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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Thirty-Second Extraordinary Session
Geneva, March 27, 2015****EXAMINATION OF THE CONFORMITY OF THE "DRAFT PROVISIONS OF BOOK FOUR
'PLANT VARIETIES' OF LAW NO. 82 OF 2002 PERTAINING TO THE PROTECTION
OF INTELLECTUAL PROPERTY RIGHTS" OF EGYPT
WITH THE 1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. By letter dated November 3, 2014, addressed to the Secretary-General of UPOV, Mr. Ahmed Agiba, Head of the Central Administration for Seed Testing and Certification (CASC), Under Secretary of the Ministry of Agriculture of Egypt, requested the examination of the "Draft provisions of Book Four 'Plant Variety Protection' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights" ("Draft Law") for conformity with the 1991 Act of the UPOV Convention ("1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a translation of the Draft Law in English provided by CASC.

BACKGROUND

2. Article 34(3) of the 1991 Act provides that "[a]ny State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

3. The Government of Egypt started the procedure to become a member of the Union in October 1999. On October 17, 1999, Dr. Yossuf Wally, Deputy Prime Minister and Minister of Agriculture and Land Reclamation of Egypt, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention of a Draft Ministerial Decree on the Protection of Plant Varieties (hereinafter referred to as the "Draft Decree").

4. The Council, at its thirty-third session, held in Geneva on October 20, 1999, decided to:

"(a) advise the Government of Egypt that the Draft Ministerial Decree on the Protection of Plant Varieties (Draft Decree) when supplemented by provisions designed to satisfy the matters referred to in paragraphs 12 and 22 of document C/33/16 provides a basis for a law conforming with the 1991 Act;

"(b) request the Office of the Union to offer its assistance to the Government of Egypt in respect of the minor additional provisions that are necessary to achieve conformity;

"(c) further advise the Government of Egypt that after the making of a Decree based upon the Draft Decree and incorporating the suggestions set out in paragraphs 12 and 22 of document C/33/16, it may deposit an instrument of accession to the 1991 Act.

5. The Office of the Union was notified in 2005 of the adoption of Law No. 82 of 2002 on the Protection of Intellectual Property Rights (Law of 2002), which contains Book Four "Plant Variety Protection". Therefore, the Draft Decree submitted to the Council in 1999 is no longer relevant.

6. On April 25, 2005, the Office of the Union informed the Government of Egypt that Book Four "Plant Variety Protection" of the Law of 2002, or any possible amendments to it, would need to be submitted to the Council for examination.

7. In 2009, the Office of the Union was informed by the Government of Egypt that amendments to the Law on the Protection of Intellectual Property Rights were under consideration and that draft provisions of Book Four "Plant Variety Protection" had been prepared for that purpose.

8. Between 2009 and 2014, the Office of the Union provided assistance to the Government of Egypt with different draft provisions of Book Four on various occasions in order to incorporate the essential provisions of the UPOV Convention.

9. On August 19, and on September 18, 2014, the Office of the Union received communications from CASC concerning a consolidated table reflecting the provisions of the Law of 2002 and amendments to Book Four approved by CASC. On September 19, 2014, the Office of the Union informed CASC that, subject to the incorporation of certain further amendments in accordance with the comments of the Office of the Union of 2013, the proposed amendments Book Four appeared to provide the essential provisions of the UPOV Convention.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN EGYPT IN ACCORDANCE WITH THE 1991 ACT

10. In Egypt, the protection of new plant varieties in accordance with the 1991 Act will be governed by the Draft Law, once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

11. Article 189 (bis)(i) and (ii) of the Draft Law contain definitions of breeder and variety corresponding to the definitions in Article 1(iv) and (vi) of the 1991 Act, respectively.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

12. Article 189 of the Draft Law provides for the grant of protection of "plant varieties, derived inside or outside Egypt, whether developed through biological or non-biological means" corresponding to the basic obligation provided by Article 2 of the 1991 Act. Article 189 provides as follows:

"Article 189

"Under the provisions of this Law, protection is granted to plant varieties, derived inside or outside Egypt, whether developed through biological or non-biological means, when registered in the special register of protected plant varieties".

