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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*¹ has adopted and the
President has proclaimed the following Law:

Plant Varieties Protection Law

Chapter I General Provisions

Section 1. Purpose of this Law

The purpose of this Law is to specify the procedures for granting the breeder's right and to ensure the protection of breeder's rights.

Section 2. Scope of Application of this Law

- (1) The Law shall be applied to all varieties of plant genus and species (including hybrids).
(2) A variety is an aggregate of cultivated plants which is included in the last position within the limits of a botanical taxon (botanical system) irrespective of whether the requirements for granting the breeder's right have been fully complied with. It may be defined as a manifestation characterising a genetic type or a combination of genetic types, as an aggregate that differs from any another aggregate of plants with at least one specific characteristic. A variety shall be regarded as a unit that remains constant when propagated.

Section 3. Conditions for Granting the Breeder's Right

- (1) Breeder's right shall be granted if a variety is:
- 1) new;
 - 2) distinct;
 - 3) uniform;
 - 4) stable.
- (2) In order to grant the breeder's right, a variety shall be assigned a denomination in accordance with the provisions of Section 20 of this Law. A breeder or his or her authorised representative shall comply with the procedures provided for in this Law. No other conditions shall be set for the granting of the breeder's right.

Section 4. Novelty of a Variety

A variety shall be deemed to be new if a breeder or his or her authorised representative, or someone else with his or her permission has not sold, or in any other way transferred the seeds, planting stock, propagating material (hereinafter – propagating material)

¹ The Parliament of the Republic of Latvia

or the harvest product of the variety to a third party for commercial use prior to the day of registration of an application for granting the breeder's right (hereinafter – application):

- 1) in Latvia – earlier than one year before the registration of an application;
- 2) outside of Latvia – earlier than six years before the registration of an application in relation to vines and tree varieties;
- 3) outside of Latvia – earlier than four years before the registration of an application in respect of other plants which are not referred to in Clause 2 of this Section.

Section 5. Distinctness of a Variety

(1) A variety shall be deemed to be distinct if it clearly differs from any other variety that has become a matter of common knowledge before the date of registration of the application.

(2) In particular, a variety shall be deemed to be a matter of common knowledge if an application for granting the breeder's right or for inclusion of the variety in the official catalogue of varieties has been registered in any state and if according to such application the breeder's right have been granted or the variety has been included in the official catalogue of varieties. A variety shall be deemed to be a matter of common knowledge as of the date of registration of an application.

Section 6. Uniformity of a Variety

A variety shall be deemed to be uniform if plants thereof, which have been propagated observing the particular features of the variety propagation, are sufficiently uniform in respect of the characteristic features of the variety.

Section 7. Stability of a Variety

A variety shall be deemed to be stable if after the repeated propagation or at the end of each propagation cycle (if a special propagation cycle is utilised) the characteristic features of the variety do not substantially change.

Section 8. Breeder

(1) In accordance with this Law the following persons are breeders:

- 1) a natural person who has derived or isolated the relevant variety;
- 2) an employer or a commissioning party who has entered into a contract with a person referred to in Clause 1 of this Section regarding the derivation or isolation of the relevant variety;
- 3) a successor to the rights of persons referred to in Clauses 1 and 2 of this Section.

(2) If a variety has been derived as a result of the joint activities of several breeders, they shall have joint breeder's right which have been specified by a written agreement. If an agreement has not been entered into, each of them is entitled to exercise breeder's right at his or her own discretion, with the exception of the granting of a licence, as well as of transferring the breeder's right to another person. The joint owners of the breeder's right shall carry out such activities only by mutual agreement or in accordance with a court adjudication.

Section 9. Owner of Breeder's Right

A person referred to in Section 8 of this Law who has acquired the breeder's right in accordance with the procedures specified in this Law is an owner of breeder's right.

Section 10. Authorised Representative

The State Plant Protection Service shall register an authorised representative based on the authorisation of a breeder.

[17 November 2005;]

Section 11. Personal Rights of a Breeder

(1) A breeder (a natural person), irrespective of who is the owner of breeder's right, has personal rights, which shall not be transferred to other persons and inherited. These are rights:

- 1) to be mentioned in materials and publications regarding the relevant variety, as well as the certificate regarding the granting of a breeder's right;
- 2) to submit a proposal for the denomination of a variety;
- 3) to apply for an equitable remuneration for the utilisation of a variety in cases provided for in a contract entered into with an employer.

