public security, protection of health and life of humans, animals or plants, protection of the environment, protection of industrial or commercial property or for the protection of competition, trade and agricultural production.

#### **Article 16. Limitation of Patent Owner's Rights**

(1) The patent owner's right shall not extend to:

- a) acts done privately and for non-commercial purposes;
- b) acts done for scientific research and experimental purposes;
- c) acts done for the purpose of breeding or discovering and developing other varieties, and, except where the provisions of Article 15(4) apply, to acts referred to in Article 15(1) to (3) in respect of such other varieties.

(2) Farmers may use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the propagating material of a protected variety, except hybrids, synthetic varieties, varieties of trees, shrubs and vines, in accordance with the Regulations on the procedures of filing and examination of an application, grant and maintenance of patent for a plant variety, approved by Government (hereinafter referred to as "*the Regulations*").

(3) The patent owner shall be entitled to receive equitable remuneration for use under paragraph (2) of the harvested product of a protected variety, which can be established by contract, but which must be less than the price charged for the licensed production of the propagating material for the same variety.

(4) Farmers shall, at the request of the patent owner, furnish information about the quantity of the harvested material used in accordance with paragraph 2".

*[Art.16 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 17. Exhaustion of Patent Owner's Rights**

The patent owner's rights shall not extend to acts concerning any material of the protected variety, or of varieties covered by the provisions of Article 15(4), which have been marketed by the breeder or with his consent, unless such acts:

- a) involve further propagation of the variety in question, except where such propagation was envisaged in the context of marketing of the corresponding material;
- 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 18. Use of a Variety Denomination**

(1) Any person who offers for sale or assigns to third parties for commercial purposes the material of a protected variety or one of the varieties to which the provisions of Article 15(4) refer, shall be obliged to use the denomination of that variety conferred on it in accordance with Article 36. The denomination of a variety must be easily recognizable and reproducible in writing.

(2) Any person who performs the acts referred to in paragraph (1) in relation to any material of the variety must indicate the denomination of the variety at the request of any authority, customer or person having a legitimate interest.

(3) The provisions of paragraphs (1) and (2) shall be applicable even after the expiry of patent protection.

#### **Article 19. Limitation of Use of a Variety Denomination**

(1) The patent owner who holds a right granted to him for a designation identical to the denomination of the protected variety may not use this right to hamper the free use of this denomination in connection with the variety, even after the expiration of patent protection.

(2) A third party may use a right granted to him for a designation identical to the denomination of the protected variety for the purpose of hampering the free use of this denomination only where such right was granted before the conferral of the variety denomination in accordance with Article 36.

(3) The denomination conferred on a variety patented in the Republic of Moldova or a Member State of UPOV, and any other denomination with which the denomination of the variety might be confused may not be used in the territory of the Republic of Moldova in relation to another variety of the same plant species or of a closely related species or for the material of this other variety.

*[Art.19 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

### **Part 4**

#### **Term of Validity and Termination of Patent Protection**

##### **Article 20. Term of Patent Protection**

(1) The term of patent protection for a plant variety shall extend up to 25 years or, in the case of varieties of vine, potato and trees – up to 30 years, as from the date of publication of the mention of the grant of the patent in BOPI.

(2) At the request of the patent owner, the term of patent protection may be extended for further five years following the expiry of the terms specified in paragraph (1).

##### **Article 21. Nullity of the Patent**

A patent may be declared null and void when it is established:

- a) that the conditions laid down in Articles 7 or 10 were not complied with at the time of grant of the patent;
- b) that, where the grant of the patent has been based upon information and documents furnished by the applicant, the conditions laid down in Articles 8 or 9 were not complied with at the time of grant of the patent;
- c) that the patent has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

##### **Article 22. Nullity Action**

(1) Proceedings for nullity of the patent may be instituted at any time during the term of validity of the patent and must only be predicated on the grounds mentioned in Article 21.

(2) Any person may institute proceedings for nullity of the patent with the court. For the cases referred to in Article 21(c), the nullity action may only be brought by a person entitled to be entered in the National Register of Patents as patent owner or jointly by other persons entitled to be entered in the Register as co-owners under Article 11 paragraph (2).

(3) Proceedings for nullity of the patent may be instituted even if the rights conferred by the patent have terminated or if the patent is surrendered.

(4) A decision for nullity of the patent shall be communicated to the AGEPI by the interested person and shall be entered in the National Register of Patents. Mention of the nullity of the patent shall be published in BOPI.

#### **Article 23. Effects of Nullity**

(1) Effects of protection referred to in Articles 15-19 shall be considered to be null and void, as from the date of grant of the patent, to the extent that the patent has been so declared null and void.

(2) The retrospective effect of the nullity of a patent shall not extend to:

(a) final and irrevocable decisions in actions related to the infringement of rights, which have come into effect prior to the adoption of the decision for nullity;

(b) contracts concluded prior to the adoption of the decision for nullity, to the extent of their execution degree before such decision. For reasons of fairness, reimbursement of amounts paid under the contract may be claimed.

#### **Article 24. Forfeiture of Patent Owner's Rights**

(1) AGEPI shall declare the forfeiture of patent owner's rights with effects *in futurum* where it establishes that the conditions laid down in Articles 8 and 9 are no longer fulfilled. Where it is established that these conditions are no longer fulfilled at a date earlier than the date of forfeiture, the forfeiture of rights may have effect from this earlier date.

(2) AGEPI shall declare the forfeiture of patent owner's rights if, within a time limit prescribed by the AGEPI, the patent owner:

a) refuses to furnish, at the request of the State Commission, the information, documents or material of the protected variety deemed necessary for its control testing;

b) does not propose, where the denomination of the variety no longer complies with the conditions laid down in Article 36, another denomination for the variety and does not pay the fee referred to in Article 62;

c) fails to pay the patent issuance and maintenance fees;

d) the patent owner or his successor-in-title no longer complies with the conditions laid down in Articles 13 and 87.

(3) Forfeiture of patent owner's rights for failure to pay the annual fee in due time or, where appropriate, the additional fee, shall be deemed to have effect from the date of expiration of the time limit established for payment of such fee.

(4) AGEPI shall publish the mention of the forfeiture of patent owner's rights in BOPI.

[Art.24 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]

#### **Article 25. Surrender of Patent**

(1) The patent owner may surrender the patent by submitting a written declaration to that effect to the AGEPI, subject to payment of the prescribed fee.

(2) Surrender of patent by one of the patent owners shall not terminate the validity of the patent, which shall remain in the ownership of the other patent owners.

(3) Surrender of patent shall only take effect upon introduction of the corresponding entry in the National Register of Patents, the mention of which shall be published in BOPI.

(4) Surrender of patent shall be entered in the National Register of Patents only with the consent of the beneficiary of a real right entered in the Register.

(5) Where the patent forms the subject of a license contract, entered in the National Register of Patents, surrender of patent shall be entered in the Register only where the patent owner provides evidence of the fact that he informed the licensee of his intention to surrender the patent. In such case, the licensee shall have a preferential right to obtain the patent in his name within 3 months as from the date on which the patent owner has informed him in writing of his intention to surrender the patent.

(6) The patent owner shall be required to inform the breeder, at the same time as he submits his written request to the AGEPI, of his intention to surrender the patent. In such case, the breeder shall have a preferential right to obtain the patent in his name within 3 months as from the date on which the patent owner has informed him in writing of his intention to surrender the patent.

### **Part 5 Patent Application and Patent as an Object of Property**

**Article 26.** Rights Conferred by a Patent Application after Publication

(1) A patent application shall, from the date of its publication and up to the grant of the patent, provisionally confer upon the applicant the same rights as those conferred upon the patent owner in accordance with Article 15.

(2) Infringement of rights by third parties referred to in paragraph (1) shall bring to the guilty party the obligation of compensation according to law, the order for payment of damages shall be enforceable after the grant of the patent. The amount of compensation shall be determined by agreement between the parties. If the parties have not agreed on the amount of compensation, shall be determined by the court.

(3) The effects of a patent application referred to in paragraph (1) shall be deemed null and nonexistent if the patent application has been withdrawn or refused.

**Article 27.** Transfer of Rights

(1) A patent application and a patent may be transferred to one or more successors-in-title.

(2) Transfer of a patent application or a patent under an assignment contract may only have effect for a successor-in-title who satisfies the conditions specified in Articles 13 and 87. Assignment shall be in writing and signed by the contracting parties except where the transfer is adjudicated by a court decision or any other final document of a legal procedure. Otherwise, the assignment shall be deemed null.

(3) Without prejudice to the cases referred to in Article 61, the transfer of rights shall not affect the rights obtained by third parties prior to the date of transfer.

(4) Transfer of rights shall take effect before the AGEPI and shall be enforceable against third parties only after the presentation of documentary evidence provided and following their entry in the National Register of Applications or the National Register of Patents.

**Article 28.** Real Rights

(1) A patent may, independently, be pledged or become the subject-matter of any other real right.

(2) Pledge of patents shall be entered in the Register of Corporal Pledges of Movables according to the [Law on Pledge](#). Other real rights in patents shall be, on request of any of the parties, entered in the National Register of Patents and shall become enforceable against third parties from the time of registration, and the data concerning these rights shall be published in BOPI.

[Art.28 as amended by [Law No.173 of 25.07.2014](#), in force as from 11.08.2014]

**Article 29.** License Contracts

(1) A patent application and a patent may be the subject of a license contract. The licenses may be exclusive or non-exclusive.

(2) The applicant or patent owner may claim rights conferred by the patent application or the patent against a license owner who has infringed one of the conditions or limitations stated in the license contract under the paragraph (1).

**Article 30.** Co-ownership

In case of co-ownership of a patent, the provisions of Articles 27 to 29 shall apply *mutatis mutandis* in relation to the appropriate parts of the co-owners, where such parts are determined by contract.

**Article 31.** Compulsory Licenses

(1) The courts may grant compulsory, non-exclusive licenses for the use of a protected variety to one or more persons who have filed an application on expiry of the period of 3 years after the grant of the patent, under the following conditions:

- a) authorization for such use shall be given where it is in the public interest;
- b) such use may be authorized only where prior to such use the proposed user has made efforts to obtain authorization from the patent owner on reasonable commercial terms and by acceptable means, although, regardless of his best efforts, he has not been successful within a reasonable period of time. The derogation from this provision shall only be permissible in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In such instances, the patent owner shall be notified as soon as reasonably practicable;
- c) the scope and duration of such use shall be limited to the purposes for which it was authorized;
- d) such use shall be non-exclusive and non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- e) any such use shall be authorized predominantly for the supply of the domestic market;
- f) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if the circumstances which led to it cease

to exist and are unlikely to recur. The judicial authority shall have the authority to review the case, upon reasonable request, where these circumstances persist;

g) the patent owner shall be paid an adequate remuneration appropriate to each individual case, taking into account the economic value of the authorization;

h) the validity of any decision relating to authorization of such use, and any decision relating to remuneration stipulated in relation to such use, may be subject to judicial review or other independent review by higher authorities;

i) the provisions specified in items (b) and (e) shall not apply where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration payable in such cases. The courts shall have the authority to refuse termination of authorization where the circumstances which led to such authorization are likely to recur.

(2) A compulsory license shall only be granted to a person who is in a position to use the variety in accordance with the license, which shall confer on its owner the right to receive initial material of the variety from the patent owner.

(3) A compulsory license shall not prevent the patent owner from using the protected variety or granting licenses to others.

(4) A compulsory non-exclusive license for the use of a protected variety may be granted, upon request, to a patent owner for a biotechnological invention, subject to payment of an equitable remuneration where:

(a) he unsuccessfully has made efforts to obtain a license contract from the plant variety patent owner;

(b) the invention involves an important technical advance of considerable economic significance in relation to the protected variety.

(5) Where the plant variety patent owner has been granted a compulsory non-exclusive license for the use of the patented invention, a reciprocal non-exclusive license for the use of the variety may be granted, on request, to the patent owner on reasonable terms.

(6) A compulsory license may be granted to the patent owner for an essentially derived variety, under the provisions of paragraph (1). The conditions for granting the compulsory license may include payment of fair remuneration to the owner of the initial variety patent.

(7) The holder of the license shall notify the AGEPI the decision of the judicial authority to grant or, where appropriate, to terminate a compulsory license, entered in the National Register of Patents and published in BOPI.

(8) If the holder of a compulsory license has not undertaken any effective and serious preparation for exploiting the variety within one year following the grant of the license, the compulsory license may be cancelled by the decision of the court. In any event, a compulsory license shall terminate if its holder has not begun exploitation of the variety within 2 years following the date on which the license was granted to him.

### **Chapter III PATENT APPLICATION**

#### **Part 1 Requirements for Filing a Patent Application**

##### **Article 32.** Filing of an Application

A patent application shall be filed with the AGEPI by the person entitled under Article 13, in person or via a patent attorney, in accordance with Article 87.

##### **Article 33.** Requirements to Be Met by a Patent Application

(1) A patent application shall contain:

(a) a request for the grant of a patent;

(b) a specification of the botanical taxon;

(c) information about the applicant (applicants);

(d) information about the breeder (breeders);

(e) a proposal for a denomination of the variety;

(f) a technical description of the variety (technical questionnaire);

(g) a declaration by which the applicant assumes responsibility for confirming that the variety for which protection is sought conforms with the provisions of Article 10;

(h) information relating to any other application filed for the variety, along with such applications.

(2) The following shall accompany the application:

(a) proof of payment of the filing fee;

(b) a priority document, where appropriate;

(c) a power of attorney, where the application is filed through a patent attorney;

- (d) necessary documentary proof of acquisition of the right to a patent, where the applicant is not the breeder or is not the sole breeder;
- (e) photographs or drawings, as necessary;
- (f) the results of variety testing, carried out by a competent authority, as necessary;
- (g) permission for introduction into the environment granted by a competent national authority under the law on biological safety, where the variety is a genetically modified organism.

(3) A patent application shall relate to one variety only or to one category of variety.

(4) The breeder shall be entitled to be mentioned in the application, patent, and in AGEPI publications concerning the application or patent. The breeder shall likewise be entitled to refuse mention of his name in the patent and relevant AGEPI publications. A request to this effect shall be filed in writing with the AGEPI.

(5) Other requirements which the application must satisfy shall be established in the Regulations.

*[Art.33 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 34. Language of Procedure**

(1) A patent application shall be filed with the AGEPI in the state language.

(2) The filing of the application and related documents in another language shall be permitted, except the elements referred to in Article 33(1) a)-(e).

(3) Where the application and related documents are filed in another language, the applicant shall, for the purposes of examination, be obliged to submit a translation into the state language within 2 months following the filing date of the application. Otherwise, the application shall be declined.

*[Art.34 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 35. Filing Date of the Application**

(1) The filing date of a patent application shall be the date of filing with the AGEPI an application containing at least the elements referred to in Article 33(1)(a)-(g).

(2) Where the requirements referred to in Article 33(1)(a)-(g) are not satisfied, the filing date of the application shall be the date on which these conditions were satisfied.

(3) The elements of the application referred to in Article 33(1)(h) and paragraph 2, except those from (b) and (g), may be submitted by the applicant within 2 months of the application filing date.

(4) Permission to introduce a genetically modified organism into the environment shall be provided simultaneously with the filing of the application or within 2 months of the date of completion of the substantive examination.

#### **Article 36. Variety Denomination**

(1) The variety shall be designated by a generic denomination which will enable it to be identified.

(2) Variety denominations:

- (a) must be easily identifiable and reproducible by users and may not consist solely of figures except where this is an established practice for designating specific varieties;
- (b) 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;
- (c) must be different from or may not be confused with the denomination of another variety of the same plant species or of a closely related species, entered in an official catalog of varieties or marketed in any UPOV Member State, except when this other variety no longer exists and its denomination has not acquired special significance;
- (d) must be used even after the expiration of the term of the patent;
- (e) must be different from or may not be confused with other denominations used for the marketing of goods or which may not be used by virtue of other normative acts.
- (f) must not contravene the morality and public order.

(3) If a variety is already entered in an official catalog of plant varieties and the material of the variety has been marketed in a Member State of UPOV, the denomination of the variety in the patent application for the same variety filed in the Republic of Moldova must be the same.

(4) 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 (5), is obliged to use it, AGEPI may require the applicant to submit another denomination for the variety.

