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# PLANT VARIETY PROTECTION

A detailed botanical illustration of a cactus plant. The cactus has several green, ribbed stems with small spines. Large, dark green, serrated leaves are attached to the stems. A large, white, multi-petaled flower is in full bloom at the bottom, with a prominent pinkish-red center. Above the flower, a developing fruit or flower bud is shown, with a cluster of orange, thread-like structures emerging from it. The background is plain white.

Gazette and Newsletter  
of the International Union  
for the Protection of  
New Varieties of Plants  
(UPOV)

**No. 90**  
**December 2000**

**UPOV**



The International Union for the Protection of New Varieties of Plants (UPOV) – an international organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plants breeders – for their benefit and for the benefit of agriculture and thus also of the community at large – in accordance with uniform and clearly defined principles.

*Plant Variety Protection* is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only – although some items are quadrilingual (English, French, German and Spanish) – at irregular intervals, usually at a rate of four issues per year. Requests for addition to the mailing list may be placed with:

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The picture on the front cover shows the species  
Dutchman's Pipe Cactus (*Epiphyllum oxpetalum* (DC.) Haw.),  
painted by Ms. Ryoko Kamei (Japan),  
courtesy of Tsukuba Botanical Garden, National Science Museum, Japan

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# GAZETTE

## EXTENTION OF PROTECTION TO FURTHER GENERA AND SPECIES

### CHINA

According to the State Intellectual Property Office of the People's Republic of China, protection is available in respect of the following genera and species:

Latin	English	Français	Deutsch	Español
<i>Arachis hypogaea</i> L.	Groundnut, Peanut	Arachide	Erdnuß	Cacahuete, Mani
<i>Brassica napus</i> L.	Swede	Chou-navet, Rutabaga	Kohlrübe	Colinabo
<i>Capsicum</i> L.	Sweet Pepper	Poivron, Piment	Paprika	Pimiento
<i>Castanea mollissima</i>	Chinese Chestnut	Châtaignier de Chine	Chinesische Kastanie	-
<i>Cucumis sativus</i> L.	Cucumber, Gherkin	Concombre, Cornichon	Gurke	Pepino, Cohombro
<i>Diospyros kaki</i>	Japanese Persimmon, Kaki	Plaqueminier, Kaki	Kakipflaume	Caqui
<i>Eucalyptus</i>	Eucalyptus	Eucalyptus	Eukalyptus	Eucalipto
<i>Ginkgo biloba</i>	Ginko	Arbre aux quarante écus, Arbre de Gordon, Noyer du Japon, Ginkgo bilobe	Ginkgobaum	-
<i>Glycine max</i> (L.) Merrill	Soya Bean, Soybean	Soja	Sojabohne	Soja
<i>Juglans</i>	Walnut	Noyer	Walnuß	Nogal
<i>Lycopersicon esculentum</i> Mill.	Tomato	Tomate	Tomate	Tomate
<i>Populus</i>	Poplar	Peuplier	Pappel	Álamo, Chopo
<i>Prunus armeniaca</i>	Apricot	Abricotier	Aprikose	Albaricoquero
<i>Prunus persica</i>	Peach	Pêcher	Pfirsich	Durazno, Melocotonero
<i>Pyrus</i> L.	Pear	Poirier	Birne	Peral
<i>Rhododendron</i>	Rhododendron, Azalea, Azaleodendron	Rhododendron, Azalée	Rhododendron, Azalee	Rododendro, Azalea
<i>Rumex</i> L.	Garden sorrel	Oseille	Gartensauer- ampfer	Acedera común
<i>Salix</i>	Willow	Saule	Weide	Sauce
<i>Taxus</i>	Yew	If	Eibe	Tejo
<i>Triticum aestivum</i> L.	Wheat, Soft wheat, Bread wheat	Blé tendre, Froment	Weichweizen	Trigo blando
<i>Vernicia</i>	-	-	-	-
<i>Zizyphus jujuba</i>	Jujube	Jujubier	Jujube	Azufaino, Guinjo, Jinjolero

### SPAIN

By virtue of Law 3/2000 on the Legal Arrangements for the Protection of New Plant Varieties with effect from

April 10, 2000, protection was extended to all plant genera and species, including hybrids of genera and species.

**NEWSLETTER****UPOV CALANDER OF MEETINGS 2001**

April 2 to 4 (morning) (Geneva, Switzerland)	Technical Committee
April 2 to 3 (evenings) (Geneva, Switzerland)	Editorial Committee
April 5 (Geneva, Switzerland)	Administrative and Legal Committee
April 6 (Geneva, Switzerland)	Consultative Committee
June 4 to 7 (Prague, Czech Republic)	Technical Working Party on Automation and Computer Programs
June 25 to 29 (Salerno, Italy)	Technical Working Party for Vegetables
September 3 to 7 (Texcoco, Mexico)	Technical Working Party for Agricultural Crops
September 24 to 28 (Nagano, Japan)	Technical Working Party for Ornamental Plants and Forest Trees
October 1 to 5 (Valencia, Spain)	Technical Working Party for Fruit Crops
October 22 and 23 (Geneva, Switzerland)	Administrative and Legal Committee
October 24 (Geneva, Switzerland)	Consultative Committee
October 25 (Geneva, Switzerland)	Council
November 21 to 23 (Hanover, Germany)	Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular



# STATES PARTY TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

## International Convention for the Protection of New Varieties of Plants\*

UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

Status on August 24, 2000

State	Date on which State became member of UPOV	Number of contribution units	Latest Act <sup>i</sup> of the Convention to which State is party and date on which State became party to that Act
Argentina .....	December 25, 1994	0.5	1978 Act..... December 25, 1994
Australia.....	March 1, 1989	1.0	1991 Act..... January 20, 2000
Austria .....	July 14, 1994	1.5	1978 Act..... July 14, 1994
Belgium <sup>ii</sup> .....	December 5, 1976	1.5	1961/1972 Act..... December 5, 1976
Bolivia .....	May 21, 1999	0.2	1978 Act..... May 21, 1999
Brazil .....	May 23, 1999	0.25	1978 Act..... May 23, 1999
Bulgaria .....	April 24, 1998	0.2	1991 Act..... April 24, 1998
Canada .....	March 4, 1991	1.0	1978 Act..... March 4, 1991
Chile .....	January 5, 1996	0.2	1978 Act..... January 5, 1996
China.....	April 23, 1999	0.5	1978 Act <sup>iii</sup> ..... April 23, 1999
Colombia .....	September 13, 1996	0.2	1978 Act..... September 13, 1996
Czech Republic.....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Denmark <sup>iv</sup> .....	October 6, 1968	1.5	1991 Act..... April 24, 1998
Ecuador.....	August 8, 1997	0.2	1978 Act..... August 8, 1997
Estonia .....	September 24, 2000	0.2	1991 Act..... September 24, 2000
Finland.....	April 16, 1993	1.0	1978 Act..... April 16, 1993
France <sup>v</sup> .....	October 3, 1971	5.0	1978 Act..... March 17, 1983
Germany .....	August 10, 1968	5.0	1991 Act..... July 25, 1998
Hungary .....	April 16, 1983	0.5	1978 Act..... April 16, 1983
Ireland.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Israel .....	December 12, 1979	0.5	1991 Act..... April 24, 1998
Italy.....	July 1, 1977	2.0	1978 Act..... May 28, 1986
Japan .....	September 3, 1982	5.0	1991 Act..... December 24, 1998
Kenya.....	May 13, 1999	0.2	1978 Act..... May 13, 1999
Kyrgyzstan.....	June 26, 2000	0.2	1991 Act..... June 26, 2000
Mexico.....	August 9, 1997	0.75	1978 Act..... August 9, 1997
Netherlands.....	August 10, 1968	3.0	1991 Act <sup>vi</sup> ..... April 24, 1998
New Zealand.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Norway.....	September 13, 1993	1.0	1978 Act..... September 13, 1993
Panama.....	May 23, 1999	0.2	1978 Act..... May 23, 1999
Paraguay.....	February 8, 1997	0.2	1978 Act..... February 8, 1997
Poland.....	November 11, 1989	0.5	1978 Act..... November 11, 1989
Portugal.....	October 14, 1995	0.5	1978 Act..... October 14, 1995
Republic of Moldova.....	October 28, 1998	0.2	1991 Act..... October 28, 1998
Russian Federation.....	April 24, 1998	0.5	1991 Act..... April 24, 1998
Slovakia .....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Slovenia .....	July 29, 1999	0.2	1991 Act..... July 29, 1999
South Africa.....	November 6, 1977	1.0	1978 Act..... November 8, 1981
Spain <sup>vii</sup> .....	May 18, 1980	1.5	1961/1972 Act..... May 18, 1980
Sweden.....	December 17, 1971	1.5	1991 Act..... April 24, 1998
Switzerland.....	July 10, 1977	1.5	1978 Act..... November 8, 1981
Trinidad and Tobago.....	January 30, 1998	0.2	1978 Act..... January 30, 1998
Ukraine .....	November 3, 1995	0.5	1978 Act..... November 3, 1995
United Kingdom.....	August 10, 1968	5.0	1991 Act..... January 3, 1999
United States of America.....	November 8, 1981	5.0	1991 Act <sup>viii</sup> ..... February 22, 1999
Uruguay.....	November 13, 1994	0.2	1978 Act..... November 13, 1994

(Total: 46 States)

\* The International Union for the Protection of New Varieties of Plants (UPOV), established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organization having legal personality. Pursuant to an agreement concluded between the World Intellectual Property Organization (WIPO) and UPOV, the Director General of WIPO is the Secretary-General of UPOV and WIPO provides administrative and financial services to UPOV.

<sup>i</sup> "1961/1972 Act" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972; "1978 Act" means the Act of October 23, 1978, of the Convention; "1991 Act" means the Act of March 19, 1991, of the Convention.

<sup>ii</sup> With a notification under Article 34(2) of the 1978 Act.

<sup>iii</sup> With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.

<sup>iv</sup> With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.

<sup>v</sup> With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.

<sup>vi</sup> Ratification for the Kingdom in Europe.

<sup>vii</sup> With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.

<sup>viii</sup> With a reservation pursuant to Article 35(2) of the 1991 Act.

## ADDRESSES OF PLANT VARIETY PROTECTION OFFICES IN UPOV MEMBER STATES

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# NEWSLETTER

## CHINA

### DECREE OF THE STATE FORESTRY ADMINISTRATION OF THE PEOPLE'S REPUBLIC OF CHINA

No. 3<sup>1</sup>

#### IMPLEMENTING RULES FOR THE REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON PROTECTION OF NEW VARIETIES OF PLANTS (FORESTRY PART)

The Implementing Rules for the Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Forestry Part) are hereby promulgated and shall enter into force as from the date of their promulgation.

Administrator WANG Zhibao

August 10, 1999

The Office of Protection of New Varieties of Plants under the State Forestry Administration (hereinafter referred to as the Office) shall be responsible for receiving and examining applications for variety rights in the new varieties of plants provided for in Article 2 of the Rules, organizing testing, depositing and other work related to the protection of new varieties of plants, and shall undertake international cooperation and other specific tasks related to the protection of new varieties of plants in accordance with relevant provisions of the State.

#### CHAPTER I

##### General Provisions

##### Article 1

The Rules are formulated in accordance with the Regulations of the People's Republic of China on Protection of New Varieties of Plants (hereinafter referred to as the Regulations).

##### Article 2

The new varieties of plants referred to in the Rules shall mean the plant varieties that are in conformity with the provisions of Article 2 of the Regulations, including forest trees, bamboo, xyloid vine, ornamental woody plants (including woody flowers), fruit trees (dry fruit trees only), and woody oil-bearing, beverage and condiment plants, as well as woody medicinal materials.

The State Forestry Administration shall determine and publish lists of protected plant varieties.

##### Article 3

The State Forestry Administration shall receive and examine applications for rights in new varieties of plants (hereinafter referred to as variety rights), and shall grant such rights in accordance with the provisions of the Regulations and the Rules.

<sup>1</sup> Translation prepared by the Office of the Union and confirmed by the Chinese authorities

#### CHAPTER II

##### Content and Ownership of Variety Rights

##### Article 4

The propagating materials referred to in the Regulations shall mean the whole plants (including nursery stock), seeds (including roots, stems, leaves, flowers, fruits) and other parts of a plant (including tissue and cell).

##### Article 5

Job-related breeding referred to in Article 7 of the Regulations shall mean the following:

- (i) breeding accomplished in the course of performing his own duty;
- (ii) breeding accomplished in the execution of any task other than his own duty, but assigned by the said entity;
- (iii) breeding accomplished within three years from his separation from the entity to which he belongs, and related to his own duty in the said entity, or to the tasks assigned to him by that entity.
- (iv) breeding accomplished by using the financial resources, instruments and equipment, testing sites, breeding resources and other propagating materi-

als of the entity, as well as its technical information whose disclosure to the public is not authorized.

Breeding other than those provided for in the fore-going paragraphs shall be non job-related.

#### Article 6

References to the individual who has accomplished the breeding of new varieties of plants, the applicant for variety rights and the variety rights holder in the Regulations shall be construed as including references to an entity or individual.

#### Article 7

Where two or more applicants apply separately for the variety rights of same variety on the same day, the Office may require the applicants to decide upon ownership of the right to file an application by consultation among themselves. Where a decision cannot be arrived at by consultation, the Office may require the applicants to provide, within a prescribed time limit, evidence to prove that he is the individual who has first accomplished the breeding of the new variety of the plant concerned. Where no evidence is provided within the said time limit, the applications shall be deemed to have been abandoned.

#### Article 8

Where a Chinese entity or individual 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 subject to approval by the State Forestry Administration.

Where a State-owned entity wishes to assign the right to file an application or the variety rights within China, such assignment shall be subject to approval by the competent administrative department at a higher level.

Where assigning of the right to file an application or the variety rights, parties concerned shall conclude a contract in writing, and register the assignment before the State Forestry Administration for publication by the latter.

The assignment of the right to file an application or of the variety rights shall enter into force on the date of its registration.

#### Article 9

In accordance with Article 11 of the Regulations, the State Forestry Administration may decide, on its own initiative or upon request by parties concerned, to grant a compulsory license to exploit new varieties of plants under any of the following circumstances:

- (i) where it is necessary for particular needs such as those of the national or public interest;
- (ii) where the variety rights holder has no justifiable grounds not to exploit the variety himself or not to

exploit it to the full, nor to authorize its exploitation by others under reasonable conditions.

An entity or individual who files a compulsory license for new varieties of plants, shall submit an application to that effect to the State Forestry Administration, stating the grounds thereof and accompanied by supporting documents each in two copies.

#### Article 10

Any party who requests for adjudication of the exploitation fees by the State Forestry Administration under paragraph 2 of Article 11 of the Regulations shall make a request to that effect, accompanied by supporting documents that can show the failure to reach an agreement. The State Forestry Administration shall adjudicate within three months from the date of receipt of the request and shall notify the parties concerned accordingly.

### CHAPTER III

#### Conditions for the Grant of Variety Rights

#### Article 11

Variety rights shall be granted pursuant to the provisions of Articles 13, 14, 15, 16, 17 and 18 of the Regulations and Article 2 of the Rules.

#### Article 12

In accordance with the provisions of Articles 45 of the Regulations, the plant varieties shall be deemed to have the characteristic of novelty where, within one year from the date of publication of the first list of the protected genera and species before the entry into force of the Regulations and those added thereto in the subsequent lists after the entry into force of the Regulations, an application for variety rights is filed in request of the genera and species in said lists, provided that the propagating materials of the variety in respect of which variety rights are applied for have not been for sale, with the consent of the breeder, for more than four years within the territory of China.

#### Article 13

In addition to those provided for in Article 18 of the Regulations, the following denominations shall not be used for designating a variety:

- (i) those in violation of national laws and administrative regulations and rules, or those with ethnic discriminations;
- (ii) those using the names of countries;
- (iii) those using the names of places of administrative districts at or above a county level, or the names of well known places in foreign countries;

- (iv) those using the same or similar identifying names of intergovernmental international organizations or famous international organizations;
- (v) those that are the known denominations of the same or similar genera or species of plants;

#### CHAPTER IV

##### Application for Variety Rights and Receipt thereof

###### Article 14

Where Chinese entities and individuals apply for variety rights, they may file an application with the State Forestry Administration directly or through a representative agency designated by the said Administration.

###### Article 15

Where the new plant variety in respect of which Chinese entities and individuals apply for variety rights involves national security or major interests and therefore needs to be kept confidential, the applicant shall indicate this fact in the application. The Office shall deal with it as a confidential application in accordance with relevant provisions of the State on secret guarding, and shall notify the applicant accordingly; where the Office considers it necessary to keep an application confidential even though the applicant has not made such an indication, the said Office shall deal with it as a confidential application, and shall notify the parties concerned accordingly.

###### Article 16

Where foreigners, foreign enterprises or other foreign organizations apply for variety rights or handle other matters in relation to variety rights before the State Forestry Administration, they shall entrust a representative agency designated by that Administration to deal with.

###### Article 17

Any applicant who appoints a representative agency to apply for variety rights or to handle other related matters before the State Forestry Administration shall file a power of attorney, specifying the scope of power entrusted.

Where two or more applicants are concerned and no representative agency is appointed, one of them shall be indicated in writing as the representative.

###### Article 18

For the purpose of applying for variety rights, the applicant shall file with the Office, in the format prescribed by the State Forestry Administration, an application, a description and a photograph that is in conformity with Article 19 of the Rules, each in two copies.

###### Article 19

The photograph referred to in Article 21 of the Regulations shall conform to the following requirements:

- (i) helpful to illustrate the distinctness of the variety in respect of which the application is filed;
- (ii) showing on the same photograph the comparison concerning one kind of characteristics;
- (iii) in color;
- (iv) of a size of 8.5cm x12.5 cm or of 10 cm x15 cm;

The photograph shall be accompanied by a brief description; the Office may require the filing of a photograph in black and white where necessary.

###### Article 20

The Office shall not receive any of the following application documents for variety rights:

- (i) where some parts are missing or the specification is not used;
- (ii) where they are illegible or seriously altered;
- (iii) where Chinese is not used.

###### Article 21

The Office may require the applicant to furnish the propagating materials of both the variety in respect of which the application is filed and the variety for comparison, for the purpose of examination and testing.

###### Article 22

The applicant shall furnish the propagating materials within three months from the date of receipt of the notification to that effect by the Office. Where seeds are concerned, the applicant shall send them to the reference collection and storage institutions designated by the said Office; where asexual propagating materials are concerned, the applicant shall send them to the testing institutions designated by the said Office.

Where the applicant does not furnish the propagating materials within the time limit, the application shall be deemed to have been abandoned.

###### Article 23

The propagating materials furnished by the applicant shall be subject to quarantine in accordance with relevant provisions of the State. Those subject to quarantine but not quarantined or those found unacceptable upon quarantine shall be refused by the reference collection and storage institutions or testing institutions.



## Article 24

Where the propagating materials furnished by the applicant are not sufficient for the purposes of testing or examination, and where the requirements are not complied with, the Office may require the applicant to furnish the missing amount.

Where the requirements are still not complied with even after the missing amount of the propagating materials has been furnished by the applicant for three times, the application shall be deemed to have been abandoned.

## Article 25

The propagating materials furnished by the applicant shall comply with the following requirements:

- (i) in consistence with the propagating materials of the plant variety as described in the application documents for variety rights;
- (ii) recently harvested or collected;
- (iii) free from plant diseases and pests;
- (iv) not having been under chemical treatment;

Where the propagating materials furnished have been under chemical treatment, the applicant shall furnish, in addition, the name of the chemical used, and the method and purpose of the use.

## Article 26

The reference collection and storage institution or the testing institution shall issue a written notice of acknowledgement upon receipt of the propagating materials furnished by the applicant.

Where the said materials are found acceptable upon examination, the reference collection and storage institution or the testing institution shall issue a written certificate of examination and notify the Office accordingly. Where the propagating materials are found unacceptable upon examination, the reference collection and storage institution or the testing institution shall notify the Office accordingly so that the latter could handle the case in accordance with relevant provisions.

## Article 27

The reference collection and storage institution and the testing institution shall keep confidential and take good care of the propagating materials furnished by applicants both during the period of examination of the application for variety rights and within the term of protection of such rights.

## Article 28

When a foreigner, a foreign enterprise or another foreign organization with no habitual residence or business office in

China applies for variety rights or claims a priority right, the Office may require him to file the following documents:

- (i) a certificate of his nationality;
- (ii) where the applicant is an enterprise or another organization, documents certifying the location of its business office or its headquarters;
- (iii) documents certifying that the country to which the foreigner, the foreign enterprise or another foreign organization belongs recognizes the entitlement of Chinese entities and individuals, under the same conditions as its own nationals, to the right to file an application for rights in new varieties of plants, the priority right and other rights related to variety rights in that country.

## Article 29

Where an applicant files an application for variety rights in a foreign country after having filed one with the Office, he may request the Office to issue a certificate concerning the priority right; where the requirements are complied with, the Office shall issue such certificate.

## Article 30

Where withdrawing an application for variety rights, the applicant shall make a request to the State Forestry Administration, indicating the denomination of the plant variety, and the number and filing date of the application.

## Article 31

Where Chinese entities and individuals apply for variety rights in a foreign country in respect of the new variety of plant bred in China, they shall register such application before the State Forestry Administration.

## CHAPTER V

## Examination and Approval of Variety Rights

## Article 32

In the course of its preliminary examination on an application for variety rights, the State Forestry Administration may require the applicant to make observations or amendments within a prescribed time limit on related issues.

## Article 33

Where an application for variety rights involves two or more new varieties, the Office shall, before it carries out substantial examination, demand the applicant to file a divisional appli-

cation within a prescribed time limit. If the applicant does not divide his application or does not give any response within the prescribed time limit, the application shall be deemed to have been abandoned.

#### Article 34

A divisional application filed under Article 33 of the Rules may keep the initial filing date of the application from which it is divided; where having priority right, the date of priority right may be kept, but does not go beyond the scope of the initial application.

A divisional application shall be subject to the various procedures under the relevant provisions of the Regulations and the Rules.

The number and the filing date of the application from which it is divided shall be indicated in the request for a divisional application. Where priority right is claimed, a copy of the priority document of the initial application shall be submitted.

#### Article 35

The State Forestry Administration shall publish the applications for variety rights that are found to be in conformity with the provisions of the Regulations and the Rules upon preliminary examination.

During the period beginning on the date of publication of the application and ending on the date of grant of variety rights, anyone may raise an objection with the State Forestry Administration to the application for variety rights which is not in conformity with the provisions of the Regulations and the Rules, and shall state the grounds thereof.

#### Article 36

Amendments to the description of the application for variety rights shall take the form of replacement sheets in the prescribed format, except for the alteration, insertion or deletion of a few words.

#### Article 37

In respect of an application for variety rights found to be in conformity with the provisions of the Regulations upon substantial examination, the State Forestry Administration shall decide to grant variety rights, issue a certificate for variety rights to the applicant, and record and publish the grant.

The variety rights holder shall, within three months from the date of receipt of the notification concerning the certificate for variety rights, come and receive such certificate and pay the annual fee for the first year in accordance with relevant provisions of the State. Subject to justifiable reasons, the variety rights shall be deemed to have been renounced in the event of failure to receive the certificate for variety rights or to pay the annual fee within such time limit.

The variety rights shall come into force on the date of the grant thereof.

#### Article 38

The Re-Examination Board for New Varieties of Plants under the State Forestry Administration (hereinafter referred to as the Re-Examination Board) shall be composed of experienced specialists on plant breeding and cultivation as well as legal experts and administrative personnel.

The Chairman of the Re-Examination Board shall be designated by the responsible individuals of the State Forestry Administration.

The Office shall deal with matters related to re-examination pursuant to the decisions made by the Re-Examination Board.

#### Article 39

Where the Re-Examination Board is requested to carry out re-examination under paragraph 2 of Article 32 of the Regulations, the applicant shall make a request to that effect in the format prescribed by the State Forestry Administration, accompanied by relevant supporting documents. The request and the supporting documents shall be filed each in two copies.

When re-examination is requested for, the applicant may make amendments to his refused application for variety rights, provided that the amendments are limited to the part to which the decision to refuse the application relates.

#### Article 40

Where the request for re-examination does not comply with the prescribed requirements, the requesting party shall file supplements or revisions within the time limit fixed by the Re-Examination Board; where no supplements or revisions are filed or still does not comply with the prescribed requirements within such time limit, the request for re-examination shall be deemed to have been abandoned.

#### Article 41

The requesting party may withdraw his request before the Re-Examination Board has made a decision on it.

### CHAPTER VI

#### Termination and Invalidation of Variety Rights

#### Article 42

Where variety rights are terminated prior to the expiration of the term thereof under Article 36 of the Regulations, such rights shall be terminated:

- (i) where the variety rights holder makes a written statement renouncing his variety rights, on the date of the statement;

- (ii) where the variety rights holder has not paid the annual fees as prescribed, on the date of expiration of the time limit on which the annual fee is due;
- (iii) where the State Forestry Administration has recorded the fact that the variety rights holder has not furnished, in the required manner, such propagating materials of the protected variety necessary for testing, or the fact that the furnished propagating materials do not comply with the requirements, on the date of such recordation;
- (iv) where, on testing, the protected variety no longer conforms to the features and characteristics that existed when the variety rights were granted, on the date of the recordation by the State Forestry Administration.

## Article 43

Any entity or individual who requests the invalidation of variety rights under paragraph 1 of Article 37 of the Regulations shall make a request to that effect to the Re-Examination Board in the format prescribed by the State Forestry Administration, accompanied by relevant materials, each in two copies, stating the facts and grounds on which the request is based.

## Article 44

Where the granted variety rights do not conform to any of the provisions of Articles 14, 15, 16 and 17 of the Regulations, the Re-Examination Board shall invalidate the variety rights *ex-officio* or upon request by any entity or individual in writing.

The State Forestry Administration shall record and publish the invalidation of variety rights, and the Office shall notify the parties concerned accordingly.

## Article 45

Where a request for invalidation does not state the facts or grounds on which it is based, or where, after the Re-Examination Board has carried out examination on request for invalidation of one variety rights and has decided to maintain the variety rights, the requesting party makes another request for invalidation on the basis of the same facts and grounds, the Re-Examination Board shall not accept the request.

