

# PLANT VARIETY PROTECTION



**Gazette and Newsletter  
of the International Union  
for the Protection of  
New Varieties of Plants**

**UPOV**

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The International Union for the Protection of New Varieties of Plants (UPOV) – an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States and Organizations interested in plant variety protection.

### UPOV Mission Statement

*To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.*

*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. Requests for addition to the mailing list may be placed with:



International Union for the Protection of New Varieties of Plants (UPOV)  
34, chemin des Colombettes, P.O.Box 18, CH-1211 Geneva 20, Switzerland

Telephone: +41-22-338 9111    Telefax: +41-22-733 0336    E-mail: [upov.mail@wipo.int](mailto:upov.mail@wipo.int)  
Website: [www.upov.int](http://www.upov.int)

#### *Amaranth*

*Amaranthus hypochondriacus*, photograph taken at *San Miguel del Milagro* (“St. Michel of Miracle”), near the archeological zone of Cacaxtla in Tlaxcala, Mexico. The etymological meaning of Cacaxtla is derived from the náhuatl word “cacaxtli”, which stands for a device used to carry merchandise. Here, the Olmec culture built their first settlement. Currently, half of the community is dedicated to the production and processing of amaranth, which is used to make candies and food, as well as being used as an ornamental.

Image kindly provided by the  
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**GAZETTE****NEW MEMBER OF UPOV****SINGAPORE**

On June 30, 2004, the Government of Singapore deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for Singapore one month after the deposit of its instrument of accession, i.e. on July 30, 2004. Singapore became the fifty-fifth member of the Union.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to the genera and species listed in the schedule of the Plant Varieties Protection Act (No. 22) of 2004 as provided by the Minister for Foreign Affairs on June 25, 2004, below:

## **ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION**

### **AUSTRIA**

On June 1, 2004, the Government of the Republic of Austria deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants with the Secretary-General of UPOV.

The 1991 Act of the Convention entered into force for the Republic of Austria one month after the deposit of its instrument of accession, i.e. on July 1, 2004.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to all plant genera and species.

**EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES****KYRGYZ REPUBLIC**

By virtue of Decree No. 778 of December 12, 2003, entitled “Additions to Decree No. 572 of August 28, 1998, ‘Approval of the lists of botanical and zoological genera and varieties of plants and animals’ of the Government of the Kyrgyz

Republic”, the Kyrgyz Republic extends the list of botanic plant genera and species from 16 to 108. The consolidated list is reproduced below (the Latin names and English common names have been provided by the Government of the Kyrgyz Republic).

ENCLOSURE TO DECREE #778 OF THE GOVERNMENT OF THE  
KIRGYZ REPUBLIC OF DECEMBER 12, 2003

By virtue of Decree No. 778 of December 12, 2003, entitled “Additions to Decree No. 572 of August 28, 1998, ‘Approval of the lists of botanical and zoological genera and varieties of plants and animals’ of the Government of the Kyrgyz Republic”, the

Kyrgyz Republic extends the list of botanic plant genera and species from 16 to 108. The consolidated list is reproduced below (the Latin names and English common names have been provided by the Government of the Kyrgyz Republic).

1.	Apricot	<i>Prunus armeniaca</i> L.
2.	Cherry-plum	<i>Prunus cerasifera</i> Ehrh.
3.	Sogdian cherry-plum	<i>Prunus sogdiana</i> Vass.
4.	Peanut, groundnut	<i>Arachis hypogaea</i> L.
5.	Watermelon	<i>Citrullus lanatus</i> (Thunb.) Matsum. et.
6.	Turkestan juniper	<i>Juniperus</i> L.
7.	Quince	<i>Cydonia</i> Mill.
8.	Aster, Michaelmas daisy	<i>Aster</i> L.
9.	China Aster	<i>Callistephus chinensis</i> (L.) Nees
10.	Aubergine, eggplant	<i>Solanum melongena</i> L.
11.	Barberry	<i>Berberis</i> L.
12.	Garden bean	<i>Vicia faba</i> L.
13.	Field bean	<i>Vicia faba</i> L.
14.	Swede	<i>Brassica napus</i> L. var. <i>napodrassica</i> (L.) Rehb.
15.	Garden valerian	<i>Valeriana officinalis</i> L.
16.	Common vetch	<i>Vicia sativa</i> L.
17.	Grapevine	<i>Vitis</i> L.
18.	Cherry	<i>Prunus cerasus</i> L.
19.	Carnation	<i>Dianthus</i> L.
20.	Hemerocallis	<i>Hemerocallis</i> L.
21.	Gladiolus	<i>Gladiolus</i> L.
22.	Garden pea	<i>Pisum sativum</i> L.
23.	Field pea	<i>Pisum sativum</i> L.
24.	Brown mustard	<i>Brassica jincea</i> (L.) Czern. Et. Coss in Czern
25.	Pear	<i>Pyrus communis</i> L.
26.	Melon	<i>Cucumis melo</i> L.
27.	Bramble, blackberry	<i>Rubus</i> subgenus <i>Eubatus</i> sect. <i>Moriferi</i>
28.	Norway spruce, common spruce	<i>Picea abies</i> (L.) Karst.
29.	Tien Shan spruce	<i>Picea shrenkiana</i> F. et M.
30.	Strawberry	<i>Fragaria</i> L.
31.	Willow	<i>Salix</i> L.
32.	Cross-bred iris	<i>Iris hybrida</i> Hort.
33.	Green (bush) marrow	<i>Cucurbita pepo</i> L. var. <i>giraumonas</i> Duch.
34.	Chinese cabbage	<i>Brassica pekinensis</i> (Lour.) Rupr.
35.	Cauliflower	<i>Brassica oleracea</i> convar. <i>botrytis</i> (L.) Alef. Var. <i>botrytis</i> L.
36.	Red clover	<i>Trifolium pratense</i> L.
37.	Brome grass	<i>Bromus inermis</i>
38.	Gooseberry	<i>Ribes uva-crispa</i> L.
39.	Corn, maize	<i>Zea mays</i> L. convar. <i>saccharata</i> Korn.

40.	Bulb onion	<i>Allium cepa</i> L.
41.	Raspberry	<i>Rubus</i> L.
42.	Juniper	<i>Juniperus</i> L.
43.	Almond	<i>Anygdalus communis</i> L.
44.	Carrot	<i>Daucus carota</i> L.
45.	Kentucky bluegrass	<i>Poa pratensis</i> L.
46.	Narcissus	<i>Narcissus</i> L.
47.	Nectarine	<i>Prunus persica</i> (L.) Batsch var. <i>nucipersca</i> (Suckow) Schneid
48.	Marigold	<i>Calendula officianalis</i> L.
49.	Chick-pea	<i>Cicer arietinum</i> L.
50.	Sea buckthorn	<i>Hippophae rhamnoides</i> L.
51.	Naked Oats	<i>Avena nuda</i> L.
52.	Red fescue	<i>Festuca rubra</i> L.
53.	Meadow fescue	<i>Festuca pratensis</i> Huds.
54.	Hard fescue, Sheep fescue	<i>Festuca ovina</i> L.
55.	Cucumber	<i>Cucumis sativus</i> L.
56.	Walnut	<i>Juglans regia</i> L.
57.	Cymbing	<i>Cucurbita pepo</i> L. var. <i>melopepea</i> d.
58.	Hot pepper	<i>Capsicum annum</i> L. var. <i>Longum</i> (DC) Sendt.
59.	Sweet pepper	<i>Capsicum annum</i> L. var. <i>Grossum</i> (L.)
60.	Peach	<i>Prunus persica</i> (L.) Batsch.
61.	Parsley	<i>Petroselinum crispum</i> (Mill.) Nym. ex A.W. Hill
62.	Silver fir	<i>Abies semenovii</i> B.Fedtsch
63.	Sunflower	<i>Helianthus annuus</i> L. & <i>H.Debilis</i> Nutt.
64.	Common millet	<i>Panicum miliaceum</i> L.
65.	Forage kochia	<i>Kochia prostrata</i>
66.	Quitch	<i>Elymus trachycaulus</i>
67.	Italian ryegrass	<i>Lolium multiflorum</i> Lam. ssp. <i>Italicum</i> (A.Br) Volkart
68.	Westerwold ryegrass	<i>Lolium multiflorum</i> Lam. var. <i>westerwoldicum</i> Witm.
69.	Perennial ryegrass	<i>Lolium perenne</i> L.
70.	Winter rapeseed	<i>Brassica napus</i> L. ssp. <i>oleifeira</i> (Metzg) Sinsk
71.	Spring rapeseed	<i>Brassica napus</i> L. ssp. <i>oleifeira</i> (Metzg) Sinsk
72.	Garden radish	<i>Raphanus sativus</i> L. var. <i>radcula</i> Pers.
73.	Black radish	<i>Raphanus sativus</i> L. convar. <i>Lobo Sazon</i> . E. Stankev. var. <i>lobo</i>
74.	Rice	<i>Oryza sativa</i> L.
75.	Rye	<i>Secale cereale</i> L.
76.	Rose	<i>Rosa</i> L.
77.	Lettuce	<i>Lactuca sativa</i> L.
78.	Safflower	<i>Carthamus tinctorius</i> L. (see doc. C 37/6)
79.	Fodder beet	<i>Beta vulgaris</i> L.
80.	Garden beet, beetroot	<i>Beta vulgaris</i> L. ssp. <i>Vulgaris</i> var. <i>condiliva</i> alof.
81.	Domestic plum	<i>Prunus domestica</i> L.
82.	Japanese plum	<i>Prunus salicina</i> Lindl.
83.	Red currant	<i>Ribes sylvestre</i> (Lam.) Mert.Et W. Koch
84.	Black currant	<i>Ribes nigrum</i> L.
85.	Grain sorghum	<i>Sorghum bicolor</i> (L.) Moench
86.	Asparagus	<i>Asparagus officinalis</i> L.
87.	Cole-seed	<i>Brassica rapa</i> L. var. (Lam.) Briggs
88.	Tobacco	<i>Nicotiana tabacum</i> L.
89.	Timothy-grass	<i>Phleum pratense</i> L.
90.	Tomato	<i>Lycopersicon lycopersicum</i> (L.) karst ex. Farw.
91.	Poplar	<i>Populus</i> L.
92.	Triticale	<i>Triticosecale</i> Witmack



