

**Law No. 45006 on Protection of the Rights of Breeders  
of New Varieties of Plants**

**THE NATIONAL CONGRESS  
On behalf of the Republic**

**Law No. 45006**

*Courtesy translation provided by WIPO © 2012*

**WHEREAS** Article 8, paragraph 14, of the Constitution of the Dominican Republic recognizes as a major objective of the State the protection of "exclusive ownership, for the time and in the manner determined by the law, of inventions and discoveries, and also of scientific, artistic and literary productions",

**WHEREAS** the recognition and protection of the rights of breeders of new plant varieties encourage investment in the generation, adaptation and transfer of agricultural technology and consequently an increase in the production, productivity and quality of agricultural products,

**WHEREAS** technological advances favor the breeding of new plant varieties and require legislation that is consistent with internationally accepted principles,

**WHEREAS**, pursuant to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the country undertook to regulate new plant varieties by virtue of a special law, in accordance with Article 2.2(c) of Law No. 2000 on Industrial Property,

**Having regard to** the international, bilateral and multilateral agreements signed and ratified by the country with regard to protection of the rights of breeders of new plant varieties,

**Having regard to** the 1991 Act of the International Convention for the Protection of New Varieties of Plants,

**Having regard to** the Law on Industrial Property, No. 2000, of May 8, 2000,

**Having regard to** the Law on Seeds, No. 23171, of November 22, 1971,

**Having regard to** Regulations No. 27178 under the Law on Seeds, of October 3, 1978,

**THE FOLLOWING LAW HAS BEEN PASSED:**

**TITLE I  
PURPOSE AND SCOPE OF THE LAW**

**CHAPTER I  
PURPOSE AND SCOPE OF THE LAW AND DEFINITIONS**

**Article 1. Purpose.** The present Law establishes the legal regime for the granting and protection of the rights of breeders of new plant varieties.

**Article 2. Administration of the Law.** The State Secretariat for Agriculture (SEA) shall be responsible for the implementation of the present Law, for which purpose the Office for Registration of Varieties and Protection of Breeders' Rights is hereby established.

**Article 3. Definitions.** For the purposes of implementation of the present Law:

"**variety**" means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the granting of a breeder's right are fully met, can be:

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

"**protected variety**" means a variety in respect of which a breeder's right has been granted, in accordance with the Law and the established Regulations;

"**breeder**" means:

- the person that bred, or discovered and developed, a variety,
- the person that is the employer of the aforementioned person or that has commissioned that person's work;
- the successor in title of the first or second person above;

"**successor in title**" means any natural or legal person that acquires another's rights by transfer or succession;

"**breeder's right**" means the right in force pursuant to the International Convention for the Protection of New Varieties of Plants of 1961, as last amended on March 19, 1991;

"**genus**" is a category for classifying living beings; specifically, a group of species that are closely related in terms of structure and evolutionary origin. In the classification of living beings, genus is positioned below family or subfamily and above species;

"**species**" is a fundamental concept in the classification of living organisms. In simple terms, a species is a group of organisms that are characterized by similar shape, size, behavior and habitat and by the fact that these common features remain constant over time;

"**botanical taxon**" means the name in Latin of the genus or subspecies to which a variety belongs, and also its common name;

"**material**", in relation to a variety, means propagating material of any kind or harvested material, including entire plants and parts of plants, and any product made directly from the harvested material;

"**natural mutation**" means a variation in a genome that is produced without human intervention;

"**backcrossing**" means a method used by breeders whereby an individual is crossed with one of its parents or with a genetically equivalent organism. The progeny of such cross is known as a generation or progeny of backcrossing;

"**somaclonal variation**" is an expression of the variability of naturally occurring plant cells, or the result of variations observed among plants regenerated from *in vitro* tissue and cell cultures. This is one of the alternatives in genetic improvement programs, since during this period genetic modifications of nuclear and/or cytoplasmic origin are generated that are usually irreversible and are transmitted to progeny through meiotic processes;

