

REPUBLIC OF LATVIA

PLANT VARIETIES PROTECTION LAW

CHAPTER ONE

GENERAL PROVISIONS

Section 1. The aim of this Law

The aim of this Law is to define the procedure for granting of breeder's right and provide the protection of breeder's right.

Section 2. Scope of Application of this Law

(1) This Law applies to varieties of all plant genera and species (including hybrids).

(2) Variety means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met. It can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics. Variety is considered as a unit with regard to its suitability for being propagated unchanged.

Section 3. Conditions for granting of breeder's right

(1) The breeder's right shall be granted if a variety is:

new;
distinct;
uniform;
stable.

(2) In order to grant the breeder's right, the variety shall be assigned a denomination in accordance with the provisions of Section 20 of this Law. Breeder or its authorised representative shall comply with the procedure provided for by this Law. No other conditions shall be proposed to granting of breeder's right.

Section 4. Novelty of a Variety

A variety shall be deemed to be new if, breeder or it's authorised representative or someone else with his or her consent has not sold, or in any other way transferred the seed, planting material (hereinafter – the propagating material) or harvested material of a variety to a third party for commercial use before the date when an application for the granting of breeder's right (hereinafter – an application) is registered:

1) in Latvia – earlier than one year before the registration of the application;

2) outside of Latvia – earlier than six years before the registration of the application in respect of vines and trees;

3) outside of Latvia – earlier than four years before the registration of the 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 the application for granting of breeder's right or the inclusion of a variety in the official catalogue of varieties has been registered in any country and, if after such submission the breeder's right has been granted, or the variety has been included in the official catalogue of varieties. It shall be deemed to be a matter of common knowledge starting from the date when the said application has been registered.

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 relevant characteristics of the variety.

Section 7. Stability of a Variety

A variety shall be deemed to be stable if, after repeated propagation or at the end of each cycle (if a particular cycle of propagation is used) the relevant characteristics of the variety do not differ substantially.

Section 8. Breeder

(1) In accordance with this Law, a breeder means:

1) a physical person who has bred, or discovered and developed the relevant variety;

2) is the employer of the aforementioned person or a commissioner who has concluded the contract with a person mentioned in Clause 1) of this Section on breeding or discovery and development of the relevant variety; or

3) the successor in title of the persons mentioned in Clause 1) and 2) of this Section.

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

Section 9. Holder of breeder's right

Holder of breeder's right is the person mentioned in Section 8 of this Law who has acquired the breeder's right in accordance with the procedures prescribed by this Law.

Section 10. Authorized representative

(1) The State Plant Protection Service shall register the authorized representative on the basis of breeder's authorization and issue certificate of authorized representative.

(2) The authorised representative shall be the citizen of Latvia, person who has a right for a non-citizen passport, person who has a permanent residence in Latvia as well as a legal entity registered in Latvia.

(3) Persons of other states shall submit the applications through mediation of an authorised representative only.

Section 11. Personal Rights of Breeder

(1) A breeder (physical person) irrespective of who is a holder of breeder's right has a personal right not assigned to other person and not transferable by inheritance. This is the right to:

- 1) be mentioned in materials and publications of the relevant variety;
- 2) submit a proposal for the name of the variety; and
- 3) claim to equitable compensation for the utilisation of the variety in the cases provided in the contract concluded with the employer.

(2) The rights laid down in the Paragraph one of this Section in the case of breach may be protected in court in accordance with the procedure relevant for protection of copyright.

Section 12. The Tasks of the National Plant Variety Council and the State Plant Protection Service in Respect of Variety Protection

(1) The National Plant Variety Council submit proposals on guidelines of plant breeding and protection of breeder's right to the Ministry of Agriculture and other institutions.

(2) The State Plant Protection Service shall:

accept and review applications and other related documents;

carry out an expert- examination of the conditions for the granting of the breeder's right;

3) take decisions on approval of variety examination results obtained in other countries according to the criteria approved by the minister of agriculture;

- 4) organise the examination of varieties;
- 5) take decision on the granting, cancellation and nullity of the breeder's right;
- 6) issue certificates on the granting of the breeder's right;
- 7) register licences for the transfer of breeder's right;
- 8) maintain the Latvian State Register of Protected Plant Varieties;
- 9) within the limits of its competency co-operate with international organizations; and
- 10) carry out other functions provided by this Law.