93.	Turnip	<i>Brassica rapa</i> L. var. <i>rapa</i> (L.) Thell
94.	Pumpkin	<i>Cucurbita maxima</i> Duch.
95.	Pumpkin, marrow	<i>Cucurbita pepo</i> L.
96.	Tulip	<i>Tulipa</i> L.
97.	Dill	<i>Anethum graveolens</i> L.
98.	Runner bean, kidney bean	<i>Phaseolus coccineus</i> L.
99.	French bean	<i>Phaseolus vulgaris</i> L.
100.	Vegetable kidney bean	<i>Phaseolus vulgaris</i> L.
101.	Freesia	<i>Freesia</i> Eckl. ex. Klatt
102.	Pistachio	<i>Pistacia Vera</i> L.
103.	Hazelnut	<i>Corylus avellana</i> L.
104.	Chrysanthemum	<i>Chrysanthemum</i> L.
105.	Sweet cherry	<i>Prunus avium</i> (L.)
106.	Spinach	<i>Spinacia oleracea</i> L.
107.	Apple	<i>Malus domestica</i> Borkh.
108.	Siever's apple	<i>Malus sieversii</i> (Ldb) M. Poem

**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 June 30, 2004**

State	Date on which State became member of UPOV	Number of contribution units	Latest Act <sup>1</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	1991 Act	July 1, 2004
Belarus	January 5, 2003	0.2	1991 Act	January 5, 2003
Belgium <sup>2</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>3</sup>	April 23, 1999
Colombia	September 13, 1996	0.2	1978 Act	September 13, 1996
Croatia	September 1, 2001	0.2	1991 Act	September 1, 2001
Czech Republic	January 1, 1993	0.5	1991 Act	November 24, 2002
Denmark <sup>4</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	1991 Act	July 20, 2001
France <sup>5</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	1991 Act	January 1, 2003
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
Latvia	August 30, 2002	0.2	1991 Act	August 30, 2002
Lithuania	December 10, 2003	0.2	1991 Act	December 10, 2003
Mexico	August 9, 1997	0.75	1978 Act	August 9, 1997
Netherlands	August 10, 1968	3.0	1991 Act <sup>6</sup>	April 24, 1998
New Zealand	November 8, 1981	1.0	1978 Act	November 8, 1981
Nicaragua	September 6, 2001	0.2	1978 Act	September 6, 2001
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	1991 Act	August 15, 2003
Portugal	October 14, 1995	0.5	1978 Act	October 14, 1995
Republic of Korea	January 7, 2002	0.75	1991 Act	January 7, 2002
Republic of Moldova	October 28, 1998	0.2	1991 Act	October 28, 1998
Romania	March 16, 2001	0.2	1991 Act	March 16, 2001
Russian Federation	April 24, 1998	0.5	1991 Act	April 24, 1998
Singapore	July 30, 2004	0.2	1991 Act	July 30, 2004
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>7</sup>	May 18, 1980	2.0	1961/1972 Act	May 18, 1980

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

**International Convention for the Protection of New Varieties of Plants<sup>\*</sup>**  
UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

(continued)

State	Date on which State became member of UPOV	Number of contribution units	Latest Act <sup>1</sup> of the Convention to which State is party and date on which State became party to that Act	
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
Tunisia.....	August 31, 2003	0.2	1991 Act.....	August 31, 2003
Ukraine.....	November 3, 1995	0.2	1978 Act.....	November 3, 1995
United Kingdom.....	August 10, 1968	2.0	1991 Act.....	January 3, 1999
United States of America.....	November 8, 1981	5.0	1991 Act <sup>8</sup> .....	February 22, 1999
Uruguay.....	November 13, 1994	0.2	1978 Act.....	November 13, 1994

(Total: 55 States)

<sup>\*</sup> 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>1</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>2</sup> With a notification under Article 34(2) of the 1978 Act.

<sup>3</sup> With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.

<sup>4</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>5</sup> With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.

<sup>6</sup> Ratification for the Kingdom in Europe.

<sup>7</sup> With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.

<sup>8</sup> With a reservation pursuant to Article 35(2) of the 1991 Act.

\* \* \*

# NEWSLETTER

## LEGISLATION

### POLAND

#### LAW ON THE LEGAL PROTECTION OF PLANT VARIETIES\*

##### CHAPTER 1 GENERAL PROVISIONS

###### Article 1

The issues of the legal protection of plant varieties shall be regulated in this Law, and in particular:

- 1) the mode and way of granting and cancellation of the right to legal protection of the variety bred, or discovered and developed by the breeder, and also making commercial use thereof;
- 2) scope of the protection of that right.

###### Article 2

1. For the purpose of this Law:

- 1) variety – shall be taken to mean a grouping of plants or their parts, as far as such parts are capable of producing entire plant, within a single botanical taxon of the lowest known rank:
  - a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
  - b) distinguished from any other plant grouping by the expression of at least one of those characteristics,
  - c) which remains unchanged after repeated propagation or after a particular cycle of propagation or crossings, as given by the breeder;
- 2) hybrid variety – shall be taken to mean a variety produced each time by crossing of specified plant groupings, in accordance with the method and sequence given by the breeder of this variety;
- 3) hybrid variety component – shall be taken to mean a variety or a plant line used in the process of production of a hybrid variety;
- 4) protected variety – shall be taken to mean a variety, the breeder has the right of legal protection thereto and making commercial use thereof;

- 5) plant breeding – shall be taken to mean the activity aimed at developing and maintenance of varieties;
  - 6) variety maintenance – shall be taken to mean the activity aimed at production of propagating material of this variety, which shall assure preservation of its characteristics, uniformity and stability;
  - 7) breeder – shall be taken to mean a person who:
    - a) bred, or discovered and developed a variety, or
    - b) is or was the employer or has commissioned the person referred to in intend a to create a variety, or
    - c) is successor in title of persons referred to in intends a and b;
  - 8) propagating material – shall be taken to mean plants or their parts intended for sowing, planting, grafting, budding or other method of propagation of plants, including the application of biotechnology;
  - 9) harvested material – shall be taken to mean the plants or their parts produced as a result of the cultivation of a specified variety not intended to be used as propagating material;
  - 10) variety examination – shall be taken to mean the testing and assessment of a variety in order to grant its breeder the legal protection to this variety;
  - 11) associated states – shall be taken to mean the states that are the members of the International Union for the Protection of New Varieties of Plants (UPOV);
  - 12) member states – shall be taken to mean the states being the members of the European Union;
  - 13) third countries – shall be taken to mean the states being the non - members of the European Union.
2. The provision of paragraph 1 subparagraph 7 intend ‘a’ shall not be applicable to the persons who bred, or discovered and developed the variety on the basis of an employment contract or other contract, unless otherwise provided for in that contract.

\* Text provided by the Polish Authorities on August 10, 2004. The Law was adopted by the Parliament of Poland on June 26, 2003, and entered into force on May 1, 2004, when Poland became a member of the European Union.

## Article 3

For the procedures in cases of the issues regulated by this Law, the provisions of the Code of Administrative Procedure are applicable, unless otherwise provided for by this Law.

## CHAPTER 2

## EXCLUSIVE BREEDERS RIGHT TO THE VARIETY

## Article 4

1. The breeder may apply for the grant of breeders right to the variety bred, or discovered and developed by him, and also any commercial exploitation of it, hereinafter referred to as the "exclusive right", if the variety is distinct, uniform, stable and new, and its denomination complies with the requirements referred to in Art. 9 paragraph 1.
2. For the grant of the exclusive right may also apply a person who has acquired from the breeder, on the basis of a written contract, the right to the variety bred or discovered and developed by that breeder.
3. The exclusive right shall be granted by the director of the Research Centre for Cultivar Testing.
4. The exclusive right shall apply to the varieties of all plant genera and species.
5. The exclusive right shall be hereditary and may be sold or otherwise disposed of to others by written contract.
6. The exclusive right shall not be granted if the variety was applied for the protection or is protected by the Community Plant Variety Office (CPVO).

## Article 5

1. A variety shall be deemed to be distinct if, at the date of an application for the grant of an exclusive right, it is clearly distinguishable by at least one characteristic, from any other variety whose existence is a matter of common knowledge.
2. The Research Centre for Cultivar Testing, hereinafter referred to as the "Centre", shall make available to the breeder, upon his request, written information on the characteristics of the variety, which shall be considered on the assessment of its distinctness.
3. A variety shall be deemed to be commonly known, if:
  - 1) an application has been lodged for the grant of an exclusive right or for the entry into a register of varieties in the Republic of Poland, in other member, associated or third state;
  - 2) has been protected or entered into a register of varieties in the Republic of Poland, in other member, associated or third state;
  - 3) its propagating material or harvested material have been placed on the market;

- 4) its description has been published in a publication issued in a member, associated or third state;
- 5) its propagating material is available in commonly accessible variety collections.

## Article 6

A variety shall be deemed to be uniform if, taking account of the method of the reproduction specific for that variety, it is sufficiently uniform in its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description.

## Article 7

A variety shall be deemed to be stable if its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description, remain unchanged after its propagation.