(2) The rights specified in Paragraph one of this Section in case of violation thereof may be protected in a court in accordance with the same procedures by which copyright is protected.

[17 November 2005]

Section 12. Tasks of the State Plant Protection Service in the Field of Protection of Plant Varieties

(1) The State Plant Protection Service shall:

- 1) examine applications regarding granting of the breeder's right and take a decision on the granting, extension, loss of effect and cancellation of the breeder's right;
- 2) approve the results of a variety examination conducted in Latvia;
- 3) recognise the results of a variety distinctness, uniformity and stability examination (hereinafter – variety examination) conducted in the Member States of the International Union for the Protection of New Varieties of Plants (UPOV) in accordance with the regulatory enactments regarding a variety distinctness, uniformity and stability examination;
- 4) supervise and control a variety examination in Latvia;
- 5) register licence agreements for the transfer of the breeder's right;
- 6) administer and maintain the Latvian State Register of Protected Plant Varieties of the State Information System for Supervision of Cultivated Plants;
- 7) in conformity with its competence co-operate with international organisations;
- 8) perform other functions provided for in this Law;
- 9) perform all activities in conformity with the legal acts of the European Union regarding plant variety protection.

[16 December 2010]

Section 13. The Latvian State Register of Protected Plant Varieties

(1) The Latvian State Register of Protected Plant Varieties (hereinafter – Register) shall include information on applications and protected varieties.

(2) The following information regarding applications shall be included in the Register:

- 1) the registration number and date of the application;
- 2) the name and address of the breeder;
- 3) if it is an authorised representative – the name and address of the authorised representative, the date, number and term of validity of the authorisation;
- 4) the proposed denomination of a variety or temporary designation;

5) the description of the variety technical form registration number and date or the official description of the variety registration number and date that is prepared after the performance of a variety examination (hereinafter – description of the variety);

6) the variety examination report registration number and date;

7) the date of publication of the registered application;

8) the date of publication of the applied for and registered variety denomination;

9) the priority date;

10) information regarding the course of the examination of the application.

(3) The following information regarding protected varieties shall be included in the Register:

1) the number by which the variety has been included in the Register;

2) the name and address of the owner of breeder's right, breeder, and authorised representative;

3) the denomination of the variety;

4) the description of the variety;

5) a reference to the components of the variety if they are utilised for the propagation of the variety;

6) the date of the granting of the breeder's right, the time period for which the breeder's right has been granted, loss of effect of the breeder's rights and cancellation thereof;

7) the information regarding compulsory licences, registered licences and registered licence contracts issued;

8) information regarding the change of the name of the owner of a licence;

9) information regarding the payment of the State fee for protection of breeder's rights.

(4) The applicant and the owner of breeder's rights shall be liable for the provision of information to be included into the Register, the veracity, amendment and alteration thereof.

[17 November 2005]

Chapter II

Application for Granting the Breeder's Right and Examination Thereof

Section 14. Application for Granting the Breeder's Right

(1) A breeder or his or her authorised representative (hereinafter – applicant) shall submit an application to the State Plant Protection Service. The Cabinet shall determine the procedures for acceptance and examination and registration of an application.

(2) The date on which the State fee was paid shall be indicated in an application. The following documents shall be appended to the application:

1) a description of the variety;

2) an authorisation if the applicant is not the breeder;

3) the documents referred to in Section 15 of this Law if a convention priority has been requested.

(3) An application shall be registered if a description of the variety technical form has been submitted and the following information has been provided in the application form and a copy of the payment document regarding the examination of the application:

1) the name and address of the applicant;

2) the name and address of the breeder if the applicant is not the breeder;

3) the submitted denomination of the variety;

4) the State in which the application has been registered and the registration date if a convention priority is requested;

5) the person referred to in Section 8, Paragraph two, Clause 1 of this Law if the breeder is the person referred to in Section 8, Paragraph two, Clause 2 of this Law.

(4) An application form shall be completed in the Latvian language. If documents appended to the application are completed in any foreign language, the State Plant Protection Service has the right to request their translation into the Latvian language.

(5) If a variety has been derived utilising other varieties (components), the applicant has the right to request that the information regarding the components of the variety be regarded as restricted access information.

(6) After the registration of an application the variety shall be deemed to be a matter of common knowledge and temporary protection shall be applied thereto.

[17 November 2005; 17 June 2010]

Section 15. Convention Priority

(1) An applicant who in accordance with specified procedures has submitted an application to another Member State of the International Union for the Protection of New Varieties of Plants (UPOV) has the right within 12 months to submit an application in Latvia in relation to the same variety utilising the priority of the first application. The specified time period of 12 months shall be calculated from the day of registration of the first application.