"**farmer**" means a natural or legal person that owns a farm and takes responsibility for the management thereof on a self-employed basis;

"**farm**" means any holding or part thereof that the farmer actually farms by growing plants, whether he owns the farm or has responsibility for managing it on a self-employed basis, particularly in the case of leasing or sharecropping;

"**nationals**" means persons born in the territory of the Dominican Republic or those who have acquired Dominican citizenship pursuant to domestic law;

"**developed**" refers to a variety that is ready for reproduction;

"**Regulations**" means the regulations drawn up for the purpose of regulating the implementation of this Law;

"**applicant**" means a natural or legal person that files an application for the granting of a breeder's right;

"**territory**" means the territory of the Dominican Republic or, where appropriate, the territory of another State or of an intergovernmental organization;

"**Office for Registration of Varieties and Protection of Breeders' Rights**" means the national authority that, as an institutional unit of the State Secretariat for Agriculture, is responsible for the administration of the present Law;

"**title**" means an attestation that an applicant holds a breeder's right in a plant variety;

"**UPOV**" means the International Union for the Protection of New Varieties of Plants.

## **CHAPTER II GENERAL OBLIGATIONS**

**Article 4. Basic obligation.** The State Secretariat for Agriculture shall grant breeders' rights and shall protect them in accordance with the present Law and the International Convention for the Protection of New Varieties of Plants.

**Article 5. Genera and species to be protected.** In accordance with the International Convention for the Protection of New Varieties of Plants, all plant genera and species shall be protected under the present Law.

**Article 6. National treatment.** The following may enjoy the granting and protection of breeders' rights:

- (a) Dominican nationals;
- (b) persons having their residence or an establishment or business in the Dominican Republic;
- (c) nationals of countries in which natural or legal persons of Dominican nationality are granted equivalent titles for the due protection of their rights;
- (d) nationals of a member of UPOV, and also natural or legal persons having their residence, registered office or establishment in a member of UPOV.

**Sole paragraph.** Any person having neither a residence nor a registered office nor an establishment in the Dominican Republic may be a party to proceedings instituted pursuant to the present Law and assert rights deriving therefrom only if he has a legal representative who has his permanent residence or office in the country. The legal representative shall be given the power to represent the party to which he is contracted in all matters relating to the protection of new varieties of plants.

## **TITLE II BREEDER'S RIGHT**

### **CHAPTER I CONDITIONS FOR THE GRANTING OF A BREEDER'S RIGHT**

**Article 7. Conditions of protection.** A breeder's right shall be granted where the variety to be registered meets the following conditions: it is a new, distinct, uniform and stable variety.

**Sole paragraph.** The granting of a breeder's right shall not be subject to any conditions further to or different from those mentioned in this Article, provided that the variety is designated by a denomination established in accordance with Articles 25 and 26 of the present Law, that the applicant complies with the formalities provided for in the present Law and that he pays the fees specified in the Regulations.

**Article 8. Criteria for novelty.** A variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to a third party, by or with the consent of the breeder, for the purposes of exploitation of the variety:

(i) in the national territory, provided that the application has been filed more than one year prior to that date; and

(ii) in another territory earlier than four years or, in the case of trees or of vines, more than six years prior to said date.

#### **Paragraph I.**

(1) Notwithstanding the provisions of Article 8, a breeder's right may also be granted for a variety that is no longer new on the date of entry into force of the present Law with respect to the species in question, subject to the following conditions:

(a) the application must be filed within the year following said date; and

(b) the variety must:

(i) have been entered in the National Register of Varieties approved for marketing or in a register of varieties held by a professional organization recognized for the

purposes of the present paragraph by the Office for Registration of Varieties and Protection of Breeders' Rights;

(ü) have been the subject of a breeder's right in a member of UPOV, or be the subject of an application for a breeder's right in a member of UPOV, provided that the application subsequently leads to the granting of the breeder's right; or

(üi) be the subject of proof acceptable to the Office for Registration of Varieties and Protection of Breeders' Rights concerning the date on which the variety ceased to be new under Article 8.