## Article 8

1. A variety shall be deemed new if, at the date of application for the grant of an exclusive right its breeder has not sold or otherwise disposed of to others, for commercial purposes, of its propagating material or harvested material or has not given written consent to it:

- 1) within the territory of the Republic of Poland – earlier than one year before the abovementioned date;
- 2) in other states:
  - a) earlier than six years – in the case of trees or of vines,
  - b) earlier than four years – in the case of other varieties

- before the date of application for the grant of an exclusive right.

2. A variety shall be also deemed to be new if the breeder at the date of application for the grant of an exclusive right:

- 1) has sold or otherwise disposed of to others:
  - a) variety propagating material to official bodies subordinated to or supervised by the minister competent for agriculture, which in the framework of their statutory activities, perform the variety examinations, or
  - b) parts of plants produced as a result of breeding, propagation, or experimental work, other than propagating material,
  - c) propagating material at an international exhibition organised in accordance with the Convention on International Exhibitions of 22 November 1928 (Journal of Laws of 1961 No 14, item 76 and of 1968 No 42, item 293);

2) has disposed of the propagating material to entities for the continuation of breeding or for performing examinations, or for experiments, provided that the propagating material produced from them shall remain the property of this breeder.

3. The components of a hybrid variety shall be deemed to be new if, at the date of application for the grant of an exclusive right, the hybrid propagating material produced thereof have not been sold by the breeder or otherwise disposed of to others for commercial purposes:

- 1) within the territory of the Republic of Poland – earlier than one year;
- 2) in other states – earlier than four years

- before the date of application for the grant of an exclusive right.

#### Article 9

1. The variety denomination must not:

- 1) be identical as or similar to the denominations of the varieties in the member, associated or third states, which are or were given to the varieties belonging to the same or another species of this genus, as well as the names protected with an exclusive right or entered in an appropriate variety registers, unless the variety is no longer protected or is not present on the market, and its denomination has not been commonly known;
- 2) evoke public objection;
- 3) mislead as to the identity of its breeder, its characteristics or the value for use;
- 4) be identical as or similar to other designations which are commonly used for the marketing of goods;
- 5) violate the rights of third parties to trade-marks;
- 6) contain the words “variety “ or “hybrid variety”;
- 7) compose exclusively of digits nor start with a digit.

2. In cases where the denomination is inadequate, the Centre shall give the breeder a 14-day period for the submission of a written proposal of another denomination.

3. In cases where a variety is protected with an exclusive right in other associated states, it may be protected in the Republic of Poland under identical denomination.

4. The duty of using the variety denomination shall apply to any person who performs the assessments, offers for sale, sales, disposes of to others, advertises or gives information on its propagating material or harvested material.

5. The variety denomination shall be protected starting from the date of the grant of an exclusive right, and in the case of removal of its entry in the register of protection of exclusive

right – so long as the propagating material remains on the market.

#### Article 10

1. An exclusive right shall be granted at a request of the breeder or its representative.

2. The breeder’s representative may be private or legal person, or an organisational unit without legal personality that has its domicile or registered seat in the territory of the Republic of Poland, other member, or associated states.

3. If the breeder has its domicile or registered seat in a third state, the application for the grant of an exclusive right shall be filed by his/her representative.

#### Article 11

1. The application for the grant of an exclusive right shall be lodged at the Centre.

2. The application for the grant of an exclusive right shall include:

- 1) the name, address and domicile of the breeder or the seat address;
- 2) Polish and Latin name of the plant genus or species;
- 3) designation of the variety on the stage of breeding;
- 4) the proposed denomination of the variety;
- 5) indication of the country of breeding, or the discovery and development of the variety;
- 6) declaration of the breeder that the variety is new in accordance with the requirements referred to in Art. 8;
- 7) declaration of the breeder that the variety has been or has not been genetically modified;
- 8) information on lodging an application for the protection of an exclusive right in other states.

3. The application referred to in paragraph 2 shall be accompanied by:

- 1) in cases where the application is filed by the breeder’s representative, the authorisation for the representation of the breeder in all issues relating to the grant of an exclusive right;
- 2) description of the variety or the hybrid variety components (technical questionnaire);
- 3) information on the pedigree, scheme of the breeding and the structure of the variety;
- 4) copy of the receipt for payment of fees for submitting the application for the grant of an exclusive right to the variety.

4. The minister competent for agriculture shall lay down, by Regulation, a specimen application form for the grant of an exclusive right, specimen technical questionnaire, having regard to the unification of the proceedings related to the grant of an exclusive right.

5. The data referred to in paragraph 3 intends 2 and 3, must not be made available without a written consent of the breeder.

6. Where the applications for the grant of an exclusive right for the same variety have the same date of application, the priority has the application which was received by the Centre earlier, which is confirmed by the consecutive receipt number given to each of the applications.

#### Article 12

1. A breeder who lodged an application for the grant of an exclusive right in an associated state may apply, within twelve months of the date of that submission, for the grant in the Republic of Poland of an exclusive right as well as for the admission of his right of priority to the variety, hereinafter referred to as “the right of priority”.

2. A breeder who submitted in the Republic of Poland an application for the grant of an exclusive right along with the right of priority shall deliver, without prejudice to paragraph 4, within three months of the date of lodging that application, a copy of the application lodged in the associated state along with the copy of the documents attached to that application.

3. In cases where a breeder has not delivered on time the copy of the application along with the copy of the attached documents lodged in an associated state, the application referred to in paragraph 2 shall not be examined in the framework of the right of priority.

4. In cases where an application for the grant of an exclusive right filed in an associated state has been withdrawn by the breeder, or has not been positively considered by a competent authority, the breeder shall be obliged to notify in writing of this fact to the Centre within three months of the date of the withdrawal of the application or receipt of the decision on the refusal of an exclusive right.

#### Article 13

1. The Centre shall publish every two months in its publication, referred to later as the “Polish Gazette”, information on the applications for the grant of an exclusive right, giving the following data:

- 1) the name, address and domicile of the breeder or the site address;
- 2) Polish and Latin names of the plant genus or species;
- 3) the variety denomination as proposed in the application;
- 4) the date of submission of the application;
- 5) the consecutive number of the application.

2. The Centre shall make available to breeders, with prejudice to Art. 11 paragraph 5, the documents attached to the application for the grant of an exclusive right and the documents relating to the examination for distinctness, uniformity and stability referred to in Art. 15 paragraph 1.

#### Article 14

1. A breeder who lodged an application for the grant of an exclusive right shall enjoy a provisional exclusive right since the date of publication of information on that application in the Polish Gazette.

2. The provisions relating to an exclusive right shall be applicable accordingly to the provisional exclusive right.

3. The provisional exclusive right shall expire on the date of entry into force of the decision on the grant or on the refusal of the grant of an exclusive right.

#### Article 15

1. Before an exclusive right has been granted, the Centre shall perform the examinations for distinctness, uniformity and stability, hereinafter referred to as the “DUS testing”, unless it deems the results of the examinations carried out by the authority performing official examinations in another associated state to be sufficient.

2. The DUS tests shall be carried out in accordance with the examination methodology established for a given species for a period necessary for completing of testing of the variety distinctness, uniformity and stability.

3. Before the beginning of the DUS tests, the Centre shall inform in writing the breeder of the date of starting and the expected time of completion of the examinations.

4. The breeder shall be obliged to deliver to the Centre, free of charge, variety propagating material for the purpose of the DUS testing.

5. The minister competent for agriculture shall lay down in Regulation the quantity of the variety propagating material necessary for carrying out of the DUS tests and the time limits for the delivery of those propagating material to the Centre, taking into account the biological characteristics of the plant species in question.

6. If the breeder has not delivered the variety propagating material for the DUS testing within the time limit referred to in paragraph 5, the application for the grant of an exclusive right shall remain without consideration.

#### Article 16

1. During the DUS testing, the breeder shall be obliged to:

- 1) make possible for the Centre to:
  - a) control the maintenance of the variety,
  - b) access to the documents relating to the variety maintenance;

- 2) provide, upon request of the Centre, written clarifications and information necessary for the performance of the DUS tests.

2. The breeder shall be given the possibility to get acquainted with the course and the results of the DUS tests for his variety, and, after the issue of the decision on the grant of an exclusive right, the breeder shall receive a final report of the DUS tests.

#### Article 17

1. If the Centre does not perform the DUS tests in given species, it may:

- 1) commission to carry out such tests or their parts to another testing authority, or
- 2) accept the results of those tests carried out abroad

- at the breeder's expense, provided that he gives the written consent.

2. The Centre, before commissioning the performance of the DUS tests or before the acceptance of the DUS test results, shall forward to the breeder written information on costs relating to those tests.

3. If a breeder within 30 days of the date of the receipt of the information about the costs referred to in paragraph 2, has not made the payment on the account indicated by the Centre, the application for the grant of an exclusive right shall remain without consideration.

#### Article 18

1. Any person may lodge with the director of the Centre a written objection to the grant of an exclusive right, if he/she is in possession of documents or information confirming that:

- 1) the variety does not comply with the conditions referred to in Art. 4 paragraph 1, or
- 2) the breeder is not authorised for submitting an application for the grant of an exclusive right.

2. The Centre, within 14 days of the date of settlement of the objection to an exclusive right, send written information to the objector on the admittance or the refusal of the objection.

3. Written information referred to in paragraph 2 shall contain the justification indicating the reasons for the admittance or the refusal of the objections to an exclusive right.

4. Notwithstanding the admittance of the objections for the reason referred to in paragraph 1 intend 2, and filing an application for the grant of an exclusive right by an authorised breeder, the results of the DUS tests concerning a given variety shall be acknowledged.

#### Article 19

1. The Centre shall charge fees for submission an application for the grant of the exclusive right, for the DUS

tests as well as for the grant and the maintenance of the exclusive right.