(5) Any person who, within the territory of one of the UPOV Member States, offers for sale or markets the material of a variety protected within the territory of said State shall be obliged to use the denomination of that variety even after the expiration of the term of the patent for that variety, except as provided in paragraph (4).

(6) A variety denomination which fulfills the requirements referred to in paragraphs (1)-(5) shall be entered in the National Register of Patents at the same time as the patent is granted and shall be published in BOPI.

(7) The conditions for conferral of the denomination to the variety shall be prescribed in the Regulations.

*[Art.36 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

*[Art.36 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]*

## **Part 2 Priority**

### **Article 37. Right of Priority**

(1) The priority of an application shall be determined by its filing date. Where several applications have the same filing date, their priority shall be determined by the order in which they were received.

(2) Any person or his successor-in-title who has filed, in accordance with the law, a plant variety patent application in any Member of the UPOV or any Member of the World Trade Organization shall, for the purpose of filing an application for the same variety, enjoy a right of priority for a period of 12 months from the filing date of the earlier application; the day of filing shall not be included in the period.

(3) The applicant shall enjoy a right of priority of the earlier application, provided that such application exists on the filing date.

(4) The right of priority shall be recognized in relation to any filing that is equivalent to a regular national filing.

(5) The applicant shall be allowed a period of two years following the expiration of the term of priority or, where the initial application is rejected or withdrawn, an appropriate period after such rejection or withdrawal, in which to furnish all the information, document or material required for the purpose of the examination.

### **Article 38. Claiming Priority**

(1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, where appropriate, a translation thereof in the state language.

(2) Priority shall be claimed when filing the application or within 2 months from the filing date of the patent application and shall be justified by a priority document.

(3) Claiming a right of priority has no effect if the applicant fails to submit to the AGEPI, within 3 months from the filing date, the copies of the earlier applications certified by the competent authorities.

(4) Where the earlier application is not made in the state language, AGEPI shall be entitled to request a certified translation thereof.

*[Art.38 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

### **Article 39. Re-Establishment of Priority Right**

(1) Where the priority of an earlier application is claimed in a subsequent patent application which was filed after the expiration of the time limit referred to in Article 37 paragraph (2), but not later than 2 months after the expiration of that time limit, AGEPI may re-establish the priority right, if at the time of filing the application the applicant submits a request, which confirms that the due diligence required by the circumstances was exercised or that non-compliance with the time limit was unintentional.

(2) The request for re-establishment of rights shall be filed within 2 months of expiry of the priority time limit referred to in Article 37 paragraph (2) and shall be accompanied by the evidence of payment of the prescribed fee; otherwise the request shall be deemed not to have been filed.

(3) If the copy of the earlier application has not been submitted to the AGEPI within the time limit referred to in Article 38 paragraph (3), the AGEPI may re-establish the priority right where the following conditions are fulfilled cumulatively:

a) the applicant has made a request in that matter with the AGEPI before the expiration of the time limit specified in Article 38 paragraph (3);

b) the applicant has submitted to the AGEPI a confirmation of the request made with the office which registered the earlier application, certifying that the copy of the earlier application was requested within a period not exceeding 14 months following the filing date of such earlier application;

c) the certified copy of the earlier application was submitted to the AGEPI within one month from the date on which the office with which was registered the earlier application issued the respective copy to the applicant.

### **Article 40. Effect of the Right of Priority**

(1) The consequence of the right of priority is that, when applying Article 7 and 10, the filing date of the earlier application will have the filing date of the patent application.

(2) Filing of another patent application, publication of information on the variety or use of a new variety, which was the subject-matter of an initial application, within the time limit referred to in

Article 37 paragraph (2), may not serve as grounds for refusing the subsequent application and the emergence of rights of third parties.

(3) Non-compliance with the terms laid down in paragraphs (2) and (3) of Article 38 and non-payment of the priority claiming fee shall result in the refusal to acknowledge the claimed priority.

**Chapter IV**  
**PROCEDURE FOR GRANT OF A PATENT**  
**Part 1**  
**Examination Up to Grant of a Patent**

**Article 41.** Examination of the Application

(1) AGEPI and the State Commission shall verify whether the patent application and the variety which forms the subject-matter of the patent meet the requirements stipulated by the Law. For that purpose, AGEPI shall undertake a formal examination, a preliminary examination and a substantive examination of the patent application. The State Commission shall undertake a technical examination of the patent application.

(2) AGEPI may invite the applicant to furnish additional materials that are considered to be essential for identification of the applicant or breeder, the constituted regular national filing or compliance with the patentability requirements.

(3) The conditions for submitting additional materials, indicated in paragraph (2), shall be established by Regulations.

**Article 42.** Formal Examination

(1) In the formal examination, AGEPI shall, within two months, check whether the patent application meets the conditions for accordance of a filing date under Article 35 paragraph (1).

(2) If the application complies with the requirements prescribed in Article 33(1)(a)-(g), AGEPI shall enter the relevant data in the National Register of Applications.

(3) If the application does not comply with the requirements prescribed in Article 33(1)(a)-(g), AGEPI shall give the applicant an opportunity to correct the deficiencies within the term prescribed in the notification.

(4) If the applicant fails to furnish the required information or fails to meet the requirements referred to in Article 33(1)(a)-(g) within the prescribed time limit, the application shall be deemed not to have been filed and the applicant shall be notified of the fact.

**Article 43.** Preliminary Examination

(1) In the preliminary examination AGEPI shall, within 3 months of the filing date of the patent application, check whether:

- a) the application meets the requirements laid down in Article 33 and, where appropriate, Article 34;
- b) the contents of the application documents complies with the requirements prescribed in the Regulations;
- c) the priority claiming complies with provisions of Articles 37 and 38;
- d) the requirements of Article 87 have been satisfied;
- e) the application filing fee has been paid within the prescribed time limit.

(2) Where AGEPI notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them within the term prescribed in the notification. Where the specified time limit is not observed or in the absence of a request for extension of the time limit, the patent application shall be refused.

**Article 44.** Publication of an Application

(1) On expiry of a period of 3 months as from the filing date of the application, AGEPI shall publish a notice concerning the application in BOPI. The particulars to be published shall be established by Regulations.

(2) Simultaneously with the publication of the application in BOPI, AGEPI shall publish the application documents as filed by the applicant.

(3) Patent applications withdrawn or refused prior to the termination of the technical preparations for publication shall not be published.

**Article 45.** Substantive Examination

(1) In the substantive examination, AGEPI shall, within 6 months from the filing date of the patent application, check whether:

- (a) the variety meets the requirements laid down in Article 10;
- (b) the variety denomination meets the requirements laid down in Article 36.

(2) AGEPI shall be entitled to request from the applicant any missing corroborative documents or clarifying materials which he must submit within a time limit specified in the notification of AGEPI. Where the time limit is not observed or in the absence of a request for extension of the time limit, the patent application shall be refused.

(3) If the examination reveals that the variety denomination does not comply with the requirements laid down in Article 36, the applicant shall be offered the opportunity to submit to the AGEPI a new variety denomination, subject to the payment of the prescribed fee, within the time limit specified in the notification. Where the time limit is not observed or in the absence of a request for extension of the time limit and failure to pay the prescribed fee, the patent application shall be refused.

(4) If the patent application complies with the prescribed requirements, AGEPI shall notify the applicant to this effect.

(5) Upon completion of the substantive examination, AGEPI shall forward a copy of the application documents to the State Commission for the purpose of conducting a technical examination of the variety.

*[Art.45 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 46. Technical Examination of a Variety**

(1) Where after examination under Articles 43 and 45, AGEPI finds that there is no obstacle to the grant of the patent, measures shall be taken to conduct a technical examination to determine:

- a) whether the claimed variety belongs to the botanical taxon stated by the applicant and identified in the preliminary examination;
- b) whether the conditions of distinctness, uniformity and stability according to Articles 7, 8 and 9 are satisfied;
- c) whether the description of the new variety enables it to be distinguished from another commonly known variety.

(2) The technical examination of the variety shall be carried out by the State Commission and shall include the organization of growing tests carried out by:

- a) the State Commission within its variety testing centers;
- b) another authority designated on behalf of the State Commission;
- c) the applicant, at the request of the State Commission, in the case of species for which the State Commission has no reference collections.

(3) In the technical examination, the State Commission may use the results of growing tests which have already been carried out or are being carried out by a competent authority of a Member State of UPOV, furnished by the applicant with the consent and under the conditions imposed by that competent authority, or tests which have already been carried out by the applicant and may take into account the results obtained.

(4) The State Commission shall establish a date and place for the seeds or propagating material, intended for the technical examination, and the reference samples and their required amount to be furnished free-of-charge. Failure to furnish the necessary materials within the prescribed time limit, the application shall be deemed withdrawn.

(5) The State Commission may require the applicant to furnish all the necessary information documents and materials.

#### **Article 47. Conduct of Technical Examination**

(1) The State Commission shall conduct a technical examination of the variety in accordance with the guidelines and within the time limits based on international standards.

(2) The applicant shall pay the prescribed fee for the technical examination to be conducted.

(3) Where testing of the variety was carried out by a competent authority of a Member State of UPOV or by the applicant, the State Commission shall analyze its results in order to confirm or deny the validity of tests carried out.

(4) On the basis of the results of the technical examination, the State Commission shall compile a technical examination report and send it to the AGEPI.

#### **Article 48. Technical Examination Report**

(1) Where the State Commission considers that the results of the technical examination are sufficient to evaluate the variety, it shall send a technical examination report and the precise official description of the variety to the AGEPI.

(2) If in the course of technical examination it is found that the variety does not comply with the requirements laid down in Articles 7, 8 and 9, the State Commission shall compile a technical examination report and send it to the AGEPI.

(3) AGEPI shall notify the applicant of the results of the technical examination and invite him, within the time limit specified in the notification, to file his observations.

(4) Where it is found that the technical examination report does not contain sufficient grounds to adopt a decision, the State Commission may, on its own initiative and following consultation with the applicant or upon reasonable request of the applicant, stipulate the conducting of an additional

examination, subject to the payment of an additional fee. Any additional examination carried out prior to the adoption of a final decision shall be deemed to be part of the examination carried out in accordance with Article 46(1).

(5) The results of the technical examination shall be used exclusively by the AGEPI and may only be used later with its consent.

#### **Article 49. Objections to a Patent Application**

(1) Any person may file written objections to a patent application. Objections must be reasonable and relate exclusively to non-compliance with the requirements stipulated in Articles 6-10 and Article 36, and may be filed:

- a) within 3 months from the publication of the application or the proposed variety denomination, where the proposed denomination does not comply with the requirements laid down in Article 36;
- b) in the period after the publication of the application and prior to the adoption of a decision, where the requirements laid down in Articles 6 to 10 are not met.

(2) The applicant shall be notified of the objections and offered the opportunity to respond within 2 months. The objections and responses filed shall be taken into account when adopting the decisions referred to in Article 50.

*[Art.49 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 50. AGEPI Decisions**

(1) Within 3 months as from the date of receipt of the technical examination report and the precise official description of the variety, AGEPI, where it finds that the results of the examination are sufficient to adopt a decision on the application and that there are no obstacles within the meaning of Article 49 and paragraph (2) of this Article, shall adopt the decision to grant a patent.

(2) AGEPI shall adopt a decision to reject an application:

- a) if the applicant has failed to remedy within the prescribed time limit the deficiencies, under Articles 43 and 45;
- b) if the applicant has failed to comply with the requirements referred to in Article 46 (1) and Article 47(2);
- c) if the applicant has failed to propose a variety denomination under Article 36;
- d) if, on the basis of the technical examination report, it concludes that the conditions of Articles 7, 8 and 9 are not fulfilled;
- e) at the request of a person whose right in the patent was recognized by a court decision.

(3) AGEPI shall notify the applicant of the decision adopted.

*[Art.50 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 51. Motivation of Decisions**

(1) AGEPI decisions shall indicate the grounds on which they were adopted.

(2) AGEPI decisions shall only be based on grounds and evidence with which the interested parties were able to get acquainted and upon which they were able to express their opinions, orally or in writing.

*[Art.51 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

#### **Article 52. Publication of a Decision**

(1) AGEPI shall publish the mention of its decision to grant a patent or to refuse a patent application in BOPI.

(2) AGEPI shall publish, at the same time as it publishes the mention of the decision to grant a patent, a specification of the patent containing the official description of the variety and, where appropriate, its photographs. The particulars to be published shall be laid down in the Regulations.

#### **Article 53. Withdrawal of Patent Application**

(1) An applicant shall be entitled to withdraw the patent application at any time, prior to the date on which a decision concerning that application has been taken.

(2) In the event of more than one applicant, the patent application may only be withdrawn with the agreement of each applicant.

(3) If the applicant is other than a breeder, he shall be obliged to inform the breeder, at the same time as he submits his written request to the AGEPI, of his intention to withdraw the application. In such case the breeder shall have a preferential right to request the continuation of procedures in respect of the application as an applicant within a period of 2 months as from the date of receipt of that notification.

## **Part 2 Appeals Procedure**

**Article 54.** Requirements for Filing an Appeal

- (1) Any decision adopted by AGEPI may be appealed before the Board of Appeals of AGEPI.
- (2) An appeal may be lodged by any natural or legal person, subject to Article 87, against a decision of which addressee is or against a decision of which addressee is another person, but which concerns him directly and personally.
- (3) The reasoned appeal shall be lodged to the AGEPI in writing, within 2 months as from the date of dispatch of the decision, where it is lodged by the applicant, or otherwise, within 20 months as from the date of publication of the decision.
- (4) The appeal shall only be deemed to have been lodged upon payment of the prescribed fee.
- (5) The appeal, under paragraph (1), shall have suspensive effect. AGEPI may, where it deems necessary, decide that the appealed decision be not suspended.

**Article 55.** Examination of an Appeal

- (1) Where an appeal is admissible, the Board of Appeals shall examine whether it is reasonable.
- (2) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Regulations on the Board of Appeals of AGEPI, the parties shall, as often as necessary, file their observations, within a period to be fixed by the Board of Appeals, on notifications addressed to them or communications received from other parties.
- (3) The parties to the appeals procedure shall be entitled to make oral representations.

**Article 56.** Decision on Appeal

- (1) Following the examination of the appeal, the Board of Appeals shall either adopt a final decision on it, or remit the case for re-examination to the competent AGEPI subdivision or to the State Commission.
- (2) Where the Board of Appeals remits the case to the competent AGEPI subdivision or to the State Commission, the grounds and directions contained in the Board of Appeals' decision shall be bound on said subdivision and on the State Commission, provided that the facts of the case are the same.
- (3) The decision of the Board of Appeals shall be published in BOPI within 2 months following the date of dispatch thereof.

**Article 57.** Means of Appealing the Board of Appeals' Decisions

- (1) Any decision taken by the Board of Appeals may be appealed before a court in accordance with the provisions of the [Code of Civil Procedure](#). The action at law shall not have suspensive effect.
- (2) Actions at law in court may be initiated on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Law or any rule of law enforcement or abuse of power.
- (3) The decision of the Board of Appeals which, in a proceeding concerning one of the parties, is not final cannot be actionable in court before the adoption of a final decision, except where such decision does not provide for the institution of an action in court.
- (4) The court has the power to cancel or amend the appealed decision.
- (5) The action may be brought to court within 2 months from the date of dispatch of the decision of the Board of Appeals to interested parties.
- (6) The action may be brought by any party to the proceedings which has been affected by the decision of the Board of Appeals.
- (7) The court decision shall be communicated to the AGEPI by the person concerned. AGEPI shall enter the amendments following the final and irrevocable court decision in the national register, and shall publish it in BOPI within 2 months from the date of its registration with the AGEPI.

## **Chapter V**

### **PROCEDURE FOR ISSUANCE AND MAINTENANCE IN FORCE OF A PATENT**

**Article 58.** Issuance of Patent

- (1) If no appeal has been filed against the grant of a patent or if any appeal filed has been rejected, AGEPI shall issue a patent to the entitled person, subject to payment of the prescribed fees, and shall publish the particulars to that effect in BOPI.
- (2) The patent shall be issued by AGEPI on the basis of the decision to grant the patent.
- (3) The date of issuance of a patent shall be the date on which the mention of the issuance is published in BOPI. The particulars to be published shall be determined by the AGEPI. The date of issuance of the patent shall be entered in the National Register of Patents.
- (4) If the prescribed fees for issuance of the patent are not paid after the publication of the mention to grant a patent under the Regulations, the patent shall not be issued, and the mention of the forfeiture of patent owner's rights shall be entered in the National Register of Patents and published in BOPI.