Section 13. The Latvian State Register of Protected Plant Varieties

(1) The information on applications and protected varieties shall be included in the Latvian State Register of Protected Plant Varieties (hereinafter – the Register);

(2) In respect to applications the following information shall be included in the Register:

the number and date of the application registration;

2) the name and address of the breeder or his authorised representative (hereinafter – the applicant) and the authorisation, if the applicant is not the breeder;

the denomination proposed for the variety;

the name and address of the breeder;

the questionnaire of the variety technical description or the variety description set up carrying out the examination of the variety (hereinafter – the variety description);

the date of priority;

information on examination of the application.

(3) In respect to protected varieties the following information shall be included in the Register:

1) the name and address of the holder of the breeder's right, the breeder, the authorised representative;

the variety denomination;

the variety description;

a reference to variety components, if such are used for propagation of the variety;

the date of the granting of the breeder's right, duration, cancellation and nullity of the breeder's right;

information on the issued licences.

(4) The applicant and the holder of the breeder's right shall be responsible for furnishing of the information included in the Register, as well as truthfulness, updating and changes of the said information.

CHAPTER TWO

APPLICATION FOR GRANTING OF BREEDER'S RIGHT AND ITS EVALUATION

Section 14. Application for Granting of Breeder's Right

(1) The application shall be submitted by the applicant to the State Plant Protection Service. The acceptance and examination procedure of the application is provided by the instruction issued by the minister of agriculture.

(2) The application shall consist of a filled-out application form and the following annexed documents:

the variety description;

the common variety description;

the copy of payment document on submitting application;

the authorisation, if the applicant is not the breeder;

documents referred to in Section 15 of this Law if the convention priority is required;

the photocopy of the first certificate on granting of breeder's right if the breeder's right is protected in another states.

(3) The application shall be registered if the technical form of variety description and the application form are submitted with the following information:

the name and address of the applicant;

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

proposed denomination;

the state where the application is registered and the date of registration if the convention priority is required.

(4) An application form shall be filled out in the Latvian language. If the documents annexed to the application are in any foreign language the State Plant Protection Service has a right to require its translation into Latvian.

(5) If the variety is bred using other varieties (components), the applicant has right to require that information on components of the variety is regarded as information of limited accessibility.

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

Section 15. Convention Priority

(1) The applicant who submits the application according to a relevant procedure in another member state of the International Union for the Protection of New Varieties of Plants (UPOV) has a right to submit an application regarding the same variety in Latvia within a 12-month period, using the right of priority of the first application. The stated 12-month period shall be counted from date continued after date of submission of the first application.

(2) In order to certify priority, the applicant shall, within a three-month period from the registration of an application to the State Plant Protection Service, submit a photocopy of registered application confirming the priority date.

(3) For three years after the priority date, the applicant has the right to submit to the State Plant Protection Service additional information, documents or materials which are required for the expert-examination of the application and the examination of the variety.

(4) The registration of another application on variety mentioned in the first application, the utilisation of this variety or the publishing of information regarding this variety may not be a reason for the rejection of the second application. The mentioned activities may not serve as basis for the arising of any rights to the variety for a third party.

Section 16. Application Examination

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

1) check whether the applicant is entitled to submit an application and the compliance of the variety with the provisions of Sections 4 of this Law;

2) inform the applicant in writing on necessity to supplement the registered application with documents mentioned in Section 14, Paragraph two of this Law and to supplement the translations of annexed documents into Latvian as well as the procedure of the variety examination.

(2) If, during the examination of the application it is established by the State Plant Protection Service that variety does not meet the requirements of Paragraph one, Clause 1 of this Section the application shall be rejected, the applicant shall be informed in writing on it.

Section 17. Submission of Objections

(1) Interested persons have a right to submit the objections to the State Plant Protection Service within three month period after publication of the information on application. Objections may concern novelty, distinctness, uniformity, stability of variety or right to submit an application. Objections shall be submitted in writing accompanied by a documentary motivation.

(2) The applicant shall submit the explanation on objections within two months subsequent to receiving the objections. If the applicant fails to submit the explanation, the application shall be rejected by the State Plant Protection Service.

(3) If objections concern distinctness, uniformity and stability of variety the State Plant Protection Service has a right to require the performance of a repeated examination of variety.