(2) In order to certify the priority, an applicant shall, within three months after the registration of the application with the State Plant Protection Service, submit a copy of the registered application certifying the priority date.

(3) An applicant within three years after the priority date has the right to submit to the State Plant Protection Service additional information, documents or materials necessary for the evaluation of the application and the examination of the variety.

(4) The registration of another application regarding the variety referred to in the first application, the utilisation of such variety or publication of information thereof shall not be a reason for rejection of the second application. The referred to activities shall not be a basis for the arising of any rights for a third party to the variety.

[17 November 2005]

Section 16. Examination of Applications

(1) Within a month from the day of registration of an application, the State Plant Protection Service shall:

1) examine the right of the applicant to submit an application and the conformity of the variety to the provisions of Section 4 of this Law;

2) inform the applicant in writing regarding the necessity to supplement the registered application with the documents referred to in Section 14, Paragraph two of this Law and to submit a translation into the Latvian language of the documents appended, as well as regarding the procedures for the examination of the variety.

(2) If during the examination of an application the State Plant Protection Service determines that the variety does not comply with the provisions of Paragraph one, Clause 1 of this Section, it shall reject the application informing the applicant in writing thereof.

Section 17. Submission of Objections

(1) Interested persons have the right within three months after information regarding the application has been published to submit objections to the State Plant Protection Service. Objections may relate to the novelty, distinctness, uniformity, and stability of a variety or to the right to submit an application. Objections shall be submitted in writing, adding the documentary justification thereto.

(2) An applicant shall, within two months after the receipt of objections, provide an explanation regarding the objections. If an applicant does not provide an explanation, the State Plant Protection Service shall reject the application.

(3) If the objections relate to the distinctness, uniformity and stability of a variety, the State Plant Protection Centre has the right to request a repeat examination of the variety.

Section 18. Variety Examination and Issue of a Permit for a Variety Examination

(1) A variety examination shall be performed by the following authorities:

1) in Latvia – the authority to which the State Plant Protection Service has issued a permit for the performance of a variety examination in accordance with the procedures specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety;

2) outside Latvia – one of the following variety examination authorities:

a) the official authority of other European Union Member State which has entered into an agreement regarding performance of a variety examination in accordance with Article 15 of Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office,

b) the authority of the Member State of the International Union for the Protection of New Varieties of Plants (UPOV), if the referred to state is the Member State of the European Free Trade Association (EFTA) and performs a variety examination for the particular species.

(2) A permit for the performance of a variety examination shall be issued by the State Plant Protection Service in accordance with the procedures specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety. A permit shall be issued within two months from the day when a submission for permission to perform a variety examination has been lodged.

(3) A variety examination shall be performed in accordance with:

1) variety examination protocols (available in electronic format on the website of the State Plant Protection Service) of the Community Plant Variety Office (CPVO) specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety;

2) the guidelines for a variety examination (available in electronic format on the website of the State Plant Protection Service) of the International Union for the Protection of New Varieties of Plants (UPOV) specified in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety, if variety examination protocol of the Community Plant Variety Office (CPVO) has not been specified for the relevant genus, species or variety group;

3) the regulatory enactments regarding the methodology for examination of distinctness, uniformity and stability of a variety, if neither variety examination protocol of the Community Plant Variety Office (CPVO), nor guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) have been specified for the relevant genus, species or variety group in the regulatory enactments regarding examination of distinctness, uniformity and stability of a variety.

(4) If neither variety examination protocol of the Community Plant Variety Office (CPVO), nor guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) have been developed for the relevant genus, species or variety group and a variety examination is not performed in Latvia, the examination for such varieties shall be performed in any of the examination authorities referred to in Paragraph one, Clause 2 of this Section, taking into account the requirements of the regulatory enactments of the relevant country.

(5) The Cabinet shall issue regulations for examination of distinctness, uniformity and stability of a variety in which the following shall be determined:

1) the variety examination protocols of the Community Plant Variety Office (CPVO) and the guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) in compliance with which a variety examination shall be performed;

2) the requirements for performers of a variety examination;

3) the procedures for the issue and cancellation of a permit for the performance of a variety examination;

4) the requirements for the collection of sample varieties necessary for a variety examination and approval procedures;

5) the provisions and procedures for the supervision of a performer of a variety examination;

6) the provisions and procedures for a variety examination;

7) the procedures for organisation of a variety examination;

8) the provisions and procedures for the approval of the results of a variety examination;

9) the requirements for recognition of the results of a variety examination.