**Article 59. Maintenance of Patent**

(1) For the maintenance of a patent, annual fees, in accordance with the provisions of Article 92, shall be paid.

(2) The annual fees shall be payable after the publication of the mention of the grant of a patent and shall be deemed to have been paid to all effects, if it is paid within the time limit prescribed in the Regulations.

(3) If an annual fee has not been paid within the prescribed time limit, it may still be paid within 6 months from the expiry of the prescribed time limit, subject to the payment of an additional fee.

**Article 60. Patent Granted to a Non-Entitled Person**

(1) If a patent is granted to a person who is not entitled to it, then the person who is so entitled may, without prejudice to any other rights or actions, claim that the patent be transferred to his name.

(2) If a person is entitled only to a part of the patent protection, he may claim under paragraph (1) recognition of the ownership of co-owner.

(3) The actions mentioned in paragraphs (1) and (2) may only be examined in court within 5 years from the date of publication of the decision to grant a patent in BOPI.

(4) Paragraph (3) shall not apply where the patent owner, at the date of grant or issuance of the patent, knew that he had no right or he was not the only person entitled to this patent.

(5) The filing of a claim with the court shall give rise to the entry in the National Register of Patents. A certified copy of the court decision shall be submitted to the AGEPI by the interested party. The final and irrevocable court decision shall be entered in the National Register of Patents and shall produce legal effects for third parties as from the date of its publication in BOPI.

**Article 61. . Effects of Change of the Patent Owner**

(1) If the patent owner is changed as a result of a court decision, the license contracts and any other rights shall be terminated upon registration of the person entitled to the patent in the National Register of Patents.

(2) If, prior to the institution of an action in the court, the patent owner or the holder of a license has used the variety on the territory of the Republic of Moldova or has made effective and serious preparations for that purpose, he may continue such use, provided he applies for a non-exclusive license to the new patent owner entered in the National Register of Patents. Such application shall be filed within the term provided for in the Regulations. The license shall be granted for a determined period and on reasonable terms and conditions.

(3) In the absence of agreement between the parties, the non-exclusive license, under paragraph (2), may be granted by a court.

(4) The provisions of paragraph (2) shall not apply where the patent owner or the holder of a license has not acted in good faith at the time of starting the use of the variety or preparations for that purpose.

**Article 62. Change of Variety Denomination**

(1) The denomination of the variety conferred in accordance with Article 36 may be changed where the AGEPI finds that such denomination does not satisfy or no longer satisfies the requirements referred to in this Article and if, in the case of an earlier opposable right of a third party, the patent owner accepts the change or if, by a court decision, is prohibited the use of the variety denomination by the patent owner or by any other person.

(2) AGEPI shall propose the patent owner to submit an amended variety denomination in accordance with Article 36, subject to payment of the prescribed fee.

(3) The proposed amended denomination shall be published in BOPI and may be subject to objections under Article 49.

(4) Data on change of the variety denomination shall be published in BOPI and entered in the National Register of patents. AGEPI shall, upon request and subject to payment of the prescribed fee, issue a patent specification containing the introduced changes.

*[Art.62 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

**Article 63. Technical Inspection**

(1) The patent owner shall be obliged to maintain the protected variety for the entire term of the patent so that it may retain all its characteristics presented in the official description of the variety at the date of grant of the patent.

(2) The State Commission may carry out a technical inspection under Articles 46 and 47 to verify whether the protected variety continues to exist as such, i.e. it retains all its characteristics indicated in the official description of the variety at the date of grant of the patent.

(3) The patent owner shall be obliged to furnish to the State Commission all the information necessary to assess the existence of the variety as such. He shall be obliged to submit the material of the

variety and to allow the inspection to determine whether the necessary measures have been taken to ensure the existence of the variety as such.

**Article 64. Technical Inspection Report**

(1) Where the State Commission finds that the variety is no longer uniform or stable, it shall send to the AGEPI a report containing its conclusions.

(2) If, in conducting the technical inspection, it detects irregularities within the meaning of paragraph (1), AGEPI shall notify the patent owner of the results of the inspection and give him the opportunity to present his observations.

(3) Where the patent owner fails to present his observations, AGEPI shall declare the forfeiture of patent owner's rights conferred by the patent, in accordance with Article 24.

**Chapter VI  
INFORMATION OF PUBLIC**

**Article 65. Information**

AGEPI and the State Commission shall, either by Order of the Director General of AGEPI or by Order of the Chairman of the State Commission, inform ex officio about all decisions and notifications which provide a certain time limit or of which communication is provided by other provisions of this Law.

**Article 66. Registers**

(1) AGEPI shall keep the National Register of Applications in which are included the following data:

- a) patent applications with an indication of the taxon, the provisional denomination of the variety, the filing date, names and addresses of the applicants, breeders and patent attorney;
- b) all data on completion of the procedure concerning patent applications with the information referred to in paragraph (a);
- c) proposals for the denomination of the variety;
- d) changes relating to the applicant or patent attorney.

(2) AGEPI shall keep the National Register of Patents in which, after the grant of a patent, are included the following data:

- a) the species and the variety denomination;
- b) the official description of the variety or the mention of the document in the possession of AGEPI, which contains this description;
- c) for the varieties which for the production of the material require the repeated use of material of components, the indication of such components;
- d) names and addresses of the patent owner, breeder and patent attorney;
- e) date of commencement and expiry of the of the patent;
- f) on request, any contractual right of exclusive exploitation or any right of compulsory exploitation of the variety, including the name and address of the beneficiary of the right of exploitation;
- g) identification of the variety as initial or essentially derived variety, including the variety denominations and the names of the parties concerned.

(3) AGEPI shall keep the registers referred to in paragraphs (1) and (2) in accordance with the provisions of the [Law on Registers](#) and the Regulations.

(4) The State Commission shall keep the Catalog of Plant Varieties, which includes the following information about varieties allowed for cultivation in the Republic of Moldova:

- (a) registration number;
- (b) variety denomination;
- (c) name and address of the breeder;
- (d) name and address of the holder;
- (e) year of admission for cultivation;
- (f) some morphological and production characteristics.

*[Art.66 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

*[Art.66 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]*

**Article 67. Public Inspection**

(1) The registers referred to in Article 66(1) and (2) and the catalogue referred to in Article 66(4) shall be open to public inspection.

(2) Where there is legitimate interest and in accordance with the conditions of the Regulations, the following shall also be open to public inspection:

- a) documents relating to a patent application;
- b) documents relating to a granted patent;

- c) culture testing of a variety for its technical examination;
- d) culture testing of a variety for technical inspection on its maintenance.

(3) In the case of varieties for which the material, consisting of specific components, must be used repeatedly for their production, at the request of the applicant for a patent application, any data relating to components, including their cultivation, shall be excluded from public inspection. Such a request is no longer acceptable after the adoption of the decision on the patent application.

(4) The material submitted or obtained in the tests cannot be transmitted to third parties by the AGEPI or the State Commission, unless the person concerned has given his consent in this regard.

(4<sup>1</sup>) The assignment, license, pledge and franchise contracts or other documents annexed to the application for registration of these contracts shall be open to public inspection only with the express consent of the contracting parties or under the court decision, except as provided by applicable law.

(5) AGEPI and the State Commission may issue excerpts from the register and, respectively, the catalog on request and subject to payment of the prescribed fee.

*[Art.67 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

*[Art.67 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]*

#### **Article 68. Periodicals**

(1) AGEPI shall publish the periodical BOPI, containing:

- a) the data entered in the National Register of Applications and the National Register of Patents, and any other information whose publication is stipulated by this Law;
- b) communications and information of general interest, disposed of by the Director General of AGEPI, and any other information related to this Law and its application.

(2) The State Commission shall periodically publish the Catalog of Plant Varieties, including varieties and hybrids allowed for production and marketing.

*[Art.68 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]*

#### **Article 69. Warning Mark**

(1) The patent owner shall be entitled to mark the propagating or harvested material of the variety with a warning mark indicating that the variety is patented.

(2) The absence of the warning mark shall not produce legal effects.

(3) If a person falsely indicates, directly or indirectly, that a material of the variety or a harvested material of the variety produced or marketed by him belongs to the variety patented by another person, that person shall be liable under the law.

(4) In the case of placement on the market of a genetically modified plant variety, the material of the variety will be marked accordingly so that on the label and/or accompanying documents to be specified the presence of the genetically modified organism.

## **Chapter VII ENSURING OBSERVANCE OF RIGHTS**

#### **Article 70. Proceedings for Infringement of Rights**

(1) Performance without the authorization of the patent owner of any action referred to in Article 15 shall be deemed to be an infringement of rights arising from a patent application or a patent, as well as of the following actions:

- a) incorrect use of the variety denomination or failure to indicate the denomination in contravention of Article 18(2);
- b) use in contravention of Article 19(3) of the denomination of a protected variety or a denomination closely related to that of the protected variety so that confusions may be created.

(2) The person who committed the infringement referred to in paragraph (1) shall be obliged to repair the damage incurred by the patent owner. The amount of compensation due to the patent owner may not be less than the advantage obtained by the infringer.

#### **Article 71. Proceedings Preceding the Grant of a Patent**

The patent owner may request reasonable compensation from any person who, in the period between the date of publication of the patent application and the date of grant of the patent, has performed an action that would have been prohibited after the grant of the patent.

#### **Article 72. Right to Institute Proceedings for Infringement of Rights**

(1) Proceedings for infringement of rights may be instituted by a patent owner.

(2) A licensee may institute proceedings for infringement of rights, unless that possibility was expressly excluded by agreement with the patent owner, for an exclusive license or by the court, in accordance with Article 31 or 61.

(3) Any licensee shall have the right to intervene in proceedings for infringement of rights instituted by the patent owner in the court, to obtain compensation for damages incurred.

**Article 73.** Measures to Preserve Evidence up to Institution of Proceedings for Infringement of Rights

(1) Any entitled person, who has presented sufficient evidence sufficient to support his claims for infringement of his rights, may request the court or other competent authority, prior to the institution of proceedings against illegal actions, to apply provisional measures to preserve relevant evidence, subject to conditions which ensure the protection of confidential information. The court may order measures to preserve evidence, provided that a security or a corresponding equivalent assurance is furnished by the plaintiff, necessary to repair the damage caused to the defendant, in case the presence of an infringement is not confirmed.

(2) In terms of the measures to preserve evidence, the court shall have the authority to:

- a) request the detailed description of the variety or its allegedly infringed materials, with or without presentation of specimens;
- b) lay a distraintment upon the infringing products;
- c) lay a distraintment upon the materials and tools used to produce and/or distribute such products, and the documents relating thereto.

(3) The proceedings for the application of measures to preserve evidence shall be performed by the court or other competent authority in accordance with the provisions of the [Code of Civil Procedure](#). Measures to preserve evidence shall be taken with the participation of a court bailiff, who might be assisted by a representative of the AGEPI and a police officer.

**Article 74.** Preservation of Evidence in Urgent Cases

(1) Measures to preserve evidence may be established without hearing the defendant where any delay is likely to cause irreparable harm to the patent owner or where there is a demonstrable risk of evidence being destroyed. The court decision shall be communicated promptly to the affected party.

(2) The court decision regarding the preservation of evidence may be appealed to the court.

**Article 75.** Nullity of Measures to Preserve Evidence

(1) Measures to preserve evidence shall be considered null or void:

- a) where the plaintiff does not institute, within 20 working days, court proceedings for infringement of his rights;
- b) as a consequence of any harmful actions or inactions on the part of the plaintiff;
- c) where it is found that there has been no infringement or threat of infringement of a right in the plant variety;
- d) by court decision where other reasons exist provided for in the applicable law.

(2) Where the measures to preserve evidence have caused damage and have been declared null and void, the plaintiff must pay the defendant an adequate compensation.

**Article 76.** Presentation and Preservation of Evidence in the Proceedings for Infringement of Rights

(1) The court shall have the authority, where a party presents reasonably available evidence to support its claims and specifies evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced in sufficient and reasonable amounts, subject to conditions which ensure the protection of confidential information. Where the infringement is committed on a commercial scale, the court may order the parties to produce additionally the relevant banking, financial or commercial documents.

(2) Where a party to the proceedings voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the court shall decide on the acceptance or rejection of the brought action on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

**Article 77.** Right to Information

(1) The court shall have the authority, where it is found during the examination of the case that the rights in a variety are infringed, to order that the information regarding the origin and channels of distribution of the materials infringing

The right in the patent be provided by the defendant or any other person which is:

- a) found to possess the infringing materials intended for commercialization;
- b) was indicated by any person mentioned under letter a) as being involved in the production, reproduction or distribution of materials of the variety.

(2) The information mentioned in paragraph (1) include, where appropriate:

- a) the names and addresses of producers, distributors, suppliers and other previous possessors of the variety as well as the target wholesalers and retailers;

b) information regarding the quantities produced, supplied, received or ordered as well as the prices for the materials of the respective variety.

(3) Paragraph (1) and (2) shall be applied without prejudice to other legal and regulatory provisions which:

- a) entitle the right owner to more detailed information;
- b) regulate the use of the information provided under this article in civil or penal law proceedings;
- c) regulate the responsibility for the abuse of the right to information;
- d) provide the possibility of refusal to provide the information, which prevents the person mentioned in paragraph (1) from admitting his own involvement or that of his close relatives in the actions infringing a patent;
- e) regulate the protection of confidentiality of the information sources or processing of personal data.

**Article 78. Measures to Ensure the Proceedings for Infringement of Rights**

(1) Where the court establishes the actual or imminently threatening infringement of a patent, it may, upon request of the patent owner, institute certain measures to ensure the proceedings for infringement of rights against the defendant and/or intermediaries, such as to:

- a) issue a provisional ruling to prohibit any activities which constitute an infringement of rights or to permit the continuation of such activities, subject to the provision of a security sufficient to cover the eventual damage to the patent owner;
- b) lay a distraintment upon materials suspected of infringing a patent with the aim to prevent their release into the channels of commerce;
- c) lay a distraintment upon defendant's assets, including the arrest of banking accounts, presentation of banking, financial or commercial documents, where the infringement was committed on commercial scale and there is a risk of the impossibility to recover the incurred damage.

(2) Measures to ensure the proceedings for infringement of rights may be ordered without hearing the defendant, where any delay is likely to cause irreparable harm to the patent owner or where there is a demonstrable risk of evidence being destroyed. The court decision shall be communicated promptly to the affected party.

**Article 79. Corrective Measures**

(1) The court shall have the authority, where an infringement is stated, to order, upon request of the plaintiff, taking of measures in respect of the goods found to be infringing a patent and, where appropriate, the materials and implements used for the creation and manufacture of such goods. Such measures may include, in particular:

- a) provisional disposal outside the channels of commerce;
- b) final disposal outside the channels of commerce;
- c) destruction.

(2) The measures mentioned in paragraph (1) shall be performed at the infringer's expense, unless this would be contrary to existing substantiated reasons.

(3) In considering the request for application of the corrective measures, the court shall be guided by the principle of equity, the seriousness of the infringement and the remedies ordered as well as the interests of third parties.

**Article 80. Enforcement of a Court Decision**

Where a court decision is issued stating the infringement of a patent, the court may, upon request of the right owner, take measures to enforce the court decision against the defendant, ordering the latter to terminate any infringing activities. To that end, the court may order the defendant to provide a corresponding security or equivalent assurance. The right owner may request to apply similar measures against the intermediaries whose services are used by a third party to infringe a patent.

**Article 81. Alternative Measures**

Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the court may order him, upon request of the infringer, to pay certain pecuniary compensation, in place of the measures referred to in Articles 79 and 80, if the application of such measures would cause disproportionate damage and if the plaintiff is reasonably satisfied with the pecuniary compensation.

**Article 82. Damages**

(1) Upon request of the affected party, the infringer who knowingly, or with reasonable grounds to know, infringed a patent shall be ordered to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement of his rights. In evaluating the damage:

a) due account shall be taken of the respective circumstances, such as the negative economic effect, including the lost profits suffered by the affected party, the benefits received unfairly by the infringer, and other aspects, such as moral damage the affected party has suffered because of the infringement of his rights;

b) alternatively, a lump amount may be fixed on the basis of certain components, such as, at least, the amount of the royalty or fees which would have been payable, had the infringer applied for the authorization to use the respective variety.