2. The fees for the DUS tests shall not be charged, if the breeder bore the costs referred to in Art. 17 paragraph 1.

3. The minister competent for agriculture, in consultation with the minister competent for public finance, shall lay down in a Regulation the rates of fees referred to in paragraph 1, the way and the time limits of payment thereof, taking into account the costs relating to carrying out of the examinations and to the grant of an exclusive right.

#### Article 20

1. After completion of the DUS tests, the director of the Centre shall make a decision concerning the grant of an exclusive right.

2. If two or more persons bred, or discovered and developed the variety jointly, the exclusive right shall be granted jointly to them.

3. The director of the Centre shall refuse, by an administrative decision, the exclusive right, if a variety is non-compliant with the conditions referred to in Art. 4 paragraph 1.

4. An appeal to the minister competent for agriculture shall lie from decisions relating the grant of the exclusive right.

#### Article 21

The exclusive right shall include:

- 1) production or reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting;
- 6) importing;
- 7) stocking

- of the protected variety propagating material.

#### Article 22

1. The exclusive right shall also cover:

- 1) harvested material or products produced directly from that material, if the breeder had no possibility of exercising of the exclusive right to the protected variety propagating material;
- 2) propagating material of ornamental and horticulture plants, if they are reused for commercial purposes as:



- a) reproduction material for the propagation of ornamental plants, or
  - b) cut flower, or
  - c) propagating material of trees, bushes and perennials;
- 3) varieties:
- a) derived, discovered or produced from a protected initial variety which is not a derived variety,
  - b) which are not clearly distinct from the protected variety,
  - c) in those cases where the production of propagating material requires repeated use of a protected variety.
2. A variety shall be regarded as derived from the initial variety, if it is distinct from the initial variety and if:
- 1) is predominantly derived from initial variety or other derived variety from the same initial variety while retaining the essential characteristics resulting from the genotype or a combination of genotypes of the initial variety;
  - 2) its characteristics are consistent with essential characteristics of the initial variety resulting from its genotype or a combination of genotypes, except for differences resulting from the use of the following breeding techniques:
    - a) selection of natural or induced mutants,
    - b) selection of new forms from initial varieties,
    - c) using backcrossings,
    - d) genetic engineering.
3. The provisions of paragraph 1 and Art. 21 shall not apply to propagating material and harvested material intended for:
- 1) private, non-commercial purposes;
  - 2) experimental purposes;
  - 3) breeding of new varieties, excluding the varieties referred to in paragraph 1 intend 3, if these varieties are to be used for commercial purposes.

#### Article 23

1. A holder of agricultural land may, without prejudice to paragraphs 3 and 4, against payment for the breeder, use the harvested material of protected variety as propagating material, excluding hybrid varieties and the varieties created from free crossing of specified lines of allogamous species (synthetic varieties).

2. The right to use the harvested material referred to in paragraph 1, shall apply to variety propagating material of the following plants:

- 1) wheat;
- 2) rye;
- 3) barley;
- 4) triticale;
- 5) oats;
- 6) winter oilseed rape;
- 7) potato.

3. A holder of agricultural land of up to 5 ha may use the harvested material as a propagating material referred to in paragraph 2, without the necessity to pay, without prejudice to paragraph 4, the remuneration to the breeder.

4. The holder referred to in paragraph 3, shall pay a remuneration to the breeder, if he uses harvested material as propagating material of very early or early varieties of potatoes on the area of above 1 ha, and in the case of other potato varieties on the area of more than 2 ha.

5. The provision of paragraphs 3 and 4 shall not be applicable, if the variety is protected by the Community Plant Variety Office (CPVO).

6. Without prejudice to paragraph 7, the amount of the remuneration referred to in paragraph 1, shall be established on an agreement basis between:

- 1) a breeder and a holder of agricultural land, or
- 2) a breeder and an organisation representing holders of agricultural land, or
- 3) an organisation of breeders and a holder of agricultural land, or
- 4) an organisation of breeders and an organisation representing holders of agricultural land

- and should be lower than the rate of royalty paid for a given category of certified propagating material, set by the breeder of that variety.

7. If the agreement has not been reached, the remuneration for the breeder amounts to 50% of the royalty for a given category of propagating material, set by the breeder of this variety.

8. A holder of agricultural land or a unit rendering services in the scope referred to in Art. 21, or the organisations representing them shall be obliged to forward to the breeders or their organisations written information on the amount of propagating material produced from the harvested material.

9. The provision of paragraph 8 shall not apply to a holder of agricultural land of up to 5 ha, unless the holder of the agricultural land uses harvested material as seed potato of very early and early varieties on the area of more than 1 ha, and in the case of remaining potato varieties on the area of above 2 ha.

#### Article 24

After the grant of the exclusive right the breeder shall be obliged to:

- 1) maintain the variety;
- 2) deliver to the Centre, free of charge, variety propagating material, as well as propagating material of the components used for production of the hybrid variety, in quantities essential for the performance of the DUS tests;
- 3) provide, upon request of the Centre, information and explanations concerning the variety;
- 4) enable the Centre to access to the documents related to the variety.

#### Article 25

Any person who makes use of the propagating material of the protected variety is obliged to, upon request of the breeder holding the exclusive right to this variety, provide him with written information concerning the quantity of propagating material of the protected variety and make a payment for the breeder equivalent to the royalty for exploitation of the exclusive right to this variety.

#### Article 26

1. If the breeder has been changed, the new breeder shall be obliged to notify of this fact in writing to the Centre within 30 days of the date, on which this change has taken place.
2. The breeder referred to in paragraph 1 shall attach a copy of the documents confirming his right to the variety.

#### Article 27

1. The exclusive right shall be effective starting from the date of making a decision on grant and shall last for:
  - 1) 30 years – in the case of vine, trees and potato varieties;
  - 2) 25 years – in the case of other varieties.
2. In cases where a breeder of the variety protected in the Republic of Poland shall be granted the Community plant variety right, the exclusive right granted in the Republic of Poland shall be suspended for the period, throughout which the breeder shall enjoy the Community plant variety right, no longer, however, than for the duration of the exclusive right in the Republic of Poland.

#### Article 28

1. The exclusive right, without prejudice to paragraph 2, shall expire if:

- 1) propagating material;
- 2) harvested material;
- 3) products produced directly from the harvested material;
- 4) varieties referred to in Art. 22 paragraph 1 intend 3

- shall be sold or otherwise disposed of to others by the breeder or with his written consent.

2. The exclusive right shall not expire if the purchaser of the variety propagating material:

- 1) shall use it for renewed propagation;
- 2) shall export it to a country, which do not provide any protection of the exclusive right to the variety of the plant species in question, unless the harvested material shall be used for consumption purposes in that country.

#### Article 29

1. The director of the Centre shall cancel, in an administrative decision, the exclusive right of the breeder:

- 1) upon his own request;
- 2) if the variety does not comply with the conditions of uniformity or stability;
- 3) if the breeder:
  - a) does not maintain the variety,
  - b) is delayed over 6 months with the payment of fees referred to in Art. 19 paragraph 1,
  - c) renders impossible carrying out of a control of the maintenance of the variety and examination of the documents relating to the variety maintenance,
  - d) does not provide the information and explanations essential for carrying out of the DUS tests,
  - e) has not delivered, free of charge, the variety propagating material in quantities indispensable for carrying out of the DUS tests,
  - f) does not submit a new denomination to the variety in case where the denomination of the variety entered into the register of granted titles of exclusive rights referred to in Art. 36 paragraph 1, does not comply with the conditions listed in Art. 9 paragraph 1.

2. An appeal to the minister competent for agriculture shall lie from decision on the cancellation of the exclusive right of the breeder.

#### Article 30

1. The breeder holding an exclusive right may, on the basis of an exploitation right agreement, grant another person the authorisation licence for exploitation of the exclusive right.

2. The exploitation right agreement requires written form under clause of nullity.

3. Exploitation of the exclusive right may be restricted in the exploitation right agreement (limited licence); if in the exploitation right contract the scope of using the exclusive right has not been limited, the holder of an exploitation right has a right to exploit the exclusive right in the same scope as the licensor (unlimited licence).

4. In cases where the exclusive exploitation of the exclusive right has not been reserved in the exploitation right agreement, the grant of an exploitation right to one entity does not preclude the possibility of granting the exploitation right to other entities, and also simultaneous exploitation of the exclusive right by the breeder (non-exclusive licence).

5. The party enjoying the exploitation right may grant another exploitation right (sub-licence) only with a written consent of the breeder; the grant of another one sub-licence shall be prohibited.

#### Article 31

1. If the breeder holding the exclusive right to a given variety does not place its propagating material or harvested material on the market, and this is demanded by important national economy interest, the minister competent for agriculture may grant, in a decision, a compulsory licence to another entity, unless the breeder has not placed the propagating material or harvested material on the market due to force majeure.

2. The compulsory licence right may also be granted if the applicant demonstrates that:

- 1) he applied for the exploitation right from the breeder, who has not introduced the variety propagating material on the market, or
- 2) the royalty demanded by the breeder is disproportional to the value of the propagating material, or
- 3) the proposed by the breeder quantity of propagating material is insufficient for the propagation of a given variety in order to place it on the market.

3. The compulsory licence shall be granted upon request of the interested party.

4. The compulsory licence shall be a non-exclusive one.

#### Article 32

1. Application for the grant of compulsory licence shall be filed to the minister competent for agriculture via the director of the Centre.

2. The director of the Centre shall forward the application referred to in paragraph 1 along with an opinion on the necessity of placing on the market of a specified quantity of propagating material or harvested material.