(6) The Cabinet shall issue regulations regarding the methodology for the variety examination of cultivated plant species for which variety examination protocols of the Community Plant Variety Office (CPVO) or guidelines for a variety examination of the International Union for the Protection of New Varieties of Plants (UPOV) have not been developed.

[16 December 2010]

Section 19. Decision Regarding Granting of the Breeder's Right

(1) After completion of the examination of the variety (if such was required), the State Plant Protection Service shall send a notification on the results of the examination to an applicant. Within two months an applicant has the right to submit objections regarding the examination of the variety performed to the State Plant Protection Service.

(2) The breeder's right shall be granted:

1) if a fully completed application form has been submitted and the documents referred to in Section 14, Paragraph two of this Law have been appended;

2) in accordance with the provisions specified in Sections 3, 4, 5, 6 and 7 of this Law.

(3) The breeder's right shall be granted by a decision of the State Plant Protection Service that comes into force on the day of the taking thereof. The State Plant Protection Service shall inform an applicant in writing regarding the referred to decision, issue a certificate regarding the granting of the breeder's right and include the variety in the Register.

[17 November 2005]

Section 20. Denomination of a Variety and Procedures for Registration Thereof

(1) The denomination of a variety shall be applied for by submitting an application. If a variety is a matter of common knowledge, it shall be applied for with a denomination previously used. If an application has been concurrently submitted in several states, the applicant shall use the same denomination of the variety. The registered denomination of the variety shall be used after the granting of the breeder's right and the expiry of the protection of the variety.

(2) The denomination of a variety shall conform to the requirements of the International Union for the Protection of New Varieties of Plants (UPOV) and of regulatory enactments of the European Union.

(3) The State Plant Protection Service shall examine the conformity of the denomination applied for to the provisions of Paragraphs one and two of this Section. If an applied for denomination:

1) conforms, it shall be published. Interested persons have the right to submit objections to the State Plant Protection Service regarding the applied for denomination of a variety within three months from the day of publication thereof. The State Plant Protection Service shall inform the applicant regarding the objections received and if they are justified, shall act in accordance with Clause 2 of this Paragraph. The State Plant Protection Service shall inform regarding a decision, which is taken in relation to the objections, to the submitter of the objection and member states of UPOV and the European Union;

2) does not conform, the applicant shall, within a month, submit a proposal regarding a new denomination of the variety. If the applicant does not submit a proposal, the application shall be rejected and the applicant informed in writing thereof.

(4) The denomination of a variety shall be registered concurrently with the granting of the breeder's right or by a separate decision.

(5) The State Plant Protection Service shall recognise the denomination of a variety as unsuitable if:

1) the denomination has been registered without complying with the provisions of Paragraphs one and two of this Section;

2) a written request of the owner of the breeder's right has been received;

3) a relevant decision of a higher institution or an adjudication of a court has been received.

(6) The denomination of a variety, which has been recognised as unsuitable, shall be cancelled and a new denomination shall be registered.

[17 November 2005; 17 June 2010]

Section 21. Publications

(1) The State Plant Protection Service shall publish the following information in the newspaper *Latvijas Vēstnesis* [the official Gazette of the Government of Latvia]:

1) registered, recalled and rejected applications;

2) denominations of varieties proposed and changes of denominations of protected varieties;

3) granting, loss of effect or cancellation of the breeder's right;

4) change of the breeder, owner of breeder's right or authorised representative;

5) other notices associated with this Law.

(2) The State Plant Protection Service shall publish the information referred to in Paragraph one of this Section also in the periodical publication "*Latvijas Augu Šķirņu Biļetens*" [Latvian Plant Variety Bulletin], which shall be sent to all member states of UPOV and the European Union.

[17 November 2005]

Section 22. State Fee

The State fee shall be paid according to the procedures and in the amount specified by the Cabinet:

1) by a submitter – for the granting of the breeder's right and extension thereof;

2) an owner of breeder's right or an authorised representative thereof – for the protection of breeder's right;

3) an owner of the licence – for the registration of the licence in the State Plant Protection Service;

4) a variety examination authority – for the issue of a permit for performance of a variety examination.