(2) When the infringer commits the infringement not knowingly, or with reasonable grounds to know about it, he shall be obliged to repay the lost profits or the damages suffered by the right holder, established by the applicable law.

**Article 83. Publication of Court Decisions**

(1) In the proceedings for infringement of protected rights, the competent court may order, upon the plaintiff's request and at the expense of the infringer, respective measures to disseminate the information regarding the court decision, including the bill sticking as well as publication of the respective decision in whole or in part.

(2) The competent court may also order additional publication-related measures in line with the particular circumstances, including a large-scale publication.

## **Chapter VIII GENERAL PROVISIONS**

**Article 84. Extension of Time Limits and Re-establishment of Time Limit**

(1) Time limits provided for in this Law or in the Regulations related to a patent application or a patent may be extended by a request filed with the AGEPI before the expiry of the prescribed time limit. Any time limit may not be extended for more than 6 months from the date of expiry of the prescribed time limit.

(2) The request for extension of the time limit shall be deemed to be submitted only upon payment of the relevant fee.

(3) Where the applicant was unable to observe a prescribed time limit for proceedings before AGEPI, he may request re-establishment of the omitted time limit within six months of the expiry date of the prescribed time limit. The omitted procedure must be undertaken within this time limit. The request shall not be deemed to have been filed until the fee for re-establishment of the omitted time limit has been paid; otherwise it shall be rejected.

(4) The provisions of this Article shall not be applicable to the time limits referred to in paragraphs (1) and (3) of this Article, as well as in paragraph (3) of Article 12, paragraph (3) of Article 34, paragraph (3) of Article 35, in Articles 37 to 39, 49, paragraph (3) of Article 54, paragraph (3) of Article 59, and paragraph (2) of Article 85.

**Article 85. Re-establishment of Rights (*restitutio in integrum*)**

(1) The applicant for or owner of a patent or any party to proceedings vis-a-vis AGEPI who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit, shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the loss of any other right or means of redress.

(2) The request for re-establishment of rights must be filed in writing within 2 months from the removal of the cause of non-compliance with the time limit, but no later than 12 months following the expiry of the unobserved time limit. If the respective request relates to revalidation of the patent in connection with non-payment of the annual maintenance fee, the period of 12 months shall be deemed to start from the date of expiry of the time limit specified in Article 59(3).

(3) The request for re-establishment of rights must state the grounds on which it is based, and must set out the facts on which it relies.

(4) The request for re-establishment of rights shall not be deemed to have been filed until the fee for re-establishment of rights has been paid.

(5) The provisions of this Article shall not be applicable to the time limits specified in paragraph (2) of this Article, as well as in paragraph (3) of Article 12, paragraph (1) of Article 14, in Articles 37 to 39, 49 and paragraph (3) of Article 54.

**Article 86. Right of Subsequent User**

Any person who, in the period covered between the loss of rights to a patent application or a patent and the restoration of such rights, has used in good faith or made effective and essential preparations to use a variety which is the subject of a published patent application or enjoys patent protection, may continue using it free of charge within or for the purposes of his business, without exceeding the existing scope of such use.

**Article 87. Representation**

(1) Subject to the provisions of paragraph (2) below, no person shall be compelled to be represented in proceedings established by this Law before the AGEPI.

(2) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova shall be represented by a patent attorney in proceedings before the AGEPI, except for the following situations:

- a) filing of a patent application;
- b) payment of fees;
- c) filing of an earlier application.

(3) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova may be represented in proceedings before the AGEPI by an employee.

(4) Representation shall be based on a power of attorney registered with the AGEPI, on terms and conditions provided by the Regulations.

(5) Patent attorneys shall act on the basis of a regulation approved by the Government.

**Article 88. Ex Officio Examination**

(1) AGEPI may, in the proceedings conducted, act upon its own initiative in the examination of the facts to the extent that they are the subject of the examination referred to in Articles 45 and 46.

(2) AGEPI may disregard facts or evidence which are not claimed or submitted within the time limit established by it.

**Article 89. Oral Proceedings**

(1) Oral proceedings shall be conducted at the AGEPI initiative or at the request of one of the parties to the proceeding.

(2) Without prejudice to the provisions of paragraph (3), oral proceedings before the AGEPI shall not be public.

(3) Oral proceedings before the Board of Appeals of AGEPI, and in particular delivery of the decision shall be public, except for decisions whose public delivery might cause serious and unjustified damage, especially to one of the parties to the proceedings.

**Article 90. Taking of Evidence**

(1) The following measures may be undertaken for the taking of evidence in any proceedings conducted before the AGEPI, the State Commission or the court:

- a) hearing of the parties;
- b) request for information;
- c) provision of documents and other evidence;
- d) hearing of witnesses;
- e) examination;
- f) visiting the place of business;
- g) written declarations under oath.

(2) Where the AGEPI, the State Commission or the court will consider it necessary for a party to the proceedings, a witness or an expert to give oral testimonial evidence:

- a) that person shall be invited to the appropriate authority;
- b) a request to obtain testimonies from the appropriate person shall be submitted to the court or other competent authority.

(3) A party to the proceedings, a witness or an expert who has been invited before the AGEPI, the State Commission or the court, may request approval to be heard by the competent authorities. After receiving such a request, or where the person fails to appear, the AGEPI, the State Commission or the court may request the competent authorities to receive the testimonial evidence of said person.

(4) Where a party to the proceedings, a witness or an expert brings testimonial evidence before the AGEPI, the State Commission or the court, that person may request the competent authorities to be heard under appropriate conditions.

**Article 91. Suspension of Proceedings in Court**

(1) Where the case in court concerns the establishment of the person entitled to obtain a patent and where the decision depends upon an assessment of the patentability of the variety according to Article 6, then such a decision may only be taken after the AGEPI has taken a decision as to the patentability of the variety in accordance with the patent application.

(2) Where the case in court concerns a patent that has already been granted, in relation to which a cancellation or loss of rights procedure has been applied, the procedure may be suspended to the extent that the decision is dependent upon the validity of the patent.

**Article 92. Fees**

(1) AGEPI shall, according to a regulation approved by the Government, charge fees for the actions carried out in accordance with the Law, and also annual fees for the maintenance in force of the patent throughout the term of protection.

(2) In the case of non-payment of fees prescribed for other actions carried out only at the request of the person concerned, the application shall be deemed not to have been filed if the fee has not been paid within the time limit specified in the notification by which AGEPI invited the person concerned to pay the fee and warned her of the consequences of non-payment.

(3) If some information provided by the applicant may only be verified by a technical examination which exceeds the established amount, the applicant shall pay an additional fee for the technical examination.

(4) Fees shall be paid by the applicant, the patent owner or by any other natural or legal person concerned.

**Article 93.** Protection and Testing of Varieties Abroad

(1) Natural and legal persons from the Republic of Moldova shall have the right to freely choose the State in which they wish to file the first patent application.

(2) The applicant shall be entitled to apply to other UPOV Member States for the grant of a plant variety patent, without having to wait for the grant of the patent for said variety by an authority of the State in which the first application was filed.

(3) The variety for which protection is sought in the Republic of Moldova may be tested in another State where a corresponding bilateral or international treaty has been concluded with that State.

(4) An applicant who has filed his first application in another State shall be required to provide information on the testing carried out in compliance with the requirements for variety protection in that State.

(5) The cost of protecting a variety abroad shall be borne by the applicant.

**Article 94.** Competence in Settlement of Disputes

(1) The Board of Appeals of AGEPI shall hear litigation with respect to:

- a) grant or rejection of a patent application;
- b) recognition of a right of priority;
- c) withdrawal of a patent application or surrender of a patent.

(2) The work of the Board of Appeals shall be governed by the Regulations on the Board of Appeals of AGEPI, approved by the Government.

(3) The court in whose jurisdiction is based the AGEPI shall hear litigation on:

- a) determination of the authorship of breeder;
- b) identification of the person entitled to a patent;
- c) grant of a license for a patent application or a patent;
- d) actions concerning the right of subsequent user;
- e) actions concerning the right to a patent between an enterprise and an employee;
- f) actions concerning the infringement of a patent application or a patent and order of appropriate measures;
- g) patent nullity actions;
- h) judgment by a court of first resort of appeals relating to the decisions of the Board of Appeals.

*[Art.94 as amended by [Law No.162 of 30.07.2015](#), in force as from 28.08.2015]*

**Article 95.** Use of Varieties for Production Purposes

(1) Plant varieties may be used in the production process only after said varieties are tested for their agronomical value and use and are entered in the Catalog of Plant Varieties.

(2) Varieties of genetically modified plants shall be used in the production process only after obtaining approval for their introduction into the environment issued by the competent national authority, in accordance with the law on biological safety, as appropriate.

*[Art.95 as amended by [Law No.85 of 13.04.2012](#), in force as from 15.06.2012]*

**Article 96.** National Treatment

Natural and legal persons from Member States of UPOV enjoy the same rights granted by this Law as the natural and legal persons from the Republic of Moldova. The provisions of this Law shall also be applicable in bilateral agreements or reciprocal relations.

**Chapter IX  
FINAL AND TRANSITIONAL PROVISIONS**

**Article 97.** Entry into Force

(1) This Law shall enter into force 3 months after the date of its publication in the Official Gazette of the Republic of Moldova, except for Articles 73, 74, 75 and 76 to be implemented with the entry into force of the corresponding amendments in the [Code of Civil Procedure](#).

(2) [Law No. 915-XIII of July 11, 1996](#) on the Protection of Plant Varieties, as amended, shall be abrogated upon entry into force of this Law.

(3) It shall be established that:

(a) patent applications, for which the examination procedure is not over until the date of entry into force of this Law, shall be examined in accordance with this Law;

(b) patents for varieties of plants belonging to botanical genera and species protected on the territory of the Republic of Moldova under the [Law No. 915-XIII of July 11, 1996](#) on the Protection of Plant Varieties, issued before entry into force of this Law, shall be legally assimilated to patents issued in accordance with this Law.

**Article 98.** Organization of Enforcement

Within 3 months following the entry into force of this Law, the Government shall:

- a) submit to the Parliament proposals on bringing the existing legislation into line with this Law;
- b) bring its normative acts in accordance with this Law.

**CHAIRMAN OF PARLIAMENT**

**Marian LUPU**

**Chisinau, February 29, 2008.**

**No. 39-XVI.**

---

Laws of the Republic of Moldova

39/29.02.2008 Law on the Protection of Plant Varieties // Official Gazette 99-101/364, 06.06.2008

**UNITED REPUBLIC OF TANZANIA****MAINLAND TANZANIA – The Plant Breeders' Rights Act, 2012**

ISSN 0856 ± 0331X

THE UNITED REPUBLIC OF TANZANIA

**ACT SUPPLEMENT****No. 1****1<sup>st</sup> March, 2013***to the Gazette of the United Republic of Tanzania No. 9 Vol. 94 dated 1<sup>st</sup> March, 2013*

Printed by the Government Printer Dar es Salaam, by Order of Government

## THE PLANT BREEDERS' RIGHTS ACT, 2012

## ARRANGEMENT OF SECTIONS

*Section**Title*

## PART I

## PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.

## PART II

## PLANT BREEDERS' RIGHTS OFFICE

3. Establishment of Plant Breeders' Rights Office.
4. Appointment of Registrar.
5. Functions of Registrar.
6. Register of plant breeders' rights.
7. Evidence of certain entries and documents.
8. Inspection of Register.
9. Plant Breeders' Rights Advisory Committee.
10. Functions of the Committee.
11. Powers of the Committee.

## PART III

## VARIETIES THAT MAY BE PROTECTED

12. Genera and species to be protected.
13. Conditions of protection.
14. Novelty.
15. Distinctness.
16. Uniformity.
17. Stability.

1

No. 9

*The Plant Breeders*

2012

PART IV  
APPLICATION FOR PLANT BREEDER'S RIGHT

18. Application for breeder's right.
19. Contents of an application.
20. Variety denomination.

PART V  
CONSIDERATION AND DISPOSITION OF APPLICATION

21. Filing date of an application.
22. Right of priority.
23. Amendment of application.
24. Publication of notice of application.
25. Objection to the proposed grant of breeder's right.
26. Grounds for objection.
27. Notice to the applicant and reply to an objection.
28. Disposition of applications.

PART VI  
PROVISIONAL AND FINAL PROTECTION

29. Provisional protection.
30. Scope of the breeder's right, essentially derived and certain other varieties.
31. Exceptions to the breeder's right.
32. Exhaustion of the breeder's right.
33. Duration of plant breeder's right.
34. Protection and damages for infringement of breeder's right.
35. Annual fees.

No. 9

*The Plant Breeders*

2012

PART VII  
NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

36. Nullity of the breeder's right.
37. Cancellation of the breeder's right.
38. Notification of nullification and cancellation.
39. Surrender of breeder's right.

PART VIII  
AUTHORIZATION AND ASSIGNMENTS

40. Authorization and assignment of Breeder's right.
41. Restrictions on the exercise of the breeder's right.
42. Information on Authorization, assignment and transmission.

PART IX  
APPEALS

43. Appeals Board.
44. Appeal from the decision of the Registrar.
45. Decision of the Appeals Board.

PART X  
PLANT BREEDERS' RIGHTS FUND, ACCOUNTS, AUDIT AND  
ANNUAL REPORT

46. Plant Breeders' Rights Development Fund.
47. Accounts and Audit.
48. Annual reports to be submitted to the Minister.

No. 9

*The Plant Breeders*

2012

PART XI  
OFFENCES AND PENALTIES

49. Offences and penalties.

PART XII  
GENERAL PROVISIONS

50. Collection of fees.  
51. Confidentiality.  
52. Action against the State.  
53. Breeder's right in respect of existing varieties of recent creation.  
54. Agreements with foreign governments.  
55. Agents.  
56. Repeal and savings.  
57. Registrar to make guidelines.  
58. Regulations.

No. 9

*The Plant Breeders*

2012

THE UNITED REPUBLIC OF TANZANIA



NO. 9 OF 2012

I ASSENT,

JAKAYA MRISHO KIKWETE,  
*President*1<sup>st</sup> December, 2012

**An Act to provide for the grant and protection of plant breeders' rights, for establishment of Plant Breeders' Rights Office and for related matters.**

**ENACTED** by Parliament of the United Republic of Tanzania.

PART I  
PRELIMINARY PROVISIONS

Short title and  
Commencement

**1.** This Act may be cited as Plant Breeders' Rights Act, 2012 and shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.

Interpretation

**2.** In this Act, unless the context otherwise requires-  
"Appeals Board" means the Appeals Board established under section 43;

“agent”, in relation to an applicant or a holder of plant breeder’s right, means a person who is duly authorized by the applicant or holder to act, on behalf of the applicant or holder;

“applicant” means the breeder entitled to file an application for the grant of a breeder’s right in accordance with the definition of “breeder” provided for in this Act;

“breeder” means-

- (a) a person who bred or discovered and developed a variety;
- (b) a person who is the employer of the person who bred or discovered and developed a variety or who has commissioned the employer’s work; or
- (c) a successor in title of a person mentioned in paragraph (a) or (b) as the case may be;

“breeder’s right” means the right of the breeder provided for under this Act;

“Committee” means a Plant Breeders’ Rights Advisory Committee established under section 9;

“Fund” means the Fund established under section 46;

“legal representative” means-

- (a) a liquidator or receiver of a company;
- (b) a representative of any person who-
  - (i) has become insolvent or bankrupt;
  - (ii) has assigned his estate;
  - (iii) is an infant or minor;
  - (iv) is of unsound mind;
  - (v) is otherwise under a disability; or
  - (vi) has died;

“Minister” means the Minister responsible for agriculture;

“Ministry” means the Ministry responsible for Agriculture;

“Register” means the Register of plant breeders’ rights kept in terms of section 6;

“Registrar” means the Registrar of Plant Breeders’ Rights appointed in accordance with Section 4;

No. 9

*The Plant Breeders*

2012

“reproductive material” means a plant or part of the plant used to multiply the plant;

“sell” means to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose off for any consideration or transmit, convey or deliver in pursuance of the sale;

“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 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.