Article 3 of the 1991 Act: Genera and Species to be Protected

13. Article 202 (bis 1) of the Draft Law provides that "[t]he law shall be applied to all plant genera and plant species". This conforms to Article 3(2)(ii) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

14. Article 191 of the Draft Law contains provisions on national treatment corresponding to the provisions of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

15. Article 192 of the Draft Law contains the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

16. Article 192 (2) and (3) of the Draft Law implements a transitional novelty regime for “Varieties of recent creation” based on Article 6(2) of the 1991 Act, as follows:

“2) Where this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Egypt within four years before the filing date or, in the case of trees or of vines, within six years before the said date”.

“3) The provision under paragraph 2 of this Article, shall only apply to applications for protection of the breeder’s right filed within one year, at the latest, after the provisions of the Law apply to the genera or species.”

Article 10 of the 1991 Act: Filing of Applications

17. The Draft Law does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

18. Article 192 (bis 1) of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

19. Article 192 (7) of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

20. Article 193 of the Draft Law contains provisions on provisional protection corresponding to the provisions in Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder’s Right

21. Article 194 of the Draft Law contains provisions on the scope of the breeder’s right corresponding to the provisions of Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder’s Right

22. Article 195 of the Draft Law contains provisions on the compulsory exceptions to the breeder’s right corresponding to the provisions of Article 15(1) of the 1991 Act.

23. Article 195 of the Draft Law contains a provision on the optional exception based on Article 15(2) of the 1991 Act as follows:

“In relation to varieties included in a list of agricultural crops, which shall not include fruits, ornamentals or vegetables, the breeder’s right shall not be infringed by farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 194 (3)(a)(i) or (ii) of this Law. The reasonable limits and the means of safeguarding the legitimate interests of the breeder shall be specified in the Executive Regulations.”

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

24. Article 198 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which correspond to the provisions of Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

25. Articles 196 and 199 of the Draft Law contain provisions concerning the restrictions on the exercise of the breeder's right which correspond to the provisions in Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

26. Article 194 (bis) of the Draft Law contains provisions concerning measures regulating commerce which correspond to the provisions of Article 18 of the 1991 Act. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

27. Article 193 of the Draft Law contains provisions concerning the duration of the breeder's right which corresponds to the provisions of Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

28. Article 192 (bis) of the Draft Law contains provisions concerning variety denominations which correspond to the provisions of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

29. Article 202 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

30. Article 202 (bis) of the Draft Law contains provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

31. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Articles 203 to 206 of the Draft Law provide as follows:

"Article 203

"Without prejudice to any more severe punishment under any other law, deliberate violation of the provisions contained in this Book shall be punishable by a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In case of repetition, the punishment shall be an imprisonment for a period of not less than three months and not more than one year and a fine of not less than 20,000 pounds and not more than 100,000 pounds. In all cases, the incriminated seeds and the propagating materials shall be confiscated".

"Article 204

"Upon the request of any concerned party, the president of the competent court considering the merits of the case, may issue a decision, by petition, to order one or more of the appropriate conservatory measures, and in particular:

- (1) Establishing infringement of a protected right
- (2) Drawing a detailed inventory and detailed description of the infringing products and the implements used or may be used in the infringement.
- (3) Seizure of all articles stated in item 2.

In all cases, the president may designate one or more experts to assist the bailiff in charge of the execution of such measures. He may require the applicant to deposit an appropriate financial security. Where the applicant fails to submit the merits of the case to the competent court, within 15 days following the date of the order, such order shall cease to have effect.

“Article 205

“The concerned parties may, within 30 days from the date of issue or publication of the order, as may be the case, appeal to the president of the court who issued that order. The president may confirm or revoke the order totally or partly, in accordance with the rules and procedures provided for under the law of civil and commercial proceedings”.

“Article 206

“The Minister of Justice, in agreement with the Minister of Agriculture, shall issue a decision designating law enforcement officers for the purpose of implementing the provisions contained in this Book.”

32. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Article 190 of the Draft Law provides as follows:

“The Prime Minister shall establish an office to be known as the Office of Plant Variety Protection. The Office shall be competent to receive, examine and decide on applications submitted for the protection of plant varieties, in accordance with the rules and procedures stipulated in the establishment decision.”