(2) The duration of the breeder's right granted under the present paragraph shall be calculated from the date of registration referred to in subparagraph (1)(b)(i), the date of the granting of the breeder's right referred to in subparagraph (1)(b)(ü), or the date on which the variety ceased to be new, referred to in subparagraph (1)(b)(üi) above. Where relevant, the earliest of those dates shall be used.

(3) Where a breeder's right is granted under the present paragraph, the holder shall grant licenses on reasonable terms in order to allow the continuation of any exploitation initiated in good faith by a third party prior to the filing of the application referred to above.

**Article 9. Distinctness.** The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application. In particular, the filing of an application for the granting of a breeder's right for another variety or for the entering of another variety in the National Register of Varieties shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of said other variety in the National Register of Varieties, as the case may be.

**Article 10. Uniformity.** The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

**Article 11. Stability.** The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## **CHAPTER II APPLICATION FOR THE GRANTING OF THE BREEDER'S RIGHT**

**Article 12. Filing of applications.** The breeder shall apply for the granting of a breeder's right at the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in the manner and under the terms established by the Regulations.

**Article 13. Right of priority.** Any breeder that has duly filed an application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the granting of a breeder's right for the same variety (a "subsequent application") with the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in said period.

**Paragraph I.** In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat, with which the subsequent application has been filed, may require the applicant to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety that is the subject matter of both applications is the same.

**Paragraph II.** The breeder shall be allowed a period of two years following the expiry of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal in which to furnish the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture with any information, documents or material required under domestic law for the purpose of the examination under Article 14.

**Paragraph III.** Events occurring within the period provided for in Paragraph I, such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute grounds for rejecting the subsequent application. Neither shall such events give rise to any third-party right.

**Article 14. Examination of the application.** Any decision to grant a breeder's right shall require an examination for compliance with the conditions set out in Articles 7 to 11 of the present Law. In the course of the examination, the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture may, in its role of national authority, grow the variety or carry out other necessary tests, arrange for the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of the examination, the authority may require the breeder to furnish all the necessary information, documents or material.

**Article 15. Provisional protection.** During the period between the publication of the application for the granting of a breeder's right and the granting of that right, the holder of a breeder's right shall be entitled to equitable remuneration from any person that, during said period, has carried out acts that, once the right is granted, require the breeder's authorization in accordance with Article 16.

**CHAPTER III  
THE RIGHTS OF THE BREEDER**

**Article 16. Scope of the breeder's right.** Subject to Articles 18 and 19:

(a) the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing;
- (vii) stocking for any of the purposes mentioned in (i) to (vi);

(b) the breeder may make his authorization subject to conditions and limitations.

**Paragraph I.** Subject to Articles 18 and 19, the acts referred to in subparagraph (a)(i) to (vii) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to said propagating material.

**Paragraph II.** With regard to acts in respect of certain products, subject to Articles 18 and 19, the acts referred to in subparagraph (a)(i) to (vii) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph 2, through the unauthorized use of said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to said harvested material.

**Article 17. Derived and other varieties.** The provisions of Article 16 shall also apply in relation to:

- (i) varieties that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (ii) varieties that are not clearly distinguishable from the protected variety in accordance with Article 9; and



(iii) varieties the production of which requires the repeated use of the protected variety.

**Paragraph I.** A variety shall be deemed to be essentially derived from another variety ("the initial variety") where:

(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(ii) it is clearly distinguishable from the initial variety; and

(iii) except for the differences that result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

**Paragraph II.** Essentially derived varieties may be obtained, for example, by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from among plants of the initial variety, backcrossing, or transformation by genetic engineering.

**Article 18. Exceptions to the breeder's right.** The breeder's right shall not extend to:

(i) acts done privately for non-commercial purposes;

(ii) acts done for experimental purposes; and

(iii) acts done for the purpose of breeding other varieties and, except where the provisions of Article 17 apply, acts referred to in Article 16 and the subsequent paragraphs in respect of such other varieties.