3. The application for the grant of compulsory licence shall include:

- 1) name, address and domicile of the applicant, or the site address;
- 2) name, address and domicile of the breeder referred to in Art. 31 paragraph 1, or the site address;
- 3) specification of the species in the Polish language and in Latin and the denomination of the variety, the applicant applies for;
- 4) specification of the proposed quantity of variety propagating material necessary for the multiplication;
- 5) specification of the proposed duration of the compulsory licence;
- 6) specification of the proposed remuneration to the breeder;
- 7) indication of an important national economy interest.

4. The application for the grant of a compulsory licence shall be accompanied by the declaration on fixed assets and equipment used for the propagation of the variety, along with description thereof.

#### Article 33

A compulsory licence right shall include:

- 1) the name, address and domicile of a person who has been granted the compulsory licence and his site address;
- 2) the name, address and domicile of the breeder or his site address;
- 3) specification of the species in Polish language and in Latin and the denomination of the variety;
- 4) specification of the duration of an the licence;
- 5) specification of the amount of the remuneration to the breeder;
- 6) specification of the quantity of propagating material needed for the multiplication of the variety in order to place it on the market.

## Article 34

1. The minister competent for agriculture shall notify in writing to the director of the Centre on issuing of the decision on the grant of a compulsory licence.
2. The Centre shall publish in its Gazette information on compulsory licences granted.
3. The breeder referred to in Art. 31 paragraph 1 shall be obliged, within 30 days of the date of receipt of written information on issuing of the decision on the grant of a compulsory licence, provide to the holder of a compulsory licence the variety propagating material in quantities indispensable for the propagation of this variety in order to place it on the market.

## Article 35

1. The minister competent for agriculture:
  - 1) shall cancel a compulsory licence if the holder of the compulsory licence has not placed on the market the variety propagating material covered by the compulsory licence in the nearest growing period following the grant of the compulsory licence;
  - 2) may cancel the compulsory licence on the request of the breeder referred to in Art. 31 paragraph 1, if the breeder placed on the market variety propagating material or harvested material of a variety covered by the granted compulsory licence.
2. The request referred to in paragraph 1 intend 2 shall be accompanied by a copy of documents evidencing that the breeder placed the propagating material on the market.
3. The minister competent for agriculture may cancel the compulsory licence in the case referred to paragraph 1 intend 2, if since the day of issuing of the decision, elapsed:
  - 1) 2 years – in the case of annual varieties, or
  - 2) 3 years – in the case of biennial varieties, or
  - 3) 5 years – in the case of perennial varieties.

## Article 36

1. The Centre shall keep a register of granted titles of exclusive rights, hereinafter referred to as the “register”, and a list of varieties, for which applications for the grant of an exclusive right have been filed, hereinafter referred to as the “list”.
2. The register shall contain specification of the protected varieties and their breeders as well as the licensees, who were granted a compulsory licence.

3. The list is a specification of the varieties for which applications for the grant of the exclusive right have been filed as well as the breeders who were granted the provisional exclusive rights.

4. A variety entered into the list or the register shall receive a number, which consists of the consecutive number taken from the list or from the register and a capital letter standing for a given group of plants.

5. The variety number on the list shall be preceded additionally by capital letter T, which means that the variety has been granted the provisional exclusive right.

6. The following letter designations shall be used for individual plant groups:

- 1) R – agricultural plants;
- 2) W – vegetables;
- 3) S – fruit plants;
- 4) L – forest plants;
- 5) O – ornamental plants;
- 6) P – other plants.

7. The register shall contain:

- 1) the name, address and domicile of the breeder, or the site address;
- 2) the species name in Polish and in Latin and the variety denomination;
- 3) the date of the grant and expiry of an exclusive right;
- 4) the designation of the breeder’s country;
- 5) information indicating whether or not the variety has been genetically modified.

8. The list shall contain:

- 1) the name and address and domicile of the breeder, or the site address;
- 2) the species name in Polish and in Latin and the variety denomination;
- 3) the date of the grant and expiry of a provisional exclusive right;
- 4) the designation of the breeder’s country;
- 5) information indicating whether or not the variety has been genetically modified.

CHAPTER 3  
PENAL PROVISIONS

Article 37

1. Any person who:
- 1) violates a variety exclusive right of the breeder;
  - 2) designates propagating material or harvested material of other or unknown variety with the denomination of a variety protected with the exclusive right;
  - 3) makes impossible carrying out of the check of a variety maintenance;
  - 4) makes impossible access into the documents concerning the variety maintenance;
  - 5) does not supply variety propagating material to the Centre for the DUS tests or the entity which has been granted compulsory licence, or delivers it in quantities insufficient or after an established deadline;
  - 6) does not provide, upon request of the breeder, whose variety is protected with the exclusive right, written information on the quantities of the protected variety propagating material;
  - 7) does not pay royalty to the breeder for using of propagating material and/or remuneration for using of harvested material of the protected variety

- shall be liable to a fine.

2. The decisions in the cases specified in paragraph 1 shall be made in accordance with the Code of Petty Offences Procedure.

CHAPTER 4  
TRANSITIONAL AND FINAL PROVISIONS

Article 38

The compulsory licences issued on the basis of the provisions so far in force shall be valid until the end of the period for which they were issued.

Article 39

The register and the list, kept on the basis of the provisions so far in force, with the day of entry into force of this Law shall become accordingly the register and the list as understood in this Law.

Article 40

This Law shall enter into force on the day, on which the Republic of Poland shall receive the membership in the European Union.

**SINGAPORE****PLANT VARIETIES PROTECTION ACT 2004\***  
(No. 22 of 2004)

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\* Text provided by the Authorities of the Republic of Singapore via their Website <http://statutes.agc.gov.sg>, as published in the Republic of Singapore Government Gazette Acts Supplement No. 21 of June 25, 2004. The Act entered into force on July 1, 2004.

An Act to provide for the protection of plant varieties.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## PART I

### PRELIMINARY

#### *Short title and commencement*

1. This Act may be cited as the Plant Varieties Protection Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

#### *Interpretation*

2. In this Act, unless the context otherwise requires —

“applicant”, in relation to any application, means the person by whom or on whose behalf the application is made;

“application” means an application for a grant of protection;

“breeder”, in relation to any plant variety, means —

- (a) subject to paragraph (b), a person who bred, or discovered and developed, the plant variety;
- (b) if the plant variety was bred, or discovered and developed, by a person in the course of performing his duties or functions as an employee of another person, that other person; or
- (c) the successor in title to the person in paragraph (a) or (b), as the case may be;

“Convention” means the international agreement called the International Convention for the Protection of New Varieties of Plants of 2nd December 1961, as revised or amended from time to time;

“Court” means the High Court;

“denomination” means the distinguishing name or identification for a plant variety;

“grant of protection” means a grant of protection made by the Registrar under section 21;

“grantee” means the holder of a grant of protection;

“harvested material” means any harvested material to which the rights of a grantee under section 28 (1) are extended by virtue of section 28 (7);

“plant” includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;

“plant variety” means a plant grouping within a single botanical taxon of the lowest rank which, irrespective of whether the conditions for a grant of protection are fully met, can be —

- (a) defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged;

“prescribed examination authority” means such plant variety examination authority in Singapore or any other UPOV member as the Minister may from time to time prescribe;

“procedural representative”, in relation to any plant variety, means a person who is resident or has an office in Singapore and who is appointed by the breeder of that variety to act on his behalf in respect of the making of any application for, or any proceedings relating to, a grant of protection for that variety;

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

“propagation”, in relation to a plant or any of its components, means the growth, culture or multiplication of that plant or component;

“protected variety” means a plant variety in respect of which a grant of protection is in force, and includes any essentially derived or other plant variety to which the grant of protection is extended by virtue of section 29 (1);

“register” means the register of plant varieties maintained under section 39;

“Registrar” means the Registrar of Plant Varieties referred to in section 5; “Registry” means the Registry of Plant Varieties referred to in section 7;

“relevant characteristics”, in relation to any plant variety, means the phenotypical and genotypical expressions of the variety that permit its identification;

“term”, in relation to a grant of protection, means the term of the grant of protection under section 24;

“UPOV member” means a state or an intergovernmental party to the Convention which is a member of the International Union for the Protection of New Varieties of Plants constituted pursuant to the Convention.

*Act to bind Government*

3. This Act shall bind the Government but nothing in this Act shall render the Government liable to be prosecuted for an offence.

*Application of Act to certain plants*

4. —(1) This Act only applies to the plant genera and species listed in the Schedule.

(2) The Minister may, by notification in the *Gazette*, amend the Schedule.

## PART 2

## ADMINISTRATION

*Registrar of Plant Varieties and other officers*

5. —(1) There shall be a Registrar of Plant Varieties who shall have the chief control of the Registry of Plant Varieties.

(2) There shall be one or more Deputy Registrars of Plant Varieties who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Act, other than the powers of the Registrar under section 6.

(3) There shall be one or more Assistant Registrars of Plant Varieties.

(4) The Registrar and all the other officers under this section shall be appointed by the Minister.

*Delegation by Registrar*

6. —(1) The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to an Assistant Registrar of Plant Varieties so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by any Deputy Registrar of Plant Varieties.

*Registry of Plant Varieties*

7. For the purposes of this Act, there shall be an office which shall be known as the Registry of Plant Varieties.

*Seal of Registry*

8. There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

*Powers of Registrar*

9. The Registrar may, for the purposes of this Act —

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

*Disobedience to summons an offence*

10. —(1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

*Refusal to give evidence an offence*

11. —(1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

*Costs awarded by Registrar*

12. —(1) The Registrar may award costs in respect of the matters, and in the amounts provided for in rules made under this Act, against any party to proceedings brought before him.

(2) The rules may provide for the taxation of the costs, or any part of the costs, by the Registrar.