## Article 46

The Re-Examination Board shall service on the variety rights holder a copy of the request for invalidation of variety rights and the relevant documents within 15 days from its receipt of such request. The variety rights holder shall make observations within three months from his receipt of the said materials; it shall not have any effect on the examination by the Re-Examination Board if no response is given within the time limit.

## Article 47

After the Re-Examination Board has decided to change the denomination of a granted variety, the State Forestry Administration shall record and publish such a change, and the Office shall notify the variety rights holder accordingly and re-issue a certificate for variety rights.

The variety rights holder shall not use the initial denomination of the granted variety once it has been changed.

## Article 48

The requesting party for invalidation of variety rights may withdraw his request before the Re-Examination Board has made a decision on it.

## CHAPTER VII

## Filing, Service and Time Limit of Documents

## Article 49

For the purposes of the various procedures prescribed in the Regulations and the Rules, a written form shall always be taken.

## Article 50

All the documents under the Regulations and the Rules shall be filed in Chinese, and shall use the standard scientific and technical terms as prescribed by the State.

Names of foreigners or foreign places, and scientific and technical terms without a generally accepted Chinese translation may be indicated in the original language.

Supporting documents that are filed under the Regulations and the Rules in a foreign language shall be accompanied by a Chinese translation; where no such translation is accompanied, the supporting documents shall be deemed not to have been filed.

## Article 51

All the documents filed by the parties concerned shall be typed or written with a pen or writing brush, and shall be clear and neat. Only one side of the paper shall be used.

## Article 52

In accordance with the provisions of the Regulations and the Rules, the party concerned may file any document by personal delivery or through a postal service. In the case of filing through a postal service, the filing date shall be determined by the postmark. If the postmark on the envelope is illegible, the filing date shall be the date of receipt of the document unless the party concerned can prove otherwise.

In accordance with the provisions of the Regulations and the Rules, any document and relevant material to the party concerned may be serviced by personal delivery, through a postal service or by publication. Where the party concerned has appointed a representative agency, the document shall be serviced on the agency; where no such agency is appointed, the document shall be serviced on the party concerned.

In respect of any personally delivered document under paragraph 2 of this Article, the date of service shall be the date of such delivery; any document serviced by post shall be deemed to have been serviced on the day immediately after 15 days from the date of dispatch; any document serviced by publication shall be deemed to have been serviced before the expiration of two months from the date of publication.

#### Article 53

Any period under the Regulations and the Rules expressed in years or in months shall expire, in the relevant subsequent year or month, on the corresponding day in the last month of the period, except that, where the relevant month has no such corresponding day, the period shall expire on the last day of that month; if a period expires on an official holiday, the period shall expire on the first working day after that official holiday.

#### Article 54

Where a party fails to comply with a time limit prescribed in the Regulations and the Rules because of *force majeure* or other special reasons and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date on which the impediment is removed, but within two years following the expiration of the time limit at the latest, explain the reasons, furnish relevant supporting documents, and make a request for re-instatement of rights to the State Forestry Administration.

#### Article 55

The date of application referred to in the Regulations and the Rules shall mean the priority date where there is a priority right.

### CHAPTER VIII

#### Fees and Gazette

#### Article 56

An application fee, examination fee, and testing fee where necessary shall be paid in respect of an application for variety rights in accordance with relevant provisions. An annual fee shall be paid where variety rights are granted.

#### Article 57

The fees under Article 56 of the Rules may be paid by the party concerned directly or via a postal or bank remittance, but not via telegraphic remittance, to the Office.

Where fees are paid via a postal or bank remittance, indications shall be made as to the number of the application or of the certificate for variety rights, the name of the applicant or of the variety rights holder, the purpose of the payment and the denomination of the protected variety.

In the case of payment via a postal or bank remittance, the date of payment shall be the date on which the payment is made.

#### Article 58

The application fee under Article 24 of the Regulations may be paid by the applicant at the time of filing the application for variety rights, or within one month from the receipt of the notification for payment; if the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been withdrawn.

The testing fee payable as prescribed shall be paid within one month from the receipt of the notification for payment; if the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been abandoned.

#### Article 59

The initial annual fee shall be paid at the time when the applicant receives the certificate for variety rights, and subsequent annual fees shall be paid one month in advance before the expiration of the term for the preceding year.

#### Article 60

Where the applicant or the variety rights holder has not paid or has not paid in full, on time, the annual fee for the subsequent year after the first year, the Office shall notify the applicant to pay it or its missing part within six months from the expiration of the time limit within which the annual fee is due, together with a late payment fee which amounts to 25% of the annual fee.

#### Article 61

Within three years from the entry into force of the Rules, any party who has difficulties in paying the fees prescribed in Article 56 of the Rules may reduce or retard the payment upon request to, and approval by, the State Forestry Administration.

#### Article 62

The State Forestry Administration shall regularly publish a gazette on the protection of new varieties of plants in which

relevant data concerning the application, grant, assignment, succession and termination in respect of variety rights are published.

The office shall keep recording book for variety rights, in which relevant data concerning the application, grant, assignment, succession and termination in respect of variety rights are recorded.

## CHAPTER IX

### Supplementary Articles

#### Article 63

When investigating and dealing with cases involving administrative punishment as provided for in the Regulations, the competent departments of forestry at county level or above shall apply the provisions in the administrative punishment procedures on forestry.

#### Article 64

Acts concerning counterfeited variety rights referred to in the Regulations shall mean any of the following:

- (i) using counterfeited certificates for, or counterfeited numbers of, the variety rights;
- (ii) using certificates for, or numbers of, the variety rights that have been terminated or invalidated;
- (iii) counterfeiting protected varieties with unprotected ones;
- (iv) counterfeiting one protected variety with another;
- (v) other acts that are liable to mislead others to assimilate an unprotected variety to a protected one.

#### Article 65

Where parties have filed a suit with the people's court concerning their disputes over the right to file an application for variety rights or over the variety rights, and the People's Court has accepted it, the parties concerned shall make a report to the State Forestry Administration, accompanied by the documents showing the acceptance of the case by the People's Court. The State Forestry Administration shall decide to suspend or to terminate the relevant procedures.

#### Article 66

In the procedures of preliminary examination, substantive examination, re-examination and invalidation, any individual who

carries out examination or re-examination under any of the following circumstances should make a request for withdrawal; the parties concerned or any other interested individual may also challenge his presence:

- (i) where he is a close relative of the party concerned or his agent;
- (ii) where he has a direct interest in the application for variety rights or in such rights;
- (iii) where he has such other kinds of relations with the party concerned or his agent that might affect impartial examination and handling.

The withdrawal of a individual carrying out examination shall be decided upon by the Office, and the withdrawal of a member of the Re-Examination Board shall be decided upon by the State Forestry Administration. The individuals who carry out examination and re-examination shall continue to perform their duties until the approval of the request for withdrawal.

#### Article 67

Subject to approval by the Office, any one may have access to, or make copies of, the files of published applications for variety rights and the registry of variety rights.

The Office shall destroy documentation concerning the applications for variety rights that are refused, withdrawn or deemed to have been withdrawn and concerning the variety rights that are renounced, invalidated or terminated.

#### Article 68

Where a change is requested for in the applicant for variety rights and in the variety rights holder, the requesting party shall go through the procedures before the Office for a change in the bibliographic data, and shall state the grounds on which such a change is based, and file supporting documents.

#### Article 69

The State Forestry Administration shall be responsible for the interpretation of the Rules.

#### Article 70

The Rules shall take effect as of the date of their promulgation.



**DECREE OF THE MINISTRY OF AGRICULTURE  
OF THE PEOPLE'S REPUBLIC OF CHINA  
No. 13**

**IMPLEMENTING RULES FOR THE REGULATIONS  
OF THE PEOPLE'S REPUBLIC OF CHINA  
ON THE PROTECTION OF NEW VARIETIES OF PLANTS  
(AGRICULTURE PART)**

The Implementing Rules for the Regulations of the People's Republic of China on the Protection of New Varieties of Plants (Agriculture Part), adopted at the Sixth Executive Meeting of the Ministry of Agriculture on April 27, 1999, are hereby promulgated for implementation.

Minister: CHEN Yaobang

June 16, 1999

**CHAPTER I**

**General Provisions**

**Article 1**

These Rules are formulated in accordance with the Regulations of the People's Republic of China on the Protection of a New Varieties of Plants (hereinafter referred to as the Regulations).

**Article 2**

New varieties of agricultural plants shall include those of grains, cotton, oil seeds, hemp, sugar crops, vegetables (including water melon and mask melon), tobacco, mulberries, tea shrubs, fruit trees (except dry fruit), ornamental plants (except woody plants), grass, green manure, herbaceous medicinal materials and tropical crops such as rubber.

The provisions of these Rules shall apply to the protection of new varieties of edible fungi.

**Article 3**

The Ministry of Agriculture shall be the authority for examining and approving rights in new varieties of agricultural plants (hereinafter referred to as variety rights) under Article 3 of the Regulations, and shall grant such rights in accordance with the provisions of the Regulations.

The Office for the Protection of New Varieties of Agricultural Plants under the Ministry of Agriculture (hereinafter referred to as the Office of Agriculture) shall undertake the tasks of receiving and examining applications for variety rights, and shall deal with other related matters.

**Article 4**

No variety rights shall be granted to any new variety of plants that is harmful to the public interest and the ecological environment.

**CHAPTER II**

**Content and Ownership of Variety Rights**

**Article 5**

The propagating materials referred to in the Regulations shall mean both the seeds and other parts of the body of a plant, which can propagate plants.

**Article 6**

Entities or persons applying for variety rights are generically designated as applicants for variety rights; and entities or persons granted with variety rights are generically designated as variety rights holders.

**Article 7**

Job-related breeding accomplished by any person in undertaking tasks for the entity to which he belongs as referred to in Article 7 of the Regulations shall mean the following:

- (i) breeding accomplished in the course of performing his own duty;
- (ii) breeding accomplished in the execution of any task other than his own duty, but assigned by the said entity;

<sup>1</sup> Translation prepared by the Office of the Union and confirmed by the Chinese Authorities

- (iii) breeding accomplished within three years from his resignation, retirement or transfer, and related to his work in the entity from which he resigns, retires or is transferred, or to the tasks assigned to him by that entity

The facilities of the entity referred to in Article 7 of the Regulations shall mean the financial resources, instruments and equipment, and testing sites of the entity, as well as the breeding materials and technical information owned or held by the entity, whose disclosure to the public is not yet authorized.

#### Article 8

The person who has accomplished the breeding of new varieties as referred to in Article 8 of the Regulations shall mean any entity or person who has accomplished the breeding of new varieties.

#### Article 9

The person who has accomplished the breeding of new varieties (hereinafter referred to as the breeder) shall mean the person who has made creative contributions to the breeding of new varieties. Those who are responsible only for organizational and managerial work, facilitate access to facilities, or perform other auxiliary functions shall not be considered as breeders.

#### Article 10

Where two or more applicants apply separately for the same variety rights simultaneously, the Office of Agriculture may require the applicants to provide, within a fixed time limit, evidence to prove that he is the person who has first accomplished the breeding of the new variety concerned. Where no evidence is provided within the said time limit or where the provided evidence is not sufficient to serve as the basis of a judgement, the applicants shall decide upon ownership of the right to file an application by consultation among themselves; where a decision cannot be arrived at by consultation, the Office of Agriculture may refuse their applications.

#### Article 11

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 subject to examination and approval by the Ministry of Agriculture. Where it concerns job-related breeding, the assignment shall be examined, verified and approved by the administrative departments of agriculture of the provincial People's Governments (and for national entities, by their competent authorities) before its submission to the Ministry of Agriculture; where it does not concern job-related breeding, it shall be submitted directly to the Ministry of Agriculture for examination and approval. If a State-owned entity wishes to assign the right to file an application or the variety rights within China, such assignment shall be subject to approval by the compe-

tent administrative department at a higher level, to which the entity is subordinate.

The Ministry of Agriculture shall publish the assignment of the right to file an application or of the variety rights, which shall enter into force on the date of its publication.

#### Article 12

The Ministry of Agriculture may decide to grant a compulsory license to produce, sell and exploit new varieties of plants under any of the following circumstances:

- (i) where it is necessary for the national or public interest;
- (ii) where the variety rights holder has no justifiable grounds not to exploit the variety himself nor to authorize its exploitation by others under reasonable conditions;
- (iii) where, in respect of a variety of important crops, although the variety rights holder has already exploited them, his exploitation clearly cannot meet the demands of the domestic market, and he does not authorize its exploitation by others under reasonable conditions.

An entity or person who files compulsory license for new varieties of plants, shall submit an application to the Ministry of Agriculture, stating the grounds thereof and accompanied by supporting documents each in two copies.

#### Article 13

Any party who requests for adjudication of the exploitation fees by the Ministry of Agriculture under paragraph 2 of Article 11 of the Regulations shall make a request to that effect, accompanied by supporting documents that can show the failure to reach an agreement. The Ministry of Agriculture shall adjudicate within three months from the date of receipt of the request and shall notify the parties concerned accordingly.

### CHAPTER III

#### Conditions for the Grant of Variety Rights

#### Article 14

In accordance with the provisions of Articles 45 of the Regulations, the Ministry of Agriculture may grant variety rights where, within two years from the date of publication of the first list of protected genera and species of plants before the entry into force of the Regulations and those added thereto in the subsequent lists after entry into force of the Regulations, an application for variety rights is filed in request of the plant genera and species in the said lists, provided that the propagating materials of the variety in respect of which variety rights are applied have not been for sale, with the consent of the

variety holder, for more than four years within the territory of China, and that the requirements for distinctness, uniformity, stability and the denomination are complied with.

#### Article 15

In accordance with the provisions of Article 18 of the Regulations, the following denominations shall not be used for designating a new variety:

- (i) those consisting of only numbers;
- (ii) those in violation of national laws or social morals, or with ethnic discriminations;
- (iii) those using the names of countries;
- (iv) those using the names of places of administrative districts at county level or above, or the names of well known places in foreign countries;
- (v) those using the same or similar identifying names of intergovernmental international organizations or famous international or national organizations;
- (vi) those that are liable to mislead as to the features or characteristics of the new variety of plant, or as to the identity of the breeder;
- (vii) those that are the known denominations of the same or similar genera or species of plants;
- (viii) those with an effect of exaggeration in their promotion.

### CHAPTER IV

#### Application for Variety Rights and Receipt thereof

#### Article 16

Where Chinese entities and persons apply for variety rights, they may file an application with the Office of Agriculture directly or through a representative agency designated by the said Office.

#### Article 17

Where foreigners, foreign enterprises or other foreign organizations with no habitual residence in China apply for variety rights, they shall file an application with the Office of Agriculture through a representative agency designated by the said Office for relations with foreigners.

#### Article 18

Any applicant who appoints a representative agency to apply for variety rights or to handle other matters before the Office of Agriculture shall file at the same time a power of attorney,

specifying the scope of power entrusted. The Office of Agriculture shall directly contact the representative agency for related procedures.

Where two or more applicants are concerned and no representative agency is appointed, one of them shall be indicated as the representative.

#### Article 19

For the purpose of applying for variety rights, an application, a description (including the abstract of the description and the technical questionnaire) and a photograph shall be filed, each in two copies, with the Office of Agriculture.

#### Article 20

An application shall include the following elements:

- (i) a provisional denomination of the new variety;
- (ii) the denomination both in Chinese and in Latin of the genera and species to which the new variety belongs;
- (iii) the name of the breeder;
- (iv) the name, address, postal code, contact person, telephone number and fax number of the applicant;
- (v) the nationality of the applicant;
- (vi) where the applicant is a foreign enterprise or another organization, the name of the country in which its headquarters is located;
- (vii) the starting and ending dates for the breeding of the new variety and the main region where the breeding is conducted.

#### Article 21

A specification shall include the following elements:

- (i) a provisional denomination of the new variety, which shall be the same as that in the application;
- (ii) the denomination both in Chinese and in Latin of the genera and species to which the new variety belongs;
- (iii) an indication on the background information concerning the comparison between the new variety and similar varieties both at home and abroad;
- (iv) an indication on the breeding process and methods, including the genealogical table, cultivating details and the parent seeds or propagating materials used;

- (v) an indication on its sale;
- (vi) a detailed description of distinctness, uniformity and stability;
- (vii) an indication on the region or environment suitable for its growing and on the cultivating techniques.

The specification shall not contain statements with an effect of depreciating other plant varieties or exaggerating the practical value of the new variety. The technical questionnaire may be submitted when the examination fee is paid.

#### Article 22

The photograph referred to in Article 21 of the Regulations shall conform to the following requirements:

- (i) helpful to illustrate the distinctness of the variety in respect of which the application is filed;
- (ii) showing on the same photograph the comparison concerning one kind of characters;
- (iii) in colour, or in black and white as may be required by the Office of Agriculture, where necessary;
- (iv) of a size of 8.5cm x12.5 cm or of 10 cm x15 cm;
- (v) accompanied by a brief description.

#### Article 23

The Office of Agriculture shall not receive any of the following application documents for variety rights:

- (i) where any of the request, specification or photograph is missing;
- (ii) where Chinese is not used;
- (iii) where the prescribed format is not used;
- (iv) where they are not typed or printed;
- (v) where they are illegible or altered;
- (vi) where the name, address or postal code of the applicant is missing.

#### Article 24

Where the Office of Agriculture deems it necessary, the applicant should furnish the propagating materials of both the variety in respect of which the application is filed and the variety for comparison, for the purpose of examination and testing of the variety in respect of which the application is filed.

#### Article 25

The propagating materials furnished by the applicant shall be in consistence with those of the new variety of plant as described in the application documents for variety rights, and shall conform to the following requirements:

- (i) not having suffered from accidental damage or been under chemical treatment;
- (ii) free from quarantinable and harmful organisms;
- (iii) recently harvested if the propagating materials furnished are seeds.

The propagating materials shall be furnished in such a manner as to comply with the requirements concerning the date, quantity, quality and other requirements as prescribed by the Office of Agriculture and in Articles 26, 27 and 28 of the present implementing Rules. Where propagating materials are not furnished within the time limit or not in the prescribed manner, the application shall be deemed to have been withdrawn.

#### Article 26

The applicant shall furnish the propagating materials within three months from the date of receipt of the notification to that effect by the Office of Agriculture. Where seeds are concerned, the applicant for variety rights shall send them to the culture collection centres published by the said Office; where asexual propagating materials such as seedlings, bulbs, tubers and roots are concerned, the applicant shall send them to the testing institutions designated by the said Office.

#### Article 27

The propagating materials shall be subject to quarantine in accordance with relevant provisions. Those found unacceptable upon quarantine or not quarantined shall be refused by the reference collection and storage centers or the testing institutions.

#### Article 28

Where the quantity of the propagating materials furnished by the applicant is less than that prescribed by the Office of Agriculture, the reference collection and storage centre or the testing institution shall notify the applicant to furnish the missing amount within one month from the date of receipt of the notification. In exceptional cases, however, where propagating materials have been furnished by the applicant in the prescribed quantity, but are still not sufficient for the purposes of testing or examination, the Office of Agriculture shall have the right to require the applicant to furnish the missing amount.

#### Article 29

The reference collection and storage centre or the testing institution shall issue a written note of acknowledgement upon

receipt of the propagating materials furnished by the applicant, and shall finish its testing and examination on viability and other aspects within 20 days (except for plants with dormant period) from the date of receipt of the propagating materials. Where the said materials are found acceptable upon examination, the reference collection and storage centre or the testing institution shall issue a written certificate of examination, and shall notify the Office of Agriculture accordingly. Where the propagating materials are found unacceptable upon examination, the culture collection centre or the testing institution shall notify the applicant to furnish new propagating materials of the variety in question within one month from the date of receipt of the notification.

#### Article 30

The reference collection and storage centre and the testing institution shall have the responsibility to keep confidential the propagating materials furnished by applicants, and shall prevent the said materials from loss, theft or other accidents both during the period of examination of the application for variety rights and within the term of protection after the grant of such rights.

#### Article 31

Where a priority right is claimed under Article 23 of the Regulations, the applicant shall indicate in the application the filing date and number of the initial application for variety rights as well as the name of the country that has received it; in the absence of such indications, the priority right shall be deemed not to have been claimed. The copy of the initial application submitted by the applicant shall be certified by the original receiving authority.

#### Article 32

When an applicant with no habitual residence or establishments in China applies for variety rights or claims a priority right, the Office of Agriculture may, where it deems necessary, require him to file the following documents:

- (i) a certificate of his nationality;
- (ii) where the applicant is an enterprise or another organization, documents certifying the location of its establishments or its headquarters;
- (iii) documents certifying that the country to which the foreigner, the foreign enterprise or other foreign organization belongs recognizes the entitlement of Chinese entities and persons, under the same conditions as its own nationals, to the right to file an application for rights in new varieties of plants, the priority right and other rights related to variety rights in that country.

#### Article 33

Where an applicant files an application for variety rights in a foreign country after having filed one with the Office of Agriculture,

he or it may request the Office of Agriculture to issue a certificate concerning the priority right.

#### Article 34

Where, under paragraph 2 of Article 19 of the Regulations, 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, the applicant shall indicate this fact in the application. The Office of Agriculture shall make a decision, upon examination, as to whether it should be dealt with as a confidential application, and shall notify the applicant accordingly; where the Office of Agriculture considers it necessary to keep an application confidential even though the applicant has not made such an indication, the said Office shall deal with it as a confidential application, and shall notify the applicant accordingly.

### CHAPTER V

#### Examination and Approval of Variety Rights

#### Article 35

In the procedures of preliminary examination, substantive examination, re-examination and invalidation, any person who carries out examination or re-examination under any of the following circumstances should withdraw on his own initiative; the parties concerned or any other interested person may challenge his presence:

- (i) where he is a close relative of the party concerned or his agent;
- (ii) where he has a direct interest in the application for variety rights or in such rights;
- (iii) where he has such other kinds of relations with the party concerned or his agent that might affect impartial examination and handling.

The withdrawal of a person carrying out examination shall be decided upon by the Office of Agriculture, and the withdrawal of a person carrying out re-examination shall be decided upon by the Ministry of Agriculture.

#### Article 36

Where an application for variety rights involves two or more new varieties, the Office of Agriculture shall, before it sends an invitation for the payment of examination fee, request the applicant to file a divisional application. If the applicant does not divide his application or does not give any response within the fixed time limit, the application shall be deemed to have been withdrawn.

#### Article 37

A divisional application filed under Article 36 of these Rules may keep the filing date of the application from which it is



divided, and where priority right is claimed, also the date of priority right, provided that the divisional application does not go beyond the scope of the initial application for variety rights.

A divisional application shall be subject to relevant procedures under the provisions of the Regulations and these Rules.

The number and the filing date of the application from which it is divided shall be indicated in the request for a divisional application. Where priority right is claimed, a copy of the priority document of the initial application shall be submitted.

#### Article 38

In accordance with the provisions of Article 27 of the Regulations, the Office of Agriculture shall carry out a preliminary examination on the application for variety rights, and shall notify the applicant of its examination result. In the case of any doubts, the Office of Agriculture may request the applicant to make observations or amendments within a prescribed time limit; if the applicant does not make a response within such time limit, the application shall be deemed to have been withdrawn. Where the Office of Agriculture finds it not in conformity with the relevant provisions even after the applicant has made observations or amendments, the Office shall refuse the application.

#### Article 39

With the exception of the application for variety rights, any document related to it filed by the applicant with the Office of Agriculture that has any of the following irregularities shall be deemed not to have been filed:

- (i) failure to use the prescribed format or to comply the requirements concerning the indications;
  - (ii) failure to file supporting document as prescribed.
- The Office of Agriculture shall notify the applicant of its findings that the application is deemed not to have been filed.

#### Article 40

During the period beginning on the date on which an acceptable application is published upon preliminary examination and ending on the date of grant of variety rights, anyone may raise an objection with the Office of Agriculture to the application for variety rights which is not in conformity with the provisions of the Regulations, and shall state the grounds thereof.

#### Article 41

Amendments to the description of the application for variety rights shall be in the form of replacement sheets in a prescribed format, except for the alteration, insertion or deletion of a few words.

#### Article 42

In accordance with the provisions of the Regulations and these Rules, an application for variety rights shall be refused upon substantive examination under the following circumstances:

- (i) where any of the provisions in Articles 13, 14, 15, 16 and 17 is not complied with;
- (ii) as prescribed in Article 4 of these Rules;
- (iii) where any amendment to the application or to the divisional application goes beyond the scope of the initial description in terms of its substance.

#### Article 43

Applicants shall go through the procedures for receiving a certificate for variety rights and for paying the annual fee for the first year within three months from the date of receipt of the notification by the Office of Agriculture concerning such procedures. Where the procedures are completed within the prescribed time limit, the Ministry of Agriculture shall grant variety rights, issue a certificate for such rights, and publish the grant accordingly. The variety rights shall come into force on the date of issuance of the said certificate.

Where the procedures are not completed within such time limit, the granted variety rights shall be deemed to have been renounced.

#### Rule 44

The Ministry of Agriculture shall invite experienced specialists on plant breeding and cultivation as well as legal experts and administrative personnel to form the Re-Examination Board for New Varieties of Plants (hereinafter referred to as the Re-Examination Board).

Responsible persons of the Ministry of Agriculture shall act concurrently as the Chairman of the Re-Examination Board. The Office of Agriculture may deal with matters related to re-examination pursuant to the mandates given by the Re-Examination Board.

#### Article 45

Where the Re-Examination Board is requested to carry out re-examination under paragraph 2 of Article 32 of the Regulations, the applicant shall make a request to that effect, stating the grounds thereof and accompanied by relevant supporting documents. The request and the supporting documents shall be filed each in two copies.

The applicant may make amendments to his refused application for variety rights when requesting for re-examination, provided that the amendments are limited to the part to which the decision to refuse the application relates.

## Article 46

Where the request for re-examination is not in the prescribed format, the requesting party shall file supplements or corrections within the time limit fixed by the Re-Examination Board; where no supplements or corrections are filed within such time limit, the request for re-examination shall be deemed to have been withdrawn.