**Sole paragraph.** Anyone that stores and sows on his own holding, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeders, harvested material that he has obtained by planting, on his own holding, a protected variety or a variety covered by Article 17, shall not thereby be infringing the breeder's right. Varieties of fruit-bearing, ornamental and forest species shall be excluded from this provision where they are planted for commercial purposes.

**Article 19. Exhaustion of the breeder's right.** The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by Article 17, that has been sold or otherwise marketed by the breeder or with his consent in the territory of the Dominican Republic, or any material derived from said material, unless such acts involve:

(a) further propagation of the variety in question;

(b) export of material of the variety that enables the propagation thereof into a country that does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

**Sole paragraph.** For the purposes of the present Article, "material" means, in relation to a variety:

- (i) propagating material of any kind;
- (ii) harvested material, including entire plants and parts of plants;
- (iii) any product made directly from the harvested material.

**Article 20. Restrictions on the exercise of the breeder's right.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in its role of national authority, may not restrict the free exercise of a breeder's right except for reasons of public interest, the declaration of which shall be made by means of a decree of the Executive.

**Article 21. Reasons of public interest.** Reasons of public interest shall be deemed to exist where:

- (a) the start or increase of or widespread exploitation of the protected variety, or improvement of the conditions in which such exploitation is carried out, are of paramount importance for public health, national defense or the environment;
- (b) lack of exploitation or insufficient quality or quantity of exploitation is causing serious harm to the country's economic or technological development;
- (c) the country's supply needs so require.

**Sole paragraph.** In any case, SEA shall give the breeder prior notice by bailiff's act, granting him a reasonable time in which to remedy the situation that is affecting the public interest. Where the breeder fails to comply with the summons, SEA shall forward the request for action to the Executive, with all the information demonstrating the reasons of public interest and the restrictions on the breeder. The procedure applicable to compulsory licenses for reasons of public interest shall be specified in regulations.

**Article 22. Equitable remuneration.** Where any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in its role as national authority, shall take all measures necessary to ensure that the breeder receives equitable remuneration.

**Article 23. Measures regulating commerce.** The breeder's right shall be independent of measures taken by the country to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material into or out of the country.

**Article 24. Duration of the breeder's right.** The breeder's right shall be granted for a period of 20 years from the date of granting. For trees and vines, said period shall be 25 years from said date.

#### CHAPTER IV VARIETY DENOMINATION

**Article 25. Variety denomination.** The designation of varieties by denominations and the use of denominations shall be carried out as follows:

(a) a variety shall be designated by a denomination which shall be its generic designation;

(b) the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in its role as national authority, shall ensure that, subject to **Article 28**, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

**Article 26. Characteristics of the denomination.** The denomination must enable the variety to be identified and shall meet the following conditions:

(a) it may not consist solely of figures, except where this is an established practice for designating varieties;

(b) it shall not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it shall be different from every denomination that designates, in the territory of the Dominican Republic, or in the territory of any other member State of UPOV, an existing variety of the same plant species or of a related species.

**Article 27. Registration of the denomination.** The denomination of the variety shall be submitted by the breeder to the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture. If it is found that the denomination does not satisfy the requirements of **Article 26**, the Office shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the Office at the same time as the breeder's right is granted.

**Article 28. Prior rights of third persons.** Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is

forbidden to a person that, in accordance with Article 31, is obliged to use it, the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall require the breeder to submit another denomination for the variety.

**Article 29. Applications under the same denomination.** Since, under the UPOV Convention, a variety must be submitted under the same denomination, the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall register the denomination so submitted, unless it finds that the denomination is unsuitable in the Dominican Republic. In the latter case, it shall require the breeder to submit another denomination.

**Article 30. Information.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall ensure that the authorities of the other members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Office.

**Article 31. Obligation to use the denomination.** Any natural or legal person that offers for sale or markets propagating material of a variety protected in the Dominican Republic shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with **Article 28**, prior rights prevent such use.