Section 18. Examination of a Variety

(1) The State Plant Protection Service shall organise the examination of the distinctness, uniformity and stability of a variety in accordance with instructions approved by the Minister of Agriculture. The variety examination methods of the distinctness, uniformity and stability shall be approved by the Minister of Agriculture.

(2) If the examination of the distinctness, uniformity and stability of a variety for which an application is submitted has been carried out in another state the applicant shall submit the variety description to the State Plant Protection Service.

Section 19. Decision on Granting of Breeder's Right

(1) After the examination of a variety has been completed (if such was necessary), the State Plant Protection Service shall send to the applicant the notification concerning the examination results. The applicant has a right to submit objections on examination carried out to the State Plant Protection Service within a two-month period.

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

1) if the filled-out application form is submitted and the documents mentioned in Section 14 Paragraph two of this Law are annexed;

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

(3) The breeder's right shall be granted by the decision of the State Plant Protection Service which takes force on the date of taking the decision. The State Plant Protection Service shall inform the applicant in writing on said decision and issue the certificate on the granting of the breeder's right.

Section 20. Denomination of Variety and Its Registration Procedure

(1) The variety denomination shall be proposed by submitting the application. If the variety is a matter of common knowledge, it shall be proposed with a previously used denomination. If the application is submitted in several states simultaneously the applicant shall use the same denomination of the variety. After granting of the breeder's right and expiration of the variety protection the registered denomination of the variety shall be used.

(2) The variety denomination shall comply with requirements of International Union for the Protection of New Varieties of Plants (UPOV) in respect of the international nomenclature of cultivated plants. The variety denomination may consist of words, combination of words and figures, as well as of figures, if that is the established practice of granting denominations. The denomination must enable the variety to be identifiable and clearly distinguishable from the variety denomination of the same or closely related plant species, title of registered company, as well as it shall comply with the language norms.

(3) The State Plant Protection Service shall check whether the proposed denomination complies with the conditions of Paragraphs one and two of this Section. If the proposed denomination:

is compliant, it shall be published. Interested persons have a right to submit objections to the proposed denomination of a variety to the State Plant Protection Service within a three month period from the date of publication. The State Plant Protection Service shall inform the applicant on objections received and conformity of the denomination of a variety with conditions of this Law;

is non-compliant, the applicant shall submit the proposal to new denomination of a variety within one month period. If the applicant does not submit the proposal, the application shall be rejected, the applicant shall be informed on it in writing.

(4) The denomination shall be registered at the same time as the breeder's right is granted.

(5) The State Plant Protection Service shall consider the denomination of a variety as inappropriate, if:

1) it is established that the variety denomination registered does not comply with the conditions of Paragraphs one and two of this Section.;

2) a written request of the holder of the breeder's right is received;

the relevant decision of higher institution or Court is received.

(6) The variety denomination considered as inappropriate shall be cancelled and the new denomination is registered.

Section 21. Publications

The State Plant Protection Service shall publish in the newspaper "Latvijas Vestnesis" the following information:

the registered and rejected applications;

the proposed denominations of variety and changes in denominations of varieties protected;

the granting, cancellation or nullity of the breeder's right;

changes of the breeders, the holder of the breeder's right or authorised representative;

other notifications related to this Law.

Section 22. The State Fee

The state fee on the protection of the breeder's right in accordance with the procedure and amount set by the Cabinet shall be paid by the holder of the breeder's right or authorised representative.

CHAPTER THREE

BREEDER'S RIGHT

Section 23. Scope of the Breeder's right

(1) No other person may turn a variety into a source of income without the permission (the license contract) of the holder of the breeder's right. In compliance with the conditions of Section 24 of this Law, the permission of the holder of the breeder's right is required for the performance of the following activities with the propagating material of protected varieties:

- 1) production and propagation;
- 2) processing in conformity with the sowing requirements to multiply the variety;
- 3) offering for sale;
- 4) sales or other types of marketing;
- 5) export and import;
- 6) stocking for the purposes referred to in Clauses 1, 2, 3, 4 and 5.

(2) In compliance with the conditions of Section 24 of this Law, 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 through the unauthorised use of the propagating material of the protected variety, the permission from the holder of the breeder's right is required unless they have had an opportunity to exercise their right in relation to the propagating material of said variety.