[17 November 2005; 21 December 2006; 17 June 2010; 16 December 2010]

Chapter III Breeder's Right

Section 23. Scope of Application of the Breeder's Right

(1) No other person shall turn a variety into a source of income without a permit (licence contract) from an owner of the breeder's right. In compliance with the provisions of Section 24 of this Law a permit from the owner of the breeder's rights shall be necessary for the performance of the following activities related to the propagating material of a variety:

- 1) production and propagation;
- 2) preparation in conformity with sowing requirements in order to propagate the variety;
- 3) offer for sale;
- 4) sale or other type of marketing;
- 5) exportation and importation;
- 6) storage for the purposes referred to in Clauses 1, 2, 3, 4 and 5.

(2) In compliance with the provisions of Section 24 of this Law, a permit from the owner of the breeder's right for the activities referred to in Paragraph one, Clauses 1, 2, 3, 4, 5 and 6 of this Section with the harvested product (including entire plant and parts of the plant) obtained by unauthorised utilisation of the propagating material of a protected variety is required unless he or she has had no opportunity to exercise his or her rights in relation to the referred to propagating material of the variety.

(3) The provisions of Paragraphs one and two of this Section shall also apply to such a plant variety:

- 1) which is essentially derived from the protected variety if this protected variety is not itself essentially derived in such manner;
- 2) which, in compliance with the provisions of Section 5 of this Law, insufficiently differs from the protected variety;
- 3) in the production of which the protected variety must be repeatedly utilised.

(4) The variety referred to in Paragraph three, Clause 1 of this Section shall be deemed to be essentially derived from another (initial) variety, if it:

1) is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety, while retaining the essential characteristics the origin of which has been determined by the genotype or combination of genotypes of the initial variety;

2) is clearly distinguishable from the initial variety;

3) conforms to the essential characteristics of the initial variety the origin of which has been determined by the genotype or combination of genotypes of the initial variety, except for the differences that have arisen during the process of derivation.

(5) A variety may essentially be derived by selecting natural or induced mutants, somaclonal variants or individuals that differ from the initial variety, as well as by utilising backcrossing or transformation by genetic engineering or other methods.

Section 24. Restrictions of the Breeder's Right

(1) In order to ensure agricultural production, the producers of agricultural products have the right without the permission of the owner of the breeder's right to utilise for propagation of harvested products, which are acquired in the fields in his or her ownership or possession

from a variety protected in Latvia that they have sown themselves (which is not a hybrid or synthetic variety), if the following plant species are grown: yellow lupine (*Lupinus luteus* L.), lucerne (*Medicago sativa* L.), peas (*Pisum sativum* L.), field beans (*Vicia faba* L.), common vetch (*Vicia sativa* L.), oats (*Avena sativa* L.), barley (*Hordeum vulgare* L.), rye (*Secale cereale* L.), triticale (x *Triticosecale* Wittm.), soft wheat (*Triticum aestivum* L. emend. Fiori et Paol.), potatoes (*Solanum tuberosum* L.), turnip rape [*Brassica napus* L. (partim)], flax (*Linum usitatissimum* L.), except for fibre flax.

(2) The producers of agricultural products, who have small holdings, may utilise the plant species referred to in Paragraph one of this Section for the propagation of harvested products in their own holdings without paying a reimbursement to the owners of breeder's rights.

(3) A small holding within the meaning of this Law is such a holding in which ownership or possession the total area of the plant species referred to in Paragraph one of this Section (except for potatoes) does not exceed 20 hectares, but for potatoes – three hectares.

(4) If other producers of agricultural products without the permission of the owner of the breeder's right utilise for propagation the plant species referred to in Paragraph one of this Section, they shall pay remuneration in the amount of 50 per cent from the remuneration for a licensed propagating material of the same variety for the same area.

[17 November 2005]

Section 25. Exceptions of the Breeder's Right

Breeder's right shall not apply to operations:

- 1) which have been performed privately and for non-commercial purposes;
- 2) which have been carried out for experimental purposes;
- 3) the objective of which is to derive new varieties, except in cases where the provisions of Section 23, Paragraph three of this Law are applied in respect of the operations with varieties referred to in Section 23, Paragraphs one and two of this Law;

4) with the propagating material of the protected variety, the harvested product (including entire plant and parts of the plant) and any material acquired from the harvested product or varieties referred to in Section 23, Paragraph three of this Law if the breeder has sold or otherwise put into circulation (or if such has taken place with his or her consent) such material or varieties, unless any of the following operations have been performed:

- a) further propagation of the protected variety,
- b) exportation of the propagating material of the protected variety, harvested product (including entire plant and parts of the plant) and any material acquired from the harvested product, which would provide an opportunity to propagate the variety in a state which does not protect varieties of the genera and species to which the referred to variety belongs, except in cases where such material to be exported is intended for final consumption.