33. Article 201 of the Draft Law corresponds to the obligation to publish information concerning applications for and grants of breeders' rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

34. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. On that basis, once the Draft Law is adopted with no changes and the Law is in force, Egypt would be in a position “to give effect” to the provisions of the 1991 Act, as required by its Article 30(2).

35. *The Council is invited to:*

(a) *note the analysis in this document;*

(b) *take a positive decision on the conformity of the “Draft provisions of Book Four ‘Plant Variety Protection’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” (“Draft Law”) of Egypt with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Egypt once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act; and*

(c) *authorize the Secretary-General to inform the Government of Egypt of that decision.*

[Annexes follow]

Ministry of Agriculture & Land Reclamation
Agricultural Services Sector
Central Administration for Seed Certification



وزارة الزراعة واستصلاح الأراضي
قطاع الخدمات الزراعية
الإدارة المركزية لفحص واعتماد التقاوي

CENTRAL ADMINISTRATION
FOR SEED CERTIFICATION

Mr. / Francis Gurry
Secretary – General
International Union for Protection of
New Varieties of Plants (UPOV)
34, Chemin des Colombettes
1211 Geneva 20
Switzerland

3 / 11 / 2014

Dear Secretary – General Gurry,

I have the pleasure to inform you that Egypt is in the process of adopting the Draft of Law Book Four "Plant Variety Protection".

Egypt intends to adhere to the International Convention for Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1973 and on March 19, 1991.

(UPOV Convention).

Pursuant to the provisions of Article 34 (3) of the UPOV Convention, I would appreciate it if the Council of UPOV could examine of the conformity of the Draft Law Book Four "Plant Variety Protection" of Egypt with the provisions of the UPOV Convention.

Sincerely yours

Eng. Ahmed Agiba

Head of Central Administration
for Seed Certification (CASC)
Under Secretary of Ministry of
Agriculture

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

**Draft provisions of Book Four
"Plant Variety Protection"
of Law 82 year 2002**

Article 189

Under the provisions of this Law, protection is granted to plant varieties, derived inside or outside Egypt, whether developed through biological or non-biological means, when registered in the special register of protected plant varieties.

Article 189 (bis)

For the purposes of this Law:

(i) "breeder" means

- the person who bred, or discovered and developed, a variety,
 - the person who is the employer of the aforementioned person or who has commissioned the latter's work, or
 - the successor in title of the first or second aforementioned person, as the case may be;

(ii) "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, 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 and
- considered as a unit with regard to its suitability for being propagated unchanged.

Article 190

The Prime Minister shall establish an office to be known as the Office of Plant Variety Protection. The Office shall be competent to receive, examine and decide on applications submitted for the protection of plant varieties, in accordance with the rules and procedures stipulated in the establishment decision.

Article 191

Without prejudice to international conventions in force in Egypt, any natural person or legal entity, Egyptian or foreign, belonging to, domiciled or active in a country or an organization that is a member of the World Trade Organization, a member of the International Union for the Protection of New Varieties of Plants (UPOV) or that applies reciprocity to Egypt, shall have the right to protection of plant varieties as prescribed in this Book.

Article 192

To be eligible for protection a variety shall be new, distinct, uniform, stable and shall be subject of a denomination.

- 1) The 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 others, by or with the consent of the breeder, for purposes of exploitation of the variety
 - (i) in the territory of Egypt earlier than one year before the date of filing of the application and
 - (ii) in a territory other than that of Egypt earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.
- 2) Where this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Egypt within four years before the filing date or, in the case of trees or of vines, within six years before the said date.
- 3) The provision under paragraph 2 of this Article, shall only apply to applications for protection of the breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species.
- 4) 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 the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, 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 the said other variety in the official register of varieties, as the case may be.

5) 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.

6) 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.

7) Any decision to grant a breeder's right by the Office of Plant Variety Protection shall require an examination for compliance with the conditions

In the course of the examination, the Office of Plant Variety Protection may grow the variety or carry out other necessary tests, cause 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 examination, the Office of Plant Variety Protection may require the breeder to furnish all the necessary information, documents or material.