(3) A party desirous to obtain costs or to have the costs taxed must apply to the Registrar in accordance with the rules.

(4) If a party is ordered to pay the costs of another party, the costs may be recovered in a court of competent jurisdiction as a debt due by the first party to the other party.



## PART III

## APPLICATION FOR GRANT OF PROTECTION

*Application for grant of protection*

13. —(1) An application for a grant of protection for a plant variety shall be made by the breeder of that plant variety in the prescribed manner to the Registrar.

(2) The application shall contain or be accompanied by the following:

- (a) a description of the plant variety;
- (b) the proposed denomination for the plant variety which qualifies for approval and registration under section 36;
- (c) an address for service in relation to that application, being an address within Singapore; and
- (d) if a right of priority is claimed under section 14, full particulars of the relevant priority application.

(3) The application shall be accompanied by an application fee and such other fees as may be prescribed.

(4) An application that complies with subsections (1), (2) and (3) at the time it is received at the Registry shall, for the purposes of this Act, be deemed to be made at that time.

(5) An application that does not comply with subsection (1), (2) or (3) at the time it is received shall nevertheless be deemed to be made at that time if it is rectified within such time and in such manner as the Registrar may specify.

(6) The Registrar shall, if satisfied that an application complies with subsections (1), (2) and (3) —

- (a) publish the application and the proposed denomination for the plant variety in the prescribed manner; and
- (b) notify the applicant of the publication.

*Priority resulting from foreign applications*

14. —(1) If —

- (a) the breeder of a plant variety has made an application in any UPOV member other than Singapore (referred to in this section as the foreign application) for the equivalent of a grant of protection; and
- (b) within 12 months after —
  - (i) the date on which the foreign application was made; or
  - (ii) where more than one foreign application has been made (whether in one UPOV member or more than one UPOV member), the date the earliest foreign

application was made, the breeder makes an application for the grant of protection in respect of the plant variety in Singapore,

the breeder may, when making the application under this Act, claim a right of priority and sections 22 and 23 shall apply to the application for a grant of protection in Singapore as if it had been made on the date the foreign application (or the earliest foreign application) was made.

(2) The breeder shall, within 3 months of making the claim of a right of priority under subsection (1), submit to the Registrar a copy of any document constituting the foreign application, which must be certified as correct by the authority in the UPOV member to which the foreign application was made.

(3) The breeder shall be allowed a period of 2 years after the expiration of the period referred to in subsection (1) (b) or, where the foreign application (or the earliest foreign application) is rejected or withdrawn, a period of 2 years after such rejection or withdrawal, in which to furnish any necessary information, document or material required for the purpose of the examination under section 17 to the Registrar or a local prescribed examination authority, as the case may be, or an examination report under section 18 to the Registrar.

*Publication*

15. The Registrar shall publish the following information in the prescribed manner at regular intervals:

- (a) applications for grants of protection;
- (b) registrations of denominations for protected varieties;
- (c) withdrawals of applications for grants of protection;
- (d) rejections of applications for grants of protection;
- (e) grants of protection made;
- (f) any change in the breeder or procedural representative in respect of a plant variety;
- (g) lapses of grants of protection;
- (h) licences in relation to grants of protection, where applicable;
- (i) any other matters which the Registrar thinks fit.

*Objections to denomination and grant of protection*

16. —(1) Any person may, within the prescribed period after the publication of a denomination, by notice in writing to the Registrar object to the approval of that denomination.

(2) Any person may, within the prescribed period after the publication of an application for a grant of protection for a plant variety, by notice in writing to the Registrar, object to

the making of a grant in respect of that plant variety on the ground that the plant variety is not new within the meaning of section 22.

(3) The Minister may make rules to provide for objection proceedings and for matters relating thereto.

(4) If a person who neither resides nor carries on business in Singapore makes an objection under this section, the Registrar may require the person to give security for the costs of the proceedings and may, if security is not given, dismiss the proceedings.

#### *Examination of plant variety*

17. —(1) Subject to section 18, the applicant shall, within the prescribed period after making an application, give to the Registrar or any prescribed examination authority in Singapore (referred to in this section as a local prescribed examination authority) —

(a) in such detail as the Registrar or the local prescribed examination authority may require for examination under subsection (2), a description of —

(i) the origin and breeding of the plant variety concerned (referred to in this section as the candidate variety);

(ii) the botanical features of the candidate variety; and

(iii) at least one plant variety that is, to the knowledge of the breeder, most similar to the candidate variety and at least one characteristic which distinguishes the candidate variety from such other variety or varieties; and

(b) propagating material of the candidate variety.

(2) The Registrar or the local prescribed examination authority shall examine the candidate variety —

(a) to verify whether the candidate variety belongs to the stated botanical taxon;

(b) to establish whether the candidate variety is distinct, uniform and stable; and

(c) where the candidate variety is found to meet the requirements in paragraphs (a) and (b), to establish an official description of the variety.

(3) The Registrar or the local prescribed examination authority may, by way of written notice, request the applicant to furnish any further information, documents or propagating material of the candidate variety and of any similar plant variety in addition to any plant variety referred to in subsection (1) (a) (iii).

(4) Where the Registrar or the local prescribed examination authority has made a request for further information, documents or propagating material under subsection (3), the applicant shall —

(a) furnish such information, documents or propagating material within the period stated in the written notice; or

(b) where such information, documents or propagating material is not available, notify the Registrar or the local prescribed examination authority, as the case may be, of this fact within that period.

#### *Corresponding examination*

18. —(1) Subject to subsection (2), the applicant may, instead of complying with the provisions in section 17, lodge with the Registrar in such manner as the Registrar may require and within the prescribed period, an examination report issued and certified by a prescribed examination authority in any UPOV member other than Singapore.

(2) The Registrar may reject an examination report lodged under subsection (1), in which case the applicant shall comply with the provisions in section 17.

#### *Withdrawal or lapse of applications*

19. —(1) Any application may be withdrawn by the applicant at any time before a grant of protection is made in respect of it.

(2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of that withdrawal.

(3) Where any information, document or material required to be given to the Registrar or a local prescribed examination authority under the provisions of this Act is not supplied within the period stated in the written notice issued by the Registrar or the local prescribed examination authority, as the case may be, requiring such information, document or material, the application concerned shall lapse upon the expiration of that period.

#### *Provisional protection*

20. Where a grant of protection for a plant variety has been made under section 21, the grantee shall have the right to take proceedings in respect of the protected variety under this Act as if the grant of protection had been made on the date the application for that grant of protection was published under section 15.

### PART IV

#### GRANT AND REVOCATION OF PROTECTION

##### *Making of grants of protection*

21. —(1) The Registrar shall —

(a) except where an application has been withdrawn or has lapsed under section 19, make a grant of protection in respect of every application that is eligible for the making of a grant of protection; and

- (b) decline to make a grant of protection in respect of every application that is not eligible for the making of a grant of protection.
- (2) An application shall be treated as being eligible for the making of a grant of protection if, and only if —
- (a) the applicant has complied with section 13 and section 17 or 18, as the case may be; and
- (b) the Registrar —
- (i) has approved, for the plant variety in respect of which the application was made, the denomination proposed by the applicant under section 36;
- (ii) is satisfied that the applicant is the breeder of that plant variety; and
- (iii) is satisfied that that plant variety is new, distinct, stable and uniform within the meaning of section 22.

*Conditions for grants of protection*

22.—(1) For the purpose of sections 16 (2), 21(2) (b) (iii) and 25 (2) (a) —

- (a) a plant variety is new if harvested or propagating material of the plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety —
- (i) earlier than 12 months before the date the application is made, where the sale or disposal and the exploitation of the plant variety is in Singapore; and
- (ii) earlier than 6 years before that date in the case of trees or vines, or earlier than 4 years before that date in any other case, where the sale or disposal and the exploitation of the plant variety is outside Singapore;
- (b) a plant variety is distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of the making of the application;
- (c) a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle; and
- (d) a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(2) For the purposes of subsection (1) (a), where, in order to increase the stock of a plant variety or for any testing of a

plant variety, the breeder of the plant variety makes any arrangement under which —

- (a) propagating material of that plant variety is to be sold to or used by some other person; and
- (b) any unused portion of that propagating material, and all the material of any type produced from that propagating material, is —
- (i) to be sold to the breeder by that other person; or
- (ii) otherwise to become the property of the breeder,

no account shall be taken of any sale or disposal under that arrangement.

(3) For the purposes of subsection (1) (a), a plant variety does not cease to be new by virtue only of the sale or disposal at any time of —

- (a) material that is not propagating material or harvested material; or
- (b) propagating material if sold or disposed of as a by-product or a surplus product of the creation of that plant variety, provided that —
- (i) the material is sold or disposed of without variety identification for purposes of consumption; and
- (ii) having been produced during the breeding, increase of stock, test, or trial of that plant variety, the material is not or no longer required for any of those activities.

(4) For the purpose of subsection (1) (b), the making of an application in any country for —

- (a) a grant of protection in respect of a plant variety; or
- (b) the entering of a plant variety in an official register of plant varieties,

shall be deemed to render that plant variety a matter of common knowledge from the date of application, provided that the application leads to a grant of protection in respect of that plant variety or to the entering of that plant variety in the official register of plant varieties, as the case may be.

*Varieties bred or discovered and developed  
by 2 or more persons independently*

23. Where —

- (a) before a grant of protection has been made in respect of any plant variety, 2 or more applications in respect of that plant variety have been made;
- (b) the Registrar is satisfied that the applicants concerned are persons who bred, or discovered and developed, that plant variety independently, or are successors of such persons; and

- (c) the Registrar is satisfied that, but for this section, each of those applicants would be entitled to a grant of protection in respect of that plant variety,

the Registrar shall make a grant of protection to the applicant whose application was made first.