Section 26. Term of Validity of the Breeder's Right

(1) Breeder's rights shall be acquired on the day when a decision on the granting of the breeder's rights is taken and shall be in effect until the end of the twenty-fifth calendar year, but for potatoes and with respect to the species of vine and tree varieties, until the end of the thirtieth calendar year from the year of granting the right.

(2) After the receipt of a reasoned application from the owner of the breeder's right, the State Plant Protection Service has the right to extend the term referred to in Paragraph one of this Section for another five years.

[17 November 2005]

Section 27. Transfer of the Breeder's Right

- (1) An owner of the breeder's right is entitled to transfer the granted breeder's right:
- 1) fully – to a successor to the breeder's right;
 - 2) in part – with an authorisation or a licence contract in accordance with the provisions of Section 28 of this Law.
- (2) The breeder's right shall be transferred in writing and they shall be in effect from the day of registration in the State Plant Protection Service.

Section 28. Licence Contract

- (1) An owner of the breeder's right may transfer his or her right to utilise the protected variety as a source of income to another person upon mutual agreement entering into a non-exclusive licence contract or an exclusive licence contract, or by announcing the free right of use.
- (2) A licence (also compulsory licence) contract and the change of the owner of the licence shall be registered in the State Plant Protection Service by making an entry in the Register. The licence contract shall be registered by the State Plant Protection Service if a copy of the document regarding the payment of the State fee has been submitted. An unregistered licence contract shall not be valid. If the operation of a licence is terminated, the relevant entry shall be made in the Register. Upon registration of the compulsory licence, the State fee shall not be paid.

[21 December 2006]

Section 29. Non-exclusive Licence

In issuing a non-exclusive licence, that is, in granting the right to utilise a variety to a owner of a licence (licensee), an issuer of a license (licenser) shall retain the right to grant a licence for the same variety to third parties. The licensee is not entitled to transfer his or her rights to another person unless such agreement is provided for in the licence.

Section 30. Exclusive Licence

Upon receiving an exclusive licence, the licensee shall acquire exclusive rights to utilise a variety in accordance with the provisions provided for in a licence contract. The licensor shall retain the right to utilise the variety to the extent provided for in the agreement.

Section 31. Free Right of Use

- (1) An owner of the breeder's right upon an agreement with the State Plant Protection Service has the right to publish a notice that any person for an appropriate remuneration is entitled to utilise a variety from the day the owner of the breeder's right has been informed in writing thereof and the licence contract has been registered in the State Plant Protection Service.
- (2) If the free right of use has been announced, the fee for the protection of a plant variety shall be reduced by 50 per cent starting with 1 January of the following year.
- (3) Based on an application of an owner of the breeder's right and after receiving the consent of all owners of free right of use, the State Plant Protection Service is entitled to cancel the operation of the free right of use.

Section 32. Compulsory Licence

- (1) If the market is not provided with propagating material of a protected variety that is significant for the State economy or the interests of the public, any person who wishes to

produce and sell such a variety in Latvia, has the right to bring an action in a court for the granting of a compulsory licence. The compulsory licence shall also include the right to receive the propagating material from the owner of the breeder's right.

(2) The State Plant Protection Service shall issue a compulsory licence on the basis of a court adjudication and make a relevant entry in the Register thereof. The court shall also determine the level of utilisation of the variety and other licensing provisions. The remuneration for utilisation of a variety shall be the same as for a non-exclusive licence for the relevant species. Depending on the circumstances of the case, the court may cancel the compulsory licence or determine new licensing provisions.

Section 32.¹ Implementation of Breeder's Rights if a Biotechnological Invention is Protected by a Patent

(1) If a breeder wants to acquire breeder's rights to a plant variety or to utilise it using a protected biotechnological invention, he or she shall obtain a licence for the utilisation of the biotechnological invention and pay remuneration for this.

(2) A breeder may apply for a compulsory licence for the non-restricted utilisation of an invention protected by a patent if:

1) the acquisition of an ordinary licence from the owner of the patent has not been successful;

2) he or she can prove that the protected variety constitutes significant technical progress of considerable economic importance compared with the invention claimed in the patent.