## Article 47

Where, upon re-examination, the Re-Examination Board finds that the request for re-examination does not conform to the provisions in the Regulations and these Rules, it shall notify the requesting party to make observations within a prescribed time limit; where no response is given within such time limit, the request for re-examination shall be deemed to have been withdrawn.

## Article 48

The requesting party for re-examination may withdraw his request before the Re-Examination Board has made a decision on it.

## Article 49

The Re-Examination Board may correct obvious mistakes in the application, and shall notify the applicant accordingly.

## CHAPTER VI

## Invalidation of Variety Rights

## Article 50

Any entity or person who requests the invalidation of variety rights under paragraph 1 of Article 37 of the Regulations shall make a request to that effect, and shall file relevant documents with the Re-Examination Board, each in two copies, stating the facts and grounds on which the request is based.

## Article 51

Invalidation of variety rights shall be based on the following facts and grounds:

- (i) that the granted variety rights do not conform to any of the provisions of Articles 13, 14, 15, 16 and 17 of the Regulations;
- (ii) that the granted variety rights fall into the categories prescribed by Article 4 of these Rules.

## Article 52

Where a request for invalidation does not state the facts or grounds on which it is based or the stated grounds do not

conform to the provisions in Article 51 of these Rules, or where, after the Re-Examination Board has carried out examination on one request for invalidation and has decided to maintain the variety rights, the requesting party makes another request for invalidation on the basis of the same facts and grounds, the Re-Examination Board shall not accept the request.

## Article 53

The Re-Examination Board shall communicate to the variety rights holder a copy of the request for invalidation of variety rights and the copies of the relevant documents, and shall invite him to make observations within a prescribed time limit. It shall not have any effect on the examination by the Re-Examination Board if no response is given within such time limit.

## Article 54

After the Re-Examination Board has decided to change the denomination of a granted variety in accordance with paragraph 1 of Article 37 of the Regulations, the Ministry of Agriculture shall record and publish such a change, and the Office of Agriculture shall notify the variety rights holder accordingly in a timely manner and re-issue a certificate for variety rights.

The variety rights holder shall not use the initial denomination of the variety once it has been changed.

## Article 55

The requesting party for invalidation of variety rights may withdraw his request before the Re-Examination Board has made a decision on it.

## CHAPTER VII

## Filing, Communication and Time Limit of Documents

## Article 56

For the purposes of the various procedures prescribed in the Regulations and these Rules, a written form shall always be taken.

## Article 57

All the documents under the Regulations and these Rules shall be filed in Chinese, and shall use the standard scientific and technical terms as well as other standard terms as prescribed by the State. Names of foreigners or foreign places, and foreign scientific and technical terms without a generally accepted Chinese translation may be indicated in their original language. Papers and supporting documents that are filed under the Regulations and these Rules in a foreign language shall be accompanied by a Chinese translation; where such a translation is

not accompanied, the supporting documents shall be deemed not to have been filed.

#### Article 58

All the documents filed by the parties concerned with the Office of Agriculture and the Re-Examination Board shall be typed or printed in black, and shall be clear and neat. The written part of the application shall run horizontally, and only one side of the paper shall be used.

#### Article 59

All the documents filed by the parties concerned and those for other procedures shall be signed by, or affixed with a seal of, the applicant, the variety rights holder, any other interested person or his representative; if a representative agency is appointed, the documents may be affixed with a seal of the agency. Where a change is requested for in the name of the breeder, or in the name, nationality and address of the applicant or the variety rights holder, or in the name of the representative agency and the agent, the requesting party shall go through the procedures before the Office of Agriculture for a change in the bibliographic data, and in the meantime, shall file relevant supporting documents for the grounds on which such a change is based.

#### Article 60

The party concerned may file any document by personal delivery or through a postal service. Filing through a postal service shall take the form of a registered mail, but not that of a parcel, and one letter shall contain only one application. In the case of filing through a postal service, the filing date shall be determined by the postmark. If the postmark on the envelope is illegible, the filing date shall be the date of receipt of the document by the Office of Agriculture and the Re-Examination Board unless the party concerned can prove otherwise.

Any document of the Office of Agriculture and the Re-Examination Board may be communicated to the party concerned through a postal service, by personal delivery or by publication. Where the party concerned has appointed a representative agency, the document shall be communicated to the agency; where no such agency is appointed, the document shall be communicated to the person first named in the request or to the representative. If the party concerned refuses to accept a document, the document shall be deemed to have been communicated.

Any document communicated through a postal service by the Office of Agriculture and the Re-Examination Board shall be deemed to have been received by the party concerned on the day immediately after 15 days from the date of dispatch.

In respect of any personally delivered document as may be required in accordance with relevant provisions, the date of communication shall be the date of such delivery.

Where a document cannot be communicated through a postal service due to an incorrect address for correspondence, it may be communicated to the party concerned by publication. The document shall be deemed to have been communicated before the expiration of two months from the date of publication.

#### Article 61

In the calculation of any time limit prescribed in the Regulations and these Rules, the first day shall be excluded. Any period expressed in years or in months shall expire, in the relevant subsequent year or month, on the corresponding day in the last month of the period, except that, where the relevant month has no such corresponding day, the period shall expire on the last day of that month.

If a period expires on an official holiday, the period shall expire on the first working day after that official holiday.

#### Article 62

Where a party fails to comply with a time limit prescribed in the Regulations and these Rules or fixed by the Office of Agriculture because of *force majeure*, and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date on which the impediment is removed, but within two years following the expiration of the time limit at the latest, explain the reasons, furnish relevant supporting documents, and make a request for re-instatement of rights to the Office of Agriculture.

Where a party fails to comply with a time limit prescribed in the Regulations and these Rules or fixed by the Office of Agriculture because of a justified reason, and that failure has the consequence of causing a loss of variety rights, the party concerned may, within two months from the date of receipt of the notification, explain the reasons and make a request for re-instatement of rights to the Office of Agriculture.

Where extension of any time limit fixed by the Office of Agriculture is requested for, the party concerned shall, before the expiration of the time limit, state the grounds to the Office of Agriculture and go through the relevant procedures.

The provisions in paragraphs 1 and 2 of this Rule shall not apply to the time limits prescribed in Article 23, paragraphs 2 and 3 of Article 32, Article 34 and paragraph 2 of Article 37 of the Regulations.

#### Article 63

Subject to the provisions of Article 22 of the Regulations, the filing date referred to in the Regulations shall mean the priority date where there is a priority right.

## CHAPTER VIII

## Fees and Gazette

## Article 64

An application fee, examination fee, annual fee and testing fee shall be paid in respect of an application for variety rights and other procedures to the Ministry of Agriculture in accordance with relevant provisions of the State.

## Article 65

The fees prescribed in the Regulations and in these Rules may be paid directly or via a postal or bank remittance, but not via telegraphic remittance.

Where fees are paid via a postal or bank remittance, indications shall be made as to the number of the application or of the variety rights, the name of the applicant or of the variety rights holder, the purpose of the payment and the denomination of the new variety.

In the case of payment via a postal or bank remittance, the date of payment shall be the date on which the payment is made.

## Article 66

The application fee under Article 24 of the Regulations may be paid by the applicant at the time of filing the application for variety rights, or within two months from the filing date at the latest. If the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been withdrawn.

## Article 67

In respect of an application for variety rights found to be acceptable upon preliminary examination, the applicant shall pay the examination fee, and the testing fee where necessary, within a prescribed time limit in accordance with the notification by the Office of Agriculture. If the fee is not paid or is not paid in full within the time limit, the application shall be deemed to have been withdrawn.

## Article 68

The annual fee for the first year after the grant of the variety rights shall be paid at the time when the applicant goes through the procedures of receiving the certificate for variety rights. Subsequent annual fees shall be paid one month in advance before the expiration of the term for the preceding year.

## Article 69

Where the applicant or the variety rights holder has not paid or has not paid in full, on time, the annual fee for the subse-

quent year after the first year of the grant of the variety rights, the Office of Agriculture shall invite the applicant to pay it or its missing part within six months from the expiration of the time limit within which the annual fee is due, together with a late payment fee which amounts to 25% of the annual fee. Where these fees are not paid within the time limit, the variety rights shall be terminated from the date of expiration of the time limit within which the annual fee is due.

## Article 70

Any applicant who has difficulties in paying some of the fees prescribed in Rule 64 of these Rules may make a request to the Office of Agriculture in accordance with relevant provisions for a reduction or retard of the payment, the details of which shall be prescribed separately.

## Article 71

The Ministry of Agriculture shall regularly publish relevant data concerning variety rights in a gazette on the protection of new varieties of plants.

## CHAPTER IX

## Penalty Provisions

## Article 72

Cases of infringement provided for in Article 39 of the Regulations shall be under the jurisdiction of the provincial administrative department of agriculture at the locality where the infringement takes place;

The case of infringement under the jurisdiction of two or more provincial administrative departments of agriculture shall be handled by the one that has first put the case on file for investigation and prosecution;

Where disputes arise between provincial administrative departments of agriculture as to the jurisdiction over a case of infringement, the Ministry of Agriculture shall designate the jurisdiction;

The Ministry of Agriculture may, where necessary, handle cases of infringement directly. Where a provincial administrative department of agriculture considers that the significance and complexity of a case of infringement merit involvement by the Ministry of Agriculture, a request to that effect may be made to the latter.

## Article 73

Handling of cases of infringement by the administrative departments of agriculture at provincial level or above shall be subject to the following conditions:

- (i) that the requesting party is the variety rights holder, or any entity or person that has a direct interest in the case of infringement of variety rights;

- (ii) that the request is made in respect of a definite party, with specific claims and factual basis;
- (iii) that the provisions in the Regulations and these Rules are complied with;
- (iv) that neither party has filed a suit with the People's Court.

#### Article 74

Acts concerning counterfeited variety rights referred to in Articles 40 and 41 of the Regulations shall mean any of the following:

- (i) printing, making or using counterfeited certificates for protected varieties, counterfeited numbers or other identifications of applications for variety rights or of the variety rights;
- (ii) printing, making or using the number or other identifications of the applications for variety rights that have been refused, withdrawn or deemed to have been withdrawn;
- (iii) printing, making or using certificates for, or numbers or other identifications of, the variety rights that have been terminated or invalidated;
- (iv) producing or selling the varieties that fall into the categories included in items (i), (ii), (iii) of this Article, and passing off an application or the denomination of a protected variety;
- (v) selling protected varieties without using their registered denominations;
- (vi) other acts that are liable to mislead others to assimilate an unprotected variety to a protected one.

#### Article 75

Under Articles 40 and 41 of the Regulations, administrative departments of agriculture of the People's Government at county level or above shall be responsible for monitoring, investigation and handling of acts concerning counterfeited variety rights that take place within the area under their jurisdiction.

The case concerning counterfeited variety rights under the jurisdiction of two or more administrative departments of agriculture at county level or above shall be handled by the one that has first put the case on file for investigation and prosecution.

Where disputes arise between the administrative departments of agriculture at county level or above as to the jurisdiction over a case concerning counterfeited variety rights, the administrative departments of agriculture at an immediately higher level shall designate the jurisdiction;

Administrative departments of agriculture at an immediately higher level may, where necessary, handle cases concerning counterfeited variety rights under the jurisdiction of those at an immediately lower level. Where administrative departments of agriculture at a lower level considers that the significance and complexity of a case of infringement merit involvement by those at a higher level, a request to that effect may be made to the latter.

#### Article 76

Administrative departments of agriculture shall pass an opinion of disposition within one month on the propagating materials of plant varieties sealed up or detained in accordance with the provision in Article 41 of the Regulations.

#### Article 77

Where parties have filed a suit with the People's Court concerning their disputes over the right to file an application for variety rights or over the variety rights, and the People's Court has accepted it, the parties concerned shall request the Office of Agriculture to suspend the relevant procedures.

Where suspension of the relevant procedures is requested under the preceding paragraph, a request to that effect shall be made to the Office of Agriculture, accompanied by the copies of documents showing the acceptance of the case by the People's Court.

### CHAPTER X

#### Supplementary Rules

#### Article 78

Files of the applications for variety rights that are deemed to have been withdrawn, refused, or withdrawn on the initiative of applicants shall be kept until the end of two years from the date of lapse of the applications.

Files of the variety rights that are renounced, invalidated or terminated shall be kept until the end of three years from the date of lapse of the variety rights.

#### Article 79

The Ministry of Agriculture shall be responsible for the interpretation of these Rules.

#### Article 80

These Rules shall enter into force as from the date of their promulgation.

## KYRGYZ REPUBLIC

### LAW ON THE LEGAL PROTECTION OF SELECTION ACHIEVEMENTS<sup>1,2</sup>

(ADOPTED BY THE LEGISLATIVE ASSEMBLY ON MAY 26, 1998)

This Law shall govern both economic and moral relations arising out of the creation [discovery, development], legal protection and use of selection achievements for which patents have been granted in the Kyrgyz Republic.

This Law shall apply to genera and species the list of which shall be approved by the Government of the Kyrgyz Republic.

#### TITLE I

#### GENERAL PROVISIONS

##### Article 1

##### *Basic Terms*

For the purposes of this Law:

- “*author*” (“*breeder*”) means a natural person whose creative work resulted in the creation, discovery or development of a selection achievement;
- “*breed*” means an animal grouping which, irrespective of its protectability, has genetically determined biological and morphological characteristics some of which are specific for the given grouping and distinguish it from other animal groupings. The breed may be represented by female or male animals or by pedigree material. Breed shall be deemed to comprise the following protected categories: type, line, crossing of lines and family;
- “*pedigree animal*” means an animal used for the purpose of reproduction of a breed;
- “*pedigree material*” means a pedigree animal, gametes or zygotes(embryos) thereof;
- “*selection achievement*” means a plant variety or animal breed;
- “*protected selection achievement*” means a plant variety or an animal breed registered in the State Register of Protected Selection Achievements;
- “*variety*” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of its protectability, can be defined by the expression of characteristics resulting from a given genotype or combination of genotypes and can be distinguished from any other plant grouping of the same botanical taxon 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. Variety shall be deemed to comprise the following protected categories: clone, line, first generation hybrid, population.

- “*seeds*” means generative and vegetative parts of a plant used for the purpose of reproduction of the variety;
- “*plant material*” means a plant or parts thereof used for purposes other than reproduction of the variety;
- “*infringing selection achievement*” means a selection achievement propagation and [or] marketing of which entails an infringement of the exclusive rights of the patent owner.

##### Article 2

##### *Legal Protection of Selection Achievements*

The rights in selection achievements shall be protected by this Law and shall be certified by selection achievement patents.

The patent shall certify the authorship of the breeder, the priority of the selection achievement and the exclusive right of the patent owner to use the selection achievement.

The scope of the legal protection conferred by a selection achievement patent shall be determined by the sum of essential characteristics as contained in the description of the selection achievement.

##### Article 3

##### *State Regulation in the Field of Legal Protection of Selection Achievements*

State Agency of Intellectual Property attached to the Government of the Kyrgyz Republic (hereinafter referred to as “Kyrgyzpatent”) shall, in accordance with this Law, carry out the State policy in the field of legal protection of selection achievements. It shall receive applications for the protection of selection achievements and publish them, effect the preliminary examination of selection achievements, take a decision, basing on the results of examination of novelty and testing distinctness, uniformity and stability of the selection achievement, to grant or to refuse the grant of a patent, effect registration thereof in the State Register of Protected Selection Achievements.

<sup>1</sup> Translation provided by the Kyrgyz authorities

<sup>2</sup> The Law entered into force on January 14, 2000.



tion Achievements of the Kyrgyz Republic (hereinafter referred to as “the State Register of Protected Selection Achievements”), publish official information relating to the legal protection of selection achievements, grant patents and monitor their validity, and shall perform other functions specified in the Statute of Kyrgyzpatent enacted by the Government of the Kyrgyz Republic.

Disputes arising with respect to selection achievements shall be examined by the Board of Appeal which shall be created for the purpose under Kyrgyzpatent. The Statute of the Board of Appeal shall be approved by Kyrgyzpatent.

A centralized State authority responsible for agriculture and agriculture shall determine the List of Genera and Species (hereinafter referred to as “the List”). The List shall be approved by the Government of the Kyrgyz Republic.

The centralized State authority responsible for agriculture and agriculture shall be competent to introduce, for consideration by the Government of the Kyrgyz Republic, proposals relating to:

- the addition to the List of new genera and species;
- the amendment of denomination of genera and species included in the List;
- the deletion of certain genera and species from the List.

When adding a new genus and species to the List, the Government of the Kyrgyz Republic may delete therefrom all varieties of the genus and species which are not characterized by a special method of propagation or reproduction or by a known final use.

Where some genera and species are deleted from the List, the deletion must not infringe the rights of applicants who filed an application for the protection of the genera and species prior to the date of entry into force of such deletion.

The State Commission for Variety Testing of Agricultural Crops (hereinafter referred to as “the State Commission”) and the State Pedigree Animal Breeding and Pasture Monitoring Inspection (hereinafter referred to as “the State Pedigree Animal Inspection”), both attached to the centralized State authority responsible for agriculture and agriculture, shall be the competent State organizations and shall perform the following functions:

- carry out, under an agreement with Kyrgyzpatent, examination of novelty and testing distinctiveness, uniformity and stability of selection achievements;
- keep the State Register of Regionized Varieties of the Kyrgyz Republic and the State Register of Pedigree Animals of the Kyrgyz Republic, respectively;
- issue a certificate attesting the suitability of the selection achievement for economic exploitation and shall perform other functions under their respective Statutes approved by the centralized State authority responsible for agriculture and agriculture.

## TITLE II

### CONDITIONS OF PATENTABILITY OF SELECTION ACHIEVEMENTS AND THE PROCEDURE FOR FILING APPLICATIONS FOR THE GRANT OF PATENT

#### Article 4

##### *Conditions of Patentability of Selection Achievements*

The patent shall be granted where the selection achievement satisfies the criteria of patentability and relates to the protected botanical or zoological genera and species.

The said criteria shall be the following:

#### (1) Novelty

A selection achievement shall be deemed new if, at the date of filing the application for the grant of a patent, seeds or pedigree material of the selection achievement have not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for the purposes of exploitation of the selection achievement:

- in the territory of the Kyrgyz Republic, earlier than one year before that date;
- in the territory of any other State, earlier than six years in the case of grapevines, forest, ornamental and fruit trees, or in the case of other varieties, earlier than four years before the said date.

Novelty of the selection achievement shall not be void, where marketing of any material of the variety or breed has been carried out by others, before the expiration of the time-limits specified in this paragraph, for the following purposes:

- deliberate infliction of damage to the applicant;
- execution of a contract for transfer of the right to obtain a patent;
- execution of a contract under which a third party supplies, with the consent of the applicant, additional material for the purposes of propagation of the variety or reproduction of the breed, provided that the supplies are carried out under his control;
- execution of a contract under which a third party carries out field tests, laboratory analysis or evaluation of the variety or breed.

#### (2) Distinctness

A selection achievement shall be deemed distinct if it is clearly distinct from any other selection achievement well-known at the time of the filing of the application.

Well-known selection achievements may be those which have been entered in an official register or reference files or of which

a precise description has been published or those which have been registered in the State Register of Protected Selection Achievements.

The notion of a well-known selection achievement shall be determined in respect of:

- selection achievements that have become a matter of common knowledge as a result of production, reproduction, conditioning for the purpose of propagation, stocking and maintenance for any of the aforementioned purposes;
- selection achievements that have been offered for sale, sold, exported or imported.

### (3) Uniformity

A selection achievement shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation or reproduction, the plants or animals are sufficiently uniform in their relevant characteristics.

### (4) Stability

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

## Article 5

### *Persons Entitled to File an Application for the Grant of a Patent*

The right to file an application for the grant of a patent (hereinafter referred to as "the application") shall belong to the breeder or employer or his successor in title (hereinafter referred to as "the applicant").

Where there are several persons who jointly bred [developed or discovered] the same selection achievement, they shall be entitled to file the application jointly.

Applications may be filed through patent agents, whose powers shall be certified in a power of attorney, and who shall act in the proceedings conducted for the grant of patents.

Natural persons having their residence or foreign legal entities having their principal place of business outside the territory of the Kyrgyz Republic, shall be required to act through patent agents registered in the Kyrgyz Republic in all proceedings conducted in the Kyrgyz Republic for the grant and maintenance of the patent unless otherwise provided in the international treaty to which the Kyrgyz Republic is party.

No staff member of Kyrgyzpatent or the State Commission or the State Pedigree Animal Inspection shall have the right to file an application for the grant of a patent for the duration of his employment contract.

## Article 6

### *Selection Achievements Bred in the Line of Duty*

Where a selection achievement has been bred [developed or discovered] by the breeder while carrying out specific duties or duties entrusted to him by virtue of his position, the right to file the application shall belong to the employer unless otherwise provided in the employment contract.

A selection achievement shall be deemed to have been bred [developed or discovered] in the line of duty if in breeding [developing or discovering] of the selection achievement the breeder:

- carried out duties entrusted to him by virtue of his position;
- carried out specific duties entrusted to him for the purpose of breeding [developing or discovering] a selection achievement.

Where the employer, within four months after having been notified by the breeder of the bred [developed or discovered] selection achievement, has not filed an application with Kyrgyzpatent or has not assigned his right to file an application to another person, the breeder shall have the right to file an application and to be granted a patent in his own name. The employer shall in that case be entitled to use the selection achievement, subject to the payment of compensation to the patent owner. The amount of the compensation shall be stipulated in a contract between the parties.

Where a selection achievement has been bred by the employee using the expertise, material, technical or other means made available to him by the employer, but not as a result of carrying out duties entrusted to him by the employer or specific duties entrusted to him for the purpose of breeding a selection achievement, the right to obtain a patent shall belong to the employee. The employer shall in that case be entitled to use the selection achievement on the priority basis, subject to the payment of compensation to the patent owner. The amount of the compensation shall be stipulated in a contract between the parties.

Other relations arising out of the breeding [development or discovery] by the employee of a selection achievement shall be governed by the legislation of the Kyrgyz Republic.

## Article 7

### *Filing of the Application for the Grant of a Patent*

The application for the grant of a patent shall be filed with Kyrgyzpatent. The application for the grant of a patent shall contain:

- (1) the request for the grant of a patent;
- (2) a short abstract containing the description of the variety or breed;

- (3) proof of payment of the prescribed fee or of circumstances affording entitlement to exemption from payment, or to a reduction in the amount, of the prescribed fee.

The conditions to be met by the above documents of the application shall be determined by the Regulations for Drawing Up, Filing and Examination of Selection Achievement Applications (hereinafter referred to as "the Regulations") established and approved by Kyrgyzpatent.

The application for the grant of a patent shall relate to one selection achievement only.

The applicant shall be responsible for authenticity of information contained in the documents of the application.

The documents of the application shall be submitted in the Kyrgyz or Russian language. If the documents are submitted in a language other than specified above, the application shall be accompanied by a translation into Kyrgyz or Russian.

The filing date of an application shall be determined by the date of receipt by Kyrgyzpatent of the documents specified in the first part of this Article.

The applicant may withdraw his application at any time prior to his receipt of the decision to grant a patent.

#### Article 8

##### *Selection Achievement Denomination*

The selection achievement shall be designated by a denomination which will be its generic designation.

The denomination must enable the selection achievement to be identified. It must be short and different from any denomination which designates an existing selection achievement of the same or of a closely related plant or animal species. It may not consist solely of figures. It must not be liable to mislead concerning the characteristics, origin or value of the selection achievement or the identity of the breeder. It must not be contrary to humanitarian principles of morality.

Any person who uses the selection achievement shall be required to use the denomination thereof as registered in the State Register of Protected Selection Achievements.

Where the denomination of the selection achievement does not satisfy the requirements of this Article, the applicant shall be required, within the time limit prescribed by the Regulations, to submit another denomination. The change of the denomination at the initiative of the breeder shall be subject to payment of the prescribed fee.

The variety or breed shall be submitted in other countries under the denomination as registered in the State Register of Protected Selection Achievements. A competent authority of a foreign country shall register the submitted denomination of the selection achievement unless such denomination is found

unacceptable in its territory. The breeder, in that case, may be required to submit another denomination.

Any person who, within the territory of one of the foreign countries, offers for sale or markets the selection achievement protected within the said territory shall be obliged to use the denomination of that selection achievement, even after the expiration of the term of patent protection of or breeder's right for that selection achievement, except where, in accordance with part seven of this Article, a prior right prevents such use.

Prior rights of the third parties shall not be affected. Where the use of a denomination of a variety or breed by virtue of a prior right is prohibited to a person, who is obliged to use it in accordance with part six of this Article, the breeder shall be required to submit another denomination of the variety or breed.

The denomination of a selection achievement shall not be used as a trademark.

#### Article 9

##### *Priority of the Selection Achievement*

The priority of the selection achievement shall be determined by the filing date of the application with Kyrgyzpatent.

Where two [or more] applications claiming the same selection achievement are filed with Kyrgyzpatent on the same date, the priority of the selection achievement shall be determined by the application whose sending date is earlier. Where the examination finding is that the said applications have the same sending date, the patent may be granted on the application having an earlier registration number with Kyrgyzpatent.

The priority of the selection achievement may be determined by the filing date of the first application filed in a foreign country party to a bilateral or multilateral agreement for the protection of plant varieties / animal breeds concluded with the Kyrgyz Republic, if the first application was received by Kyrgyzpatent within 12 months from the filing date thereof.

The applicant wishing to enjoy the priority of the first application shall, when filing the application with Kyrgyzpatent, indicate the date of priority of the first application. The applicant shall be required, within three months following the filing date of the subsequent application, to furnish to Kyrgyzpatent a copy of the documents which constitute the first application, certified to be a true copy by the authority which received that application, and a sample or other evidence that the selection achievement which is the subject matter of both applications is the same.

The applicant shall be given an adequate opportunity and sufficient time, within two years following the expiration of priority of the first application or where the first application was rejected or withdrawn, to furnish to Kyrgyzpatent any information, documents or material required for the purposes of examination.

**TITLE III****EXAMINATION OF SELECTION ACHIEVEMENTS****Article 10***Examination of Selection Achievement Applications*

Examination of selection achievement applications shall be carried out by Kyrgyzpatent and shall include a preliminary examination of the claimed selection achievement and examination of its compliance with the prescribed conditions of protectability.