*Term of grant of protection*

24. —(1) The Registrar shall endorse on every grant of protection the date of the grant of protection.

(2) Subject to sections 25 and 26, the term of a grant of protection shall be a period of 25 calendar years from the date of the grant of protection.

(3) The grantee shall during the term of the grant of protection pay an annual fee of a prescribed amount and furnish such information as the Registrar may require in the prescribed manner and within the prescribed period.

*Grounds of invalidity of grants of protection*

25. —(1) An application for a declaration of invalidity of any grant of protection on any ground referred to in subsection (2) may be made by any person to the Court.

(2) A grant of protection shall be declared invalid if the Court is satisfied that —

- (a) the plant variety concerned is not new or distinct within the meaning of section 22;
- (b) where the grant of protection was made on the basis of an examination report by a prescribed examination authority lodged under section 18, the plant variety was not, at the time the grant of protection was made, stable or uniform within the meaning of section 22 (1) (c) or (d), respectively; or
- (c) the grant of protection has been made to a person who is not entitled to it, unless it has since been transferred to the person who is so entitled.
- (3) The Registrar shall remove from the register any grant of protection which has been declared invalid by the Court under this section.

*Cancellation of grants of protection*

26. —(1) An application for cancellation of any grant of protection may be made by any person —

- (a) to the Registrar, on any ground referred to in subsection (2); or
- (b) to the Court, on the ground referred to in subsection (3).
- (2) A grant of protection shall be cancelled by the Registrar at any time during its term in the event that —

- (a) the grantee, after having been requested by the Registrar to provide such information, documents or material as the Registrar thinks fit for verifying the maintenance of the plant variety, failed to do so within the period specified by the Registrar;
- (b) in any particular year, the annual fee required under section 24 (3) to be paid, has not been paid within the prescribed period; or
- (c) the grantee, after having been requested by the Registrar to propose another suitable denomination under section 38, failed to do so within the prescribed period.
- (3) A grant of protection shall be cancelled by the Court at any time during its term in the event that it is established that the plant variety is no longer stable or uniform within the meaning of section 22 (1) (c) or (d), respectively.
- (4) The Registrar shall remove from the register any grant of protection which has been cancelled under this section.

*Renunciation of grantee's right*

27. —(1) A grantee may, in writing to the Registrar, renounce his grant of protection.

(2) The Registrar shall remove from the register any grant of protection which has been renounced under subsection (1).

PART V

SCOPE AND NATURE OF GRANT OF PROTECTION

*Scope and nature of grant of protection*

28. —(1) Subject to sections 31 and 32, a grantee in respect of any protected variety shall be entitled to prevent a person from doing any of the following acts in respect of the propagating material of the protected variety without the authorisation, by way of a licence or otherwise, of the grantee:

- (a) production or reproduction;
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other forms of marketing;
- (e) export;
- (f) import;
- (g) stocking for any of the purposes specified in paragraphs (a) to (f).
- (2) The grantee may give his authorisation subject to conditions and limitations.
- (3) A grant of protection is personal property and may be assigned or transmitted in the same way as other personal property.

(4) An assignment of a grant of protection under subsection (3) is not effective unless it is in writing and signed by or on behalf of the assignor.

(5) Subject to subsection (6), a licence granted by a grantee in respect of any protected variety is binding on every successor in title to the grantee's interest —

(a) except any person who, in good faith and without any notice (actual or constructive) of the licence, has given valuable consideration for the interest in the grant of protection; or

(b) unless the licence provides otherwise,

and any reference in this Act to doing anything with, or without, the consent of the grantee shall be construed accordingly.

(6) Every person shall be deemed to have notice of a licence if the prescribed particulars of the grant of the licence are entered in the register under section 42.

(7) Subject to sections 31 and 32, the rights of a grantee under subsection (1) shall also apply to harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the plant variety unless the grantee has had a reasonable opportunity, before the harvested material was obtained, to exercise his rights in relation to the unauthorised use of the propagating material.

*Essentially derived and certain other plant varieties*

29. —(1) Where a grant of protection is made under section 21, that grant of protection shall also extend to —

(a) any plant variety which is essentially derived from the plant variety in respect of which the grant of protection was made (referred to in this section as the original plant variety);

(b) any plant variety which is not distinct in accordance with section 22 (1) (b) from the original plant variety; and

(c) any plant variety the production of which requires the repeated use of the original plant variety.

(2) For the purposes of this section, a plant variety shall be treated as being essentially derived from the original plant variety if —

(a) it is predominantly derived from the original plant variety or from a plant variety that is itself predominantly derived from the original plant variety;

(b) it retains the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety;

(c) it is clearly distinguishable from the original plant variety; and

(d) except for the differences which result from the act of derivation, it conforms to the original plant variety in

the expression of the essential characteristics that result from the genotype or a combination of genotypes of the original plant variety.

*Infringement of grant of protection*

30. —(1) A grant of protection is infringed by any person who —

(a) not being entitled by any licence or transfer or otherwise, does in Singapore, or authorises the doing in Singapore of, any act specified in section 28 (1) in respect of any propagating material or harvested material of a protected variety;

(b) where propagating material of the protected variety has been imported into Singapore, propagates, sells or uses that material as propagating material without the authority of the grantee concerned; or

(c) imports into Singapore, without the consent of the grantee —

(i) from a country that is not a UPOV member, any harvested material of the protected variety; or

(ii) from a UPOV member, any harvested material of the protected variety in respect of which it is not possible to make the equivalent of a grant of protection under the law of that member.

*Exceptions to infringement of grant of protection*

31. —(1) It is not an infringement of a grant of protection in respect of a protected variety for any person to do —

(a) any act privately and for a non-commercial purpose;

(b) any act for any experimental or research purpose; or

(c) any act for the purposes of breeding any other plant variety and, except in the case of an essentially derived or other plant variety to which the grant of protection is extended by virtue of section 29 (1), any act that requires the authorisation of the grantee under section 28 (1) in respect of such other variety.

(2) It is not an infringement of a grant of protection for any person engaging in farming activities to use, for propagating purposes and for the purpose of safeguarding agricultural or horticultural production, on his own holdings, harvested material from the protected variety where —

(a) the genera or species within which the protected variety is classified has been prescribed for the purposes of this section as exempt from the rights of a grantee; and

(b) the harvested material —

(i) has been obtained by purchase or otherwise with the authority of the grantee concerned; or

- (ii) having been obtained in accordance with subparagraph (i), has subsequently been propagated or grown on those holdings.

*Exhaustion of grant of protection*

32. —(1) An act concerning —

- (a) any material of a protected variety which has been sold or otherwise marketed in Singapore by or with the consent of the grantee; or
- (b) any material that is derived from such material,

does not infringe a grant of protection, unless such act involves —

- (i) further propagation of the protected variety; or
- (ii) the export of any material of that protected variety which enables the propagation of the protected variety to a country which does not protect varieties of the plant genus or species to which the protected variety belongs, except where the exported material is for final consumption purposes.

(2) In this section, “material” means —

- (a) propagating material of any kind; and
- (b) harvested material, including entire plants and parts of plants.

- (a) the extent to which the protected variety may be exploited; and

- (b) the right of the licensee to obtain propagating material from the grantee to the extent reasonable.

(4) The Court shall set out in its order the equitable remuneration which the licensee shall pay to the grantee.

(5) A licence shall not be granted under this section to any person who is unable to demonstrate to the Court that he will be able to exploit the protected variety in a manner acceptable to the Court.

(6) No licence shall be granted under this section unless the person applying for the licence has first taken all reasonable steps to obtain authorisation from the grantee on reasonable commercial terms and conditions and has failed to obtain such authorisation within a reasonable period of time.

(7) A licence granted under this section shall not prevent the grantee from exploiting the protected variety himself or from granting a licence in this respect.

(8) A licence in respect of a protected variety granted under this section may be transferred to another person, but only together with the business activity in connection with which the protected variety is exploited or is intended to be exploited.

(9) Any licence granted under this section may, upon the application of any interested party, be terminated by the Court where the Court is satisfied that the ground upon which the licence was granted has ceased to exist.

UPOV

PART VI

AUTHORISATION AND COMPULSORY LICENCES

*Rights under authorisation*

33. Where a person has been authorised to do any act referred to in section 28 (1) by licence by a grantee, that person shall have the same rights as the grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the protected variety which affects any right given under that licence and committed after the authorisation was granted.

*Compulsory licences*

34. —(1) Any person may apply to the Court for the grant of a compulsory licence to exploit a protected variety in Singapore.

(2) The Court may make an order for the grant of a compulsory licence, subject to such terms as it thinks fit, in accordance with an application under subsection (1) if, and only if, the Court is satisfied that the grant of a compulsory licence is in the public interest.

(3) Without prejudice to the generality of subsection (2), the Court may set out in its order —

PART VII

NOTICE OF PROTECTION

*Notice of protection*

35. —(1) Where an applicant sells any propagating material of the plant variety in respect of which his application relates, he shall take all reasonable steps, by means of suitable labeling or other identification of that material to inform the purchaser of the existence of his application, unless and until his application is withdrawn or lapses or the Registrar declines to make a grant in respect of that application.

(2) Any person who —

(a) has acquired any rights in respect of any plant variety under section 21, or who is a licensee of such rights; and

(b) sells any propagating material of that plant variety,

shall take all reasonable steps, by means of suitable labeling or other identification of that material, to inform the purchaser of those rights.

(3) In determining, for the purposes of section 30 (4), whether or not any person had reasonable grounds for supposing that any action was an infringement of a grant of protection, the Court may take into account the extent, if any,

to which a person referred to in subsection (1) or (2), as the case may be, has complied with that subsection in respect of any propagating material in relation to which that infringement occurred.