Article 192 (bis)

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

(i) Subject to subparagraph (iv) of this Article, 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.

(ii) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must 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 must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(iii) The denomination of the variety shall be submitted by the breeder to the Office of Plant Variety Protection. If it is found that the denomination does not satisfy the requirements of subparagraph (ii), the Office of Plant Variety Protection 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 of Plant Variety Protection at the same time as the breeder's right is granted.

(iv) 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 who, in accordance with the provisions of subparagraph (vii), is obliged to use it, shall require the breeder to submit another denomination for the variety.

(v) A variety must be submitted to all members of UPOV under the same denomination. The Office of Plant Variety Protection shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(vi) The Office of Plant Variety Protection ensures that the authorities of the 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 of Plant Variety Protection.

(vii) Any person who offers for sale or markets propagating material of a variety protected within the territory of Egypt is 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 the provisions of subparagraph (iv), prior rights prevent such use.

(viii) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 192 (bis 1)

1) The breeder who has duly filed an application for the protection of a variety in one of the members of UPOV (first application) is entitled to enjoy the right of priority if he files a subsequent application for the protection of the same variety before the Office of Plant Variety Protection of Egypt within a period of 12 months following the date of filing of the first application.

2) The priority shall be computed as from the date filing of the first application. The date of filing shall not be included in the priority period.

3) In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim such priority.

4) The Office of Plant Variety Protection shall require the breeder to furnish, within a period of three months from the filing date of the application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

5) The breeder shall be allowed a period of two years after the expiration 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, to the Office of Plant Variety Protection, any necessary information, document or material required for the purpose of the examination.

Events occurring within the period provided for in paragraph (1), 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 a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 193

The term of protection for plant varieties shall be 25 years for trees and vines and 20 years for other crops.

The term of protection shall run from the date of the granting the right.

Nevertheless, provisional measures are provided to safeguard the interests of the breeder during the period between the date of the publication of the application and the grant of the title. During that period, the holder of a breeder's right is entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 194.

Article 194

(1) (a) Subject to Articles 195 and 198, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing, stocking for any of the purposes mentioned in this paragraph.

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

(2) Subject to Articles 195 and 198, the acts referred to paragraph (1)(a) 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 the said propagating material.

(3) (a) The provisions of paragraphs (1) and (2) shall also apply in relation to:

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety

(ii) varieties which are not clearly distinguishable from the protected variety ,

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

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

(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 which 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.

(c) 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 plants of the initial variety, backcrossing, or transformation by genetic engineering

Article 194 bis

The breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.

Article 195

The breeder's right shall not extend to:

(a) acts done privately and for non-commercial purposes,

(b) acts done for experimental purposes

(c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article

194 (3) apply, acts referred to in Article 194 (1) and (2) in respect of such other varieties.

In relation to varieties included in a list of agricultural crops, which shall not include fruits, ornamentals or vegetables, the breeder's right shall not be infringed by farmers who, within reasonable limits and subject to

the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 194 (3)(a)(i) or (ii) of this Law, The reasonable limits and the means of safeguarding the legitimate interests of the breeder shall be specified in the Executive Regulations

Article 196

For reasons of public interest, the Office of Plant Variety Protection is entitled, upon the proposal of the Minister of Agriculture and the approval of a ministerial committee established as per decision issued by the Prime Minister, grant compulsory licenses whereby a third party is authorized to perform any act for which the breeder's authorization is required as provided in Article 194. In such a case, the breeder is entitled to an equitable remuneration.

Article 197

In accordance with the provisions of Article 196, the licensee shall, during the period of the license, abide by the conditions of the license and shall not assign the license to a third party or prejudice other rights of the breeder.

The license shall lapse at the end of its duration or where the licensee does not comply with any of the terms of the license

Article 198

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 194 (3), which has been sold or otherwise marketed by the breeder or with his consent in the territory of Egypt, or any material derived from the said material, unless such acts

- involve further propagation of the variety in question or
- involve an export of material of the variety, which enables the propagation of the variety, into a country which 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.