**Article 11***Preliminary Examination of Selection Achievement Applications*

A preliminary examination of a selection achievement application shall be carried out after two months have elapsed following the date of its filing with Kyrgyzpatent. A preliminary examination shall be carried out in order to determine the priority date of the selection achievement and verify the presence of the required documents and their compliance with the conditions prescribed by the Regulations and this Law.

A preliminary examination shall be carried out subject to payment of the prescribed fee.

Within one month after the filing date of the application the applicant shall have the right to supplement, amend or correct the documents of the application on his own initiative.

Where the filed application does not comply with the prescribed requirements with respect to form or content, the applicant shall be invited to furnish the corrected or missing documents within two months from the date of receipt of the invitation.

During the preliminary examination procedure the applicant may be invited to furnish additional materials. The applicant in that case shall comply with the invitation within two months following the date of its receipt.

At the request of the applicant containing valid reasons therefor and subject to payment of the prescribed fee, Kyrgyzpatent may extend the time limits specified in parts three and four of this Article up to six months.

If the applicant fails, within the prescribed time limit, to comply with the invitation or to file a request for extension of the said time limit, the application shall be deemed to have been withdrawn.

Where the applicant wishes to contest the decision taken on the basis of the preliminary examination finding he may do so, within three months following the date of receipt of the decision, by lodging an appeal with the Board of Appeal.

The procedure and time limits for consideration of appeals contesting the decision of the preliminary examination by the Board of Appeals shall be prescribed by Kyrgyzpatent.

Filing an appeal contesting the decision of the preliminary examination with the Board of Appeal shall be subject to payment of the prescribed fee.

Where the preliminary examination has produced a favorable result, the applicant shall be notified to the effect that his application has been accepted for the purposes of examination of its compliance with the conditions of protectability.

**Article 12***Publication of Selection Achievement Applications*

No later than four months after the date on which the preliminary examination of the selection achievement application has been completed, Kyrgyzpatent shall publish the particulars thereof in the official Gazette. The content of the published particulars shall be determined by Kyrgyzpatent.

Subject to payment of the prescribed fee, any person shall have the right to inspect the documents of the application after the particulars thereof have been published.

Publication of the particulars of the application shall not be effected if, before the expiration of the time limit for publication, the application has been withdrawn or a decision to grant a patent or to refuse the patent grant has been taken and may not be contested any longer.

The author of the selection achievement, who is not the patent owner, may waive his right to be identified in the published particulars of the application.

**Article 13***Provisional Legal Protection of Selection Achievements*

During the period between the date of publication of the application and the date of the grant of a patent the selection achievement claimed by the applicant shall be afforded the provisional legal protection.

After the patent has been granted, the patent owner shall be entitled to compensation for damages from any person who, during the period of the provisional legal protection, has carried out, without the authorization of the applicant, any acts provided for in part one of Article 24 of this Law.

During the period of the provisional legal protection of the selection achievement the applicant shall be authorized to sell or otherwise furnish seeds of the variety or pedigree material of the breed only for experimental purposes or where such acts are performed in connection with the assignment of rights in a selection achievement, or where the production of seeds or pedigree material is commissioned by the applicant for the purpose of the creation of stocks.

The provisional legal protection shall be deemed never to have been granted where the applicant or any other person with his consent has failed to comply with conditions provided for in part three of this Article.

## Article 14

*Examination of Selection Achievements for Compliance with Conditions of Protectability*

During the examination of the claimed selection achievement the compliance of the variety or breed with the conditions of protectability shall be verified and its priority shall be determined, where it has not been determined in the preliminary examination.

The examination shall consist in testing compliance of the claimed variety or breed with the conditions of distinctness, uniformity and stability and determining novelty, provided for in Article 4 of this Law and shall be carried out in accordance with methodology and within the periods approved by the State Commission and the State Pedigree Animal Inspection, respectively. The examination shall be carried out subject to payment of examination fee.

When the novelty of a selection achievement is determined, a notice of opposition of any interested person shall be taken into consideration provided it was received by Kyrgyzpatent within six months following the date of publication of the particulars of the application in accordance with Article 12 of this Law.

Kyrgyzpatent shall notify the applicant of the notice and give essential grounds of the opposition. In the case of disagreement with the notice of opposition the applicant may, within three months from the date of receipt of the said notice, lodge an appeal with the Board of Appeal stating the grounds thereof. The filing and consideration of the notice of opposition shall be subject to payment of the prescribed fee.

The Board of Appeal shall, on the basis of all available documents, take a decision and notify the applicant accordingly.

Where the selection achievement does not comply with the condition of novelty, a decision to refuse the patent grant shall be taken.

When testing a selection achievement as to its compliance with the conditions of distinctness, uniformity and stability, the State Commission and the State Pedigree Animal Inspection may take into account the results of tests which have been carried out on the basis of contracts concluded with natural persons/legal entities of the Kyrgyz Republic or competent authorities of other States on the basis of bilateral or multilateral agreements on the protection of plant varieties/animal breeds to which the Kyrgyz Republic is party, or which have been carried out by the applicant or with his authorization in the Kyrgyz Republic or abroad.

The State Commission and the State Pedigree Animal Inspection may require that the applicant furnish all information, documents or seeds /pedigree material required for the purposes of testing or invite him to carry out specific tests in respect of the variety or breed.

The State Commission and the State Pedigree Animal Inspection shall, on the basis of the results of tests of the selection

achievement, take a decision as to compliance thereof with the requirements of protectability and shall make the official description of the selection achievement.

During the technical development of the selection achievement, the State Commission and the State Pedigree Animal Inspection shall have the right, within the life of the patent, to supplement the official description.

Kyrgyzpatent shall, on the basis of results of testing of a selection achievement as to its compliance with the conditions of novelty, distinctness, uniformity and stability, and proceeding from the reports and findings of the State Commission and the State Pedigree Animal Inspection and subject to compliance of its denomination with the conditions prescribed in Article 8 of this Law, take a decision to grant or to refuse the grant of a patent.

The applicant may acquaint himself with the documents of examination and inspect the carrying out of tests.

The applicant may, within two months following the date of receipt of the decision on his application, request to furnish copies of all documents cited by the opposition and complete information on the tests which have been carried out.

## Article 15

*Contesting the Examination Decision and Reinstatement of Rights Contingent on a Time Limit*

In the case of disagreement with the examination decision the applicant may, within three months from the date of receipt of the decision or of the requested copies of documents cited by the opposition and complete information on the tests which have been carried out, lodge an appeal with the Board of Appeal stating the grounds therefor. The Board of Appeal shall consider the appeal within four months from the date of its receipt. With respect to complicated applications, subject to the applicant's approval, the above period may be extended. The applicant himself or through his patent agent may participate in the consideration of his appeal.

Lodging an appeal contesting the examination decision with the Board of Appeal shall be subject to payment of the prescribed fee.

The applicant may, within six months from the date of the decision taken by the Board of Appeal, contest it in court.

If the applicant fails to respect time limits prescribed in parts three, four and seven of Article 11, parts three and four of Article 14, part one of this Article, in Article 18 and in part one of Article 29 of this Law, Kyrgyzpatent may yet reinstate his rights provided that he presents legitimate reasons for the delay and pays the prescribed fee.

The request for reinstatement of rights contingent on a time limit may be filed by the applicant no later than 12 months after the expiration of the time limit in question.

**TITLE IV****REGISTRATION OF SELECTION ACHIEVEMENTS  
AND THE GRANT OF PATENT****Article 16***Registration of Selection Achievements and  
the Grant of Patent*

Within two months after the decision to grant a patent has been taken and subject to payment of the prescribed fee, Kyrgyzpatent shall register the selection achievement in the State Register of Protected Selection Achievements.

The registration fee shall be paid within two months following the receipt by the applicant of the examination decision to register his selection achievement or, subject to payment of an additional fee, within three months after the date of expiration of the said two month period.

The selection achievement patent shall be granted to the applicant. Where several applicants are indicated in the request for the grant of a patent, the patent shall be granted to the applicant whose name is mentioned first and shall be used jointly by all applicants on the basis of agreement between them.

Selection achievement patents shall be granted on behalf of the Kyrgyz Republic and shall be signed by Kyrgyzpatent.

The layout of the patent and the list of particulars contained therein shall be prescribed by Kyrgyzpatent.

The author of the selection achievement who is not the patent owner shall be granted by Kyrgyzpatent a certificate of authorship in accordance with Article 21 of this Law.

Kyrgyzpatent shall, at the request of the patent owner, rectify obvious and clerical errors in the granted patent.

In case of damage or loss of the granted patent the patent owner shall, subject to payment of the prescribed fee, be granted a duplicate of the patent.

**Article 17***The Term of Patent*

The term of patent for plant varieties shall be 30 years from the date of registration of the claimed selection achievement in the State Register of Protected Selection Achievements. For grapevines, ornamental, fruit and forest trees, including rootstocks thereof, and animal breeds, the said period shall be 35 years.

**Article 18***Maintenance of Patents*

Every patent owner shall, throughout the life of the patent, pay an annual maintenance fee. The first year in which the

annual fee is due shall be the first calendar year following the year in which the patent was granted.

**Article 19***Publication of Particulars of the Patent Grant*

Kyrgyzpatent shall, within six months following the registration of the selection achievement in the State Register of Protected Selection Achievements, publish the particulars of the patent grant in the Official Gazette. The full list of the published particulars shall be determined by Kyrgyzpatent.

**Article 20***Patent Fees*

Filing an application for the grant of a selection achievement patent, the carrying out of examination of the claimed selection achievement and the grant and maintenance of the selection achievement patent, as well as performance of any other legal acts in relation with the selection achievement shall be subject to payment of fees.

A list of acts for which fees are payable, the amounts of the fees and the time limits for payment thereof, and also conditions governing exemption from fees, the reduction or reimbursement of fees, shall be determined by the Government of the Kyrgyz Republic.

The fees shall be payable to Kyrgyzpatent by the applicant or the patent owner, or subject to an agreement between the parties, by any natural person or legal entity.

Any proceeds from collected fees, including foreign currency earnings, and payments for services and materials transferred to the account of Kyrgyzpatent shall be used to cover expenses incurred in connection with the carrying out of acts provided for in part one of this Article, as well as to procure technical equipment, to develop the automated system, to replenish the collection of patent information and to provide training and create incentives for the staff.

**TITLE V****THE RIGHTS OF AN AUTHOR OF A  
SELECTION ACHIEVEMENT****Article 21***The Author of a Selection Achievement*

A natural person whose creative work resulted in the breeding [development or discovery] of a selection achievement shall be recognized as the author thereof. Whereas selection achievement was bred [developed or discovered] by the joint creative work of several natural persons, those persons shall be recognized as joint authors thereof. The conditions for exercising the rights in the selection achievement shall be determined by agreement between them.

Natural persons shall not be recognized as joint authors where they have not made a personal creative contribution to the breeding [development or discovery] of the variety/breed, but have simply given the author (or authors) technical, organizational or material assistance or helped him (or them) in securing legal rights in the selection achievement.

Any person who usurps the breeder's authorship or acquires the status of a joint author by coercion shall be liable to criminal sanctions under the legislation of the Kyrgyz Republic.

The authorship of a selection achievement shall belong to its author and shall be an inalienable personal right. The right shall enjoy protection of unlimited duration.

Any dispute arising from the authorship of a selection achievement shall be settled in court.

Any dispute between the patent owner who is not the author of the selection achievement and the author who is not the patent owner shall be settled in court.

A certificate of authorship shall be granted by Kyrgyzpatent to all authors. The certificate shall attest the authorship and the entitlement of the author to remuneration from the patent owner for the use of the selection achievement.

In case of damage or loss of the granted certificate the author shall, subject to payment of the prescribed fee, be granted a duplicate of the certificate.

The layout of the certificate and the list of particulars contained therein shall be prescribed by Kyrgyzpatent.

#### Article 22

##### *Remuneration Payable to the Author of the Selection Achievement Who Is Not the Patent Owner*

The author of the selection achievement who is not the patent owner shall, for the life of the patent, be entitled to remuneration from the patent owner for the use of the bred [developed or discovered] selection achievement. The amount of remuneration and the terms of payment shall be stipulated in a contract between the patent owner and the author of the selection achievement.

Where there are several authors who bred [developed or discovered] the selection achievement, their respective share in remuneration shall be determined by agreement between the parties.

In the absence of agreement between the parties on the amount of remuneration and the terms of payment the dispute shall be referred to court.

## TITLE VI

### RIGHTS AND OBLIGATIONS OF PATENT OWNERS

#### Article 23

##### *The Patent Owner*

The right to obtain a patent shall belong to:

- the author (or authors) of the selection achievement;
- the employer in cases provided for in Article 6 of this Law;
- their successor in title, including the person who has acquired the right through its assignment.

#### Article 24

##### *The Rights of the Patent Owner*

The owner of the patent shall have the exclusive right to use a selection achievement.

The exclusive right of the patent owner shall extend to the following acts in respect of seeds/pedigree material of the protected selection achievement:

- production or reproduction;
- conditioning of seeds for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting from the territory of the Kyrgyz Republic;
- importing into the territory of the Kyrgyz Republic;
- stocking for any of the aforementioned purposes.

The right to a patent and the right to use the selection achievement arising out of the patent may be assigned to any natural person or legal entity. Assignment of rights may be effected on the basis of a contract of assignment or license contract.

The authorization of the patent owner shall be required in order to carry out acts provided for in part one of this Article with respect to:



- seeds of varieties or pedigree material of breeds which are essentially derived from the protected (initial) variety or breed, where the protected variety or breed is not itself an essentially derived selection achievement,
- seeds of varieties or pedigree material of breeds which are not clearly distinguishable from the protected variety or breed,
- seeds of varieties or pedigree material of breeds whose production requires the repeated use of the protected variety or breed.

A selection achievement shall be deemed to be essentially derived from another (initial) protected selection achievement when, being clearly distinguishable from the initial variety or breed,

- it is predominantly derived from the initial selection achievement, or from a selection achievement that is itself predominantly derived from the initial selection achievement, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial selection achievement,
- except for the differences which result from the act of deviation such as individual selection from the initial varieties or breeds, selection of induced mutant, or transformation by genetic engineering, it conforms to the initial selection achievement in the expression of essential characteristics that result from the genotype or combination of genotypes of the initial selection achievement.

#### Article 25

##### *Acts Not Infringing the Rights of the Patent Owner*

The performance of the following acts in respect of the protected selection achievement shall not constitute an infringement of the rights of the patent owner:

- acts done privately and for non-commercial purposes [the use of new plant varieties for the purpose of propagation on private plots for subsequent use as alimentary products];
- acts done for experimental purposes;
- the use as the initial material for the purpose of breeding other selection achievements, as well as acts referred to in part one of Article 24 of this Law in relation to the so bred selection achievements, except for the cases provided for in part four of Article 24 of this Law;
- the use, for the duration of two years, of the plant material gained on farms as seeds for the propagation of the variety on their own holdings. The list of such plant genera and species shall be determined by the Government of the Kyrgyz Republic;

- the reproduction of marketable animals for purposes of use on a given farm.

#### Article 26

##### *Maintenance of Selection Achievements*

The patent owner shall, throughout the life of the patent, maintain the variety or breed in such a way that all characteristics defined in the description of the variety or breed at the date of registration thereof in the State Register of Protected Selection Achievements are maintained.

On the request of the State Commission or the State Pedigree Animal Inspection the patent owner shall furnish seeds of the variety or pedigree material of the breed for the purposes of testing a new variety or breed and provide the opportunity for in-site inspection and approbation.

### TITLE VII

#### DEFENCE OF THE RIGHTS OF PATENT OWNERS

#### Article 27

##### *Liability for Infringement of the Rights of Patent Owners*

Any infringement of the patent owner's rights provided for in this Law shall entail civil, administrative and criminal liability.

Any licensee may also lodge an infringement appeal where a license contract provides for such opportunity.

Any natural person or legal entity who, in violation of the requirements prescribed by this Law in respect of the exclusive rights of the patent owner and without his authorization, imports into the territory of the Kyrgyz Republic seeds, pedigree material or other selection achievement shall be deemed to be an infringer of the patent and his selection achievement shall be deemed infringing.

Selection achievements imported into the territory of the Kyrgyz Republic from other States where they have never been or ceased to be protected but at the same time are protected under this Law, shall also be deemed infringing.

#### Article 28

##### *Defense of the Rights of Patent Owners*

At the request of the patent owner, the infringer shall:

- (a) recognize the rights of the patent owner;
- (b) restore the situation that existed before the infringement has occurred and cease the acts infringing or potentially liable to infringe the rights of the patent owner;

- (c) compensate the damages sustained, including lost profits;
- (d) recover profits derived by him from the infringement of the rights of the patent owner, instead of compensating the damages sustained;
- (e) take any other measures provided for in legislative enactments in relation with defense of the rights of patent owners.

Measures prescribed in paragraphs (c) and (d) of this Article shall be applied by the patent owner at his choice.

In order to defend his rights, the patent owner may file an appeal with court or with a competent investigation authority.

At the judgement of the court infringing seeds or pedigree material must be seized. The seized infringing seeds or pedigree material shall be destroyed unless where the patent owner requests to deliver up the same to him.

Where there is sufficient proof that the rights of the patent owner have been infringed, the competent investigation authority or the court shall be obliged to take measures in order to find and seize the allegedly infringing selection achievement.

## TITLE VIII

### REVOCATION AND CANCELLATION OF PATENTS

#### Article 29

##### *Revocation of the Patent*

Any person may, within three months following the date of publication of the particulars of the patent grant, file with the Board of Appeal a request for revocation of the patent stating the grounds therefor. Kyrgyzpatent shall send a copy of the request to the patent owner. The patent owner shall, within three months from the sending date of the copy, furnish his reply stating valid reasons in support of the grant.

Filing and consideration of a request for revocation of a patent shall be subject to payment of the prescribed fee.

The Board of Appeal shall take a decision on the request within six months from its receipt unless additional testing is required.

The patent shall be revoked in the following cases:

- where on the date of the grant of the patent the selection achievement did not comply with the condition of novelty, distinctness, uniformity or stability;
- where the person indicated in the patent as the patent owner had no legitimate grounds for obtaining the patent.

#### Article 30

##### *Cancellation of Patent*

Kyrgyzpatent shall cancel the patent in the following cases:

- where the patent owner fails to pay the annual maintenance fee by the prescribed time limit;
- where the patent owner does not provide at the request of the State Commission or the State Pedigree Animal Inspection, within the prescribed time limit, seeds, pedigree material, documents or other relevant information deemed to be necessary for testing the protectability of the selection achievement or fails to provide opportunity for in-site inspection of the selection achievement;
- where the selection achievement no longer complies with the conditions of uniformity and stability.

#### Article 31

##### *Contesting the Decisions of the Board of Appeal or Kyrgyzpatent*

A decision to grant or to refuse the grant of a patent, or to revoke a patent taken by the Board of Appeal and a decision to cancel a patent taken by Kyrgyzpatent may be contested in court.

## TITLE IX

### LICENSES

#### Article 32

##### *License Contract*

Under a license contract (a contract for the grant of an exclusive or non-exclusive license) the patent owner (the licensor) grants, within the limits of rights, periods, territory and terms of payment specified in the contract, the right to use the selection achievement to another person (the licensee).

Under a non-exclusive license the licensee is afforded the right to use the selection achievement within the periods and the scope of the transferred rights specified in the license contract. Under a non-exclusive license the licensor retains his right to grant licenses to third parties or to use the selection achievement by himself. The licensee shall not transfer the license to the third parties and shall have no right to grant sub-licenses.

Under an exclusive license the licensee is afforded the exclusive right to use the selection achievement on agreed terms and within the periods and territory specified in the license contract. While granting an exclusive license the licensor shall have no right to use the selection achievement or to grant licenses to third parties in a given territory.

The terms of a license contract imposing on the licensee limitations which do not arise from rights afforded to him by the patent or which are not indispensable for the maintenance of the patent shall be deemed null and void.

Any license contract or contract of assignment provided for in part two of Article 24 of this Law shall be registered with Kyrgyzpatent within one month following the date of its conclusion, failing which it shall be deemed null and void. The registration of a license contract or a contract of assignment shall be subject to payment of the prescribed fee.

### Article 33

#### *Open Licenses*

The patent owner may publish in the Official Gazette of Kyrgyzpatent a notice to the effect that he undertakes to grant the right to use the selection achievement to any person subject to payments specified in the notice. The payments shall be effected as from the date on which the patent owner has been notified accordingly.

In such a case the maintenance fee shall be reduced by 50% as from January 1 of the year of publication of the notice.

Kyrgyzpatent shall enter particulars of the grant of an open license including the amount of payments in the State Register of Protected Selection Achievements.

At the request of the patent owner and subject to the consent of all holders of the open license Kyrgyzpatent shall register the lapse thereof in the State Register of Protected Selection Achievements.

Filing the request for the lapse of an open license and publication of the particulars of the lapse in the Official Gazette shall be subject to payment of the prescribed fee.

### Article 34

#### *Compulsory Licenses*

Where the patent owner or the person to whom the right to use the selection achievement was assigned has failed to use the selection achievement within three years following the date of the patent grant and has declined an offer to conclude a license contract on terms conforming to established practice, any person wishing and being in a position to use the selection achievement may file an appeal with the court requesting the grant of a compulsory license.

If the patent owner fails to furnish proof to the effect that non-use of the selection achievement is justified by reasonable grounds, the court shall grant a compulsory license and shall determine the limits of the use, the amount and the terms of payments. The amount of payments shall not be lower than the value of the license to be determined in accordance with established practice.

When granting a compulsory license the licensee shall be afforded the right to use the selection achievement within the scope of rights afforded by the grant of non-exclusive license.

At the order of court the patent owner may be required to furnish the licensee, against payment of equitable compensation and on reasonable terms, with seeds of the variety or pedigree material of the breed in a quantity sufficient for the purposes of use of the compulsory license in an efficient manner.

A compulsory license shall only be granted where the following conditions are met:

- a person requesting the grant of a compulsory license must be in a position, financially, technically and scientifically, to use the rights of the patent owner in an efficient manner;
- the patent owner has refused the applicant the right to produce or market seeds of the variety or pedigree material of the breed in relation to the protected selection achievement in a way sufficient to satisfy the needs of the society or does not intend to grant the right on reasonable terms;
- there are no grounds hindering the patent owner from granting the right to use the selection achievement in a required manner;
- the application requesting the grant of a compulsory license has been filed after three years have passed after the date of publication of the particulars of the patent grant.

A compulsory license shall be granted for a period to be determined by the court.

The court may decide to revoke a compulsory license if its holder has infringed the terms under which the license was granted.

The particulars of the compulsory license grant shall be published in the Official Gazette and registered in the State Register of Protected Selection Achievements.

Registration and publication of the particulars of the compulsory license grant in the Official Gazette shall be subject to payment by the licensee of the prescribed fee.

## TITLE X

### INTERNATIONAL COOPERATION

#### Article 35

##### *The Right To File an Application Abroad*

The applicant shall have the right to file an application for the protection of the selection achievement with a competent authority of any other State. Prior to filing an application abroad it shall be registered with Kyrgyzpatent.

The cost of obtaining a protection right of a selection achievement outside the territory of the Kyrgyz Republic shall be borne by the applicant.

#### Article 36

##### *Rights of Foreign Natural Persons and Legal Entities*

Foreign natural persons and legal entities shall, on the basis of international treaties to which the Kyrgyz Republic is party, or on the basis of reciprocity, enjoy the rights provided for in this Law on the same footing as natural persons and legal entities of the Kyrgyz Republic.

#### Article 37

##### *The Effect of International Treaties*

Where an international treaty to which the Kyrgyz Republic is party contains provisions different from those specified in this Law, the former shall prevail.

### TITLE XI

### FINAL PROVISIONS

#### Article 38

##### *Export and Import Control with Respect to Selection Achievements*

Export and import control with respect to selection achievements registered in the State Register of Protected Selection Achievements shall be carried out by the organizations within the State Customs Committee of the Kyrgyz Republic.

#### Article 39

##### *Legal Regime of Certificates and Inventor's Certificates Granted for Selection Achievements Registered by the USSR State Committee for Inventions and Discoveries*

The effect of certificates and inventor's certificates granted for selection achievements registered by the USSR State Committee for Inventions and Discoveries shall be recognized in the territory of the Kyrgyz Republic.

The owners of certificates and inventor's certificates granted for plant varieties whose terms of 20 years and 25 years for grapevines, ornamental, fruit and forest trees and animal breeds, respectively, from the filing date have not expired, shall have

the right to request the exchange thereof for the patents of the Kyrgyz Republic. The request shall be filed with Kyrgyzpatent. The procedure for filing and consideration of the request shall be prescribed in the Regulations.

The applicant shall have the right, with respect to applications for the grant of inventor's certificate for a new variety or breed filed prior to enactment of this Law and which variety or breed has been tested by the State Commission or the State Pedigree Animal Inspection, respectively, and in respect of which a decision to approve its use has been taken, to request the grant of a selection achievement patent of the Kyrgyz Republic provided that the selection achievement complies with the conditions of protectability specified in this Law.

The request for the grant of the patent shall be filed with Kyrgyzpatent within 12 months from the date of enactment of this Law.

The applications on which the request specified in part three of this Article has been filed within the prescribed time limit, shall be considered in accordance with the procedure prescribed in this Law and the Regulations. In such a case the condition of novelty of the selection achievement in accordance with Article 4 of this Law shall be disregarded.

The selection achievement patent of the Kyrgyz Republic granted on the above request shall be valid from the date of registration of the claimed selection achievement in the State Register of Protected Selection Achievements and until the expiration of 20 years for plant varieties and 25 years for grapevines, ornamental, fruit and forest trees and animal breeds, respectively, from the filing date.

#### Article 40

##### *Enactment of this Law*

1. This Law shall enter into force as of the date of publication thereof.

2. The Government of the Kyrgyz Republic, within three months from the date of entry into force of this Law, shall be responsible:

- for approving a list of botanical and zoological genera and species to be protected under this Law,

for bringing its legal enactments into line with this Law.

## NORWAY

# REGULATIONS CONCERNING THE PLANT BREEDER'S RIGHT<sup>1</sup>

Laid down by the Royal Ministry of Agriculture on 6 August 1993, pursuant to Act No. 32 of 12 March 1993 relating to the Plant Breeder's Right and the Royal Decree of 14 May 1993, and amended on 6 February 1995 and 16 July 1997.