## PART VIII

### DENOMINATION

#### *Approval and registration of denomination*

36. —(1) A plant variety in respect of which an application for a grant of protection is made shall have a denomination and, subject to subsections (2) and (3), the denomination shall be approved by the Registrar and registered at the time the grant of protection is made.

(2) The Registrar shall approve and register a proposed denomination for a plant variety if, and only if, in the opinion of the Registrar, it complies with the prescribed requirements.

(3) The Registrar shall not approve or register a denomination for the plant variety which —

- (a) consists solely of figures, except where this is an established practice for designating plant varieties;
- (b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;
- (c) is contrary to any written law or public order, or is likely to be offensive to the public;
- (d) is likely to cause confusion with a trade mark, a name, a business or any other rights for which any person other than the applicant enjoys protection under any law; or
- (e) is likely to cause confusion with a trade mark for any material of another plant variety or for goods similar to any material of the first-mentioned plant variety for which the applicant enjoys protection under any law.

(4) Where a denomination for a plant variety has previously been submitted in any UPOV member other than Singapore for the purpose of registration in that UPOV member, the denomination submitted for the purpose of an application in Singapore in respect of that plant variety must be the same as the denomination submitted in the UPOV member.

(5) The Registrar shall approve the denomination submitted under subsection (4) upon the grant of protection, unless the Registrar considers the denomination to be unsuitable for use within Singapore.

(6) Where the Registrar refuses to approve a denomination under subsection (2), (3) or (5), the Registrar shall require, and the applicant shall propose, another denomination within the prescribed period.

#### *Use of denomination*

37. —(1) Any person who offers for sale or disposes of propagating material of a protected variety shall use the registered denomination for that protected variety, whether or not the term of the grant of protection has expired.

(2) A person shall not offer for sale or dispose of, under the registered denomination of a protected variety, propagating material of some other plant variety, whether or not the term of grant of protection has expired.

(3) A registered denomination for a protected variety or a denomination which is confusingly similar to the registered denomination shall not be used for any plant variety of the same plant species as the protected variety or for a plant species which is closely related thereto or for any material of such a plant variety, so long as —

- (a) the registration of the registered denomination of the protected variety is in force; or
- (b) the registered denomination of the protected variety is still in use in respect of the commercial exploitation of the protected variety, even if the term of the grant of protection has expired.

(4) A person who sells or markets the propagating material or harvested material of a protected variety may, for that purpose, associate a trade mark, trade name or other similar indication which he owns with the registered denomination of that protected variety.

(5) Where a person associates a trade mark, trade name or other similar indication with the registered denomination under subsection (4), the denomination must nevertheless be easily recognisable and distinct from the trade mark, trade name or other similar indication.

#### *Invalidation of registration of denomination*

38. —(1) An application for a declaration of invalidity of a registered denomination may be made to the Court on the ground that it is registered in breach of section 36 (3).

(2) Where —

- (a) the registration of a denomination has been declared invalid by the Court under subsection (1); or
- (b) the use of the registered denomination by the grantee has been prohibited or restricted by an order of Court pursuant to any proceedings taken under any law,

the Registrar shall require the grantee to submit another suitable denomination for registration within the prescribed period.

## PART IX

## REGISTER OF PLANT VARIETIES

*Register to be maintained*

39. —(1) The Registrar shall maintain a register of plant varieties.

- (2) There shall be entered in the register —
- (a) grants of protection made;
  - (b) every decision of the Registrar making or declining the making of a grant;
  - (c) the approved denomination for a plant variety;
  - (d) such particulars of the grantee as the Registrar may determine; and
  - (e) any other matters and information relating to a protected variety or grant of protection whose entry in the register appears to the Registrar to be useful.
- (3) The register may be kept in whole or in part using a computer.
- (4) Any record of a particular or other matter made by using a computer used for the purpose of keeping the register, or any part of the register, is taken to be an entry in the register.

*Inspection of and extract from register*

40. —(1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.

- (2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part of the register.
- (3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of the prescribed fee.
- (4) Any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of the prescribed fee.
- (5) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection (3) or (4) is a right to a copy or extract in a form in which it can be taken away.

(6) In this section, “certified copy” and “certified extract” mean a copy and extract certified by the Registrar and sealed with the seal of the Registrar.

*Rectification of register*

41. —(1) Any person having a sufficient interest may apply to the Registrar for the rectification of an error or omission in the register.

- (2) Except where the Registrar directs otherwise, the effect of a rectification of the register is that the error or omission in question is deemed never to have been made.
- (3) Subject to subsection (4), an application for rectification may not be made in respect of a matter affecting the validity of a grant of protection.
- (4) The Registrar may make any correction in the register pursuant to any Court order affecting a grant of protection.
- (5) The Registrar may remove from the register any matter which appears to him to have ceased to have effect.

*Changes reflected in register*

42. —(1) The Registrar may enter the following in the register:

- (a) any change in the name or address of the grantee;
- (b) any change in ownership of the rights in relation to a grant of protection;
- (c) a note of any licence granted by a grantee,

upon receiving such information under section 24 (3) or on request made in the prescribed manner by the grantee of a registered grant of protection.

(2) Where a grant of protection has been transferred to another person, or a licence (including a licence granted under section 34) has been granted or transferred, an entry of this fact shall, upon request and the payment of the prescribed fee, be made in the register.

*Registration to be prima facie evidence of validity*

43. In any proceedings before the Court relating to a grant of protection —

- (a) the entry in the register of a person as a grantee shall be prima facie evidence of the validity of the grant of protection; and
- (b) the entry in the register of any change in ownership of the rights in relation to the grant of protection shall be prima facie evidence of such change in ownership.



## PART X

## OFFENCES

*Falsification of register*

44. Any person who —
- (a) makes, or causes to be made, a false entry in the register;
  - (b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or
  - (c) produces or tenders, or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

*Falsely representing plant variety as protected variety*

45. Any person who —
- (a) falsely represents that a plant variety is a protected variety; or
  - (b) makes a false representation as to the propagating material of a protected variety,

knowing or having reason to believe that the representation is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

*Misuse of denomination*

46. Any person who wilfully or negligently acts in contravention of section 37 (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

## PART XI

## MISCELLANEOUS

*Registrar not liable in respect of official acts*

47. —(1) The Registrar and any officer of the Registry shall not be taken to warrant the correctness or validity of a grant of protection or the registration of a denomination under this Act or under any international agreement or convention to which Singapore is a party.

(2) The Registrar, any officer of the Registry and any officer of a local prescribed examination authority referred to in section 17 (1), shall not incur any liability by reason only of, or in connection with, any examination required or authorised by this Act, or any such international agreement or convention, or any report or other proceedings consequent on such examination.

*Right of appeal*

48. —(1) Except as provided in subsection (2) or by rules made under this Act, there shall be no appeal to the Court from a decision of the Registrar for any matter under this Act.

- (2) The following shall be subject to appeal to the Court:
- (a) a decision of the Registrar to decline to make a grant of protection;
  - (b) a decision of the Registrar to make a grant of protection;
  - (c) a decision of the Registrar approving or disapproving a proposed denomination.

*Forms and directions of Registrar*

49. The Minister may make rules for the publication by the Registrar of —

- (a) the forms to be used for any purpose relating to a grant of protection or any other proceedings before the Registrar under this Act; and
- (b) the practice directions issued by the Registrar.

*Fees*

50. —(1) There shall be paid in respect of applications and other matters before the Registrar under this Act such fees as may be prescribed.

(2) The Minister may make rules as to the remission of fees under prescribed circumstances.

(3) All fees collected shall be paid into the funds of the Registry.

*Hours of business and excluded days*

51. —(1) The Registrar may issue practice directions to specify —

- (a) the hours of business of the Registry; and
  - (b) the days which are to be treated as excluded days.
- (2) The Minister may prescribe the effect of doing any business under this Act —
- (a) on any day after the hours of business of the Registry; or
  - (b) on any day which is an excluded day.
- (3) For the purposes of subsections (1) and (2) —
- (a) different hours of business may be specified for different classes of business;

- (b) different excluded days may be specified for different classes of business; and
- (c) different effects of doing business —
  - (i) outside the hours of business of the Registry; or
  - (ii) on an excluded day,

may be prescribed for different classes of business.

#### *Composition of offences*

52. —(1) The Registrar or any person authorised by him in writing may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$2,000.

(2) The Registry may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

(3) All sums collected under this section shall be paid to the Registry.

#### *Jurisdiction of court*

53. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

#### *Rules*

54. —(1) The Minister may make rules —

- (a) for prescribing anything authorised or required by this Act to be prescribed; and
  - (b) generally for regulating practice and procedure under this Act.
- (2) Without affecting the generality of subsection (1), rules made under this section may make provision —
- (a) as to the manner of making applications and filing other documents and in respect of anything that is to accompany or to be furnished together with any application;

- (b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings or other matter before the Registrar, and the rectification of irregularities of procedure;
- (c) providing for the testing and treatment of plant varieties to which applications relate;
- (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (e) as to the service of documents;
- (f) prescribing time limits for anything required to be done under this Act;
- (g) providing for the extension of any time limit prescribed or specified by the Registrar, whether or not it has already expired;
- (h) providing for the forfeiture of any priority given in respect of an application;
- (i) authorising the preparation, publication, sale and exchange of copies of diagrams, photographs and documents filed with the Registry, and indexes and abridgments to them;
- (j) prescribing the mode of publishing any matters required by this Act to be published;
- (k) prescribing the requirements to be met in selecting the denominations of plant varieties, and providing for the approval or rejection by the Registrar of any denomination or the amendment to any denomination; and
- (l) prescribing fees and charges for the purposes of this Act.