**Article 32. Indications used in association with denominations.** Where a variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with a registered variety denomination. If such indication is so associated, the denomination shall nevertheless be easily recognizable.

## CHAPTER V NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

**Article 33. Nullity of the breeder's right.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall declare a breeder's right granted by it null and void if it is established that:

(a) the conditions laid down in **Articles 8 and 9** were not complied with at the time of granting of the breeder's right;

(b) where the granting of the breeder's right was essentially based on information and documents furnished by the breeder, the conditions laid down in **Articles 10 and 11** were not effectively complied with at the time of granting of the breeder's right; or

(c) the breeder's right has been granted to a person that is not entitled to it, unless it is transferred to the person that is so entitled.

**Sole paragraph.** No breeder's right shall be declared null and void for reasons other than those referred to in subparagraphs a), b) and c) of the present Article.

**Article 34. Cancellation of the breeder's right.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture may cancel a breeder's right granted by it if:

(a) it is established that the conditions laid down in **Articles 10 and 11** are no longer effectively fulfilled;

(b) after being requested to do so and within a prescribed period:

(i) the breeder does not provide the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture with the information, documents or material deemed necessary for verifying the maintenance of the variety;

(ii) the breeder fails to pay such fees as may be payable to keep his right in force; or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the granting of the right, another suitable denomination.

**Sole paragraph.** No breeder's right shall be cancelled for reasons other than those referred to in the present Article.

### TITLE III ORGANIZATION AND PROCEDURE

#### CHAPTER I ORGANIZATION, COMPETENCE AND GENERAL RULES OF OPERATION

**Article 35. Competence of the national authority.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall be responsible for the full administration of the present Law and the implementation of the Regulations thereunder, for which it shall have the required institutional structure with the appropriate budget therefor.

**Article 36. Establishment of the Technical Committee for the Classification of Varieties.** The technical decisions of the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture relating to the granting of breeders' rights shall be taken on the basis of recommendations of the Technical Committee for the Classification of Varieties, the membership of which shall be as follows:

(a) the Under-Secretary for Agricultural Research, Extension and Training, who shall chair the Committee;

(b) the Director of the Dominican Institute for Agricultural and Forestry Research (IDIAF), member;

(c) the Director of the Seeds Department, member;

(d) the Director of the Plant Health Department, member;

(e) a representative of the faculties or schools of agriculture of the universities, member.

**Article 37. Functions of the Technical Committee for the Classification of Varieties.** The functions of the Committee shall be to:

(a) check applications for plant variety protection forwarded by the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in accordance with the present Law and the Regulations thereunder;

(b) recommend to the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture whether to approve or reject, in accordance with the present Law and the Regulations thereunder, applications for the registration of plant varieties;

(c) recommend to the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture the issuance, subject to study and evaluation of the application and other relevant information, of plant breeders' certificates; it shall send such certificates for registration and delivery, in accordance with the Regulations under the present Law;

(d) advise the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture on the settlement of administrative disputes, referred to in the present Law, that fall within its absolute jurisdiction; to that end, it shall meet with the parties to the dispute and shall always propose compromise solutions to them, within the framework of the law, with a view to avoiding the referral of disputes that arise to other authorities provided for in the present Law.

**Article 38. Right to be heard by the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture.** The interested parties shall be notified of the Office's decisions. In the event of a dispute, the affected party shall submit its observations within thirty (30) days of said notification.

**Sole paragraph.** Where one or more parties to a dispute disagree with the Office's decisions, they may appeal those decisions before the National Seeds Commission, which shall take the final decision.

**Article 39. National Register of Varieties.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall keep a National Register of Varieties, which shall be administered in accordance with the Regulations under the present Law.

**Article 40. Receipt of applications.** Applications for the granting of breeders' rights shall be received by the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, in accordance with the Regulations under the present Law, and shall be forwarded to the Technical Committee for the Classification of Varieties.