## CHAPTER I

## GENERAL PROVISIONS

*Scope of Regulations*

## Section 1

The plant breeder's right may be granted for varieties of all genera or species of plants, including hybrids between genera and species.

## Section 2

In addition to variety owners who are resident or have their registered office in or are nationals of a State which is a member of the Union of New Varieties of Plants, plant breeders right may be granted to variety owners who are resident or have their registered office in or are nationals of a State which is a member of the World Trade Organisation.

In respect of plant varieties of particular significance to Norwegian plant production, or when warranted by other considerations, the Plant Variety Board may grant plant breeder's right to applicants from countries which are not member states of the Union for the protection of New Varieties of Plants or the World Trade Organisation. (cf. Act relating to the Plant Breeder's Right, Section 1, third paragraph)

*Priority*

## Section 3

To secure priority rights as provided in the third paragraph of Section 2 of the Act relating to the Plant Breeder's Right, the applicant must:

- (a) submit a written claim thereof together with an application for breeders' rights in Norway
- (b) within three months of filing a priority claim, furnish to the Plant Variety Board a copy of the documents which constitute the application upon which the priority claim is based. These documents must be certified by the authority which received the first application.

## CHAPTER II

## APPLICATION FOR PLANT BREEDERS' RIGHTS

*The Application*

## Section 4

A written application in Norwegian shall be submitted to the Plant Variety Board. The application shall be signed by the applicant or by his agent if the applicant is so represented. The application shall contain:

- (a) The name and address of the original breeder and the applicant, and the name and address of any agent representing the applicant.
- (b) A specific power of attorney for any agent representing the applicant.
- (c) The grounds for the applicant's title to the variety in question if the applicant is not the original breeder.
- (d) A description of the variety specifying its botanical classification, origin and the characteristics which distinguish it from other varieties, together with the results of any tests carried out on the variety and a description of the propagation of the material.
- (e) A proposed denomination.
- (f) Information stating whether protection has been sought in other countries for the variety in question, the name or names under which protection has been sought, and the decisions of the authorities in these countries on the applications.
- (g) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.
- (h) Information on previous exploitation of the variety which according to litra (d) of the first paragraph of Section 2 of Act relating to the Plant Breeder's Right may hinder the granting of breeders' rights.

Applications shall be submitted together with payment of such application fees as specified in Section 18 of these Regulations.

<sup>1</sup> Translation provided by the Norwegian authorities

*Processing of Applications*

## Section 5

The Plant Variety Board shall first undertake a provisional examination of the application in accordance with Section 6 of the Act relating to the Plant Breeder's Right. Information pertaining to the application shall be sent to the relevant authorities in the other member states for their comments (cf. Act relating to the Plant Breeder's Right, Section 5, third paragraph).

The Plant Variety Board shall enter into agreements concerning verification of the originality of varieties with the domestic and foreign institutions responsible for this task, and the board shall decide, for each individual application, whether the variety shall be tested, the scope of testing and where such testing shall be carried out (cf. Act relating to the Plant Breeder's Right, Section 9).

When the originality of the variety has been verified, the Plant Variety Board shall determine whether the application fulfils the requirements of the Act relating to the Plant Breeder's Right, Section 2, first paragraph, litra (a) to (c).

Where a right of priority is claimed in accordance with Section 2 of the Act relating to the Plant Breeder's Right, the Plant Variety Board cannot direct the applicant to provide the information and the plant material required to consider the application earlier than four years after the expiry of the time limit for priorities.

If the application comprising the basis of a right of priority claim is decided with the result that neither a breeder's right nor a patent is granted, the Plant Variety Board may set a new deadline for supplying information and plant material.

The Plant Variety Board may obtain expert opinions.

The results of the verification of originality shall be submitted to the applicant before the Plant Variety Board proceeds with the application in question.

*Registration*

## Section 6

The Plant Variety Board shall maintain a register of applications for plant breeders' rights. This register shall be open to the public. For each application, the register shall contain:

- (a) The application number and date of receipt.
- (b) The original breeder's name and address.
- (c) The applicant's name and address.
- (d) The name and address of any agent representing the applicant.
- (e) If a right of priority is claimed, the country where the application invoked was filed, as well as the

date of filing of this application and the application number.

- (f) The variety's botanical classification.
- (g) The proposed denomination
- (h) Incoming communications and statements of fees which have been paid.
- (i) Outgoing communications and any decisions made in respect of the application.
- (j) Delays in dealing with the application due to conflicts with previously submitted applications. Correlating remarks shall also be entered into the prior application's register entry.
- (k) Lists of any transfers of applications (cf. Act relating to the Plant Breeder's Right, Section 8).

*Public Information*

## Section 7

As of the date upon which the Plant Variety Board publishes notice of an application pursuant to Section 7 of the Act relating to the Plant Breeder's Right, all documents pertaining to the case shall be accessible to the general public.

If so requested by the applicant, the documents shall be made accessible sooner than the date stipulated in the foregoing paragraph.

If a document contains business secrets which have no bearing on the plant variety for which breeder's right is sought, the Plant Variety Board may, when special grounds so indicate, and upon application, determine that the document in question shall be withheld from the public. If an application to this effect has been filed, the document shall be withheld from access until such time as the said application is turned down.

Proposals, drafts, considerations and other working documents of a similar nature, produced by the Plant Variety Board in the process of dealing with a case, shall not be accessible to the public unless the Plant Variety Board determines that they shall be.

*Public Notice*

## Section 8

The Plant Variety Board shall, in a publication issued periodically, publish notice of the application (cf. Section 7 of the Act relating to the Plant Breeder's Right). The notice shall contain:

- (a) The application number and date of receipt.
- (b) The original breeder's name and address.

- (c) The applicant's name and address.
- (d) The name and address of any agent representing the applicant.
- (e) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.
- (f) The variety's botanical classification.
- (g) The proposed denomination.
- (h) Time limit for objections.

## Section 9

Upon publication of notice of an application for a breeder's right in accordance with Section 7 of the Act relating to the Plant Breeder's Right, if any demand or proposal is forthcoming to change the denomination of the variety, the Plant Variety Board shall publish notice thereof.

Such notice shall contain, in addition to the information specified in Section 8 litra (b), (c), (d) and (f), the application number, the date of the proposal, the denomination previously published and the proposed new denomination.

## Section 10

Notice of the granting of a plant breeder's right shall be published together with the information specified in Section 8, litra (b), (c), (d), (f) and (h) as well as the registration number, the approved denomination and the date when the right was granted (cf. Section 10 of the Act relating to the Plant Breeder's Right).

## Section 11

Notice of reconsideration of an application due to objections to the granting of a breeder's right, together with the result of the reconsideration, shall be published.

Such notice shall contain the items of information specified in Section 8 litra (b), (c), (d) and (f) in addition to the application number, the denomination and changes resulting from the objections (cf. Section 11 of the Act relating to the Plant Breeder's Right).

Notice of the result of the reconsideration shall be published together with the information specified in Section 8 litra (b), (c), (d) and (f) in addition to the registration number, approved denomination, and the date when the right was granted, or in addition to the proposed denomination and the date when the application was turned down.

## Section 12

Notice of expiration of a breeder's right shall, in addition to the items of information specified in Section 8 litra (c) and (f), shall state the registration number of the variety, the approved denomination, the date of expiration of the breeder's right and the reason for the expiration.

*Objections*

## Section 13

Any objection filed against published applications or denominations shall state the grounds of the objection.

If the objection is submitted by an agent, the said agent shall also submit his power of attorney.

Objections shall be written in Norwegian.

The Plant Variety Board shall notify the applicant of any objections.

*Registration in the Register of Plant Varieties*

## Section 14

If a breeder's right is granted pursuant to Section 10 of the Act relating to the Plant Breeder's Right, the variety shall be entered in the Register of Plant Varieties. The Register of Plant Varieties shall contain:

- (a) The registration number.
- (b) The original breeder's name and address.
- (c) The name and address of the holder of the breeder's right.
- (d) The name and address of any agent representing the holder of the breeder's right.
- (e) The variety's botanical classification.
- (f) The approved denomination.
- (g) The date of
  - receipt of the application
  - published notice of the application
  - registration and granting of breeder's right
  - any changes in denomination
- (h) Information on reconsideration of applications due to objections, and the final outcome of the reconsideration.
- (i) If a right of priority is claimed, the name of the country where the application invoked was filed, as well as the date of filing of this application and the application number.

*Annotations in the Register of Plant Varieties*

## Section 15

The following annotations shall be recorded in the Register of Plant Varieties:

- (a) Annual fees paid or deferrals granted.
- (b) Forfeiture of a breeder's right due to non-payment of annual fee.
- (c) Request for reinstatement, and reinstatement fees paid.
- (d) Action to have a breeder's right annulled, transferred, or to obtain a compulsory license.
- (e) Annotation of a final judgement in a court of law. The main elements of the decision shall be included in this entry.
- (f) Declared expiration of a breeder's right.
- (g) Transfer of a breeder's right or granting of a compulsory license, the name and address of the holder of the right and the date of the transfer or the granting of the compulsory licence.
- (h) Attachment of a breeder's right, cf. Enforcement Act, Section 7-20, eighth paragraph.
- (i) Changes in respect of agents.

*Reinstatement*

## Section 16

An applicant who has exceeded a time limit laid down in the Act relating to the Plant Breeder's Right shall, upon application, be accorded reinstatement if he has made every effort which may reasonably be required. Such application shall be submitted in writing to the Plant Variety Board no later than two months following the termination of the hindrance which prevented him from meeting the deadline, though no later than one year after the deadline.

The omission must be rectified by the close of the stated period and the stipulated fee paid.

*The Plant Variety Board*

## Section 17

The Plant Variety Board shall consist of seven members with personal deputies.

The Plant Variety Board shall be composed of members having a thorough knowledge of the plant varieties in question, as well as members competent in trade mark law and administration and/or legal experts.

The Ministry of Agriculture shall appoint the members of the Plant Variety Board.

The Norwegian Agricultural Inspection Service shall act as secretariat for the Plant Variety Board.

*Fees*

## Section 18

For activities conducted in connection with implementation of the Act relating to the Plant Breeder's Right, the following fees shall be paid:

Application fee	NOK	1,500
Annual fee for a protected variety	"	1,800
Additional charge for extension of deadline for payment of the annual fee	"	500
Appeal fee	"	1,300
Resumption fee	"	500
Reinstatement request fee	"	1,000
Printing fee, per page	"	200
Fee for annotation of transfers and denomination changes in the Register	"	200
Fee for annotation of changes in respect of agents in the Register	"	200
Fee for transcripts from the Register	"	200

A fee shall additionally be paid for verification of the originality of a variety. The Plant Variety Board shall set the verification fee after assessing each individual case, on the basis of the fees of testing institutions.

No annual fee shall be paid for the year in which a breeder's right is granted.

The Plant Variety Board may, in special cases, defer payment of annual fees.

*Deadlines for Payment of Fees*

## Section 19

Where no specific deadlines are stipulated in the Act relating to the Plant Breeder's Right or in these Regulations for payment of fees, they fall due no later than one month after the Plant Variety Board has requested payment.

Fees paid by mail, cable, postal money order, postal giro or bank giro, are held to be paid on the date stamped on the letter or instrument of transfer by a domestic Norwegian post office or bank.

Deadlines expiring on a day on which the Norwegian Agricultural Inspection Service is not open for business shall be extended to the next subsequent day on which the Norwegian Agricultural Inspection Service is open for business.



*Fee Refunds*

## Section 20

Fees which are not paid in due time, or which are not paid in full by the deadline with the result that payment cannot be validated, shall be refunded.

*Entry into Force*

## Section 21

These Regulations enter into force as of 16 July 1997.

## PANAMA

**LAW NO. 23 OF JULY 15, 1997, ON INDUSTRIAL PROPERTY  
TITLE V  
PROVISIONS ON THE PROTECTION OF NEW PLANT VARIETIES<sup>1,2</sup>**

## CHAPTER I

## PURPOSE AND SCOPE

## Article 231

*Purpose*

The purpose of this Title is to recognize and accord to the breeder of a new plant variety a right, to be known as a “breeder’s right,” under the conditions hereinafter defined.

## Article 232

*Definitions*

The following terms and definitions shall be adopted for the purposes of this Title:

*National Seed Committee:* The national Committee created by Decree No. 3 of April 5, 1978, which consists of representatives of State entities and the private sector. Its purpose is to control the quality of the seed and propagating material used in the country, to certify and register seed and to supervise compliance with the applicable legal provisions. It has a Technical Secretariat which includes the Seed Reproduction Unit, the Official Seed Laboratory and the Certification and Registration Unit.

*Council for the Protection of New Plant Varieties:* The consultative body comprising the various circles and bodies interested in the protection of new plant varieties and presided over by the Minister for Agricultural Development.

*International Convention for the Protection of New Varieties of Plants (CIPOV), of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978:* The International Convention to which States may adhere, the objective of which is the protection of plant varieties by an intellectual property right. It constitutes the legal basis for the International Union for the Protection of New Varieties of Plants (UPOV).

*Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI):* The State entity where the industrial property registers of the Republic of Panama are kept. For the purposes of this Title, it has the task of keeping the Register of Protected Varieties and granting breeders’ rights.

*Reference specimen:* The smallest sample used by the breeder to maintain his variety, from which the representative sample is taken for the purposes of the registration of the variety.

*Institute of Agricultural Research of Panama (IDIAP):* The State entity which has its own legal personality and assets and enjoys administrative, economic and technical autonomy, and whose task is to regulate the research activities and to formulate and apply the scientific and technological policies of the public sector in the field of agriculture and livestock. For the purposes of this Title, it is the entity entrusted with the technical analyses required to determine whether a variety satisfies the conditions set forth in this Title for its registration and for the grant of breeders’ rights in respect of it.

*Reproductive or vegetative propagating material:* Seed, fruit, plants or parts thereof that are used for the reproduction of plants. It includes the whole plant.

*Breeder:* The natural or legal person who has created or discovered a new plant variety, either through natural means or by genetic manipulation.

*Recognized Priority:* The precedence for the grant of breeders’ rights, based on the filing abroad of an application relating, either wholly or in part, to the same subject matter as a later application filed in the Republic of Panama.

*Register:* The Register of Protected Varieties kept at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries.

*Claim:* A petition for the protection of an essential characteristic of a new plant variety, made in a precise and specific way in the application for registration and granted, where relevant, in the corresponding title.

*Title:* When used with a lower-case initial letter, a document that in one way or another attests, constitutes or confers rights.

*International Union for the Protection of New Varieties of Plants (UPOV):* The intergovernmental organization with its headquarters in Geneva (Switzerland), based on the International Convention for the Protection of New Varieties of Plants and whose members are the signatory countries of the Convention.

*Variety:* A plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be

<sup>1</sup> Translation provided by Panama authorities with the collaboration of the Office of UPOV

<sup>2</sup> Entered into force on March 19, 1999

- 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 a unit with respect to its suitability for being propagated unchanged.

*Protected Variety:* A variety entered in the Register of Protected Varieties of the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries which is the subject of breeders' rights.

#### Article 233

##### *Scope*

This Title shall apply to the plant genera and species specified in the Regulations.

#### Article 234

##### *National Treatment and Reciprocity*

The following shall be the beneficiaries of the rights conferred by this Title:

1. Nationals of the Republic of Panama and all persons having their place of residence or registered office in Panama.
2. Nationals of the member States of the International Union for the Protection of New Varieties of Plants (UPOV), and all persons having their place of residence or registered office on their territory.
3. Nationals of any State which, without being a member of the International Union for the Protection of New Varieties of Plants, grants effective protection to the nationals of the Republic of Panama. The Executive shall determine, for the purposes of this paragraph, whether the protection granted by another State is effective and may be reciprocated.

## CHAPTER II

### SUBSTANTIVE LAW

#### Article 235

##### *Nature of the Breeder's Right*

The breeder's right shall be treated for all purposes as an industrial property right, to which the legal provisions in force with respect to that property shall subsidiarily apply, except where otherwise provided in this Title.

#### Article 236

##### *Entitlement*

Entitlement to breeders' rights shall vest in the breeder or his successor in title.

Where two or more persons have created or discovered a variety jointly, entitlement to protection shall vest in them jointly. Subject to any agreement to the contrary between them, the shares of joint breeders shall be equal.

Where the breeder is an employee, the entitlement to breeders' rights shall be determined by the employment relationship in the context of which the variety was bred or discovered and in accordance with the law applicable to that relationship.

#### Article 237

##### *Features of the Right*

Breeders' rights may be assigned or transferred by contract or succession. The assignee or successor may use the rights, derive benefits therefrom and dispose of them during their period of validity in the same way and under the same conditions as his predecessor. The holder of the rights may grant licenses of exploitation for the use of the protected variety to third parties. The Executive shall regulate this matter further.

#### Article 238

##### *Scope of Breeders' Rights*

The authority of the breeder to whom breeders' rights have been granted shall be required for the following acts in respect of reproductive or vegetative propagating material of the protected variety:

1. Production.
2. Offering for sale, sale or other marketing.
3. Repeated use of the new variety for the commercial production of another variety.
4. Use of ornamental plants or parts thereof that are normally marketed for purposes other than propagation, when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

The breeder may make the authority granted in accordance with the preceding paragraphs subject to such conditions and limitations as he may specify.

#### Article 239

Breeders' rights shall extend to all botanical species and genera, and shall apply in general to the whole plant, including any type of flowers, fruit and seed and any other part thereof

which may be used as reproductive or vegetative propagating material.

The use, by a farmer on his own holding, of the harvest produced from material acquired beforehand in an adequate manner shall not be deemed an infringement of breeders' rights. However, the said material may under no circumstances be marketed, sold or disposed of lawfully as seed or propagating material.

#### Article 240

The breeder's authority shall not be required either for the use of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. His authority shall however be required where repeated use of the variety becomes necessary for the commercial production of another variety.

#### Article 241

##### *Seed Marketing Authorization*

With respect to the requirements for the sale of seed, the National Seed Committee shall take the provisions of this Title into account.

#### Article 242

##### *Judicial Assignment of Breeders' Rights*

Where an application for breeders' rights has been filed by a person not entitled to protection, the holder of the better right or the entitled person may bring an action for the assignment to him of the application or of the breeders' rights if already granted.

The action for assignment shall be barred after five years from the date of publication of the grant of breeders' rights. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.

Where the action succeeds, any right granted to third parties on the basis of the breeders' rights in the intervening period shall lapse.

However, the holder of any exploitation right acquired in good faith who has taken genuine and effective measures with a view to exercising his right before the date of the notification of the action or, failing such notification, of the decision, may perform or continue to perform the act of exploitation resulting from the measures taken, subject to payment of equitable remuneration to the entitled person.

## Section I

### Conditions for the Grant of Breeders' Rights

#### Article 243

##### *Conditions for Protection*

Breeders' rights shall be granted where the variety possesses the following characteristics: it is new, distinct, uniform and stable, and has been given a denomination in accordance with the provisions of Articles 265 *et seq.*

The grant of breeders' rights may only be made subject to the aforementioned conditions, and the rights shall be granted provided that the applicant has complied with the formalities established by this Title and paid the required fees.

#### Article 244

##### *Novelty*

The variety shall be deemed new if, on the filing date of the application or where relevant on the priority date, reproductive or vegetative propagating material or harvested material of the variety has not been offered for sale or marketed, by or with the consent of the breeder or his successor in title:

1. On the territory of the Republic of Panama for longer than one year.
2. On the territory of any other State for longer than four years or, in the case of trees and vines, for longer than six years.

The Executive shall specify in the Regulations the cases in which a sale or another form of disposal to others will not affect the novelty of the variety.

#### Article 245

##### *Distinctness*

The variety shall be deemed distinct if it is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

The filing, in any country, of an application for breeders' rights or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety in respect of which the application is filed a matter of common knowledge from the date of the application, provided that the latter leads to the grant of breeders' rights or entry in the catalogue, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors, such as exploitation of the variety already in progress, entry of the variety in the register of varieties kept by a recognized professional association or inclusion of the variety in a reference collection.

#### Article 246

##### *Uniformity*

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

#### Article 247

##### *Stability*

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

### Section II

#### Creation, Duration, Limitation

#### Article 248

##### *Creation of the Right*

Breeders' rights shall be created by registration with the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, under the terms and conditions set forth in this Title.

#### Article 249

##### *Duration of the Right*

The rights shall be granted to the breeder for a period of 20 years, counted from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including their rootstocks in each case, the period of protection shall be 25 years. Breeders' rights shall remain in force only as long as the fees arising from registration and maintenance of the rights in accordance with the provisions of this Title are paid.

On the expiry of the periods of protection the varieties shall be regarded as having become public property.

#### Article 250

##### *Restrictions on the Exercise of the Protected Rights*

The free exercise of the exclusive rights accorded to the breeder may not be restricted otherwise than for reasons of public interest. In such cases, the grant of compulsory licenses for the exploitation of registered varieties may be authorized. When granting a compulsory license, the competent authority shall fix the equitable remuneration to be paid to the breeder by the holder of the compulsory license.

The Executive shall regulate this matter further.

#### Article 251

##### *Measures Regulating Commerce*

Breeders' rights shall be independent of any measure taken by the Republic of Panama to regulate within its territory the production, certification and marketing of material of varieties or the import or export of such material. The right shall be deemed assimilated to the rights resulting from industrial property, and the competition law provisions applicable to such property shall be applicable also to it.

### CHAPTER III

#### REGISTRATION AND APPLICATION

#### Section I

##### **Registration**

#### Article 252

##### *Register of New Plant Varieties*

The Register of New Plant Varieties shall be kept at the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries (DIGERPI).

The Directorate General of the Industrial Property Registry shall maintain for that purpose a Register of New Plant Varieties in which applications filed and rights granted shall be recorded. The Directorate General of the Industrial Property Registry shall distinguish between the Register of Applications and the Register of Rights, both of which shall be open to public inspection.

Any person having a legitimate interest may:

1. Inspect the documents relating to applications.
2. Inspect the documents relating to breeders' rights already granted.

3. Visit the growing tests and examine the other necessary tests relating to the technical examination.

In the case of varieties the production of which requires repeated use of other varieties (components), the applicant may, when making his application, request that the documents and tests relating to the components be withheld from public inspection.

The Directorate General of the Industrial Property Registry shall preserve the originals or copies of the documents in the files for five years after the withdrawal or rejection of the application or the lapse of breeders' rights, as the case may be.

#### Article 253

##### *Gazette*

The Directorate General of the Industrial Property Registry shall at regular intervals publish registrations of new plant varieties, and applications therefor, in the Official Gazette of the Industrial Property Registry under the following headings:

1. Applications for the grant of breeders' rights.
2. Applications for variety denominations.
3. Registrations of new denominations for protected varieties.
4. Withdrawals of applications for the grant of breeders' rights.
5. Rejections of applications for the grant of breeders' rights.
6. Grants of breeders' rights.
7. Changes in the persons (applicants, holders and procedural representatives).
8. Lapses of breeders' rights.
9. Licenses.
10. Official announcements.

#### Article 254

##### *Fees*

The administrative acts of The Directorate General of the Industrial Property Registry shall give rise to the payment of fees for services rendered. For the purposes of this Title, the fees and the amounts specified in Law No. 35 of May 10, 1996, on Industrial Property for the registration of patents and industrial designs shall be applicable.

#### Article 255

##### *Registration with the National Seed Committee*

Registrations made with the National Seed Committee of Panama shall be valid for the purposes set forth in the corresponding legislation, but shall not confer any breeders' rights, nor may they be claimed on the territory of any other member State of the International Union for the Protection of New Varieties of Plants. Producers who wish to hold breeders' rights in their new varieties shall comply with the registration provisions set forth in this Title.

#### Section II

##### **Applications**

#### Article 256

##### *Form and Content of the Application*

Any person wishing to have a variety protected shall file an application with the Directorate General of the Industrial Property Registry and pay the corresponding fee.

The application, to be valid, shall contain at least the following elements:

1. The name and address of the breeder, if he is not the applicant.
2. The name and address of the applicant and, where relevant, his procedural representative.
3. The identification of the botanical taxon (Latin and common names).
4. The denomination proposed for the variety, or a provisional designation.
5. Where the priority of an earlier application is claimed, the member State of the International Union for the Protection of New Varieties of Plants with which the said application was filed and the filing date;
6. A technical description of the variety.
7. Proof of payment of the application fee.

The Executive shall regulate this matter further.

## Article 257

*Priority*

The applicant may avail himself of a right of priority based upon an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the authority of a member State of the International Union for the Protection of New Varieties of Plants.

Where an application filed with the Directorate General of the Industrial Property Registry is preceded by several such applications, priority may be based only on the earliest application.

The right of priority shall be expressly claimed in the application filed with the Directorate General of the Industrial Property Registry. It may only be claimed within a period of 12 months from the filing date of the earliest application. The day of filing shall not be included in the said period.

In order to avail himself of the right of priority, the applicant shall submit to the Directorate General of the Industrial Property Registry, within three months from the filing date, in accordance with the provisions of this Title, a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed.

The Directorate General of the Industrial Property Registry may request that a translation of the first application, or of certain documents that constitute the first application, be produced within three months from the date of receipt of the request.

The effect of priority shall be that, with respect to the conditions of protection attaching to the variety, the application is deemed filed on the filing date of the first application.

## Article 258

*Examination of the Application as to Form; Filing Date*

The application must satisfy the requirements of form and substance.

Where the application is clearly unacceptable by reason of the botanical taxon to which the variety belongs, the documents constituting the application shall be returned to the applicant and the application fee shall be refunded.

Where the application is incomplete or incorrect, the Directorate General of the Industrial Property Registry shall request the applicant to correct it within 30 days from the date of receipt of the request. Any application that is not corrected within the prescribed period shall be deemed not to have been filed.

Any application that is complete and correct shall be given a filing date and shall be recorded in the Register. The date on which the information requested under this Title is received by the Directorate General of the Industrial Property Registry shall be taken to be the filing date.

## Article 259

*Examination of the Application as to Substance*

The Directorate General of the Industrial Property Registry shall examine the application as to substance in order to verify, on the basis of the information given in the application, that the variety satisfies the requirements and that the applicant is entitled in accordance with the provisions of this Title.