(3) If the owner of the patent utilises a variety protected with a breeder's right, the owner of the breeder's right has the right to apply for a cross-licence and remuneration.

[17 November 2005]

Section 33. Certification or Conformity Assessment of Propagating Material

The certification or conformity assessment of the propagating material of varieties for which the breeder's right has been granted in Latvia or they are protected by European Union breeder's rights shall be carried out if the grower or the processor of the propagating material is an owner of breeder's right or he or she has a licence contract registered with the State Plant Protection Service.

[17 November 2005]

Section 34. Examination of Variety during Protection Period Thereof

(1) In order to examine the uniformity and stability of a variety during its protection period, the State Plant Protection Service has the right to request that the owner of breeder's right provides the propagating material, documentation and other information that is necessary for the performance of an examination.

(2) *[17 November 2005]*

[17 November 2005]

Section 35. Provision of Information regarding the Use of a Protected Variety

(1) Upon the request of the owner of breeder's right or authorised representative thereof, agricultural production producers or processors of seed shall provide him or her with the information regarding the production, propagation, processing and sale of the propagating material of a protected variety.

(2) The State Plant Protection Service, upon the request of the owner of breeder's right or authorised representative thereof, shall provide information regarding the quantity of propagating material of a protected variety prepared for sale.

(3) The Rural Support Service, upon the request of the owner of breeder's right or authorised representative thereof, shall provide information regarding the area of agricultural production of the species referred to in Section 24, Paragraph one of this Law.

[17 June 2010]

Section 35.¹ Co-operation of Agricultural Societies in the Field of Breeders' Right Protection

The owner of breeder's right or authorised representative thereof shall determine the remuneration for annual use of a protected variety upon mutual agreement with the agricultural associations.

[17 June 2010]

Chapter IV Loss of Effect and Cancellation of Breeder's Right

Section 36. Loss of Effect of Breeder's Right

(1) Breeder's right shall lose effect if at least one of the following circumstances arise:

1) the owner of breeder's right has not paid the State fee in accordance with Section 22 of this Law.

2) the owner of breeder's right does not provide the propagating material, documentation or other materials that are necessary for the examination of maintenance of a variety;

3) provisions of Sections 6 or 7 of this Law are no longer complied with;

4) the owner of breeder's right himself or herself notifies in writing that he or she waives the breeder's right;

5) the State Plant Protection Service has recognised the denomination of a variety as unsuitable and the owner of breeder's right within three months has not proposed a new denomination conforming to the provisions of Section 20 of this Law.

(2) If there is a legal basis to construe that the breeder's right has lost effect, the State Plant Protection Service prior to taking the decision shall notify the owner of breeder's right thereof by specifying the reason of such an action, as well as by providing a time period for the rectification of the circumstances referred to in Paragraph one of this Section.

Section 37. Cancellation of Breeder's Right

The breeder's right shall be cancelled in any of the following cases:

1) in taking a decision on the granting of the breeder's right the provisions of Sections 4 or 5 of this Law have not been complied with;

2) the granting of the breeder's right has been mainly based on the information and documents provided by a breeder, but in taking a decision on granting the breeder's right the provisions of Sections 6 or 7 of this Law have not been complied with;

3) the breeder's right has been granted to a person who has no legal rights thereto.

Chapter V

Liability for Infringement of Breeder's Right

Section 37.¹ Right to Submit an Application to the Court Regarding Infringement of Breeder's Right

An owner of breeder's right, a successor of rights or an authorised representative thereof (hereinafter – claimant) may submit to the court an application regarding infringement of breeder's right. The owner of the licence is entitled to submit the application regarding infringement of breeder's right with the consent of the owner of breeder's right. The consent of the owner of breeder's right shall not be necessary if the right of the owner of the licence to submit independently to the court the application regarding infringement of breeder's right has been determined in the contract or the owner of breeder's right does not submit the application, even though the owner of the licence has invited him in writing to do it. Any owner of the licence is entitled to intervene into the matter and to claim a compensation for the losses incurred by him or her due to an illegal use of the variety referred to in the licence contract.

[21 December 2006]

Section 38. Procedures for Determination of the Amount of the Compensation for Losses and Moral Injury

(1) If infringement of breeder's right has happened due to the fault of a person, the claimant is entitled to request a compensation for losses and moral injury caused.

(2) The amount of the compensation for losses and moral injury shall be determined in accordance with the Civil Law. The unfairly obtained profit of such person may be taken into consideration when determining the amount of the compensation for losses, who has used breeder's right illegally.