## PART II

## PLANT BREEDERS’ RIGHTS OFFICE

Establishment  
of plant  
breeders’ rights  
office.

3. There is established within the Ministry responsible for Agriculture, an office to be known as the Plant Breeders’ Rights Office.

Appointment of  
Registrar

4.-(1) The Minister shall, by notice published in the *Gazette*, appoint a person or an officer who has the relevant academic qualifications and experience in plant breeding field or sector to be a Registrar who shall perform the functions conferred to or imposed on the Registrar of Plant Breeders’ Rights under this Act.

(2) The Minister shall, where necessary, appoint deputy Registrars and other officers who, subject to the direction of the Registrar, shall assume some of the powers and privileges conferred to the Registrar pursuant to this Act.

Functions of  
Registrar

5. The functions of the Registrar shall be to-

- (a) grant breeders’ rights;

No. 9

*The Plant Breeders*

2012

- (b) maintain a register and provide information on plant breeders' rights issued in Tanzania;
- (c) facilitate transfer and licensing of plant breeders' rights;
- (d) collaborate with local and international bodies whose functions relate to plant breeders' rights matters; and
- (e) perform any other functions as are necessary for the furtherance of the objects of this Act.

Register of plant breeders' rights

6.-(1) The Registrar shall maintain an official breeders' rights register in which all information required to be registered under this Act shall be entered.

(2) The information to be listed in the Register for each registered variety, shall include-

- (a) species and denomination of a variety;
- (b) the full name and address of-
  - (i) the applicant or holder of the breeder's right;
  - (ii) the person who bred or discovered and developed the variety, in case such person is different from the applicant or holder of the breeder's right;
- (c) the date and time of inception of the breeder's right;
- (d) all other matters which-
  - (i) are required by this Act or any other written law to be entered in the Register,
  - (ii) otherwise, affect the validity or ownership of plant breeders' rights; and
- (e) any other information which may be required by Regulations made under this Act.

(3) The Register shall be a *prima facie* evidence of any matter entered therein.

Evidence of certain entries and documents

7.-(1) A certificate purporting to be signed by the Registrar certifying that any entry under this Act, has or has not been made or that

No. 9

*The Plant Breeders*

2012

any other requirement has not been fulfilled shall be a *prima facie* evidence of the matter so certified.

(2) A copy of -

- (a) an entry in the Register or of any document lodged in terms of this Act; or
- (b) an extract from the Register or from any document lodged in terms of this Act,

which purports to be certified by the Registrar shall be admitted as evidence.

Inspection of  
Register

8.-(1) The Register shall be open for inspection by any member of the public at all convenient times during business hours.

(2) A certified copy of any entry in the Register shall be given upon request and payment of the prescribed fee.

Plant Breeders'  
Rights Advisory  
Committee

9.-(1) There is established a committee to be known as the Plant Breeders' Rights Advisory Committee.

(2) The Committee subject to gender consideration, shall be composed of the following members who shall be appointed by the Minister-

- (a) one representative from the Ministry, who shall be the Chairman to the Committee;
- (b) one representative of plant breeders association;
- (c) one representative of seed traders association;
- (d) one representative from registered farmers association;
- (e) one representative of a University offering a course on plant breeding;
- (f) one representative of an authority responsible for registration of intellectual property rights;
- (g) one representative of the Attorney General; and
- (h) a person responsible for granting breeders' rights in Tanzania Zanzibar;

(3) The Registrar shall be the Secretary of the Committee.

**No. 9** *The Plant Breeders* **2012**

Functions of the Committee	<p><b>10.</b> The functions of the Committee shall be-</p> <p>(a) to advise the Minister on efficient enforcement of this Act;</p> <p>(b) to receive reports of plant breeders' rights applications from the Registrar;</p> <p>(c) to make expert consideration on the plant breeders' rights reports and on the Registrar's tests results; and</p> <p>(d) to manage the operations of the Fund.</p>
Powers of the Committee	<p><b>11.</b> The Committee shall, in fulfilling its functions, have powers-</p> <p>(a) to make its own rules of procedure;</p> <p>(b) to give the Registrar directives of specific and general nature;</p> <p>(c) to call applicants and other interested persons for hearing before the approval by the Registrar of a plant breeder's right application.</p>

**PART III**  
**VARIETIES TO BE PROTECTED**

Genera and species to be protected	<p><b>12.</b>-(1) The protection of varieties under this Act shall apply to all plant genera and species.</p>
Conditions of protection	<p><b>13.</b>-(1) The breeder's right shall be granted with respect to a variety which is new distinct, uniform and stable.</p> <p>(2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Section 20 and the applicant complies with the formalities provided for under this Act and that he pays the required fees.</p>
Novelty	<p><b>14.</b>-(1) 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</p>

material of the variety has not been sold or otherwise disposed off to any person by or with the consent of the breeder for purposes of exploitation of the variety-

- (a) in the territory of the United Republic of Tanzania, earlier than one year before the date of filing the application;
  - (b) in a territory other than that of the United Republic of Tanzania-
    - (i) earlier than four years; or
    - (ii) in the case of trees or of vines, earlier than six years before the said date.
- (2) Subject to subsection (1), the following acts shall not be considered to result in the loss of novelty-
- (a) trials of the variety not involving sale or disposal off to others for purposes of exploitation of the variety;
  - (b) sale or disposal off to others without the consent of the breeder;
  - (c) sale or disposal off to any person that forms part of an agreement for the transfer of rights to the successor in title;
  - (d) sale or disposal off to any person that forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder, provided that:
    - (i) the property in the multiplied material reverts to the breeder;
    - (ii) the multiplied materials is not used for the production of another variety;
  - (e) sale or disposal off to any person that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials with a view of evaluating the variety;
  - (f) sale or disposal off to any person that forms part of the fulfillment of a statutory or administrative obligation concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade;
  - (g) sale or disposal off to any person of harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in paragraphs (e) and (f) provided

No. 9

*The Plant Breeders*

2012

that the said material is sold or disposed off without variety identification for the purposes of consumption; and

(h) disposal off to any person due to or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition.

Distinctness

**15.-(1)** A variety shall be deemed to be distinct where 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.

(2) For purposes of subsection (1), the filing of an application for the granting of breeder's right or for the entering of another variety in the official register of varieties in any country, shall be deemed to render that other variety a matter of a common knowledge from the date of the application, provided that the application leads to the granting of breeder's right or to the entering of the said other variety in the official register of varieties.

Uniformity

**16.** 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.

Stability

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

## PART IV

## APPLICATION FOR PLANT BREEDERS' RIGHTS

Application  
for breeder's  
right

**18.** A breeder of a new variety may apply for the grant of a breeder's right for that variety.

No. 9

*The Plant Breeders*

2012

Contents of  
an application**19.** The application for breeder's right relating to a variety shall contain the following-

- (a) the name and address of the applicant;
- (b) where the applicant is the successor in title of the person who bred, or discovered and developed, the variety:-
  - (i) proof of title or authority in the form and content satisfactory to the Registrar or as may be specified by Regulations establishing the existence and validity of the assignment or succession; and
  - (ii) the name and address of the person who bred, or discovered and developed the variety;
- (c) the proposed denomination, along with the description of the characteristics of the variety as the Registrar may require;
- (d) samples of propagating material in such quantities as the Registrar may require; and
- (e) additional information, documents and material that may be required in connection with the application as may be prescribed in the Regulations.

Variety  
denomination**20.**-(1) The variety shall be designated by a denomination which shall be its generic designation and subject to subsection (5), 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 -

- (a) shall enable the varieties to be identified;
- (b) shall not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
- (c) shall be different from every denomination which designates, in the territory of any member of international organisation dealing with plant breeders' rights matters to which Tanzania is a party, an existing variety of the same

plant species or of a closely related species; and  
(d) may not consist solely of figures except where this is an established practice for designating varieties.

(3) The denomination of the variety shall be submitted by the applicant to the Registrar and where the Registrar finds that the denomination does not satisfy the requirements of this section, he shall refuse to register it and require the applicant to propose another denomination within the period to be prescribed in the Regulations.

(4) The denomination shall be registered by the Registrar at the time the breeder's right is granted.

(5) Prior rights of third persons shall not be affected and where, 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 subsection (9), is obliged to use it, the Registrar shall require the applicant to submit another denomination for the variety.

(6) Where the variety is already protected by a member of an international organization dealing with the plant breeders' rights matters to which Tanzania is a party or an application for the protection of the same variety is filed in a member of such organisation, the variety denomination which has been proposed or registered in that other member of the organisation shall be submitted by the applicant to the Registrar.

(7) The Registrar shall register the denomination submitted, unless he considers the denomination unsuitable within the territory of the United Republic of Tanzania and in case the denomination is unsuitable he shall require the applicant to submit another denomination.

(8) The Registrar shall in writing, inform the authorities of the members of an international organisation dealing with the plant breeders' rights matters to which Tanzania is a party, on matters concerning variety denominations, in particular the submission, registration and cancellation of the denominations.

(9) Any person who, within the territory of the United Republic of Tanzania, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination

No. 9

*The Plant Breeders*

2012

of that variety, even after the expiration of the breeder's right in that variety, except where prior rights prevent such use.

(10) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination and where such an indication is so associated, the denomination shall nevertheless be easily recognizable.

## PART V

## CONSIDERATION AND DISPOSITION OF APPLICATION

Filing date of  
an  
application.

21.-(1) The filing date of an application shall be the date which the application was received by the Registrar.

(2) For purposes of this section, an application shall be deemed to have been received on the date that the required parts of the application are received in the form sufficient for consideration under this Act.

(3) An application filed with the authority responsible for the breeders' rights in Zanzibar shall be deemed to be an application for the same variety filed with the Registrar.

Right of  
priority

22.-(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeders' rights matters which Tanzania is a party shall enjoy a right of priority for a maximum period of twelve months. This period shall be computed from the date of filing the first application. The day of filing shall not be included in the latter period.

(2) The applicant shall, in order to benefit from the right of priority in the subsequent application in the United Republic of Tanzania, claim within twelve months the priority of the first application.

(3) The Registrar may require the applicant to furnish, within a period of not less than three months from the filing date, a copy of the documents which constitute the first application certified to be a true copy by the authority with which that application was filed and samples or other evidence indicating that the variety which is the subject matter of both applications is the same.

No. 9

*The Plant Breeders*

2012

(4) The applicant shall, within a period of two years after the expiration of the period of priority or a period of six months where the first application is rejected or withdrawn, be allowed to furnish to the Registrar any necessary information, document or material required in this Act for the purpose of the examination.

Amendment  
of application

**23.-(1)** An applicant may amend his application for the grant of a breeder's right for a variety at any time without affecting its filing date, provided that the amendment does not affect the variety which is the subject of the application.

(2) Where any amendment of an application occurs after publication of a notice under section 24, the applicant shall be liable to pay the cost of re-publication.

Publication of  
notice of  
application

**24.** The Registrar shall publish in the *Gazette* and in a news paper of vast circulation, a notice of every filed application for plant breeder's right that satisfies the requirements of the Act specifying -

- (a) the name and address of the applicant;
- (b) the filing date of the application;
- (c) the proposed denomination; and
- (d) such other information as may be specified in the Regulations.

Objection to  
the proposed  
grant of  
breeder's  
right

**25.-(1)** Any person may, within two months of publication of a notice under section 24, lodge with the Registrar a written objection to the matter specified in that notice.

(2) The Minister may, on behalf of the Government, lodge an objection under this Section.

- (3) A notice of objection made under sub-section (1) shall-
- (a) specify the ground on which the objection is based;
  - (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a); and
  - (c) be supported by an affidavit or other proof, if required by the Registrar.

No. 9

*The Plant Breeders*

2012

Grounds for  
objection

26. An objection lodged pursuant to Section 25 shall be based on allegation of one or more of the following grounds:

- (a) that the applicant is not entitled to file the application;
- (b) that the application contains a material misrepresentation;
- (c) that the contents of the application do not comply with this Act or the Regulations;

Notice to the  
applicant and  
reply to an  
objection

27.-(1) The Registrar shall notify the applicant of an objection under Section 25 and provide him with a copy of the notice of an objection and all supporting documents that are lodged with the objection within two weeks from the date of filing the objection.

(2) The applicant may respond to the allegation of the objector in a written reply which shall be lodged to the Registrar and copied to the objector within one month or such further period as the Registrar may allow from the date of notification made under sub-section (1).

(3) The Minister may, on behalf of the Government, lodge a reply to any objection lodged against the Government.

Disposition of  
applications

28.-(1) The Registrar shall, upon completion of the notice requirements under section 24 and the expiration of time limits for objections and replies, examine the application and a reply.

(2) Upon any decision to grant a breeder's right which require an examination for compliance with the conditions specified under this Act, the Registrar may, in the course of the examination, grow or cause to be grown the variety or carry out other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

(3) The Registrar may, for the purposes of examination, require the breeder to furnish all the necessary information, document or material.

(4) The Minister may appoint one or more persons based on their special knowledge to advise the Registrar in the examination of applications.

(5) Where the Registrar concludes that-

- (a) the application conforms to the requirements of this Act;
- (b) the applicant is entitled to file the application;

No. 9

*The Plant Breeders*

2012

- (c) no objection has been filed;
  - (d) in respect of objections filed, there are no grounds for objection; and
  - (e) the objection filed does not state an impediment to the granting of the breeder's right for the variety, he shall grant a breeder's right.
- (6) For each variety for which breeder's right is granted, the Registrar shall-
- (a) issue a certificate of registration to the applicant;
  - (b) enter the variety in the register as provided for under Section 6; and
  - (c) publish a notice of the grant of breeder's right and the approved denomination in the *Gazette*.
- (7) Any grant of breeder's right made by the authority responsible for granting breeders' rights in Zanzibar shall have the same effect as the grant of breeder's right of the same variety made by the Registrar.

PART VI  
PROVISIONAL AND FINAL PROTECTION

Provisional  
protection

29. The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period between the publication of the application under section 24 for the grant of a breeder's right and the date of the grant of that right, has carried out acts which, once the right is granted, require the breeder's authorization as provided for under section 30.

Scope of the  
breeder's  
right,  
essentially  
derived and  
certain other  
varieties

30.-(1) Subject to Sections 31 and 32, the following acts in respect of the propagating material of the protected variety shall require the authorization of the holder of the breeder's right-

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or marketing;

- (e) exporting;
  - (f) importing; and
  - (g) stocking for any purposes mentioned in paragraphs (a) to (f).
- (2) The holder of the breeder's right may make his authorization subject to conditions and limitations.
- (3) Subject to the provisions of Sections 31 and 32, the acts referred to in paragraph (a) to (g) of sub-section (1) in respect of harvested material, including entire plants and parts of plants obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said propagating material.
- (4) Subject to Sections 31 and 32, the acts referred to in paragraph (a) to (g) of sub-section (1) in respect of products made directly from harvested material of the protected variety falling within the provision of sub-section (3) through the unauthorized use of the said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.
- (5) The provisions of sub-sections (1),(2),(3) and (4) shall apply to-
- (a) varieties that are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;
  - (b) varieties which are not clearly distinguishable in accordance with section 15 from the protected variety; and
  - (c) varieties whose production requires the repeated use of the protected variety.
- (6) For the purposes of paragraph (a) of subsection (5), a variety shall be deemed to be essentially derived from another variety when-
- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotype of the initial variety;

No. 9

*The Plant Breeders*

2012

- (b) it is clearly distinguishable from the initial variety; and
- (c) except for the difference, 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.

(7) For the purposes of this section, essentially derived varieties may be obtained through means such as the selection of a natural or induced *mutant*, or of *somaclonal* variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Exceptions to  
the breeder's  
right

**31.**-(1) The breeder's right shall not extend to-

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes; and
- (c) acts done for the purpose of breeding other varieties and, except where the provisions of section 30(5) apply, acts referred to in section 30(1) to (4) in respect of such other varieties.

(2) For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forests trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or a variety covered by section 30(5)(a) or (b).

(3) The reasonable limits and the means of safeguarding the legitimate interests of the holder of the breeder's right shall be specified in the Regulations.