Where the examination reveals an obstacle to the grant of the breeders' rights, the application shall be rejected.

The examination as to substance shall be ordered by the Directorate General of the Industrial Property Registry and undertaken by the entities qualified to do so, namely the Institute of Agricultural Research of Panama or any other designated entity.

## Article 260

*Technical Examination of the Variety*

The variety shall undergo a technical examination the purpose of which shall be:

1. To verify that the variety belongs to the stated botanical taxon.
2. To establish that the variety is distinct, uniform and stable.
3. Where the variety is found to meet the aforesaid requirements, to establish an official description of the variety.

In principle, the examination shall be carried out by the Institute of Agricultural Research of Panama or under its supervision. The examination may be carried out by private entities in so far as they have been officially accredited for that purpose. The accreditation of such entities shall comply with the applicable provisions in force in the Republic of Panama.

The Institute of Agricultural Research of Panama shall determine the practical details of the examination. The cost of the technical examination shall be paid by the applicant directly to the institution that carries it out. The said cost shall be determined by the material used and the effectiveness of the service. The cost of the examination shall be reasonable. The Executive shall regulate this matter further.

The official description referred to under 3 above may be subsequently extended or amended on the basis of developments in agrobotanical knowledge without the subject matter of protection being affected thereby.

## Article 261

*Information, Documents and Material Required for the Examination*

The applicant shall submit all the information, documents or material requested for the purposes of the technical examination. Failure to submit the requested elements shall cause the application to be rejected, unless the applicant submits a reason of *force majeure* for his omission.

## Article 262

*Publicizing the Application*

Applications shall be published in the Official Gazette of the Industrial Property Registry and the announcements shall include, as a minimum, the elements mentioned in Article 256 under 1, 2, 3, 4 and 5.

## Article 263

*Objections to the Grant of Breeders' Rights*

As from the publication of the application any person may file objections to the grant of breeders' rights.

The objections may only be based on the allegation that the variety is not new, distinct, uniform or stable, or that the applicant is not entitled to protection.

The Executive shall regulate this matter further, due account being taken, however, of the provisions of Law No. 35 of 1996 on objections to the grant of a patent.

## Article 264

*Grant of Breeders' Rights; Rejection of the Application*

The Directorate General of the Industrial Property Registry shall grant breeders' rights where it is satisfied, as a result of the examination undertaken by the Institute of Agricultural Research of Panama, that the variety fulfills the requirements set forth in Article 243 under 1, 2, 3 and 4 and that the applicant has fulfilled the other requirements set forth in this Title.

Where it is not so satisfied, the Directorate General of the Industrial Property Registry shall reject the application.

The grant of breeders' rights, or the rejection of the application, shall be recorded in the Register of New Plant Varieties and published in the Gazette.

The breeders' rights shall also be recorded in the said Register. The description of the variety may be included in the Register by reference to the technical files of the Directorate General of the Industrial Property Registry and the examinations provided by the Institute of Agricultural Research of Panama.

## CHAPTER III

## DENOMINATION

## Article 265

*Denomination*

The denomination of a protected variety shall be its generic designation.

The denomination may consist of any word, combination of words, combination of words and figures or combination of

letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must differ from every denomination which designates in any member State of the International Union for the Protection of New Varieties of Plants, an existing variety of the same botanical species or of a closely related species.

For as long as the variety is exploited, it shall be prohibited to use, in the territory of the Republic of Panama, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. This prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety. Any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be obliged to use the denomination of that variety.

The obligation to use a denomination shall not end with the breeders' rights that gave rise to it.

When a variety is offered for sale or otherwise marketed, the use of a trademark, trade name or other similar indication in association with the registered variety denomination shall be permitted, subject to the denomination remaining easily recognizable.

## Article 266

*Grounds for Refusal*

Without prejudice to the provisions of the Convention for the Protection of New Varieties of Plants and the rules established by the International Union for the Protection of New Varieties of Plants, registration as the denomination of a variety shall be denied to a designation that:

1. Does not conform to the provisions of the preceding Article.
2. Is not appropriate for the identification of the variety, in particular owing to lack of distinctiveness or linguistic unsuitability.
3. Is contrary to public policy or morality.
4. Consists exclusively of signs or indications that may serve, in the plant varieties and seeds sector, to designate kind, quality, quantity, intended purpose, value, geographical origin or time of production.
5. Is liable to mislead or to cause confusion as to the characteristics, value or geographical origin of the variety, or the links between the variety and certain persons, in particular the breeder or the applicant.
6. Is identical or confusingly similar to a denomination that designates, on the territory of Panama, an existing variety of the same or a closely related species, unless the existing variety is no longer exploited and its denomination has not acquired any particular significance.



The registration of such designations shall be refused on the basis of opposition filed by the holder of the rights in the element concerned, due regard being had to the applicable provisions of Law No. 35 of 1996. The details shall be specified in the Regulations.

#### Article 267

##### *Registration Procedure*

The denomination proposed for the variety for which protection is sought shall be submitted together with the application.

Subject to payment of a special fee and the supply of a provisional designation for the variety in the application, the applicant may have the procedure for the registration of the denomination deferred. In such a case, the applicant shall submit the proposed denomination within 30 days from the date of receipt of the request. If the applicant fails to submit a proposal within the prescribed period, the application shall be rejected.

The proposed denomination shall be published in the Gazette, unless the competent authority has found or knows of a ground for refusal under the provisions of this Title.

Any interested person may file an objection to the registration of the denomination based on any one of the grounds for refusal set forth in this Title.

The objections and observations shall be communicated to the applicant, who may reply.

The applicant may, on the basis of the objections and observations, submit a new proposal.

For the examination of the suitability of the denomination, the Directorate General of the Industrial Property Registry shall submit the proposal for consideration to the Institute of Agricultural Research of Panama, which shall be the competent authority for determining whether or not a denomination may be registered. The Directorate General of the Industrial Property Registry shall abide by the findings of the report of the Institute of Agricultural Research of Panama.

The denomination shall be registered at the same time as breeders' rights are granted.

The Executive shall specify the details in the Regulations.

#### Article 268

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

The Directorate General of the Industrial Property Registry shall cancel a registered denomination:

1. When it is established that the denomination has been registered despite the existence of a ground for refusal.

2. When the holder so requests and demonstrates a legitimate interest.
3. When a third person produces a judicial decision prohibiting the use of the denomination in connection with the variety.

The holder shall be informed of the intended cancellation and requested to propose a new denomination. The proposed new denomination shall be subject to the examination and publication procedure set forth in this Title. The new denomination shall be registered and published once approved; the former denomination shall be cancelled at the same time.

### Section IV

#### **Maintenance of the Variety**

#### Article 269

##### *Maintenance of the Variety*

The holder shall be under the obligation to maintain the protected variety or, where relevant, its hereditary components for the whole duration of the breeders' rights.

At the request of the Directorate General of the Industrial Property Registry, the holder shall provide it or an authority designated by it, within the prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety.

### Section V

#### **Payment for and Lapse of Breeders' Rights**

#### Article 270

##### *Annual Fee*

The breeder shall pay, every five years throughout the period of protection, a fee which shall be determined according to the provisions of Law 35 of 1996. The first payment shall be made on the filing of the application, and the subsequent ones every five years, counted from the filing date of the application. The payment may be made at any time before the end of the five-year period concerned. If the payment is not made at the end of a period of six months after the date on which the payment of a particular fee became due, the holder will be deemed to have abandoned his breeders' rights and the latter shall automatically lapse.

#### Article 271

##### *Lapse and Cancellation of Breeders' Rights*

The breeders' rights and its registration shall lapse, with the corresponding rights becoming public property, where

1. The period of protection set forth in this Title comes to an end.
2. The holder surrenders his right in a written declaration addressed to the Directorate General of the Industrial Property Registry.
3. The annual fees are not paid.
4. The holder is not in a position to provide the competent authority with reproductive or vegetative propagating material capable of producing the variety with its characteristics as defined when the protection was granted.
5. The holder, after being requested to do so and within a prescribed period, does not provide the documents and the information deemed necessary for checking the variety, or does not allow inspection of the measures which have been taken for the maintenance of the variety.

#### Article 272

##### *Nullity of Breeders' Rights*

Breeders' rights shall be declared null and void when it is established that:

1. The variety was not new or distinct on the filing date of the application or, where relevant, on the priority date.
2. Where the grant of breeders' rights has been essentially based on information and documents submitted by the applicant, the variety was not uniform or stable on the said date.
3. Breeders' rights have been granted to a person who is not entitled to them and the entitled person has not brought an action for judicial assignment under Article 242, or has renounced the right to bring such an action.

Subject to any provision to the contrary in this Title, breeders' rights that have been declared null and void shall be deemed never to have been granted.

Any person having a legitimate interest may file a request for annulment.

#### CHAPTER IV

##### REMEDIES AND SANCTIONS

#### Article 273

##### *Civil Remedies*

Any person who, without being entitled to do so, performs acts that require authorization by the holder, or who uses a designation or fails to use a variety denomination in contravention of the provisions of this Title, may be sued by the

breeder or by the holder of an exclusive license and shall be liable to the provisions on civil procedure applicable to the rights deriving from industrial property as set forth in Law No. 35 of May 10, 1996.

Subject to the provisions of this Title, the provisions applicable to the exercise of the rights conferred in relation to inventions and utility models, as set forth in the provisions on industrial property of the Republic of Panama, shall apply *mutatis mutandis* to the exercise of the prerogatives conferred by breeders' rights.

#### Article 274

##### *Criminal Penalties*

Any act that involves improper use of breeders' rights and any infringement committed with full knowledge of the facts shall constitute a punishable offense for the purposes of this Title. The provisions, procedures and sanctions specified in the Law on Industrial Property of the Republic of Panama with respect to inventions shall be applicable.

#### Article 275

##### *Offenses in Relation to Variety Denominations*

Any person who, in full knowledge of the facts, uses a designation or fails to use a variety denomination in contravention of the provisions of this Title shall be liable to a fine of 1,000 to 10,000 balboas. In the case of a second or subsequent offense, the fine shall be doubled.

#### CHAPTER V

##### OFFICIAL BODIES

#### Article 276

##### *Council for the Protection of New Plant Varieties*

A Council for the Protection of New Plant Varieties is created which shall be presided over by the Minister for Agricultural Development and shall comprise representatives of the various circles concerned with the protection of new plant varieties, including necessarily, but not exclusively, the Institute of Agricultural Research of Panama, the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries, the Faculty of Agricultural Sciences of the University of Panama and the members and Executive Secretary of the National Seed Committee.

The details of the appointment of the members of the Council and of its operation shall be specified in the Regulations.

The task of the Council shall be to advise the Minister for Agricultural Development and make proposals to him, as a consultative body for the implementation of this Title, in ac-

cordance with the other provisions applying to new plant varieties and seeds in the Republic of Panama.

## CHAPTER VI

### MISCELLANEOUS PROVISIONS

#### Article 277

##### *Regulations*

The Executive shall issue Regulations for the implementation of this Title.

#### Article 278

##### *Cooperation in Examination*

The Institute of Agricultural Research of Panama shall be entitled to conclude administrative agreements for cooperation in the examination of varieties and the verification of the maintenance of varieties with the competent authorities of the member States of the International Union for the Protection of New Varieties of Plants.

#### Article 279

##### *Coordination*

The Institute of Agricultural Research of Panama shall coordinate its action with the Directorate General of the Industrial Property Registry of the Ministry of Commerce and Industries in the examination of the application with regard to bo-

tanical taxons, technical aspects, the maintenance of the variety, the suitability of the denomination, publications in the Official Gazette of the Industrial Property Registry and any other action that is necessary for the effective protection and registration of new plant varieties as industrial property rights in the Republic of Panama.

#### Article 280

##### *Transitional Provision Relating to Registrations*

Any breeder who has a variety registered with the National Seed Committee of the Republic of Panama may have his registration validated with the Directorate General of the Industrial Property Registry for the grant of breeders' rights. The applicant shall satisfy the requirements of form and substance for the application, but shall be exempted from the provisions regarding technical examination and the maintenance of the variety. He shall be subject to the legal provisions relating to the variety denomination.

#### Article 281

##### *Derogations*

This Title shall not be affected by any provision that would be incompatible with it, and shall enter into force on its promulgation.

## PANAMA

## MINISTRY OF COMMERCE AND INDUSTRIES

EXECUTIVE DECREE NO. 13<sup>1</sup>

(of March 19, 1999)

## Regulating Title V of Law 23 of July 15, 1997

The President of the Republic by virtue of his constitutional and legal powers

## CONSIDERING

That Law No. 23 of July 15, 1997, "Approving the Marrakesh Agreement establishing the World Trade Organization and the Protocol of Accession of Panama to the said Agreement, together with its annexes and list of undertakings, and by which national legislation is adapted to international provisions and other provisions are enacted," contains provisions in its Title V for the protection of new plant varieties,

That, by virtue of the regulatory power conferred on it by Article 179.14 of the Political Constitution, the Executive has to enact regulations under those laws that so require for their better implementation, but without departing in any event from the text or spirit thereof,

That the Executive, acting through the Ministry of Commerce and Industries, having consulted the sectors concerned with agricultural and livestock breeding, development, registration and research, and also institutions concerned with new varieties of plants, has drawn up the regulatory provisions for Title V of Law No. 23 of July 15, 1997, which are adopted by this Decree with a view to easing the formalities and other action for the defense and protection of rights under the provisions for the protection of new plant varieties;

## DECREES AS FOLLOWS:

## CHAPTER I

## GENERAL PROVISIONS

## Article 1

The purpose of this Decree is to regulate the rights of the breeder of a plant variety that complies with the provisions laid down in Title IV of Law No. 23 of July 15, 1997.

## Article 2

For the purposes of this Decree, the definitions given in Title V of Law No. 23 of July 15, 1997, and the following shall apply:

- (a) "Law" means Title V of Law No. 23 of July 15, 1997.
- (b) "Board" means the Plant Variety Protection Board.

- (c) "Public interest" means a situation that transcends the specific individual context and affects centers of civil society in their various dimensions and at the various levels of social, economic and political development.

## Article 3

In addition to the powers conferred on it by Article 276 of the Law, the Council is empowered by this Decree to:

- (a) recommend to the Minister of Agricultural and Livestock Development the genera and species to which the Law shall apply;
- (b) recommend to the Minister of Agricultural and Livestock Development the amendment of the list of genera and species to which the Law applies by the addition or exclusion of new genera or species with effect from a specified future date;
- (c) lay down the terms of reference for the accreditation of bodies to be entrusted with carrying out technical examinations;
- (d) recommend to the Directorate General of the Industrial Property Registry that it grant breeders' rights after verification that the technical examination has complied with the guidelines laid down for the genus or species to which the application relates;
- (e) recommend to the Executive the grant and the term of compulsory licenses;
- (f) keep the register of accredited bodies or organizations;
- (g) establish the procedures for its own organization and operation;
- (h) perform any other function equivalent to those specified.

## Article 4

The Minister of Agricultural and Livestock Development shall appoint by resolution the members of the Board to whom Article 276 of the Law refers, and who shall consist of a titular member and an alternate, each with a term of office of two years.

<sup>1</sup> Translation provided by Panama authorities with the collaboration of the Office of UPOV

## Article 5

The procedures for the organization and operation of the Board shall be determined by resolution issued by the Ministry of Agricultural and Livestock Development.

## Article 6

Where a genus or species is excluded from the list of genera or species to which the Law applies with effect from a specific date, the exclusion shall not affect the rights of applicants who have filed applications for the protection of varieties of that genus or species prior to the said date.

## Article 7

The owner of a variety to whom breeders' rights are granted may be a natural person or a legal entity.

## Article 8

A request for the transfer of breeders' rights, like the breeders' rights themselves, shall be set down in writing and duly authenticated by a notary. Any transfer shall be recorded in the Register of Protected Plant Varieties at the Directorate General of the Industrial Property Registry, provided that the request is filed through an attorney and the document attesting the transfer and the payment of the prescribed fees is enclosed. No transfer by succession shall be binding on third parties until such registration has taken place.

## Article 9

Joint applicants for breeders' rights, or joint owners of such rights, may act separately to transfer the shares accruing to them and exclude third parties from the exploitation of the variety. However, they may only exploit the variety and grant licenses with the consent of the other joint applicants or joint owners.

## CHAPTER II

## CONTRACTUAL LICENSES

## Article 10

When the owner of the breeders' rights grants exploitation licenses to third parties for the use of protected varieties, he shall submit the following to the Directorate General of the Industrial Property Registry:

- (a) a request, on the form provided for the purpose;
- (b) a power of attorney;
- (c) a contract or document clearly evidencing the license; the effects of registration shall be determined by the contents of the document that is registered;

- (d) payment of the prescribed fee.

## Article 11

The license contract shall be in writing, signed by both parties and duly authenticated by a notary. The contract shall specify the following in particular:

- (a) the exclusive or non-exclusive character of the license;
- (b) its term;
- (c) the sublicensing or assignment of the license, as the case may be, except where otherwise provided.

## Article 12

License contracts shall be without effect if they are invalidated or where their owner is deprived of them. Nevertheless, the licensee may not, on the grounds of the invalidation or deprivation of rights, demand repayment of royalties paid prior to the date of invalidation or deprivation of rights.

## Article 13

Unless otherwise provided by contract, the owner of breeders' rights and the licensee may bring either jointly or separately such legal actions as may be appropriate for the defense of the rights conferred by the breeder's certificate.

## CHAPTER III

## COMPULSORY LICENSES

## Article 14

The Executive is the body empowered to grant, at the request of the party or parties concerned, compulsory licenses to one or more natural persons or public or private legal entities, but only where the public interest so dictates and after consultation of the Board.

## Article 15

In addition to those laid down in Article 14, the following conditions shall be met for the grant of a compulsory license:

- (a) three years must have elapsed since the grant of the breeders' rights without their having been exploited;
- (b) the party requesting the grant of a compulsory license must be financially or otherwise capable of exploiting the breeders' rights competently and efficiently, and willing to do so;
- (c) the owner of the breeders' rights must have refused to permit the party requesting the compulsory license to produce or market propagating material of

the protected variety in a manner sufficient to meet the needs of the general public, and must be unwilling to grant such permission on the normal terms;

- (d) the conditions in which the owner of the breeders' rights might be expected to allow the use of the variety in the manner requested must not exist;
- (e) the party requesting the compulsory license must have paid the prescribed fee.

#### Article 16

The request for a compulsory license must include the following:

- (a) The identity of the requesting party and of the owner of the variety.
- (b) The denomination of the variety or varieties.
- (c) A statement explaining the public interest concerned, which must include details of the facts, evidence and arguments adduced in support of the allegations.
- (d) A proposal for the coverage of the compulsory license requested.

#### Article 17

The request for a compulsory license shall be accompanied by documents attesting the objecting owner's refusal of his request for a contractual license.

#### Article 18

A request for a contractual license shall be considered refused for the purposes of Article 15(c) of this Decree where:

- (a) the owner has not given a final answer to the requester within a period of one year following his request;
- (b) the owner has refused to grant the requester a contractual license;
- (c) the objecting owner has offered the requester a contractual license on terms that are clearly unreasonable, for instance with respect to the fees to be paid or other terms.

#### Article 19

The Decree by which a compulsory license is granted shall include a statement setting forth the relevant public interest

involved and also the equitable remuneration that the licensee has to pay the breeder.

#### Article 20

Among other reasons in the public interest, requesters may invoke the protection of human, animal or plant life or health.

#### Article 21

The Board shall recommend the term of the compulsory license to the Executive. The compulsory license shall not be granted for a term shorter than two years or longer than four years. The term may be prolonged where, on the basis of further examination, it is found that the circumstances that gave rise to it are still present after the first term has expired.

#### Article 22

The Executive shall revoke the compulsory license if its owner violates the terms on which it was granted.

### CHAPTER IV

#### TRANSFER OF REGISTRATION

#### Article 23

The request filed with the Directorate General of the Industrial Property Registry for the grant of protection for a plant variety under the provisions of Article 256 of the Law shall be filed through an attorney on the requisite form and accompanied by the following documents:

- (a) power of attorney;
- (b) technical questionnaire published in the Official Bulletin of the Industrial Property Registry for the genera and species concerned, endorsed by a suitable professional recognized by the National Technical Council for Agriculture.

The applicant shall supply the material for registration in the amounts and on the date and in the place specified when the technical examination is ordered by the body that carries it out.

#### Article 24

The documents accompanying the application shall be filed in Spanish, separately, in one original and three copies. The documents shall be accompanied by a translation done by an official translator where documents in another language are involved. Those documents shall in addition carry consular certification from the country of origin and such legalization as is appropriate, or an explanatory note.

## Article 25

The filing date of the application for plant variety protection shall be that on which a valid application has been received on the premises of the Directorate General of the Industrial Property Registry, in accordance with the provisions of Article 256 of the Law and Article 23 of this Decree.

## Article 26

Every application shall be numbered in strict order of receipt, with a mention of the hour and date of filing, which shall be shown on the copy returned to the applicant.

## Article 27

The applicant for breeders' rights who wishes to benefit from the priority of an earlier application under Article 257 of the Law shall enclose a written declaration with his application, which shall give the date and number of the earlier application, the country in which he and his predecessor in title filed the said application and the number under which it was filed.

## Article 28

With the exception of cases in which the Law, this Decree and the provisions regulating it specify a different period, the application shall lapse where the relevant file remains blocked, through the fault of the party concerned, for three months following the appearance of a notice at the Directorate General of the Industrial Property Registry.

The decision declaring the application lapsed shall be brought to the attention of the person concerned by means of a notice at the Directorate General of the Industrial Property Registry.

## Article 29

Where protection has been applied for earlier abroad, the breeder shall have a period of two years, counted from the expiry of the period of one year referred to in Article 257 of the Law, within which to supply the additional documents and the material for registration requested under the second paragraph of Article 23 of this Decree.

## Article 30

Within a period not exceeding two months from the publication of the application for breeders' rights in the Official Bulletin of the Industrial Property Registry, any person may file observations questioning the grant with the Directorate General of the Industrial Property Registry; such observations shall be examined by the Board.

Observations may be based on the allegation that the applicant is not the owner of the variety, or they may claim that the variety was not new, distinct, uniform and stable.

## Article 31

On the expiry of the period accorded to third parties for the filing of observations on the grant of breeders' rights, the documents filed shall be forwarded to the applicant so that he may comment on them within a period not exceeding two months.

## Article 32

Where the observations are found to be justified, the Directorate General of the Industrial Property Registry, on a report by the Board, shall issue a resolution rejecting the application.

## Article 33

In accordance with Article 253 of the Law, denominations proposed under Article 267 of the Law shall likewise be published in the Official Bulletin of the Industrial Property Registry, and objections may be filed within a period not exceeding two months from the said publication.

## Article 34

Where the variety is already protected in another country, or where an application for protection of the variety has been filed in such a country, only the denomination of the proposed or registered variety may be proposed and registered, and the Directorate General of the Industrial Property Registry shall not register any other designation as a denomination for the variety. Nevertheless, where the variety denomination used in the other country is unsuitable for any of the reasons for rejection mentioned in Article 266 of the Law, the applicant shall propose another denomination for the variety.

## Article 35

In the event of an objection to the registration of the variety denomination, the Directorate General of the Industrial Property Registry, on a report from the Institute of Agricultural and Livestock Research of Panama, shall invite the applicant for breeders' rights to file, within 30 days, a proposed new denomination for the variety, on the expiry of which it shall be declared abandoned.

## Article 36

Once the substantive examination has taken place, if the Directorate General of the Industrial Property Registry is not aware of any impediment to the grant of breeders' rights, it shall make arrangements for the technical examination to take place in order to establish compliance with the conditions provided for in Articles 245, 246 and 247 of the Law.

## Article 37

The Institute of Agricultural and Livestock Research of Panama or a body designated by it shall determine, by virtue of general provisions or on request in individual cases, the date and

place for the filing of the material to be registered with a view to the technical examination, and also the quantity thereof.

#### Article 38

With a view to compliance with the conditions set forth in Articles 245, 246 and 247 of the Law, the Institute of Agricultural and Livestock Research of Panama or a body designated by it shall undertake any other investigation that may be necessary for the purposes of the technical examination.

#### Article 39

The conduct of the technical examination shall conform to the Test Guidelines issued by the Board.

#### Article 40

For the purposes of the technical examination, the Institute of Agricultural and Livestock Research of Panama or other accredited bodies approved by the Board, may use the services of other technically qualified organizations and recognize the results obtained by them or by the applicant, subject to a sworn statement, and payment of the fee for the service.

#### Article 41

The Institute of Agricultural and Livestock Research of Panama or the accredited body shall convey the findings of the technical examination to the applicant and give him the opportunity of making his comments before the final report is sent to the Board.

#### Article 42

Where the Board considers that the examination report does not constitute a sufficient basis for the issue of its recommendation, it may, either *ex officio* or at the request of the applicant, order the conduct of an additional examination which shall be considered an integral part of the technical examination.

#### Article 43

The breeder's certificate shall contain:

- (a) the name of the person, whether natural person or legal entity, to whom the plant breeders' rights are granted, and his address;
- (b) the number and date of the registration of the breeders' rights with the Directorate General of the Industrial Property Registry;
- (c) the expiry date of the protection, the genus and the species;
- (d) the denomination of the variety protected.

#### Article 44

The breeder shall enjoy provisional protection during the period between the filing of the application and the grant of the certificate.

Action for damages or prejudice may only be brought once the breeder's certificate has been issued, but it may extend to damages caused by the defendant as from the publication of the application.

#### Article 45

The term of protection of breeder's rights shall start on the date of the resolution by which the breeders' rights certificate is granted.

#### Article 46

The Board shall confirm the registration of commercial varieties registered with the National Seeds Committee provided for in Article 280 of the Law provided that the application is filed within the year following the entry into force of this Decree for the genus and species to which the variety belongs.

The validity of the breeder's certificate shall be proportional to the period that has elapsed since the date of registration with the National Seed Committee.

#### Article 47

Where the variety has been entered in the register of cultivars of any of the member countries of the International Union for the Protection of New Varieties of Plants, or in a register of protected varieties of any country having special legislation on plant variety protection that grants reciprocal treatment to the member country in which the application is filed, that registration may be confirmed, before the Board, within the year following the entry into force of this Decree.