**Article 41. Fees.** The interested parties shall pay fees for administrative acts relating to applications for breeders' rights, in accordance with the Regulations under the present Law.

**Article 42. Technical examination of the variety.** The Technical Committee for the Classification of Varieties shall carry out a technical examination of the variety, the purpose of which shall be to:

- (a) verify that the variety belongs to the stated botanical taxon;
- (b) establish that the variety is new, distinct, uniform and stable; and
- (c) determine whether the proposed denomination meets the requirements set out in this Law.

**Article 43. Consideration of objections.** Objections shall be communicated without delay to an applicant for a plant breeding right, who shall have a period specified in the Regulations within which to express his views on the objections and state whether he intends to maintain, amend or withdraw his application. The period may be extended on the basis of a substantiated request from the applicant.

**Article 44. Granting of the breeder's right and rejection of the application.** The Technical Committee for the Classification of Varieties shall recommend to the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture that it grant breeders' rights and hence that the granting thereof be entered in the National Register of Varieties, where it is satisfied, as a result of the technical examination of the variety, that the variety fulfills the requirements of Articles 8 to 11, that the variety has been designated by a denomination in accordance with Articles 25 to 32, and that the applicant has fulfilled the other requirements set out in the present Law. The Committee shall recommend that the Office reject the application where it is not so satisfied.

**Paragraph I.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall issue the relevant attestation on the basis of the recommendations of the Technical Committee for the Classification of Varieties.

## **CHAPTER II VALIDITY OF THE BREEDER'S RIGHT**

**Article 45. Annual fee.** The holder shall pay an annual fee, which shall be specified in the Regulations under the present Law, to keep his breeder's right in force for the whole period of protection. The fee shall be payable within the period from January 1 to 31 each year.

**Article 46. Maintenance of the variety.** The holder shall maintain the protected variety or, where relevant, its hereditary components while the breeder's right is in force. The breeder shall provide the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, within the prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety.

## **CHAPTER III INFRINGEMENT OF THE BREEDER'S RIGHT**

**Article 47. Remedies.** Any natural or legal person that, without being authorized to do so, performs acts that require the authorization of the holder under **Article 16** or uses a designation in infringement of **Article 26** or fails to use a variety denomination in infringement of **Article 31** may be sued by the breeder or by the holder of an exclusive license or by any natural or legal person. Compensation for harm caused to the breeder shall be paid in accordance with ordinary law.

**Paragraph I.** The available remedies shall include prompt provisional measures and border measures for the effective enforcement of breeders' rights.

**Paragraph II.** Disputes that arise as a result of infringement of the breeder's right shall fall within the competence of the relevant criminal court of first instance, without prejudice to any compensation that may be due.

**Article 48. Criminal penalties.** Anyone that infringes a breeder's right that has been duly registered with the Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture, causing harm to the holder thereof, shall be committing offenses punishable with a prison term of three months to three years and fines of five (5) to twenty (20) times the minimum private sector wage, in accordance with the Regulations under the present Law. Where the infringer alters or removes the breeder's genetic material, or where a registered plant variety has been propagated unlawfully, the same penalty shall apply.



**Paragraph I.** In the event of unlawful propagation of the variety, in addition to a fine and a prison term, the propagating material obtained and the inputs and machinery used in the process of unlawful propagation of the variety shall be confiscated.

**Paragraph II.** Fines shall be doubled and the maximum sentence provided for in the present Article shall be applicable in respect of anyone that commits a repeat infringement of the rights provided for in the present Law.

**Article 49. Penalties.** Anyone that applies for a breeder's right using false documents shall be charged with the offense of fraud and shall be punished with the penalties set out in Article 405 of the Penal Code of the Dominican Republic.

**Paragraph I.** Public officials and employees who, through negligence or for any other reason, obstruct due compliance with the present Law and the Regulations thereunder or infringe the provisions thereof shall be punished with disciplinary measures; and, where the seriousness of the case so warrants, they shall be suspended from their duties and their dismissal shall be recommended.