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

- 1) which is essentially derived from a protected variety if this protected variety is not itself an essentially derived variety;
- 2) which, complying with the provisions of Section 5 of this Law, is not clearly distinguishable from the protected variety; and
- 3) the production of which requires the repeated use of the protected variety.

(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 that result from the genotype or combination of genotypes of the initial variety;
- 2) is clearly distinguishable from the initial variety; and

3) conforms to the essential characteristics of the initial variety that result from the genotype or combination of genotypes of the initial variety, except for the differences that have arisen from the act of derivation.

(5) A variety may essentially be obtained by selecting natural or induced mutants or 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 Breeder's right

Agricultural producers shall pay remuneration to the holder of the breeder's right according to mutual agreement on the propagation of harvested product obtained from a protected variety they have sown themselves, but the remuneration shall not exceed 50% from the remuneration for licensed propagating material of the same variety in the same area.

Section 25. Exceptions to the Breeder's Right

Breeder's right shall not concern the following activities:

- 1) which have been carried out privately and for non-commercial purposes;
- 2) which have been carried out for experimental purposes; or
- 3) the purpose of which is the breeding of new varieties, except in cases when the provisions of Section 23, Paragraph three of this Law apply in respect of such activities with varieties which have been referred to in Paragraph one and two of Section 23 of this Law;
- 4) with propagating material, harvested product (including entire plants and parts of plants) and any material obtained from harvested product of the protected variety or varieties referred to in Section 23, Paragraph three of this Law, if this material or varieties have been sold or otherwise released for circulation by the breeder (or with his consent) unless any of the following activities are carried out:
 - a) further propagation of the protected variety; or
 - b) export of propagating material, harvested product (including entire plants and parts of plants) and any material obtained from harvested product of the protected variety, which enables the propagation of the

variety in a state which does not protect varieties of the genus or species to which the said variety belongs, except in instances when the exported material is intended for final consumption purposes.

Section 26. Term of Validity of Breeder's Rights

(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, or, in the case of vine and tree species, until the end of the thirtieth calendar year since the year of granting the right.

(2) Upon the receiving of the justified application from the holder of the breeder's right the State Plant Protection Service has a right extend the term referred to in Paragraph one of this Section by another five years.

Section 27. Transferring of Breeder's Right

(1) The holder of the breeder's right has a right to transfer the breeder's right granted:

completely – to the transferee of breeder's right;

partly – with an authorisation or the license contract according to conditions of Section 28 of this Law.

(2) The breeder's right shall transfer in writing and it takes force from the date of registration in the State Plant Protection Service.

Section 28. License Contract

(1) Holder of the breeder's right has a right to transfer his or her right to use the protected variety as a source of income to another person on the basis of the mutual agreement by issuing a non-exclusive licence or an exclusive licence, or by announcing a free right of use.

(2) A licence (also, a compulsory licence) contract and the change in a holder of a licence shall be registered in the State Plant Protection Service, by making an entry in the Register. An unregistered licence contract shall not be in effect. If the validity of the licence is terminated, the relevant entry in the Register shall be made.

Section 29. A non-exclusive licence

When issuing a non-exclusive licence, that is, when granting the right to use a variety to a holder of the license (a licensee), the issuer of the license (a licensor) shall retain the right to grant a licence for the same variety to third party. The licensee has no right to transfer his or her right to another person unless such agreement is provided for by the licence.

Section 30. An exclusive licence

A licensee shall acquire the exclusive right to use a variety in accordance with the conditions provided by the license contract. The licensor shall retain the right to use the variety to the extent provided for by the contract.

Section 31. Licence of free right of use

(1) Holder of the breeder's right agreed with the State Plant Protection Service has right to publish a notice that any person is entitled to use the variety for a relevant fee, from the day the holder of the breeder's right have been notified thereof in writing and the licence contract has been registered in the State Plant Protection Service.

(2) If the licence of free right of use is announced, the fee for the protection of a variety shall be reduced by 50 per cent as of 1 January of the following year.

(3) In accordance with an application from the holder of the breeder's right and with the consent of all holders of free right of use, the State Plant Protection Service has a right to cancel the action of free right of use.