The validity of the breeder's certificate granted under this provision shall be proportional to the period that has already elapsed since the entry or registration. Where the variety has been registered in two or more countries, the entry or registration bearing the earliest date shall be applicable.

#### Article 48

In accordance with Article 270 of the Law, the grant of breeders' rights shall be subject to payment of the following fees every five years throughout the term of protection:

- (a) 800 balboas (B) for the first five years or protection;
- (b) 1,600 B for the following five years;
- (c) 2,400 B for the five years thereafter;



- (d) 3,200 B for the remainder of the term of protection.

#### Article 49

The Directorate General of the Industrial Property Registry shall charge fees for services connected with the protection of plant varieties in the following cases:

Fee for	Fee
(a) application for breeders' rights	230
(b) anticipation request	25
(c) request for certification	10
(d) retrieval of a document	1
(e) request for change of owner, address	55
(f) request for authenticated copy of a document	1
(g) request for recording of contractual or compulsory license	10
(h) request for assignment or transfer	10
(i) one entry published in the BORPI	10
(j) breeder's certificate	50

#### Article 50

This Decree shall start to apply as from its promulgation.

THE FOREGOING IS TO BE COMMUNICATED AND PUBLISHED

Done in Panama City on this nineteenth day of March, 1999.

Ernesto Pérez Balladares  
Raul A. Hernández L.  
President of the Republic  
Minister of Commerce and Industries

## PARAGUAY

**DECREE No.7797/00 OF MARCH 7, 2000,<sup>1</sup>**  
**ENACTING REGULATIONS UNDER LAW NO. 385/94**  
**“ON SEEDS AND PROTECTION OF PLANT VARIETIES”**

## CHAPTER I

## General Provisions

*Aim*

## Article 1

The purpose of these Regulations is to establish the conditions facilitating implementation of Law No. 385 of August 11, 1994, “On Seeds and Protection of Plant Varieties” and to amend Decree No.19.975 of February 17, 1998, which fixes the amounts of the fees provided for in said Law.

*Definitions*

## Article 2

For the purposes of the implementation of these Regulations the following meanings shall be taken into consideration:

- a. *Testing Station and/or Test Growing Field:* Site belonging to a duly accredited official or private body in the Agricultural Research Directorate (DIA), attached to the Ministry of Agriculture and Livestock (MAG), on which studies are carried out into the behavior of species or varieties of agricultural genera of economic importance.
- b. *Technical Officer:* Staff member having graduated from the agronomy and forestry branch with a national or recognized degree, duly entered in the National Register of Agronomists and Forestry Engineers (RNIAF), and who shall submit to the Seeds Directorate (DISE) the terms of agreements concluded with producers responsible for implementing Law No 385/94, these Regulations and the Technical Standards for Seed Production.
- c. *Approved Seed:* Seed produced by seed producers entered in the National Register of Seed Producers (RNPS) of the DISE and conforming to the technical standards established for such seed.
- d. *Supervised Trader:* Natural or legal person under public or private law with an established institution who produces, imports, exports, stores, processes and distributes seed for commercial purposes, and is entered in the National Register of Seed Traders (RNCS).
- e. *Batch:* Quantity of seed packaged or in bulk and identified by a number or other symbol that guarantees the uniformity of the consignment.

- f. *Sample:* Quantity of seed representative of a batch.
- g. *Analysis:* Set of procedures carried out by a seed laboratory by means of which the physical, physiological and health characteristics of a seed sample are determined.
- h. *Purity:* Percentage by weight of pure seed in a particular sample.
- i. *Germinating power or germination:* The percentage of seed capable of producing normal plants under favorable conditions, in accordance with international rules.

## CHAPTER II

## Institutional Organization

*National Seeds Council*

## Article 3

The National Seeds Council (CONASE) shall be established by Ministerial Resolution and shall comprise ten members, five of whom shall be representatives of the public sector and five of the private sector, having been designated by the corresponding bodies (Article 8 of Law No. 385/94).

The public sector representatives shall be from:

- The Seeds Directorate;
- The Agrarian Development Directorate;
- The Plant Protection Directorate;
- The Agricultural Research Directorate;
- The official credit institutions attached to the Ministry of Agriculture and Livestock.

The private sector representatives shall be from:

- The Federation of Production Cooperatives (FECOPROD);
- The Association of Seed Producers of Paraguay (APROSEMP);
- The Organization of Seed Traders;
- The Plant Breeders' Association;
- The National Agriculture Society, the National Agricultural Union or another organization which, in the judgement of CONASE, is in a position to represent farmers.

<sup>1</sup> Translation provided by the Office of UPOV

The institutions or bodies represented within CONASE shall appoint a titular representative and an alternate with knowledge and experience of the areas associated with the seed sector, in order that the Council's advisory role in establishing national seed policy may be carried out.

Council members shall discharge their duties *ad honorem*.

### CHAPTER III

#### National Register of Commercial Plant Varieties

##### Article 4

Any variety of plant that is intended for production and marketing under the Production of Certified and/or Approved Seed systems shall be entered in the National Register of Commercial Plant Varieties (RNCC) (Article 14 of Law No. 385/94).

The inclusion of a plant variety in the RNCC shall be for the sole purpose of its production and/or marketing on the national territory and shall not confer any other right on the person making the entry.

A request for the inclusion of a plant variety in the RNCC shall be made to the DISE on the form provided for that purpose, which shall be regarded as a sworn declaration.

On the submission of a request, the DISE shall convene the Technical Committee for Plant Variety Inspection (CTCC), which shall issue a ruling on the basis of information emerging from an investigation.

Where the CTCC considers it necessary, the DISE may also request any additional information, documents, field and/or laboratory test findings with which to verify the characteristics attributed to a plant variety.

In the event of an adverse ruling by the CTCC, the DISE shall inform the requesting party of the rejection and of the grounds for it, whereupon the requesting party may submit a further request once the grounds for rejection have been remedied.

In the event of a favorable ruling by the CTCC, the DISE shall forward the request to the Ministry of Agriculture and Livestock for approval by resolution.

Following a decision by the Ministry of Agriculture and Livestock to issue a favorable ruling, the DISE shall enter the plant variety concerned in the RNCC and shall issue the corresponding certificate, subject to payment by the interested party of the request and entry fees specified in Article 1(c) of Decree No. 19.975/98 and these Regulations; the requesting party shall also pay the annual maintenance fees stipulated in the Decree mentioned.

Plant varieties that have been declared to be in the public interest, which are included in the RNCC *ex officio*, shall be exempt from the above charges.

##### Article 5

All plant varieties which, prior to approval and publication of this Decree, have already been produced and/or commercialized on the national territory shall be declared to be in the public interest and included *ex officio* in the RNCC in accordance with Article 19 of Law No. 385/94.

##### Article 6

All varieties of species not included in the RNCC shall be produced and/or commercialized on national territory as common seed (Article 15 of Law No. 385/94) and shall be entered in a National Common Seed Register (RNSC) authorized by the DISE until such time as they may be included in the RNCC.

##### Article 7

To be considered fit for inclusion in the RNSC, varieties of species shall meet the following requirements:

- a. They must have been commercialized in the country for at least the last three years prior to the introduction of Law No. 385/94;
- b. Official statistics or information must be available from other sources to demonstrate that they have been in commercial use for a period of more than three years;
- c. They must be of known origin so that more information may be requested regarding the botanical features and/or agronomical behavior of the variety.

##### Article 8

In addition to those specified in Article 15 of Law No. 385/94, all of the following may be commercialized as common seed;

- a. The seed of species which, while included in the RNCC, have not been produced under the certified and/or approved seed production systems;
- b. The seed of species which, while included in the RNCC and produced under the approved seeds production system, have not satisfied the requirements established by the Minimum Production and Commercialization Rules for their category.

##### Article 9

For the commercialization of common seed, the identity of the species and variety shall be considered, and it shall be ascertained whether it conforms to the minimum purity and germination percentages of the laboratory reference material for the species and current plant health standards.

Packages of common seed shall be clearly marked on the outside with the words "Common Seed."

The purity and germination percentages specified on labels may be verified by means of an analysis which the Official Laboratory or another duly registered authorized laboratory shall conduct.

#### Article 10

Species not included in the RNCC that are required to satisfy national agricultural needs (Article 13 and 15 of Law No. 385/94) shall be included, by virtue of a resolution issued by the Ministry of Agriculture and Livestock, in the following manner:

- a. The DISE shall propose to the MAG the inclusion in the RNCC of the species considered necessary (Article 16 of Law No. 385/94);
- b. For the inclusion of new species in the RNCC, test results achieved in research monitored by the DISE shall be taken into consideration.

#### Article 11

One or more of the agricultural research representatives of the CTCC (Article 17 of Law No. 385/94) shall be an expert on the species to which the variety filed for inclusion in the RNCC or National Register of Protected Plant Varieties (RNCP) belongs.

Similarly, the seed producers' representative may also be a producer of the species to which the variety filed for inclusion belongs.

#### Article 12

The denomination of a plant variety shall meet the following requirements:

- a. It shall allow the variety to be identified;
- b. It may not consist only of figures;
- c. It shall not mislead or confuse as to the characteristics, value or identity of the variety, or as to the identity of the breeder;
- d. It shall differ from any denomination that designates a preexisting variety of the same or of a similar botanical species in any other country;
- e. The DISE may reject the inclusion of a plant variety whose denomination does not meet the established criteria and may request that another denomination be proposed for a variety:

Where the former would affect rights granted previously by another country;

Where the attempt is made to register a denomination different from that already registered for the same variety in another country.

#### Article 13

The DISE shall propose the exclusion of a plant variety from the RNCC to the Ministry of Agriculture and Livestock (Article 21 of Law No. 385/94), on the basis of a ruling by the CTCC, where:

- a. The plant variety is found to have lost the features for which it was accepted, or anomalies or differences have been detected in statements made following its inclusion;
- b. The plant variety has ceased to be produced or commercialized in the country for a period of five consecutive years;
- c. The plant variety is also included in the RNCP and has been removed from it owing to loss of stability and uniformity;
- d. The person responsible for its inclusion so requests.

### CHAPTER IV

#### National Register of Protected Plant Varieties

#### Article 14

The prior authorization of a breeder shall be required for the performance of the following acts by third parties in relation to material for the propagation or multiplication of a protected variety (Article 23 of Law No. 385/94):

- a. Production, reproduction, multiplication or propagation (for commercial purposes);
- b. Conditioning and storage for the purposes of commercial reproduction, multiplication or propagation;
- c. Offering for sale;
- d. Sale, commercialization or transmission for whatever purpose;
- e. Import or export.

A breeder may give his authorization for the above acts subject to conditions which he himself shall define.

#### Article 15

For the purposes mentioned in Article 25 of Law No. 385/94, sale means offering for sale, a transaction actually agreed or any other form of commercialization of a variety or its propagating material in any form.

Similarly, novelty shall not be lost where the propagating material of the variety has been sold, commercialized or transmitted to third parties by a breeder or with his consent when:

- a. It forms part of an agreement under which a third party has increased the stocks of said material on behalf and at the request of a breeder;
- b. It forms part of an agreement under which a third party has carried out small-scale field, laboratory or processing trials in order to evaluate the variety.

#### Article 16

The denomination of a variety (Article 26 of Law No. 385/94) shall differ from any denomination designating a preexisting variety of the same or of a similar botanical species.

The denomination proposed for a variety shall be identical in cases where the same denomination is registered in another State, whether in a register of protected varieties or in a register or list of varieties suitable for commercial purposes.

The proposed denomination shall take no account of prior third-party rights. If, by virtue of a previous right, the use of the denomination of a variety is prohibited for a person who is obliged to use it, the DISE shall request the breeder to propose another denomination for the variety within a period not exceeding 30 days from the notification of rejection.

Where it is observed that a proposed denomination does not meet the requirements mentioned in this Article, the DISE shall refuse to register the denomination and shall request the breeder to propose another within the above period.

#### Article 17

A request for inclusion and actual inclusion in the National Register of Protected Plant Varieties, Article 29 of Law No. 385/94, shall have the effect of a sworn declaration and shall be submitted in accordance with the following requirements:

- a. Name, document and address of plant improver if not the same person as the breeder;
- b. Name and address of the breeder, and of his national representative legally registered in the country where applicable;
- c. Name, address and professional registration number of the agronomist sponsoring the inclusion, and his RNIAF registration number;
- d. Common and scientific name of the species;
- e. Proposed name of the variety;
- f. Establishment and place where the variety was bred;
- g. The description, which shall cover the morphological, physiological, health, phenological, physical and chemical features and also the industrial or technological properties enabling the variety to be identified; drawings, photographs or any other generally accepted technical element shall be included to illustrate morphological aspects;

- h. The basis of novelty, with a mention of the date as from which the variety has been commercialized in the country or abroad;
- i. The basis of the variety's distinguishability, with an indication of the reasons for which the variety is considered novel and previously undisclosed, with justification of the features distinguishing it from those already existing;
- j. The verification of stability, the date on which the variety was first propagated in that form, and proof of its stability or sustainability;
- k. Particulars of the parent lines of the new variety;
- l. The origin, whether national or foreign, with a mention in the latter case of the country of origin, the date of inclusion of the variety in that country's property register and a copy of the corresponding property title;
- m. Reproduction or propagation mechanism;
- n. Other additional information for species that so require, as laid down by the DISE.

Any documentation submitted with the request shall be certified by the competent authority, and shall be accompanied by a translation by an official public translator in the case of documents of foreign origin evidencing the exercise of whatever kinds of right may be inherent in the variety filed for inclusion (certificates, powers, contracts and the like), certification by the Paraguayan consulate of the country of origin and appropriate authentication.

Following a decision by the Ministry of Agriculture and Livestock to issue a favorable ruling, the DISE shall include the plant variety in the RNCP and shall grant the breeder's title against payment by the interested party of the request and entry fees established by Article 1(b) of Decree No. 19.975/98 and these Regulations, together with the annual maintenance fee laid down in the said Decree.

The MAG, acting through the DISE, shall issue procedural rules for the inclusion of plant varieties in the appropriate Register.

The rules to be issued shall not affect the right of third parties to formulate such objections as they consider relevant.

#### Article 18

The breeder's right to a variety shall have a minimum duration, counted from the date on which the title is granted, of 15 years except in the case of vines and trees, for which the duration shall be 18 years (Article 30 of Law No. 385/94).

#### Article 19

The transfer of the breeder's title to a third party (Article 32 of Law No. 385/94) shall be effected by means of a joint submis-

sion by the transferor and the transferee containing the personal particulars of both parties, and the legal documentation evidencing the transfer shall be enclosed in accordance with the requirements of Article 17 of the said text.

The transfer request, with the names of and information concerning the transferor and transferee, shall be published in two major circulation national newspapers for a period of ten working days, for the purposes of possible objections by third parties. Once the period in question has elapsed and provided that no objections have been raised, the transfer shall be submitted to the RNCP and shall be recorded in the breeder's title concerned.

The transferee shall remain subject to the same obligations, with the same scope, as the transferor.

#### Article 20

In order to benefit from the priority right provided for in Article 33 of Law No. 385/94, the interested party shall make an express request for his priority right, within three months of the date on which the subsequent request was made, and shall provide a copy of all the documents included in the first request, which shall be approved by the competent national authority to which the first request was submitted; he shall also enclose samples or any other sufficient proof of the fact that the variety to which both requests relate is the same.

#### Article 21

The authorization of the holder of a breeder's right (Article 35 of Law No. 385/94) shall not be required where a farmer uses, for the purposes of propagation on his own land, the product of the harvest from the sowing on that land of the acquired material, with the authorization of said holder, or derived from the material so acquired.

#### Article 22

The declaration of "Restricted Public Use" of a plant variety specified in Article 36 of Law No. 385/94 shall be valid for a maximum period of two years. The extension of this otherwise equal period may only be declared in the form of a new well-founded resolution issued by the Ministry of Agriculture and Livestock, subject to the opinion of CONASE.

#### Article 23

The declaration of "Restricted Public Use" (Article 37 of Law No. 385/94) shall be published in a major circulation national newspaper for a period of 15 working days, and shall require submissions by interested third parties, as well as minimum technical and economic guarantees and other qualifications which shall be met by the requesting parties.

#### Article 24

An interested party may submit an appeal for reexamination of the resolutions of the Ministry of Agriculture and Livestock refusing the grant of a breeder's title is refused, in ac-

cordance with Article 39, Chapter IV of Law No. 385/94, and invalidating and canceling those already granted, to the administrative and judicial authorities specified in Articles 95 and 96 of said Law, subject to the conditions and periods stated therein.

### CHAPTER V

#### Seed production

##### *National Register of Seed Producers*

#### Article 25

All agricultural producers shall, for the purpose of producing seeds, be included in the National Register of Seed Producers (RNPS) authorized by the DISE (Article 49 of Law No. 385/94), inclusion in which shall be requested using the form provided for that purpose, which shall have the effect of a sworn declaration.

The request shall be accompanied by the following:

- a. Terms of agreement of a duly registered technical representative, who shall be responsible to the DISE for observance of the specific technical standards established for the species to be produced;
- b. Exact location of the production holding (sketch) where the producer grows the seed by himself;
- c. Where production is carried out by a producers' cooperative, a list of members shall be submitted together with the relevant accreditation documents and the exact location of the producers' holdings;
- d. List of appropriate machinery and equipment available for the work to be done at the different stages of production;
- e. List of facilities, machinery and equipment for storing, processing, analysing and preserving seed until it is commercialized;
- f. Design of the trade name or trademark that will be printed on the packaging.

The above requirements shall apply only to producers of seed of species included in the RNCC.

Once the aforementioned requirements have been met, and the request and entry fees provided for in Article 1(a) of Decree No. 19.975/98 have been paid, subject to verification by DISE specialists of the submissions made and a favorable decision taken thereon, the Corresponding Seed Producer Certificate shall be issued.

#### Article 26

The seed producer shall pay the annual maintenance fee established in Article 1(a) of Decree No. 19.975/98.

Non-payment of said fee for a period of five consecutive years shall lead to the exclusion *ex officio* of the seed producer in question from the RNPS.

A seed producer excluded from the RNPS may request re-registration, for which purpose he shall comply with the initial registration requirements.

#### Article 27

The technical representative shall, to be recognized as such, complete an authorized register of signatures held by the DISE.

#### *Seed production system*

#### Article 28

Seed produced under the certified and approved seed production system that does not meet the requirements of specific production standards may be commercialized as seed of a lower category to which it does conform. Similarly, within the approved seed production system a mention shall be made of the origin of the seed to be propagated (Article 51 of Law No. 385/94).

### CHAPTER VI

#### Seed Trade

#### *National Register of Seed Traders*

#### Article 29

All traders commercializing seed shall be included in the National Register of Seed Traders (RNCS) (Article 56 of Law No. 385/94), for which purpose their registration shall be required using the form provided by the DISE, which shall have the effect of a sworn declaration.

The declaration shall be accompanied by the following:

- a. Description of the conditions and capacity of the storage sites guaranteeing appropriate seed preservation.
- b. Trading license granted by the relevant municipalities and other accreditation documents.

#### Article 30

Once the above requirements have been met, the application and registration fees provided for in Article 1(e) of Decree No. 19.975/98 have been paid, the storage and sale sites have been inspected by DISE specialists and a favorable decision has been taken, the corresponding Seed Trader Registration Certificate shall be issued (Article 57 of Law No. 385/94).

In cases where an application is rejected as a result of not meeting the specified requirements, the party concerned shall

have a period of 30 days from the date of notification to satisfy the request made, failing which the application shall be considered abandoned, and there shall be no right to appeal.

#### Article 31

The register, use of which shall be compulsory for natural or legal persons engaged in the seed trade, shall, in accordance with Article 61 of Law No. 385/94, be numbered and initialled by the DISE on each page.

The initialling may be in the form of a rubber-stamp impression on each page of the register.

#### Article 32

Any change in the premises used for commercialization and/or storage shall be communicated to the DISE within 30 working days of the change taking place.

The opening of any branches shall be communicated to the DISE which, following inspection of the new premises, may authorize their inclusion in the same register.

#### Article 33

Where a seed trader wishes to terminate his trading activity, he shall request the DISE to cancel his registration and shall attach the latest registration certificate to the request.

Inclusion in the RNCS shall be renewed annually following payment of the annual maintenance fee provided for in Article 1(e) of Decree No. 19.975/98.

#### *Seed identification and packaging*

#### Article 34

All seed placed on sale (Article 58 of Law No. 385/94) may be commercialized in packaging made of:

- a. Jute;
  - b. Plastic fiber;
  - c. Cotton;
  - d. "Kraft" paper;
  - e. Other materials.
- a. The maximum capacity of each package shall be 50 kilograms. In the case of cottonseed, the use of plastic-fiber or jute bags is not recommended.
  - b. Packaged material shall be clearly and legibly identified, as provided in the Article referred to above, in the official language.
  - c. Seeds produced under the certified and approved seed production systems that are commercialized shall conform to specific laboratory reference material for the different categories of each species.

- d. Labels shall be provided solely by the Seeds Directorate, following quality control of the batches of seed to be commercialized.

#### Article 35

Seed traders may divide up the contents of labelled original packages, provided that they have been authorized to do so by the DISE, Article 60 of Law No. 385/94, in order to establish the corresponding responsibilities.

In that case the divided packages shall also be identified with information from the label of the original package, whether in the form of an actual label or an inscription on the package. Such information shall have the effect of a sworn declaration.

Where seed has been treated, a mention and a description of the chemical treatment to which it has been subjected shall be compulsory; the seed shall be dyed to warn of its unsuitability for use as human and/or animal food.

#### *Seed Imports*

#### Article 36

All natural or legal persons under public or private law interested in importing seed shall be included in the RNCS (Article 62 of Law No. 385/94).

All seed of species and varieties included in the RNCC or RNCS may be imported in commercial quantities.

Species and/or varieties included in the RNCS may be imported in commercial quantities only after the DISE has issued a favorable technical opinion and if they conform to plant health standards and the purity and germination requirements established on laboratory samples of each species.

#### Article 37

Individual farmers or those in partnership interested in importing seeds for their own use shall request the necessary authorization from the DISE which, following a favorable ruling by CONASE, shall submit the request to the Minister of Agriculture and Livestock for approval by a resolution, Article 63 of Law No. 385/94.

The farmers in question shall be required:

- a. To prove their status as individual farmers or as partners;
- b. To prove that the volume of seed to be imported corresponds to the area to be sown.

#### Article 38

Imported seed that does not conform to technical standards in relation to the species and/or to hygiene may be returned, re-exported, used in industry or for human or animal consumption

or be destroyed by the importer, as dictated by circumstances, subject to supervision by the DISE.

Once it has entered the country, all imported seed shall be subject to the provisions of Law No. 385/94, these Regulations and the control and supervision of the DISE.

#### Article 39

The import of species and varieties for the purposes of propagation and subsequent export (Article 65 of Law No. 385/94) shall be permitted provided that the following requirements are satisfied:

- a. The seed to be imported must not be diseased or carry diseases expressly prohibited in Paraguay;
- b. The species or varieties of the seed to be imported must meet technical and plant hygiene standards;
- c. The interested party must have documents providing proof of a subsequent export agreement.

Seed imported for propagation purposes and subsequent export shall only be used for the purposes specified.

It may not be sold, commercialized or distributed inside the country.

Once seed has entered the country, the importer shall be responsible for the imported material and shall keep the DISE informed of the place of storage and the plot where it is to be sown, thereby allowing free access for control and supervision by DISE specialists.

#### *Seed Exports*

#### Article 40

Natural or legal persons under public or private law included in the RNPS and/or RNCS shall request authorization from the DISE to export seed which, subject to a favorable ruling by the CONASE, shall be transmitted to the Ministry of Agriculture and Livestock for a resolution to be adopted (Article 69 of Law No. 385/94).

### CHAPTER VII

#### Seed Analysis

#### *National Register of Seed Laboratories*

#### Article 41

Interested parties shall request the DISE to include a Seed Analysis Laboratory in the National Register of Seed Laboratories (RNLS) (Article 74 of Law No. 385/94), using the form provided for that purpose; said form shall have the effect of a sworn declaration, which shall comply with the provisions of Resolution GMC No. 60/97 and its amended version contained



in Resolution GMC No. 69/98 of Article 1 of Decree No.5.090/99, and shall be accompanied by:

- a. Terms of agreement signed by the technical representative;

Where the requesting party is also a producer included in the RNPS, the technical production representative shall, in that capacity, also be an authorized signatory on behalf of the Seed Analysis Laboratory;

- b. List of analysts, place and date of training;
- c. Equipment data, specifications, quantity, make, model and capacity;
- d. Exact location of the Laboratory;
- e. List of species to be analysed.

The DISE shall verify whether the facilities and equipment are appropriate, and also whether the technical personnel are trained to carry out all analysis-related activities.

If during an inspection of facilities and equipment, or verification of the suitability of analysts declared by a requesting party, DISE specialists detect non-compliance with the rules established for the analysis of requested species, the requesting party shall be duly informed and, once the relevant requirements have been satisfied, shall contact the DISE to arrange another inspection.

For the purposes of inclusion in the RNLS, laboratories shall comply with the Standards for Authorization of Seed Analysis Laboratories (LAS), Decree No. 5.090/99.

Once a requesting party has complied with the requirements established for inclusion in the RNLS, and following its authorization as an Approved Laboratory and payment of the application and registration fees established in Article 1(d) of Decree No. 19.975/98, the DISE shall issue the corresponding Registration Certificate.

#### Article 42

The DISE Seed Analysis Laboratory shall be the Official Laboratory for the purposes specified in Law No. 385/94 and these Regulations.

#### Article 43

Seed analysis laboratories included in the RNLS shall have the status of Approved Laboratories.

#### Article 44

The Official Laboratory and Approved Laboratories shall observe the analysis procedures established in the ISTA (International Seed Testing Association) Standards.

#### Article 45

Only the Official Laboratory and Approved Laboratories may issue seed analysis certificates and/or bulletins, which shall be valid on the whole of the national territory, and in certain circumstances abroad under relevant conventions or agreements that have been or may be signed.

#### Article 46

In the case of divergent seed analysis findings of approved laboratories, the Official Laboratory shall be responsible for resolving the matter.