**Paragraph II.** In the event of complicity, the official or employee and the applicant shall be punished with a prison term of one month to one year and fines of one to five times the minimum private sector wage.

**Paragraph III.** In the case of legal persons, institutions or companies, penalties consisting of fines and prison terms shall be imposed on the administrators, managers or legal representatives thereof, without prejudice to the compensation to be paid by the legal persons that they represent for the harm caused to other natural or legal persons.

**Article 50. Fraud in relation to variety denominations.** Any person that knowingly uses a designation in infringement of Article 26 or fails to use a variety denomination in infringement of Article 31 shall be punished with a fine of one to five times the minimum private sector wage and a prison term of one month to one year.

**Sole paragraph.** In the event of a repeat infringement, the fines shall be doubled and the maximum prison sentence shall be applicable.

#### **CHAPTER IV PUBLICATIONS**

**Article 51. Bulletin.** The Office for Registration of Varieties and Protection of Breeders' Rights of the State Secretariat for Agriculture shall publish, at least once a year or whenever necessary, a bulletin containing the following sections:

- (a) official announcements;
- (b) grants of protection of breeders' rights;

(c) lapses of breeders' rights;

(d) list of tariffs and fees in force for acts and procedures relating to intellectual property protection rights in respect of new plant varieties;

(e) changes relating to persons (applicants, right holders and legal representatives);

(f) rejections of applications for the granting of breeders' rights;

(g) registrations of variety denominations;

(h) withdrawal of applications for the granting of breeders' rights;

(i) applications for the granting of breeders' rights;

(j) applications for variety denominations.

**Article 52. Publication of applications.** Applications shall be the subject of an announcement in the bulletin, which shall contain, as a minimum, details of the applicant and the plant variety to be protected.

**Article 53. Publication of the lapse of a breeder's right.** The lapse of a breeder's right and the grounds therefor shall be entered in the National Register of Varieties and shall be published in the bulletin of the national authority.

#### TITLE IV FINAL AND TRANSITIONAL PROVISIONS

##### FINAL PROVISIONS

**Article 54. Validity of prior registrations.** Registrations of new plant varieties obtained pursuant to Law No. 231 of November 22, 1971, and Regulations No. 271 of October 3, 1978, shall be deemed valid. The validity of prior registrations of new plant varieties, and also applications that are being processed on the date on which this Law enters into force, shall be governed by the present Law.

**Article 55. Publication of prior registrations.** For the purposes of making them public and enforceable against others, applications in process and new plant varieties that have been registered in accordance with other legal provisions in force and prior to the entry into force of the present Law shall be published *in extenso* in the first bulletin.

**Article 56. Preparation of the Regulations.** For the purposes of enforcing the present Law, the Regulations for the implementation thereof shall be submitted to the Executive within no more than 120 days.

**Article 57.** The present Law shall repeal all prior legal provisions on the same subject that are contrary thereto.

**DONE** at the Meeting Hall of the Senate, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on November 28, 2006, the 163rd year of Independence and the 144th year of the Restoration.

**Reinaldo Pared Pérez**  
President

**Amarilis Santana Cedano**  
Secretary

**Dionis Alfonso Sánchez Carrasco**  
Ad Hoc Secretary

**DONE** at the Meeting Hall of the Chamber of Deputies, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on December 6, 2006, the 163rd year of Independence and the 144th year of the Restoration.

**Julio César Valentín Jiminián**  
President

**María Cleofia Sánchez Lora**  
Secretary

**Teodoro Ursino Reyes**  
Secretary

**LEONEL FERNANDEZ**  
**President of the Dominican Republic**

In exercise of the powers conferred on me by Article 55 of the Constitution of the Republic,

I hereby **ENACT** the present Law and order it to be published in the *Official Gazette* so as to make it known and ensure compliance therewith.

**DONE** at Santo Domingo de Guzmán, capital of the Dominican Republic, on December 6, 2006, the 163rd year of Independence and the 144th year of the Restoration.

**LEONEL FERNANDEZ**