Exhaustion of  
the breeder's  
right

**32.**-(1) The breeder's right shall not extend to acts concerning any material of the protected variety or of a variety covered by the provisions of section 30(5), which has been sold or otherwise marketed by the breeder or

No. 9

*The Plant Breeders*

2012

with his consent in the territory of the United Republic of Tanzania or any material derived from the said 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.
- (2) In this section "material" means, in relation to a variety-
- (a) propagating material of any kind;
  - (b) harvested material, including entire plants and parts of plants; and
  - (c) any product made directly from the harvested material.

Duration of plant breeder's right

**33.**-(1) Except as set forth in Part VII, the breeder's right granted under this Act shall expire after twenty years from the date of the grant except for trees and vines whose breeder's right shall expire after twenty five years from the date of grant.

(2) The term may be extended for an additional five years, by a written notice to the Registrar given by the holder of the breeder's right six months before the expiration of the original term.

Protection and damages for infringement of breeder's right

**34.**-(1) Breeders' rights are protected by both civil and criminal measures stipulated in any written law.

(2) A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought in any court of competent jurisdiction.

(3) The court may in addition to the cost of the action, grant an injunction or damages or both, as it may appear to be reasonable in the circumstances of the case.

Annual fees

**35.** The holder of breeder's right shall pay maintenance fee at time and rate specified in the Regulations.

No. 9

*The Plant Breeders*

2012

PART VII  
NULLITY, CANCELLATION AND SURENDER OF  
BREEDER'S RIGHT

Nullity of the  
breeder's  
right

**36.**-(1) The Registrar shall declare a breeder's right granted by him null and void when it is established that-

- (a) the conditions laid down in sections 14 and 15 were not complied with at the time of the grant of the breeder's right;
- (b) where the grant of the breeder's right has been essentially based upon information and documents furnished by the applicant, the conditions laid down in section 16 or 17 were not complied with at the time of the grant of the breeder's right; or
- (c) 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.

(2) The breeder's right shall not be declared null and void for reasons other than the reasons referred to in sub-section (1).

Cancellation  
of the  
breeder's  
right

**37.**-(1) The Registrar may cancel a breeder's right granted by him where he has established that the conditions laid down in sections 16 or 17 are no longer fulfilled.

(2) Without prejudice to sub-section (1), the Registrar may cancel a breeder's right granted by him, within the prescribed period provided in the Regulations, where-

- (a) the holder of the breeder's right does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b) the holder of the breeder's right fails to pay such fees as may be payable to keep his right in force; or
- (c) the holder of the breeder's right does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

No. 9

*The Plant Breeders*

2012

(3) The breeder's right shall not be declared cancelled for reasons other than the reasons referred to in sub-sections (1) and (2).

Notification  
of  
nullification  
and  
cancellation

**38.-(1)** The Registrar shall notify the holder of the breeder's right and any licensee of any decision made under section 36 or 37 of this Act and grounds for such decision.

(2) Any person receiving notice under sub-section (1) may contest the decision, by a written objection lodged to the Registrar within thirty days from the date of receipt of notification of the decision.

(3) The Registrar may hold, within a reasonable time after receipt of an objection, a hearing or may decide the matter based on written submissions of all interested parties.

(4) Where the Registrar nullifies and cancels any breeder's right under this section, he shall publish the nullification or cancellation by a notice in the *Gazette*, after expiration of thirty days from the date of the decision or following a decision made under sub-section (3).

(5) The holder shall return to the Registrar any certificate of the grant of a breeder's right that has been nullified or cancelled under this section.

Surrender of  
breeder's  
right

**39.-(1)** Any holder of a breeder's right may, by written notice to the Registrar, surrender the breeder's right.

(2) The Registrar shall, within one month from the date of receiving the notice under sub section (1), terminate breeder's right and publish a Notice in the *Gazette* of such termination.

No. 9

*The Plant Breeders*

2012

PART VIII  
AUTHORIZATION AND ASSIGNMENTS

Authorization  
or assignment  
of Breeder's  
right

**40.** The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in section 30.

Restrictions  
on the  
exercise of  
the breeder's  
right

**41.-(1)** The free exercise of a breeder's right shall, unless where expressly provided in this Act, not be restricted for reasons other than of public interest.

(2) When any such restriction has the effect of the Registrar granting of a compulsory authorization in respect of a breeder's right on the ground that it is necessary to safeguard the public interest, the person to whom the compulsory authorization is granted shall pay the holder of the breeder's right an equitable remuneration.

Information  
on  
Authorization  
assignment  
and  
transmission

**42.-(1)** A person authorized under section 40 may, in not more than sixty days from the effective date of the authorization, notify the Registrar of the transaction and furnish the Registrar with a copy of that authorization agreement.

(2) The Registrar may prescribe the form and manner of notification to be made under sub-section (1).

(3) Upon assignment or other transmission of all of a breeder's right, the assignee or recipient shall notify the Registrar for the purposes of making changes in the Register.

No. 9

*The Plant Breeders*

2012

PART IX  
APPEALSAppeals  
Board

**43.**-(1) The Minister shall appoint an Appeals Board consisting of three members in which one member shall be an expert in legal matters and two other members shall be experts qualified in agricultural science.

(2) The Minister shall appoint one person from amongst members of the Appeals Board to be the chairman.

(3) The Appeals Board shall have power to-

- (a) prescribe its own rules of procedure;
- (b) order and secure the attendance of witnesses;
- (c) compel discovery and the production of documents; and
- (d) administer oath or affirmation to any witness.

(4) The Appeals Board shall keep records of its proceedings.

(5) The Appeals Board may appoint one or more persons with expert knowledge to serve the Appeals Board in an advisory capacity, either generally or with regard to a specific case or cases.

Appeals from  
the decision  
of Registrar

**44.**-(1) An appeal from the decisions of the Registrar made under this Act shall lie to the Appeals Board.

(2) A person who is aggrieved by any such decision may appeal to the Appeals Board by submitting a notice of the appeal within sixty days following the publication or of the receipt of the individual notice of such decision by the person whose interest is the source or subject of the appeal.

Decision of  
the Appeals  
Board

**45.**-(1) The Appeals Board may conduct investigation, if it deems necessary to do so, and may hold a hearing of the appeal or make a decision based on written submissions.

(2) The Appeals Board may confirm, set aside or vary any decision or action of the Registrar and may order the Registrar to carry out the decision of the Appeals Board.

(3) The Appeals Board shall give the reasons for its decision in writing, and copies thereof shall be furnished to the appellant, the Registrar and any other interested party.

No. 9

*The Plant Breeders*

2012

(4) Subject to the provisions of this section, a decision of the Appeals Board shall be final.

PART X  
PLANT BREEDERS' RIGHTS DEVELOPMENT FUND, ACCOUNTS,  
AUDIT AND ANNUAL REPORT

Plant  
Breeders'  
Rights  
Development  
Fund

**46.**-(1) The Minister shall, after consultation with the Minister responsible for finance, establish a Fund to be known as the "Plant Breeders' Rights Development Fund" into which moneys realized under this Act shall be kept.

(2) The sources of moneys for the Fund shall include-

- (a) fees payable under this Act;
- (b) any donations or grants from the government or any person.

(3) The purposes of the Fund shall include financing of the following activities-

- (a) development and promotion of the plant breeders' rights;
- (b) training of plant breeders on matters concerned with plant breeders' rights;
- (c) establishment and maintenance of the variety collections and data base; and
- (d) such other activities relating to administration of the Act.

(4) In addition to the functions entrusted to it under Section 10, the Committee shall operate as the Fund Committee, whereby-

- (a) the Registrar shall be a member of the Fund Committee and shall serve as Secretary of the Fund;
- (b) the Fund Committee shall make rules and procedures for the operations and management of the Fund provided that such rules and procedures shall not be operative unless approved by the Minister.

(5) Separate books of accounts and other records in respect of the moneys of the Fund shall be kept properly and maintained and be subject to audit.

No. 9

*The Plant Breeders*

2012

Accounts and  
audit

**47.**-(1) The Plant Breeders' Rights Office shall cause to be kept and maintained proper books of accounts with respect to-

- (a) all sums of moneys received and expended by the Plant Breeders' Rights Office and matters in respect of which the receipt and expenditure take place;
- (b) all the assets and liabilities of the Plant Breeders' Rights Office and the Fund; and
- (c) the income and expenditure statement of the Plant Breeders' Rights Office.

(2) The financial year of the Plant Breeders' Rights Office and the Fund shall end on 30<sup>th</sup> June of each year.

(3) The books of accounts of the Plant Breeders' Rights Office and the Fund shall be audited at the end of each financial year by the Controller and Auditor General.

Annual report  
to be  
submitted to  
the Minister

**48.**-(1) The Plant Breeders' Rights Office shall, not later than six months after the end of each financial year, submit to the Minister a copy of the audited accounts and annual report on the activities of the Plant Breeders' Rights Office in respect of that particular year.

(2) The Minister shall, within a period of six months or such longer period as the National Assembly may by resolution appoint after the accounts have been audited, lay the audited accounts and audit report before the National Assembly.

PART XI  
OFFENCES AND PENALTIES

Offences and  
penalties

**49.**-(1) Any person who knowingly-

- (a) makes a false entry in the Register;
- (b) makes a writing which falsely purports to be a copy of an entry in the Register or of a document lodged with the Registrar;

No. 9

*The Plant Breeders*

2012

- (c) produces or tenders a false entry of copy as evidence;
- (d) submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;
- (e) obstructs or hinders the Registrar or any officer in the exercise of his powers or the carrying out of his functions under this Act;
- (f) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse to appear;
- (g) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (h) contravenes the obligation to use the denomination as required by section 20 (9);
- (i) gives false information in any application or makes any false statement in evidence; and
- (j) violates breeder's right, commits an offence.

(2) Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding one year or to both.

#### PART XII GENERAL PROVISIONS

Collection of  
fees

**50.** Notwithstanding any other provision of this Act, the Registrar shall collect fees from the applicant or any other person filing a document or requesting access of administrative action under this Act, for each application, extension, filing, inquiry or other administrative process or service.

No. 9

*The Plant Breeders*

2012

Confidentiality

**51-(1)** The contents of any licence or assignment shall be confidential unless both parties agreed to permit access thereto by third parties and only to the extent of the permission so granted.

(2) The applicant may declare some portion of the application to be confidential, and where declared so, the Registrar shall determine whether the application can be processed without publication or other violation of that confidentiality, and give the applicant the option of altering his statement of confidentiality or withdraw the application.

(3) Except as otherwise provided for in this Act, any person who discloses any information made available under this Act, except to-

- (a) the Minister, the Appeals Board, the Registrar or any other person for the purposes of carrying out his duties or the performance of his functions under this Act;
- (b) a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or
- (c) any other person when required to do so by any court or under any written law,

commits an offence and upon conviction shall be liable to a fine not exceeding five million shillings or an imprisonment for a period not exceeding one year or to both.

Action against the State

**52-(1)** Subject to the existing law on taking action against the State, this Act shall be binding on the Government with regard to its applications for breeder's right and other interests acquired or given in breeder's right to the same extent and with the same effect as it applies to any other person.

(2) No claim shall lie against the State, the Minister, the Registrar or any other officer for anything done in good faith in the discharge of duties under the powers conferred by this Act.

Breeder's right in respect of existing varieties of recent creation

**53.** Within twelve months from the date of commencement of this Act, the breeder of an existing variety of recent creation may apply to the Registrar in respect of that variety.

No. 9	<i>The Plant Breeders</i>	2012
Agreement with foreign governments	<p><b>54.</b> The Minister may enter into bilateral or multilateral agreements with states and intergovernmental or non-governmental organizations in order to facilitate cooperation in testing.</p>	
Agents	<p><b>55.</b>(1) Where the breeder is a non-resident or in the case of a corporation, does not have its registered office in United Republic of Tanzania, he shall have an agent who is resident in United Republic of Tanzania.</p> <p>(2) The Registrar may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Registrar to be sufficient, refuse to recognize or to continue to recognize any person as authorized by the breeder to act in the capacity of agent.</p>	
Repeal and savings	<p><b>56.</b>(1) The Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002 is hereby repealed.</p> <p>(2) All Regulations, rules, directions and decisions made under the repealed Act which are in force, on the effective date of this Act shall be deemed to be Regulations and rules made or direction given under this Act unless revoked or cancelled.</p> <p>(3) All grants or certificates issued under the repealed Act and contract of service in force at the commencement of this Act shall continue to be in force and shall be deemed to have been made under this Act unless cancelled.</p>	
Registrar to make guidelines	<p><b>57.</b> The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act.</p>	
Regulations	<p><b>58.</b>(1) The Minister may make Regulations prescribing anything which under this Act may be prescribed.</p> <p>(2) Without prejudice to the generality of the sub-section (1), Regulations made shall prescribe-</p> <ul style="list-style-type: none"> <li>(a) various forms to be used under this Act;</li> <li>(b) the procedure to be followed in any proceedings before the Registrar;</li> </ul>	

No. 9

*The Plant Breeders*

2012

- (c) specific information and facilities to be provided, and of the propagating and other material to be submitted with respect to a variety;
- (d) the tests, trials, examinations and other steps to be taken with respect to a variety, by applicants or by the Registrar and the time within which any such steps are to be taken;
- (e) the fees to be paid in respect of-
  - (i) application for the grant of breeder's right, for extension of its term;
  - (ii) maintenance of breeder's right;
  - (iii) requests for administrative review, including objections to nullity and cancellation of breeder's right, appeals from administrative decisions and other administrative actions;
  - (iv) technical examination;
  - (v) the inspection or obtained records in the Register or other transaction involving a breeder's right;
  - (vi) provision of certified copy of any entry therein;
  - (vii) any other fees to be paid under this Act.

Passed in the National Assembly on the 5<sup>th</sup> November, 2012.

DR. THOMAS D. KASHILAH  
*Clerk of the National Assembly*

**ZANZIBAR – Plant Breeders’ Rights Act No. 1 of 2014**

**AN ACT TO PROVIDE THE ESTABLISHMENT OF PLANT  
BREEDERS' RIGHTS REGISTRY  
ACT NO. 1 OF 2014**

**ARRANGEMENT OF SECTIONS**

**SECTIONS****TITLE**

**PART I  
PRELIMINARY PROVISIONS**

1. Short title and Commencement.
2. Interpretation.

**PART II  
PLANT BREEDERS' RIGHTS OFFICE**

3. Establishment of the Office.
4. Appointment of Registrar.
5. Functions of Registrar.
6. Register of Plant Breeder's Rights.
7. Oral and written evidence.
8. Inspection of Register.
9. Plant Breeders' Rights Advisory Committee.
10. Functions of the Committee.
11. Meeting and Procedure of the Committee.
12. Powers of the Committee.

**PART III  
VARIETIES TO BE PROTECTED**

13. Genera and species to be protected.
14. Conditions of protection.
15. Novelty.
16. Distinctness.
17. Uniformity.
18. Stability.

**PART IV  
APPLICATION FOR PLANT BREEDER'S RIGHTS**

19. Application for Breeder's Right.
20. Contents of and application.
21. Variety denomination.



**PART V  
CONSIDERATION AND DIPOSITION OF APPLICATION**

22. Filing date of application.
23. Right of priority.
24. Amendment of application.
25. Publication of notice of application.
26. Objection to the proposed grant of breeder's right.
27. Grounds for objection.
28. Notice to the applicant and reply to an objection.
29. Disposition of applications.

**PART VI  
PROVISIONAL AND FINAL PROTECTION**

30. Provisional protection.
31. Other areas of Breeder's rights.
32. Exceptions to the Breeder's right.
33. Exhaustion of the breeder's right.
34. Duration of plant breeder's right.
35. Protection and damages for infringement of breeder's right.
36. Annual fees.

**PART VII  
NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT**

37. Nullity of the breeder's right.
38. Cancellation of the breeder's right.
39. Notification on nullification and cancellation.
40. Surrender of breeder's right.

**PART VIII  
AUTHORIZATION AND ASSIGNMENTS**

41. Authorization or assignment of breeder's right.
42. Restrictions on the exercise of the breeder's right.
43. Information on authorization, assignment and transmission.



**PART IX  
APPEALS**

- 44. Appeal's Board.
- 45. Appeals from the decision of Registrar.
- 46. Decision of the Appeals Board.