#### Article 47

Where an Approved Laboratory requests an increase in the number of species to be analysed for commercial purposes, it shall do so in writing to the DISE which, prior to granting authorization, shall verify the availability of the equipment necessary for carrying out the analysis of the requested species and the suitability of the analysts.

If, during the verification mentioned in the previous paragraph, one or more pieces of the necessary equipment prove unavailable and/or the analysts unsuitable, the requesting party shall be duly informed and, once the relevant requirements have been satisfied, shall contact the DISE to arrange another inspection.

Following a favorable ruling on the second inspection mentioned above, the DISE shall authorize the release of the species to be analysed by the laboratory in question.

#### Article 48

Approved Seed Analysis Laboratories shall pay an annual maintenance fee as provided in Article 1(d) of Decree No. 19.975/98.

Non-payment of the fee mentioned in the preceding paragraph for a period of five consecutive years shall lead to the exclusion *ex officio* of the laboratory in question from the RNLS.

Any laboratory excluded from the RNLS as a result of the above provisions may request re-registration, for which purpose it shall satisfy the initial registration requirements.

### CHAPTER VIII

#### Inspection and Supervision

#### Article 49

Verification shall be carried out in the following cases:

- a. As a matter of routine;
- b. On a complaint by the competent authority;

- c. On a complaint by a producer who has acquired seed that does not correspond to a particular type of labelling.

Accredited technical officials shall, during supervision of seed production, transportation and/or trade (Article 77 of Law No. 385/94), produce three copies of a report, the contents and force of which shall be identical, on forms provided by the DISE; the report shall be signed by an inspector and owner of or person responsible for the seed; it shall record everything observed during the verification and, where an irregularity or irregularities have been detected, the type of defect shall be specified with reference to individual batches, and the number and weight of the packages concerned shall be given.

The seed samples extracted by the inspector during the verification shall be sent to the Official Laboratory for analysis in order to determine whether they meet legal requirements and technical standards. The batches affected may not be commercialized until such time as the Official Laboratory allows it, following analysis.

On the basis of the results of the analysis conducted by the Official Laboratory, the actions to be carried out shall be determined in accordance with Article 88 of Law No. 385/94.

## CHAPTER IX

### Fees and Promotion of Production

#### Article 50

Decree No. 19.975/98, implementing Article 82 of Law No. 385/94, is hereby amended, Article 1(g) of which shall read as follows:

Article 1: The amounts of the fees provided for in Law No. 385/94 "ON SEEDS AND PROTECTION OF PLANT VARIETIES" are hereby fixed and shall be payable to the Seeds Directorate, attached to the Ministry of Agriculture and Livestock, as follows:

#### Minimum Wages

Application	Register	Annual Maintenance
a. National Register of Seed Producers (RNPS)		5 10 5
b. National Register of Protected Plant Varieties (RNCP)		5 30 10
c. National Register of Commercial Plant Varieties (RNCC)		5 10 5
d. National Register of Seed Laboratories (RNLS)		5 10 5
e. National Register of Seed Merchants (RNCS)		5 10 5
f. Issue of provisional certificates in the National Register of Protected Plant Varieties (RNCP)		
g. Provision of labels or tags for seed, the equivalent up to 0.03 Daily Minimum Wages (DMW), according to origin, species and category of seed, which shall be established as follows:		

1. 0.03 DMW for registered, approved and hybrid categories for each bag of national or imported agricultural seed.
2. 0.02 DMW for each bag of agricultural seed of the supervised national or imported category.
3. 0.01 DMW for each bag of agricultural seed commercialized as common seed.
4. For seed of horticultural, fruit, ornamental, forest and other varieties:
  - 0.0225 DMW for seed whose unit price does not exceed 5.0 DMW;
  - 0.0250 DMW for seed whose unit price is between 5.1 and 10 DMW;
  - 0.0275 DMW for seed whose unit price is between 10.1 and 15.0 DMW;
  - 0.030 DMW for seed whose unit price is over 15.0 DMW.

#### Article 51

The amounts to be paid to the DISE, provided for in Article 82(a), (d) and (e) of Law No. 385/94, for the provision of services such as inspection of seed production under the approved and supervised systems, seed sampling, analysis, processing and testing services, shall be established by decision of the MAG, at the request of the DISE, based on the actual cost of the services in question.

The amounts shall be adjusted annually, taking into account the annual variation in the consumer price index established by the Central Bank of Paraguay (BCP).

#### Article 52

The MAG may make annual incentive awards as follows (Article 87 of Law No. 385/94) at the request of the DISE and in agreement with CONASE:

- a. Individuals or institutions noted in the plant improvement sector for breeding superior varieties beneficial to national agriculture shall be awarded certificates or distinctions;
- b. Producers and/or merchants noted in their respective areas of activity shall be awarded certificates, plaques or trophies according to their various circumstances.

## CHAPTER X

### Infringements and Penalties

#### Article 53

In addition to those provided for in the various paragraphs of Article 88 of Law No. 385/94, the following shall be regarded as infringements:

- a. All violations committed in the process of commercializing and transporting seed, such as:
    - Detaching, altering, defacing or destroying any label attached in accordance with the Law;
    - Using on any label or advertising the term “type” in conjunction with the name of a seed;
    - Moving, handling or disposing of seed batches withdrawn from sale, or their labels, without written authority from the Seeds Directorate;
    - Transporting seed in bulk once it has been processed;
    - Having a certificate for an analysis carried out more than six months previously;
    - Having information added to a package or label that is not strictly authorized by Law No. 385/94 and these Regulations.
  - b. Natural or legal persons importing seeds, tubers, bulbs or other reproductive material intended exclusively for industrialization or consumption, and offering to give away, distribute, transfer or sell those items, for whatever purpose, as “seed.”
  - c. A seed producer who himself, or whose Technical Representative acting on his behalf, omits or falsifies information and thereby confuses or misleads in relation to a plant variety being produced which, in accordance with Law No. 385/94, these Regulations and the technical standards established for the propagated species, the producer is obliged to supply to the DISE.
- Using seed not covered by established reference material or plant varieties not included in the RNCC;
  - Storing seed, with a view to its being sown, without the care required to preserve its physical, physiological and/or plant hygiene characteristics;
  - Using plots of land for producing unregistered seed intended for commercial production;
  - Failure to observe of the technical conditions laid down in the General and Specific Standards for the species being produced;
  - Producing seed without the corresponding registration, whether initial or renewed;
  - Preventing or obstructing, by whatever means, the action of authorized inspectors:

In the course of the inspection of seed trading and/or transport, the following batches shall be liable to fines:

- Those with health certificates whose period of validity has expired;
- Those identified as non-compliant or whose identification is false or inaccurate;
- Those that have been advertised, by any means or in any form, with non-representative or false statements;
- Those presented as approved, inspected or in any other category without that fact being specified on their containers or packaging, or on official labels or tags provided by the DISE;
- Those not accompanied by the requisite legal documentation.

#### Article 54

Without prejudice to the relevant criminal responsibility, failure to comply with Law No. 385/94 and this Decree shall be subject to the following administrative penalties.

- a. Caution: This is the written document in which the attention of the party primarily responsible is drawn to the breach committed, taking into account the nature and circumstances of the infringements where these are of a minor nature.
- b. Fine: This is the financial penalty imposed on any person violating the relevant legal provisions for the verification of seed production and trade.

A fine may constitute a principal or additional penalty to be applied according to the gravity of the infringement.

In the course the verification of seed production, fines may be imposed on seed producers who commit the following breaches:

- Using plots of land without prior authorization;

A fine shall likewise be imposed on natural or legal persons who:

- Prevent or obstruct supervisory activities by whatever means;
- Commercialize or transport seed whose commercialization has been suspended by the DISE.

Seed batches that fail to comply with the above provisions may not be commercialized.

- c. Confiscation: This is a punitive measure designed to prevent the commercialization of seed that is not suitable for sowing; seed batches shall be confiscated where:
  - The requirements of official reference models are not adhered to;
  - Plant health certificates have expired or have been tampered with;

- The name of a species or variety is incorrect or is not given;
- They have been commercialized or transported without displaying, clearly written in a visible place on the container or packaging, the label or tag or identification stamp containing the information required by Law No.385/94, these Regulations and the technical standards in force for the species in question;
- The plant variety has been officially recognized as being unfit for sowing;
- They have been commercialized by natural or legal persons not included in official registers;
- They have been produced by seed producers not registered with the DISE;
- The transport of the batches is not accompanied by the requisite legal documentation;
- Commercialized seed batches come from seedbeds closed for not complying with the standards established by the DISE.

In cases of confiscation, the infringing party shall be the depository of the confiscated seed batches, whose replacement, transfer or commercialization shall be prohibited until such time as the MAG has taken a decision on their fate.

- d. Temporary withdrawal from the Seed Producers and Traders Register or other registers held by the DISE, Article 90 of Law No. 385/94, shall occur in cases where:
  - The seed producer or trader repeats any of the offenses specified in Law No. 385/94, these Regulations and the technical standards in force;
  - The producer or trader imports seed and uses it for other economic purposes without due authorization from the DISE;
  - The producer or trader sows, distributes, sells or displays seed that is not authorized or is prohibited, or whose production and/or commercialization is suspended;
  - The producer or trader distributes, sells or displays for sale seed imported for the purposes of propagation and subsequent export, Article 65 of Law No. 385/94.
- e. Definitive cancellation of inclusion in the relevant register(s) shall occur in cases where:
  - The seed producer or trader repeats any of the offenses punishable by temporary withdrawal from the register;

- The performance of fraudulent acts is proved, on a proposal by the DISE relating to the suitability of a producer or trader.

#### Article 55

Records of infringement proceedings shall be issued in three copies, the content and effect of which shall be identical, and which shall be signed by the inspector and by the infringer or his legal representative.

- a. Where the infringer refuses to sign the record, that fact shall be noted and a copy shall be sent to him;
- b. Consideration of the record of an offense shall be regarded as an administrative proceeding and conducted by the MAG, which shall decide on the penalty to be applied and shall notify the infringer accordingly.

#### Article 56

An appeal for reconsideration of a particular case shall be made, within ten days of the date on which notification is received, to the authority that has imposed the penalty, which after considering the case shall arrange for it to be referred to the appropriate body.

### CHAPTER XI

#### Special Provisions

#### Article 57

All provisions contrary to those contained in this Decree are repealed.

#### Article 58

The Ministry of Agriculture and Livestock (MAG) shall be authorized to extend and/or partly to amend this Decree by means of resolutions with a view to improving, facilitating and expediting its application.

#### Article 59

This Decree shall be authenticated by the Ministry of Agriculture and Livestock.

#### Article 60

Communication, publication and transmittal to the Official Registry is hereby ordered.

## NEW ZEALAND

## PLANT VARIETY RIGHTS AMENDMENT 1999-No. 122

## AN ACT TO AMEND THE PLANT VARIETY RIGHTS ACTS 1987

[14 October 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title- This Act may be cited as the Plant Variety Rights Amendment Act 1999, and is part of the Plant Variety Rights Act 1987 (“the principal Act”).

2. Orders in Council as to convention parties-

- (1) The principle Act is amended by inserting, after section 38, the following section:

“38A. For the purpose of giving effect to any international agreement or arrangement to which New Zealand is a party or that applies to New Zealand, the Governor-General may by Order in Council declare that any entity specified in the order that is a party to the agreement or arrangement or to which the agreement or arrangement applies (whether a state, part of a state, a territory for whose international relations a state is responsible, a political union, an international organisation, or any other entity) is a convention party for the purposes of this Act.”

- (2) Section 2 of the principle Act is amended by repealing the definitions of the terms “international agreement” and “UPOV country”, and inserting, after the definition of the term “Commissioner”, the following definition:

““Convention party” means an entity that for the time being-

“(a) Is declared by an order under section 38A to be a convention party for the purposes of this Act; or

“(b) Is a contracting party to the body that, on the commencement of the Plant Variety Rights Amendment Act 1999, was known as the International Union for the Protection of New Varieties of Plants (constituted under the international agreement then called the International Convention for the Protection of New Varieties of Plants):”.

- (3) Section 12(1) of the principle Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Any person makes an application for a grant in New Zealand in respect of a variety in respect of which that person has earlier, -

“(i) After a convention party that is a state, part of a state, or a territory for whose international relations a state is responsible most recently became a convention party, made in and under the law of that convention party an equivalent application that has been accepted; or

“(ii) After a convention party that is not a state, part of a state, or a territory for whose international relations a state is responsible most recently became a convention party, made under the rules of that convention party an equivalent application that has been accepted; and

“(b) That application for a grant in New Zealand is made not more than 12 months after that equivalent application (or, if more than 1 equivalent application has been made, whether in or under the rules of several convention parties, the earliest of them) was made; and”.

- (4) Section 17(6) of the principal Act is amended by omitting from paragraphs (a) and (b) the words “UPOV country”, and substituting in each case the words “convention party”.

This Act is administered by the Ministry of Commerce.



## PLANT VARIETY PROTECTION LEGISLATION INDEX

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Andean Community</u></b>		
Decision 345 of the Subregional Integration Agreement (Cartagena Agreement), Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties, of October 21, 1993	75	Dec. 1994
<b><u>Argentina</u></b>		
Law No. 20247/73 on Seed and Phytogetic Creations	70	Feb. 1993
Implementing Decree No. 2183/91 to the Law on Seed and Phytogetic Creations	70	Feb. 1993
Resolution No. 35/96 of February 28, 1996	81	Apr. 1997
<b><u>Australia</u></b>		
Plant Breeder's Rights Act 1994 (No. 110 of 1994) (amend. 1999)	88	June 2000
Taxa Covered by Plant Variety Protection Legislation (All species of plants including fungi and algae, but excluding bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages)	77	May 1995
<b>Miscellaneous Information</b>		
Tariff of Fees	64	Aug. 1991
Accession to the 1991 Act of the UPOV Convention	87	Mar. 2000
<b><u>Austria</u></b>		
Federal Law on the Protection of Plant Varieties (Variety Protection Law) as amended by the Federal Law BGB1.I No. 72/1997	84	Apr. 1998
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
	86	Dec. 1999
Tariff of Fees	78	June 1995
<b><u>Belgium</u></b>		
Law on the Protection of New Plant Varieties (of May 20, 1975)	59	Jan. 1990

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Bolivia</u></b>		
Decision 345 (see “Andean Community”)	75	Dec. 1994
General Regulations on Seed Certification and Inspection		
Secretariat Resolution No. 064/96	87	Mar 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	85	Oct. 1999
<b><u>Brazil</u></b>		
Law No. 9,456 (April 28, 1997)	89	Sept. 2000
Decree No. 2,366 (November 5, 1997)	89	Sept. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Bulgaria</u></b>		
Law on the Protection of New Plant Varieties and Animal Breeds	84	Apr. 1998
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	84	Apr. 1998
<b><u>Canada</u></b>		
The Plant Breeders’ Rights Act	62	Apr. 1991
Regulations Respecting Plant Breeders’ Rights	69	Nov. 1992
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	78	June 1995
All species of the plant kingdom, except bacteria, algae and fungi	85	Oct. 1999
Tariff of Fees	69	Nov. 1992
<b><u>Chile</u></b>		
Law No. 19.342 on the Rights of Breeders of New Varieties of Plants	81	Apr. 1997



State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>People's Republic of China</u></b>		
Regulations of the People's Republic of China on the Protection of New Varieties of Plants	85	Oct. 1999
Decree No. 3 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Forestry Part)	90	Dec. 2000
Decree No. 13 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Agriculture Part)	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Colombia</u></b>		
Decision 345 (see "Andean Community")	75	Dec. 1994
Decree No. 533 of March 8, 1994, introducing Regulations to the Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties as Amended by Decree No. 2468 of November 4, 1994	83	Dec. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	80	Dec. 1996
<b><u>Czech Republic</u></b>		
Law on the Legal Protection of the Varieties of Plants and Breeds of Animals <sup>1</sup>	64	Aug. 1991
Decree of the Federal Ministry of Agriculture and Food Concerning the Implementation of Certain Provisions of Law No. 132/1989 of the Collection of Laws on the Legal Protection of New Varieties of Plants and Breeds of Animals <sup>1</sup>	64	Aug. 1991
Declaration of Continued Application	70	Feb. 1993
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999

<sup>1</sup> Enacted by Czechoslovakia

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Denmark</u></b>		
The Danish Plant Variety Protection Act Order No. 51 of 5 February, 1996	87	Mar. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	79	July 1996
Modification of Fees	73	April 1994
<b><u>Ecuador</u></b>		
Decision 345 (see “Andean Community”)	75	Dec. 1994
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	82	Aug. 1997
<b><u>Estonia</u></b>		
Plant Variety Rights Act	89	Sept. 2000
<b>Miscellaneous Information</b>		
Taxa covered by Plant Variety Protection Legislation all botanical genera and species	89	Sept. 2000
<b><u>European Union</u></b>		
Council Regulation (EC) No. 2100/94 of July 27, 1994 on Community Plant Variety Rights	77	May 1995
Council Regulation (EC) No. 2470/96 of December 17, 1996 Providing for an extension of the terms of a Community plant variety right in respect of potatoes	89	Sept. 2000
Commission Regulation (EC) No. 1238/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the CPVO	89	Sept. 2000
Commission Regulation (EC) No. 1239/95 of May 5, 1995 Establishing implementing rules for the application of Council	89	Sept. 2000

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Finland</u></b>		
The Act on Plant Breeder's Right (No. 789/1992) as amended (No. 238/1999, 5.3.1999)	88	June 2000
Decree on the Plant Variety Board (No. 906 of October 9, 1992)	71	July 1993
Decree on Breeders' Rights (No. 907 of October 9, 1992)	71	July 1993
<b><u>France</u></b>		
Law on the Protection of New Plant Varieties (No. 70-489 of June 11, 1970) <sup>1</sup>	33	Apr. 1983
Decree Concerning the Committee for the Protection of New Plant Varieties (No. 71-454 of June 7, 1971) <sup>3</sup>	33	Apr. 1983
Order Concerning the Denomination of Plant Varieties in respect of which either an Entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a New Plant Variety Protection Certificate has been Issued (of September 1, 1982)	34	June 1983
Decree No. 95-1047 of December 28, 1995, amending the Intellectual Property Code (Regulatory Part) with respect to the scope of application of New Plant Variety Certificates and the Term and Scope of Breeders' Rights	81	Apr. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom)	80	Dec. 1996
Tariff of Fees	55	June 1988

<sup>1</sup> These texts have been integrated into the Intellectual Property Code

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Germany</u></b>		
The Plant Variety Protection Law (Consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by: Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990); Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992); Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992); Article 72 of the Law of April 27, 1993 (entered into force on January 1, 1994); Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005); Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995); Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997))	86	Dec. 1999
Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985	51	Sept. 1986
<b>Miscellaneous Information</b>		
Reunification	61	Feb. 1991
Tariff of Fees	78	June 1995
<b><u>Hungary</u></b>		
Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds)	84	Apr. 1998
Joint Decree Relating to the Execution of the Law on the Protection of Inventions by Patents (No. 4/1969 XII. 28) OMFB-IM of the President of the National Committee for Technical Development and the Minister of Justice, as Amended by Decree No. 4/1983 (V.12) IM of the Minister of Justice	49	Jan. 1986
<b><u>Ireland</u></b>		
Plant Varieties (Proprietary Rights) Act, 1980	32	Feb. 1983
Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 No. 41, 1998	88	June 2000
<b>Miscellaneous Information</b>		

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Israel</u></b>		
Law on the Rights of the Breeders of Plant Varieties (Consolidated Text of the Plant Breeders' Rights Law, 5733-1973, as Amended by the Plant Breeders' Rights (Amendment) Law, 5744-1984 and as Amended by the Plant Breeder's Rights (Amendment No. 2) 5756-1996)	86	Dec. 1999
<b>Miscellaneous Information</b>		
Tariff of Fees	67	Feb. 1992
<b><u>Italy</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995
	79	July 1996
Tariff of Fees	70	Feb. 1993
<b><u>Japan</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	66	Dec. 1991
<b><u>Kenya</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Kyrgyz Republic</u></b>		
Law on the Legal Protection of Selection Achievements (May 26, 1998)	90	Dec. 2000
<b>Miscellaneous Information</b>		
Accession to the 1991 Act of the UPOV Convention	88	June 2000
<b><u>Mexico</u></b>		
Federal Law on Plant Varieties	82	Aug. 1997
Regulations of the Federal Plant Variety Law (Sept. 24, 1998)	87	Mar. 2000

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Netherlands</u></b>		
Seeds and Planting Material Act (Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999)	88	June 2000
Territorial Extension of the Application of the UPOV Convention	52	June 1987
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All taxa of the plant kingdom)	61	Feb. 1991
Tariff of Fees	71	July 1993
<b><u>New Zealand</u></b>		
Plant Variety Rights Act 1987, as Amended by the Plant Variety Rights Amendment Act 1990 of August 1, 1990, and the Plant Variety Rights Amendment Act of July 1, 1994	78	June 1995
Plant Variety Rights Amendment, an Act to Amend the Plant Variety Rights Act 1987, 2 September 1996	82	Aug. 1997
Plant Variety Rights Amendment Regulations 1997	82	Aug. 1997
Act No. 122 - Plant Variety Rights Amendment	90	Dec. 2000
<b>Miscellaneous Information</b>		
Tariff of Fees	85	Oct. 1999
<b><u>Norway</u></b>		
Act of March 12, 1993, Relating to the Plant Breeder's Rights Regulations concerning the Plant Breeder's Right as amended on February 6, 1995 and July 16, 1997	74	July 1994
	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	80	Dec. 1996
Tariff of Fees	72	Nov. 1993

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Panama</u></b>		
Law No. 23 of July 15, 1997 on Industrial Property, Title V	90	Dec. 2000
Executive Decree No. 13 Regulating Title V of Law No. 23	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Paraguay</u></b>		
Law No. 385/94 on Seeds and Cultivar Protection	83	Dec. 1997
Decree No. 7797/00 enacting Regulations under Law 385/94	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	81	Apr. 1997
<b><u>Poland</u></b>		
Extract from Decree of the Minister for Agriculture, Forestry and Food Economy Concerning the Register of Varieties, the Role of Exclusive Rights on Varieties and the Control of Propagating Materials of April 14, 1988, as Amended on September 25, 1990	68	Apr. 1992
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	80	Dec. 1996
<b><u>Portugal</u></b>		
Decree-Law No. 213/90 of June 28, 1990	83	Dec. 1997
Ministerial Order No. 940/90 of October 4, 1990, as Amended by Ministerial order No. 351/91 of April 20, 1990	66	Dec. 1991
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
Tariff of Fees	66	Dec. 1991
<b><u>Republic of Moldova</u></b>		

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Russian Federation</u></b>		
Law on the Protection of Selection Achievements (of August 6, 1993)	76	Feb. 1995
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Taxa Covered by Plant Variety Protection Legislation	87	Mar. 2000
<b><u>Slovakia</u></b>		
Declaration of Continued Application	70	Feb. 1993
Law on the Protection Rights of New Varieties and Animal Breeds No. 132/1989 Coll. Laws, dated 15 Nov. 1989 (amended 22/1996 Coll. Laws)	87	Mar. 2000
<b><u>Slovenia</u></b>		
Law on Plant Variety Protection	86	Dec. 1999
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>South Africa</u></b>		
Plant Breeder's Rights Act No. 15 of 1976 as amended by Plant Breeder's Amendment Act No. 5 of 1980, Plant Breeder's Amendment Act No. 14 of 1981, Plant Breeder's Amendment Act No. 38 of 1983, Transfer of Powers and Duties of the State President, Act. No. 97 of 1983 and Plant Breeder's Amendment Act, No. 15 of 1996	82	Aug. 1997
Regulations Relating to Plant Breeder's Rights No. R 1186 of 12 September, 1997	87	Mar. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	85	Oct. 1999



State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Spain</u></b>		
Law on the Protection of Plant Varieties No. 12/1975 of March 12, 1975 <sup>1</sup>	67	Feb. 1992
General Rules on the Protection of Plant Varieties (Approved by Royal Decree No. 1674/1977 of June 10, 1977)	67	Feb. 1992
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All genera and species)	72 90	Nov. 1993 Dec. 2000
<b><u>Sweden</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	81	Apr. 1997
Tariff of Fees	85	Oct. 1999
<b><u>Switzerland</u></b>		
Federal Law on the Protection of New Plant Varieties (Consolidated Text of the Federal Law of March 20, 1975, as Amended by the Federal Law of October 10, 1980)	56	July 1988
Ordinance on the Protection of Plant Varieties	61	Feb. 1991
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	61	Feb. 1991
Tariff of Fees	75	Dec. 1994
Tariff of Fees (Corrigendum)	76	Feb. 1995
<b><u>Trinidad and Tobago</u></b>		
The Protection of New Plant Varieties Act, 1997	85	Oct. 1999
<b>Miscellaneous Information</b>		

<sup>1</sup> The Law has been updated recently.

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>United Kingdom</u></b>		
Plant Varieties Act 1997	85	Oct. 1999
The Plant Breeder's Rights (Information Notices) (Extension to European Community Plant Variety Rights Regulations 1998)		
Statutory Instrument No. 1023 of 1998 The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1024 of 1998 The Plant Breeders' Rights (Information Notices) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1025 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998	87	Mar. 2000
Statutory Instrument No. 1026 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1027 of 1998 The Plant Breeders' Rights Regulations 1998	87	Mar. 2000
<b><u>United States of America</u></b>		
Plant Variety Protection Act (Consolidated Text of Public Law 91- 577 of December 24, 1970, as Amended by Public Law 96-574 of December 22, 1980, Public Law 97-164 of April 2, 1982, Public Law 100-203 of December 22, 1987, Public Law 102-560 of October 28, 1992, Public Law 103-349 of October 6, 1994 and Public 104-127 of April 4, 1996)	80	Dec. 1996
Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996	80	Dec. 1996
<b><u>Uruguay</u></b>		
Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract)	76	Feb. 1995
Decree No. 84/983, Introducing Law No. 15.173, Regulating the Production, Certification and Marketing of Seed, as Amended by Decree No. 418/987 of August 12, 1987, and Decree No. 519/991 of September 17, 1991 (Extract)	76	Feb. 1995
Law No. 16.811	82	Aug. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995