Section 32. Compulsory Licence

(1) If the market is not provided with the propagating material of the protected variety which is significant for the interests of the State economy or the public, any person who intends to produce and sell such a variety in Latvia, has a right to submit to Court a claim for the granting of a compulsory licence. The compulsory licence shall also include the right to receive the propagating material from the holder of the breeder's right.

(2) A compulsory licence shall be issued on the basis of a court adjudication by the State Plant Protection Service and make a relevant entry in the Register. The court shall also determine the extent of the variety use and other licensing

conditions. Fee on the use of the variety shall be the same as for issuing the non-exclusive licence for relevant species. Depending on the circumstances of the case the Court may cancel the compulsory licence or determine a new licensing conditions.

Section 33. Certification or Assessment of Compliance of Propagating Material

The certification or assessment of compliance of propagating material of protected varieties shall be carried out if the producer or the processor of the propagating material is a holder of the breeder's right or has been issued a licence registered with the State Plant Protection Service.

Section 34. Examination of a Variety During Its Period of Protection

(1) The State Plant Protection Service has right to require for examination of uniformity and stability of a variety during its period of protection the propagating material, documentation and other information necessary for carrying out the examination to the holder of the breeder's right.

(2) The State Plant Protection Service has right to check the maintenance of the variety during the period of its protection. The maintenance of the variety shall be carried out by the holder of the breeder's right.

Section 35. Release of Information on Use of the Protected Variety

Upon request of a holder of the breeder's right, agricultural producers, seed processors and other service providers as well as the State Plant Protection Service shall provide him or her with the necessary information concerning the production, propagation, processing and sale of propagating material of protected varieties.

CHAPTER FOUR

CANCELLATION AND NULLITY OF BREEDER'S RIGHT

Section 36. Cancellation of Breeder's Right

(1) The breeder's right shall be cancelled if any of the following conditions has been established:

- 1) the holder of the breeder's right has not paid the state fee according to Section 22 of this Law;
 - 2) the holder of the breeder's right does not provide with the propagating material, documents or other materials required for verifying the maintenance of the variety;
 - 3) provisions of Sections 6 or 7 of this Law are no longer complied with;
 - 4) the holder of the breeder's right himself or herself provides notification in writing that he or she renounces the breeder's right;
 - 5) the denomination of a variety is considered as inappropriate by the State Plant Protection Service and the holder of the breeder's right has not proposed a new denomination complying with the provisions of Section 20 of this Law within a three-month period;
- (2) If the cancellation of the breeder's right legally grounded the State Plant Protection Service before the decision is taken shall notify the holder of the breeder's right on it indicating the reason of such action, allowing a certain time limit for correction of the conditions referred to under Paragraph one of this Section.

Section 37. Nullity of the Breeder's Right

The breeder's right shall be declared null and void if:

- 1) the provisions of Sections 4 or 5 of this Law have not been complied with when the decision on the granting of the breeder's right is taken;
- 2) where the granting of breeder's right has been essentially based on the information and documents provided by the breeder, the provisions of Sections 6 or 7 of this Law were not complied with when the decision on the granting of the breeder's right is taken;
- 3) the breeder's right has been granted to a person who is not entitled to it.

CHAPTER FIVE

LIABILITY FOR VIOLATION OF THE BREEDER'S RIGHT

Section 38. Compensation for Losses Caused as a Result of Infringement of Breeder's Right

A person who has infringed the breeder's right shall compensate to the holder of the breeder's right for the utilisation of the variety losses caused as a result of the violation of this Law.

Section 39. Compensation for Losses Caused in Connection with the Temporary Protection of a Variety

If a third party uses the propagating material of a protected variety the provisions of this Law in respect of violation of the rights of a holder of breeder's right shall apply from the day of publication of the application. In such case, losses shall be compensated only for the part, which concerns the remuneration for the utilisation of the variety, unless the holder 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, however, not earlier than from the day of submitting the application to the State Plant Protection Service.

Section 40. Liability for Infringement of the Breeder's Right

Persons who have infringed the breeder's right shall be subject to liability prescribed by the law.

Transitional Provision

The Law "On Plant Variety Protection" (Republic of Latvia Supreme Council and Government Journal, 1993, No.18; Republic of Latvia Saeima and Cabinet of Ministers Journal, 1995, No. 22; 1999, No. 23) is hereby repealed.

Adopted in Saeima 2 May, 2002.

President of the State

Riga, 17 May, 2002