**PART X  
PLANT BREEDERS' RIGHTS DEVELOPMENT FUND, ACCOUNTS,  
AUDIT AND ANNUAL REPORT**

- 47. Plant Breeder's Rights Development Fund.
- 48. Accounts and audit.
- 49. Annual report to be submitted to the Minister.

**PART XI  
OFFENCES AND PENALTIES**

- 50. Offences and penalties.

**PART XII  
GENERAL PROVISIONS**

- 51. Collection of fees.
- 52. Confidentiality.
- 53. Action against the Government.
- 54. Breeder's right in respect of existing varieties of recent creation.
- 55. Agreement with foreign governments.
- 56. Agents.
- 57. Registrar to make guidelines.
- 58. Regulations.



ACT NO. 1 OF 2014

I ASSENT

{DR. ALI MOHAMED SHEIN}  
PRESIDENT OF ZANZIBAR  
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

*2<sup>nd</sup> July, 2014*

**AN ACT TO PROVIDE THE ESTABLISHMENT OF PLANT BREEDER'S RIGHTS**

ENACTED by the House of Representatives of Zanzibar

**PART I  
PRELIMINARY PROVISIONS**

Short title and commencement.

1.-(1) This Act may be cited as Zanzibar Plant Breeders' Rights Act, 2014 and shall come into force on such date as the Minister may, by notice published in the Gazette, appoint.

(2) Subject to subsection (1) of this Section, the Minister shall publish in the Gazette not more than six months since the date of assented by the president .

Interpretation.

2. In this Act, unless the context otherwise requires:-

"Agent" in relation to an applicant or a holder of plant breeder's right, means a person who is duly authorized by the applicant or holder to act on behalf of the applicant or holder;

"Appeals Board" means the Appeals Board established under Section 44 of this Act.

"Applicant" means the breeder entitled to file an application for the grant of a breeder's right in accordance with the definition of "breeder" provided for in this Act;

"Breeder" means:-

(a) the person who bred or discovered and developed a variety;



- (b) the person who is the employer of the person who bred or discovered and developed a variety or who has commissioned the employer's work; or
- (c) the successor in title of a person mentioned in paragraph (a) or (b) as the case may be;

"Breeder's right" means the right of the breeder provided for under this Act;

"Committee" means a Plant Breeder's Rights Advisory Committee established under Section 9 of this Act;

"Certificate" means a certificate which approve the description of the register as prescribed under Section 7 of this Act;

"Gazette" means Zanzibar Government Gazette;

"Fund" means the Fund established under Section 47 of this Act;

"legal representative" means:-

- (a) a liquidator or receiver of a company;
- (b) administrator of the estate of the deceased;
- (c) a representative of any person who:-
  - (i) has become insolvent or bankrupt;
  - (ii) has assigned his estate;
  - (iii) is an infant or minor;
  - (iv) is of unsound mind; or
  - (v) is otherwise under any disability.

"Minister" means the Minister responsible for agriculture;

"Ministry" means the Ministry responsible for agriculture;

"Register" means the Register of plant breeders' rights kept in terms of Section 6 of this Act;

"Registrar" means the Registrar of Plant Breeders' Rights appointed in accordance with Section 4 of this Act;

"Reproductive material" means a plant or part of the plant used to multiply the plant;



"sell" means to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose off for any consideration or transmit or convey or deliver in pursuance of the sale;

"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 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.

## PART II PLANT BREEDERS' RIGHTS OFFICE

Establishment of the Office.

3. There is hereby established within the Ministry responsible for agriculture, an Office to be known as the Plant Breeders Rights Office.

Appointment of Registrar.

4.-(1) The Minister shall, by notice published in the Gazette, appoint a person or an officer who has relevant qualification and experience to perform the functions conferred to or imposed on the Registrar of Plant Breeders' Rights under this Act.

(2) The Minister may appoint Deputy Registrars and other officers with relevant qualification and experience who shall perform some of the powers and privileges conferred to the Registrar pursuant to this Act.

(3) For the purpose of this section, relevant qualification shall include at least First Degree from any recognized institution in the field of agricultural science, law or related field with a minimum experience of five years in the said field.

Functions of Registrar

5. The functions of the Registrar shall be:-

- (a) to grant breeder's rights;
- (b) to maintain a register and provide information on plant breeders' rights issued in Zanzibar;
- (c) to facilitate transfer and licensing of plant breeder's rights;
- (d) to collaborate with local and international bodies whose functions relate to plant breeders' rights matters; and



- (e) to perform any other functions as are necessary for the furtherance of the objects of this Act.

Register of  
plant breeder's  
rights

**6.-(1)** The Registrar shall maintain an official plant breeder's rights register in which all information required to be registered under this Act shall be entered.

(2) The information to be listed in the Register for each registered variety, shall include-

- (a) species and denomination of a variety;
- (b) the full name and address of:-
  - (i) the applicant or holder of the breeder's right;
  - (ii) the person who bred or discovered and developed the variety, in case such person is different from the applicant or holder of the breeder's right;
- (c) the date and time of inception of the breeder's right;
- (d) all other matters which:-
  - (i) are required by this Act or any other written law to be entered in the Register;
  - (ii) otherwise, affect the validity or ownership of breeder's right; and
- (e) any other information, which may be required by Regulations made under this Act.

(3) The Register shall be prima facie evidence of any matter entered therein.

Oral and written  
evidence

**7.-(1)** A certificate purporting to be signed by the Registrar certifying that any entry under this Act, has or has not been made or that any other requirement has not been fulfilled shall be prima facie evidence of the matter so certified.

(2) A copy of:-

- (a) an entry in the Register or of any document lodged in terms of this Act; or
- (b) an extract from the Register or from any document lodged in terms of this Act, which purports to be certified by the Registrar;

shall be admitted as evidence.

Inspection of  
Register.

**8.-(1)** The Register shall be open for inspection by any member of the public at all convenient times during business hours.



(2) A certified copy of any entry in the Register shall be given upon request and payment of the prescribed fee.

Plant Breeders'  
Rights Advisory  
Committee

**9.**-(1) There is hereby established a committee to be known as the Plant Breeders' Rights Advisory Committee.

(2) The members of the Committee shall be appointed by the Minister in consultation with relevant authorities atleast three among them should be female and they are:-

- (a) one senior officer with qualification of agricultural science from the Ministry, who shall be the Chairperson to the Committee;
- (b) one representative from a registered plant breeders association;
- (c) one representative from registered seed trade association;
- (d) one representative from registered farmers association;
- (e) one representative from an institution teaching plant breeding;
- (f) one representative of an authority responsible for registration of intellectual property rights;
- (g) A Legal Officer from the Ministry;
- (h) One representative from the institute responsible for agricultural research; and
- (i) the Registrar of Plant Breeders' Rights in Tanzania Mainland.

(3) The Registrar shall be the Secretary of the Committee.

Functions of  
the Committee.

**10.** The functions of the Committee shall be:-

- (a) to advise the Minister on efficient enforcement of this Act;
- (b) to receive reports of plant breeders' rights applications from the Registrar;
- (c) to make expert consideration on the plant breeders' rights reports and on the Registrar's tests results; and
- (d) to manage the operations of the Fund.

Meeting and  
Procedure of  
the Committee.

**11.**-(1) The meetings of the Committee shall be convened by the Secretary of the Committee, in consultation with the Chairperson, once in every quarter of a year.

(2) The Chairperson may convene an extra ordinary meeting when deemed necessary.



(3) Subject to subsection (1) of this section, the Secretary shall give at least seven days notice in writing to each of the members of the Committee specifying the time and place appointed for and the business proposed to be transacted at a meeting of the Committee; Provided that the extra ordinary meeting may be convened on not less than twenty-four hours' notice.

(4) Subject to the other provisions of this Section, the Committee may determine the proceeding of its meetings.

(5) To constitute a quorum at a meeting of the Committee, the number of members present shall be more than half.

(6) Each member of the Committee shall have one vote and, in the event of equality of votes, the person presiding shall have a second or casting vote.

(7) No act or proceeding of the Committee shall be invalid or called in question on the ground of any vacancy in the post of any member, or any deficiency in the proceeding of the Committee.

Powers of the Committee.

**12.** The Committee shall, in fulfilling its functions, have powers-

- (a) to make its own rules of procedure;
- (b) to give advice to the Registrar on specific and general nature;
- (c) to call applicants and other interested persons for hearing before the approval by the Registrar of a plant breeder's right application.

### PART III VARIETIES TO BE PROTECTED

Genera and species to be protected.

**13.** The protection of varieties under this Act shall apply to all plant genera and species.

Conditions of protection.

**14.-(1)** The breeder's right shall be granted with respect to variety which is new, distinct, uniform and stable.

(2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Section 21 of this Act, and the applicant complies with the formalities provided for under this Act and that he pays the required fees.



Novelty.

**15.-(1)** 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 off to any person by or with the consent of the breeder, for purposes of exploitation of the variety:-

- (a) in the territory of the United Republic of Tanzania, earlier than one year before the date of filing the application;
- (b) in a territory other than that of the United Republic of Tanzania:-
  - (i) earlier than four years; or
  - (ii) in the case of trees or of vines, earlier than six years before the said date.

(2) Subject to subsection (1) of this Section, the following acts shall not be considered to result in the loss of novelty:-

- (a) trials of the variety not involving sale or disposal off to others for purposes of exploitation of the variety;
- (b) sale or disposal off to others without the consent of the breeder;
- (c) sale or disposal off to any person that forms part of an agreement for the transfer of rights to the successor in title;
- (d) sale or disposal off to any person that forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder, provided that:-
  - (i) the property in the multiplied material reverts to the breeder,
  - (ii) the multiplied materials is not used for the production of another variety;
- (e) sale or disposal off to any person that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials with a view of evaluating the variety;
- (f) sale or disposal off to any person that forms part of the fulfillment of a statutory or administrative obligation, concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade;
- (g) sale or disposal off to any person of harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in paragraphs (e) and (f), provided that the said material is sold or disposed off without variety identification for the purposes of consumption; and



- (h) disposal off to any person due to or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition.

**Distinctness.** 16.-(1) A variety shall be deemed distinct where 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.

(2) For the purposes of subsection (1) of this Section, the filing of an application for the granting of breeder's right or for the entering of another variety in the official register of varieties in any country, shall be deemed to render that other variety a matter of common recognition from the date of the application provided that the application leads to the granting of breeder's right or to the entering of the said other variety in the official register of varieties.

**Uniformity.** 17. A variety shall be deemed 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.

**Stability.** 18. A variety shall be deemed to be stable, where its relevant characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation, at the end of each cycle.

#### PART IV APPLICATION FOR PLANT BREEDER'S RIGHTS

**Application for breeder's right.** 19. A breeder of a new variety may apply for the grant of a breeder's right for that variety.

**Contents of an application.** 20. The application for breeder's right relating to a variety shall contain the following:-

- (a) the name and address of the applicant;
- (b) where the applicant is the successor in title of the person who bred, or discovered and developed the variety:-
  - (i) proof of title;
  - (ii) or authority in the form and content satisfactory to the Registrar or as may be specified by Regulations establishing the existence and validity of the assignment or succession; and
  - (iii) the name and address of the person who bred, or discovered and developed the variety;
- (c) the proposed denomination, along with the description of the characteristics of the variety as the Registrar may require;



- (d) samples of propagating material in such quantities as the Registrar may require; and
- (e) additional information, documents and material that may be required in connection with the application as may be prescribed in the Regulations.

Variety  
denomination.

21.-(1) The variety shall be designated by a denomination which shall be its generic designation and subject to subsection (5) of this Section, 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:-

- (a) shall enable the variety to be identified;
- (b) shall not mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
- (c) shall be different from every denomination which designates, in the territory of any member of an international organization dealing with plant breeders' rights matters to which Tanzania is a party, an existing variety of the same plant species or of a closely related species; and
- (d) may not consist solely of figures except where this is an established practice for designating varieties.

(3) The denomination of the variety shall be submitted by the applicant to the Registrar and where the Registrar finds that the denomination does not satisfy the requirements of this section, he shall refuse to register it and require the applicant to propose another denomination within the period to be prescribed in the Regulations.

(4) The denomination shall be registered by the Registrar at the time the breeder's right is granted.

(5) Prior rights of third persons shall not be affected and where, 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 subsection (9) of this Section, is obliged to use it, the Registrar shall require the applicant to submit another denomination for the variety.

(6) Where the variety is already protected by a member of an international organization dealing with the plant breeders' rights matters to which United Republic of Tanzania is a party or an application for the protection of the same variety is filed by a member of such organisation, the variety denomination which has been proposed or registered by that other member of the organisation shall be submitted by the applicant to the Registrar.



(7) The Registrar shall register the denomination submitted, unless he considers the denomination unsuitable within the territory of the United Republic of Tanzania and in case the denomination is unsuitable, he shall require the applicant to submit another denomination.

(8) The Registrar shall, in writing, inform authorities of the members of an international organization dealing with the plant breeders' rights matters to which United Republic of Tanzania is a party, of matters concerning variety denominations, in particular the submission, registration and cancellation of the denominations.

(9) Any person who, within the territory of the United Republic of Tanzania, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, prior rights prevent such use.

(10) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination and where such an indication is so associated, the denomination shall nevertheless be easily recognizable.

#### PART V CONSIDERATION AND DISPOSITION OF APPLICATION

Filing date of application.

**22.**-(1) The filing date of an application shall be the date, which the application was received by the Registrar.

(2) For the purpose of this section, an application shall be deemed to have been received on the date that the required parts of the application are received in the form sufficient for consideration under this Act.

(3) The Minister shall enter into bilateral agreement with relevant Minister of Tanzania Mainland regulating the following:-

- (a) any application filed with Registrar of Plant Breeders' Right of Tanzania Mainland to be recognized as an application, for the same variety, filed by the Registrar.
- (b) a grant of breeder's right made by the Registrar of Tanzania Mainland to be recognized as the grant made by the Registrar.
- (c) distribution of fees for registration of plant breeder's right.

Right of priority.

**23.**-(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeders' rights matters which United Republic of Tanzania is a party, shall enjoy a right of priority for a maximum



period of twelve months; this period shall be computed from the date of filing the first application; the day of filing shall not be included in the latter period.

(2) The applicant shall, in order to benefit from the right of priority, in the subsequent application in the United Republic of Tanzania, claim within twelve months the priority of the first application.

(3) The Registrar may require the applicant to furnish, within a period of not less than three months from the filing date, a copy of the documents which constitute the first application certified to be a true copy by the authority with which that application was filed and samples or other evidence indicating that the variety which is the subject matter of both applications is the same.

(4) The applicant shall, within a period of two years after the expiration of the period of priority or a period of six months where the first application is rejected or withdrawn, be allowed to furnish to the Registrar any necessary information, document or material required in this Act for the purpose of the examination.

Amendment of application.

**24.**-(1) An applicant may amend his application for the grant of a breeder's right for a variety at any time without affecting its filing date, provided that, the amendment does not affect the variety which is the subject of the application.

(2) Where any amendment of an application occurs after publication of a notice under Section 25 of this Act, the applicant shall be liable to pay the cost of republication.

Publication of notice of application.

**25.** The Registrar shall, publish in the Gazette, and in a newspaper of vast circulation, a notice of every filed application for breeder's right that satisfies the requirements of the Act specifying:-

- (a) the name and address of the applicant;
- (b) the filing date of the application;
- (c) proposed denomination; and
- (d) such other information as may be specified in the Regulations.

Objection to the proposed grant of breeder's right.

**26.**-(1) Any person may, within two months of publication of a notice under Section 25 of this Act, lodge with the Registrar a written objection to the matter specified in that notice.

(2) The Minister may, on behalf of the Government, lodge an objection under this Section.



(3) A notice of objection made under subsection (1) shall:-

- (a) specify the ground on which the objection is based;
- (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a); and
- (c) be supported by an affidavit or other proof, if required by the Registrar.

Grounds for objection.

**27.** An objection lodged pursuant to Section 26 of this Act shall be based on allegation of one or more of the following grounds:-

- (a) that the applicant is not entitled to file the application;
- (b) that the application contains a material misrepresentation;
- (c) that the contents of the application do not comply with this Act or the Regulations.

Notice to the applicant and reply to an objection.

**28.**-(1) The Registrar shall notify the applicant of an objection under Section 26 and provide him with a copy of the notice of an objection and all supporting documents that are lodged with the objection within two weeks from the date of filing the objection.