(3) If, in accordance with Paragraph two of this Section the amount of actual losses may not be determined, the amount of the compensation for losses shall be determined in keeping with the sum which the claimant might receive if a person who has used breeder's rights illegally had paid reimbursement for the use of propagating material.

[21 December 2006]

Section 39. Compensation for Losses Caused in Relation to the Temporary Protection of a Variety

If a third party utilises a propagating material of a variety, provisions of this Law in relation to the infringement of the breeder's right shall be applied from the day of publication of the application. In such case, only such losses shall be compensated as relate to the remuneration for the utilisation of a variety, unless the owner of the breeder's right has warned the relevant persons of the registration of the application prior to its publication. The losses shall be compensated from the day of receipt of the warning, but not earlier than from the day of registration of the application in the State Plant Protection Service.

Section 40. Liability for Infringement of Breeder's Right

Persons who have infringed the breeder's right shall be held liable in accordance with the procedures prescribed by law.

Transitional Provisions

1. The Law On the Protection of Plant Varieties (*Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1993, No. 18; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 1995, No. 22; 1999, No. 23) is repealed.

[17 November 2005]

2. The Cabinet shall:

1) by 1 January 2006 issue the regulation referred to in Section 18, Paragraph one of this Law;

2) by 1 June 2006 issue the regulation referred to in Section 14, Paragraph one of this Law; and

3) by 1 December 2007 issue the regulation referred to in Section 18, Paragraph two of this Law.

[17 November 2005]

3. The provisions of Section 33 of this Law in relation to the conformity assessment of propagation materials shall come into force on 1 April 2006.

4. Section 37.¹ and the new version of Section 38 of this Law shall come into force on 1 March 2007.

[21 December 2006]

5. The Cabinet shall, by 1 April 2011, issue the regulation referred to in Section 18, Paragraph five of this Law. Until the day of coming into force of the relevant Cabinet regulation, but not longer than until 1 April 2011 the Cabinet Regulation No. 243 of 28 March 2006, Procedures for Organisation or Performance of a Variety Examination and Taking of Decisions Regarding Recognition of the Results of a Variety Examination, shall be applied, in so far as it is not in contradiction with this Law.

[16 December 2010]

6. A variety examination that has been commenced before 1 July 2010 shall be completed in accordance with those regulatory enactments that were in force at the time of commencing the variety examination.

[17 June 2010]

7. Amendments to Section 22, Clause 1 of this Law in respect of the State fee for extension of breeder's right shall come into force on 1 December 2011.

[17 June 2010]

8. The Cabinet shall, by 1 April 2011, issue the regulation referred to in Section 18, Paragraph six of this Law regarding the methodology for examination of distinctness, uniformity and stability of Japanese (flowering) quince. Until the coming into force of the relevant Cabinet regulation, but not longer than until 1 April 2011 the Cabinet Regulation No. 126 of 9 February 2010, Methodology for Examination of Distinctness, Uniformity and Stability of Japanese (Flowering) Quince, shall be applied, in so far as it is not in contradiction

[16 December 2010]

9. The Cabinet shall, by 1 December 2012, issue the regulation referred to in Section 18, Paragraph six of this Law, except the regulation provided for in Paragraph 8 of these Transitional Provisions regarding the methodology for distinctness, uniformity and stability of cultivated plants.

[17 June 2010; 16 December 2010]

10. Until 1 January 2012 a performer of a variety examination in Latvia, who in accordance with the Cabinet Regulation No. 243 of 28 March 2006, Procedures for Organisation or Performance of a Variety Examination and Taking of Decisions Regarding Recognition of the Results of a Variety Examination, has entered into an agreement with the State Plant Protection Service regarding performance of a variety examination, shall perform a variety examination in conformity with the provisions of the agreement, taking into account the requirements of Section 18, Paragraph three of this Law.

[16 December 2010]

11. A variety examination that has been commenced before 1 January 2011 shall be completed in accordance with those regulatory enactments that were in force at the time of commencing the variety examination.

[16 December 2010]

12. Section 18, Paragraph one, Clause 1 and Paragraph two, as well as Section 22, Clause 4 of this Law shall come into force from 1 January 2012.

[16 December 2010]

Informative Reference to European Union Directives

The Law contains legal norms arising from:

1) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions; and

2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[17 November 2005; 21 December 2006]

This Law has been adopted by the *Saeima* on 2 May 2002.

President

V. V. Vīķe-Freiberga

Rīga, 17 May 2002