(2) The applicant may respond to the allegation of the objector, in a written reply which shall be lodged to the Registrar and copied to the objector, within one month or such further period as the Registrar may allow from the date of notification made under subsection (1) of this Section.

(3) The Minister may, on behalf of the Government, lodge a reply to any objection lodged against the Government.

Disposition of applications.

**29.**-(1) The Registrar shall, upon completion of the notice requirements under Section 25 of this Act and the expiration of all time limits for objections and a reply, examine the application and reply.

(2) Upon any decision to grant a breeder's right which requires an examination for compliance with the conditions specified under this Act, the Registrar may in the course of the examination, grow or cause to be grown the variety or carry out other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

(3) The Registrar may, for the purposes of examination, require the breeder to furnish all the necessary information, document or material.



(4) The Minister may appoint one or more persons based on their special knowledge to advise the Registrar in the examination of applications.

(5) Where the Registrar concludes that:-

- (a) the application conforms to the requirements of this Act;
- (b) the applicant is entitled to file the application;
- (c) no objection has been filed;
- (d) in respect of objections filed, there are no grounds for objection; and
- (e) the objection filed does not state an impediment to the granting of the breeder's right for the variety;

he shall grant a breeder's right.

(6) For each variety for which breeder's right is granted, the Registrar shall-

- (a) issue a certificate of registration to the applicant;
- (b) enter the variety in the register as provided for under Section 6 of this Act; and
- (c) publish a notice of the grant of breeder's right and the approved denomination in the Gazette.

(7) Subject to a bilateral agreement made under Section 22(3) of this Act, any grant of breeder's right made by the Registrar of Tanzania Mainland shall be recognized as the grant of breeder's right of the same variety made by the Registrar.

#### PART VI PROVISIONAL AND FINAL PROTECTION

Provisional protection.

**30.** The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period between the publications of the application under section 25 of this Act for the grant of a breeder's right and the date of grant of that right, has carried out acts which, once the right is granted, require the breeder's authorization as provided for under section 31 of this Act.

Other areas of Breeder's rights.

**31.**-(1) Subject to Sections 32 and 33 of this Act, the following acts in respect of the propagating material of the protected variety shall require the authorization of the holder of the breeder's right:-



- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or marketing;
- (e) exporting;
- (f) importing; and
- (g) stocking for any purposes mentioned in paragraphs (a).

(2) The holder of the breeder's right may make his authorization subject to conditions and limitations.

(3) Subject to the provisions of Sections 31 and 32 of this Act, the acts referred to in paragraph (a) to (g) of subsection (1) of this section, in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said propagating material.

(4) Subject to Sections 31 and 32, the acts referred to in paragraph (a) to (g) of subsection (1) of this section, in respect of products made directly from harvested material of the protected variety falling within the provision of subsection (3) of this section, through the unauthorized use of the said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(5) The provisions of subsections (1),(2),(3) and (4) of this section shall apply to:-

- (a) varieties that are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;
- (b) varieties which are not clearly distinguishable in accordance with Section 16 of this Act, from the protected variety; and
- (c) varieties whose production requires the repeated use of the protected variety.

(6) For purposes of paragraph (a) of subsection (5) of this Section, a variety shall be deemed to be essentially derived from another variety when-

- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotype 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.

(7) For the purposes of this section, essentially derived varieties may be obtained through means such as 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.

Exceptions to the Breeder's right.

**32.-**(1) The breeder's right shall not extend to:-

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts done for the purpose of breeding other varieties and, except where the provisions of Section 31(5) to (7) apply, acts referred to in Section 31(1) to (4) of this Act, in respect of such other varieties.

(2) For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forests trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, used for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or a variety covered by section 31(5)(a) or (b) of this Act.

(3) The reasonable limits and the means of safeguarding the legitimate interests of the holder of the breeder's right shall be specified in the Regulations.

Exhaustion of the breeder's right.

**33.-**(1) The breeder's right shall not extend to acts concerning any material of the protected variety or of a variety covered by the provisions of Section 31 (5) of this Act, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the United Republic of Tanzania or any material derived from the said 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.



(2) In this Section "material" means, in relation to a variety:-

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants; and
- (c) any product made directly from the harvested material.

Duration of  
plant breeder's  
right.

**34.**-(1) Except as set forth in Part VII, the breeder's right granted under this Act shall expire after twenty years from the date of the grant except for trees and vines whose breeder's right shall expire after twenty five years from the date of grant.

(2) The term may be extended for an additional five years, by a written notice to the Registrar given by the holder of the breeder's right six months before the expiration of the original term.

Protection and  
damages for  
infringement of  
breeder's right.

**35.**-(1) Breeders' rights are protected by both civil and criminal measures stipulated in any written law.

(2) A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought in any court of competent jurisdiction.

(3) The court may in addition to the cost of the action, grant an injunction or damages or both, as it may appear to be reasonable in the circumstances of the case.

Annual fees.

**36.** The holder of breeder's right shall pay maintenance fee at time and rate as specified in the Regulations.

#### PART VII NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

Nullity of the  
breeder's right.

**37.**-(1) The Registrar shall declare a breeder's right granted by him null and void when it is established that:-

- (a) the conditions laid down in Sections 15 and 16 of this Act, were not complied with at the time of the grant of the breeder's right;
- (b) where the grant of the breeder's right has been essentially based upon information and documents furnished by the applicant, the conditions laid down in Section 17 or 18 of this Act, were not complied with at the time of the grant of the breeder's right; or
- (c) 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.



(2) The breeder's right shall not be declared null and void for reasons other than the reasons referred to in subsection (1).

Cancellation of the breeder's right.

**38.**-(1) The Registrar may cancel a breeder's right granted by him where he has established that the conditions laid down in Section 17 or 18 are no longer fulfilled.

(2) Without prejudice to subsection (1) of this Section, the Registrar may cancel a breeder's right granted by him, within the prescribed period provided in the Regulations, where:-

- (a) the holder of the breeder's right does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b) the holder of the breeder's right fails to pay such fees as may be payable to keep his right in force; or
- (c) the holder of the breeder's right does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(3) The breeder's right shall not be declared cancelled for reasons other than the reasons referred to in subsections (1) and (2) of this Section.

Notification on nullification and cancellation.

**39.**-(1) The Registrar shall notify the holder of the breeder's right and any licensee of any decision made under Section 37 or 38 of this Act and grounds for such decision.

(2) Any person receiving notice under subsection (1) of this Section, may contest the decision, by a written objection lodged to the Registrar within thirty days from the date of receipt of notification of the decision.

(3) The Registrar may hold, within a reasonable time after receipt of an objection, a hearing or may decide the matter based on written submissions of all interested parties.

(4) Where the Registrar nullifies and cancels any breeder's right under this Section, he shall publish the nullification or cancellation by a notice in the Gazette, after expiration of thirty days from the date of the decision or following a decision made under subsection (3) of this Section.

(5) The holder shall return to the Registrar any certificate of the grant of a breeder's right that has been nullified and cancelled under this Section.

Surrender of breeder's right.

**40.**-(1) Any holder of a breeder's right may, by written notice to the Registrar, surrender the breeder's right.



(2) The Registrar shall, within one month from the date of receiving the notice under subsection (1) of this Section, terminate the breeder's right and publish a notice in the Gazette of such termination.

**PART VIII  
AUTHORIZATION AND ASSIGNMENTS**

Authoriza-tion or assignment of Breeder's right.

**41.**-(1) The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in Section 31 of this Act.

Restrictions on the exercise of the breeder's right.

**42.**-(1) The free exercise of a breeder's right shall, unless where expressly provided in this Act, not be restricted for reasons other than of public interest including food security and nutrition issues.

(2) When any such restriction has the effect of the Registrar granting of a compulsory authorization in respect of a breeder's right on the ground that it is necessary to safeguard the public interest, the person to whom the compulsory authorization is granted shall pay the holder of the breeder's right an equitable remuneration.

Information on authorization, assignment and transmission.

**43.**-(1) A person authorized under section 41 of this Act may, in not more than sixty days from the effective date of the authorization, notify the Registrar of the transaction and furnish the Registrar with a copy of that authorization agreement.

(2) The Registrar may prescribe the form and manner of notification to be made under subsection (1) of this Section.

(3) Upon assignment or transmission to other person of all of breeder's right, the assignee or recipient shall notify the Registrar for the purposes of making changes in the Register.

**PART IX  
APPEALS**

Appeal's Board.

**44.**-(1) The Minister shall appoint an Appeal's Board consisting of five members in which two member shall be an expert in legal matters and three other members shall be experts qualified in agricultural science.

(2) The Minister shall appoint one person from amongst members of the Appeal's Board to be the Chairperson.

(3) The Appeal's Board shall have power to:-

- (a) prescribe its own rules of procedure;
- (b) order and secure the attendance of witnesses;



- (c) compel discovery and the production of documents;
- (d) administer oath or affirmation to any witness; and
- (e) appoint Board Secretary among the members with legal expertise.

(4) The Appeal's Board shall keep records of its proceedings.

(5) The Appeal's Board may appoint one or more persons with expert knowledge to serve the Appeal's Board in an advisory capacity, either generally or with regard to a specific case or cases.

Appeals from  
the decision of  
Registrar.

**45.**-(1) An appeal from the decisions of the Registrar made under this Act shall lie to the Appeal's Board.

(2) A person who is aggrieved by any such decision may appeal to the Appeal's Board by submitting a notice of the appeal within sixty days following the publication or of the receipt of the individual notice of such decision by the person whose interest is the source or subject of the appeal.

Decision of the  
Appeals Board.

**46.**-(1) The Appeal's Board may conduct investigation, if it deems necessary to do so, and may hold a hearing of the appeal or make a decision based on written submissions.

(2) The Appeal's Board may confirm, set aside or vary any decision or action of the Registrar; and may order the Registrar to carry out the decision of the Appeal's Board.

(3) The Appeal's Board shall give reasons for its decision in writing, and copies thereof shall be furnished to the appellant, the Registrar and any other interested party.

(4) Subject to the provisions of this section, a decision of the Appeal's Board shall be final.

#### PART X PLANT BREEDERS' RIGHTS DEVELOPMENT FUND, ACCOUNTS, AUDIT AND ANNUAL REPORT

Plant Breeder's  
Rights  
Development  
Fund.

**47.**-(1) The Minister of Finance shall, after receiving a request from the Minister, establish a Fund to be known as the "Plant Breeders' Rights Development Fund" into which moneys realized under this Act shall be kept.

(2) The sources of moneys for the Fund shall include:-

- (a) grants from the government;
- (b) fees payable under this Act;
- (c) any donations or grants from any person;



- (3) The purposes of the Fund shall include financing of the following activities:-
- (a) development and promotion of the plant breeders' rights;
  - (b) training of plant breeders on matters concerned with plant breeders' rights;
  - (c) establishment and maintenance of the variety collections and data base; and
  - (d) such other activities relating to administration of the Act.

(4) Separate books of accounts and other records in respect of the moneys of the Fund shall be kept properly and maintained and be subject to audit.

Accounts and  
audit.

**48.**-(1) The Plant Breeders' Rights Registry shall cause to be kept and maintained proper books of accounts with respect to:-

- (a) all sums of moneys received and expended by the Plant Breeders' Rights Registry and matters in respect of which the receipt and expenditure take place;
- (b) all the assets and liabilities of the Plant Breeders' Rights Registry and the Fund; and
- (c) the statement of income and expenditure of the Plant Breeders' Rights Registry.

(2) The financial year of the Plant Breeders' Rights Registry and the Fund shall end on 30<sup>th</sup> June of each year.

(3) The books of accounts of the Plant Breeders' Rights Registry and the Fund shall be audited at the end of each financial year by the Controller and Auditor General.

Annual report to  
be submitted to  
the Minister.

**49.** As soon as the accounts of the Registry has been audited, and in any case not later than six months after the close of each financial year, the Registrar shall submit to the Minister such audited statement of accounts and a copy of the report made by the Controller and Auditor General.

#### PART XI OFFENCES AND PENALTIES

Offences and  
penalties.

**50.**-(1) Any person who knowingly:-

- (a) makes a false entry in the Register;
- (b) makes a writing which falsely purports to be a copy of an entry in the Register or of a document lodged with the Registrar;



- (c) produces or tenders a false entry of copy as evidence;
- (d) submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;
- (e) obstructs or hinders the Registrar or any officer in the exercise of his powers or the carrying out of his functions under this Act;
- (f) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse to appear;
- (g) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (h) contravene the obligation to use the denomination as required by Section 21 (9) of this Act;
- (i) gives false information in any application or makes any false statement in evidence; and
- (j) violates breeder's right; commits an offence.

(2) Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not less than two millions and not exceeding ten millions Tanzanian shillings or to an imprisonment for a term not less than one year and not exceeding three years or to both.

## PART XII GENERAL PROVISIONS

Collection of fees.

**51.** Notwithstanding any other provision of this Act, the Registrar shall collect fees from the applicant or any other person filing a document or requesting access of administrative action under this Act, for each application, extension, filing, inquiry or other administrative process or service.

Confidentiality.

**52.-(1)** The contents of any licence or assignment shall be confidential unless both parties agreed to permit access thereto by third parties and only to the extent of the permission so granted.

(2) The applicant may declare some portion of the application to be confidential, and where declared so, the Registrar shall determine whether the application can be processed



without publication or other violation of that confidentiality, and give the applicant the option of altering his statement of confidentiality or withdraw the application.

(3) Except as otherwise provided for in this Act, any person who discloses any information made available under this Act, except to:-

- (a) the Minister, the Appeal's Board, the Registrar or any other person for the purposes of carrying out his duties or the performance of his functions under this Act;
- (b) a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or
- (c) any other person when required to do so by any court or under any written law;

commits an offence and upon conviction shall be liable to a fine not less than one million and not exceeding five million Tanzanian shillings or an imprisonment for a period not less than six months and not exceeding one year or to both.

Action against  
the Government.

**53.**-(1) Subject to the existing law on taking action against the Government, this Act shall be binding on the Government with regard to its applications for breeder's right and other interests acquired or given in breeder's right to the same extent and with the same effect as it applies to any other person.

(2) No claim shall lie against the State, the Minister, the Registrar or any other officer for anything done in good faith in the discharge of duties under the powers conferred by this Act.

Breeder's right in  
respect of  
existing varieties  
of recent  
creation.

**54.** Within twelve months from the date of commencement of this Act, the breeder of an existing variety of recent creation may apply to the Registrar in respect of that variety.

Agreement with  
foreign  
governments.

**55.** The Minister may enter into bilateral or multilateral agreements with states and intergovernmental or non-governmental organizations in order to facilitate cooperation in testing.

Agents.

**56.**-(1) Where the breeder is a non-resident or in the case of a corporation, does not have its registered office in United Republic of Tanzania, he shall have an agent who is resident in United Republic of Tanzania.

(2) The Registrar may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Registrar to be sufficient, refuse to recognize or to continue to recognize any person as authorized by the breeder to act in the capacity of agent.



Registrar to  
make guidelines.      57. The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act.

Regulations.      58.-(1) The Minister may make Regulations prescribing anything which under this Act may be prescribed.

(2) Without prejudice to the generality of subsection (1) of this Section, Regulations made shall prescribe:-

- (a) various forms to be used under this Act;
- (b) the procedure to be followed in any proceedings before the Registrar;
- (c) specific information and facilities to be provided, and of the propagating and other material to be submitted with respect to a variety;
- (d) the tests, trials, examinations and other steps to be taken with respect to a variety, by applicants or by the Registrar and the time within which any such steps are to be taken;
- (e) the fees to be paid in respect of:-
  - (i) applications for the grant of breeder's right and extension of its term;
  - (ii) maintenance of a breeder's right;
  - (iii) requests for administrative review; including objections to nullity and cancellation of breeder's right, appeals from administrative decision and other administrative actions;
  - (iv) technical examination;
  - (v) inspection or obtaining records in the Register or other transaction involving a breeder's right;
  - (vi) provision of a certified copy of any entry therein;
  - (vii) any other fees to be paid under this Act.

**PASSED** by the House of Representatives on the date of 23<sup>rd</sup> January, 2014.

(YAHYA KHAMIS HAMAD)  
**CLERK OF THE HOUSE OF REPRESENTATIVES  
ZANZIBAR.**