(2) For the purposes of paragraph (1), "material" means,

- propagating material of any kind,
- harvested material, including entire plants and parts of plants, and
- any product made directly from the harvested material.

(3) For the purposes of paragraph (1), where the regulations of a regional organization of which Egypt is a member so require, acts done on the territories of the States members of that regional organization are considered to be done on the territory of Egypt

Article 199

The Minister of Agriculture is entitled, upon the recommendation of the ministerial committee referred to in Article 196, first paragraph, of the present law, to limit the exercise of the breeder's right provided for in this law with the aim of safeguarding the public interest. In such a case, the breeder is entitled to equitable remuneration.

Article 200

Cancel Article 200 of the law

Article 201

The Office of Plant Variety Protection shall issue the breeder's right certificate in accordance with the procedures prescribed by the Executive Regulations of the present law, against a fee prescribed therein, but not exceeding five thousand pounds. An annual fee shall be payable during the protection period, and it shall increase gradually as from the beginning of the second year. The Executive Regulations shall determine rates of such a fee where it may not exceed one thousand pounds per year. The applicant for the certificate shall pay for examination, tests and experience to be proved by the Office or entities it cooperates with. The Executive Regulations shall determine the rules and procedures for collecting such payment.

The Office of Plant Variety Protection shall publish, at the expense of the breeder, in a monthly gazette issued by the Office, information concerning:

Applications and grant of breeders' rights, and proposed and approved denominations.

Where an application is rejected, the applicant shall be informed of the rejection decision and the reasons thereof. Any interested party may, within 60 days from the publication date or the date of notification,

oppose the decision to grant a breeder's right certificate or to reject an application for the protection of a plant variety, as may be the case.

The Regulations shall prescribe the rules and procedures for the notification, examination of the appeal and the decision thereon.

Article 202

(1) The breeder's right shall be declared null and void when it is established

(i) that the conditions laid down in Articles 192 paragraphs (1) to (4) were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Article 192 paragraphs (5) and (6) were not complied with at the time of the grant of the breeder's right, or

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

(2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

(3) This decision shall be notified to the concerned parties in a registered letter with acknowledgement of receipt, and may be appealed within 60 days from the date of notification.

The Minister of Agriculture shall issue a decision establishing the rules and procedures for examination and settlement of the appeal.

Article 202 (bis)

(a) The breeder's right shall be cancelled if it is established that the conditions laid down in Article 192 paragraphs (5) and (6) are no longer fulfilled.

(b) Furthermore, the breeder's right shall be cancelled if, after being requested to do so and within the prescribed period:

(i) the breeder does not provide the Office of Plant Variety Protection with the information documents or material necessary for verifying the maintenance of the variety. The Executive Regulations shall prescribe such information, documents or material and the rules and procedures to be followed.

(ii) the breeder does not pay the fees and expenses payable to keep his right in force, or

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

The provisions of paragraphs 3 and 4 of Article 202 of the Intellectual Property Rights Law shall apply to notify the concerned party of the cancellation decision, the rules and procedures of examining and deciding the complaint against the decision.

Article 202 (bis 1)

The law shall be applied to all plant genera and species.

Article 203

Without prejudice to any more severe punishment under any other law, deliberate violation of the provisions contained in this Book shall be punishable by a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In case of repetition, the punishment shall be an imprisonment for a period of not less than three months and not more than one year and a fine of not less than 20,000 pounds and not more than 100,000 pounds.

In all cases, the incriminated seeds and the propagating materials shall be confiscated.

Article 204

Upon the request of any concerned party, the president of the competent court considering the merits of the case, may issue a decision, by petition, to order one or more of the appropriate conservatory measures, and in particular:

(1) Establishing infringement of a protected right.

(2) Drawing a detailed inventory and detailed description of the infringing products and the implements used or may be used in the infringement.

(3) Seizure of all articles stated in item 2.

In all cases, the president may designate one or more experts to assist the bailiff in charge of the execution of such measures. He may require the applicant to deposit an appropriate financial security.

Where the applicant fails to submit the merits of the case to the competent court, within 15 days following the date of the order, such order shall cease to have effect.

Article 205

The concerned parties may, within 30 days from the date of issue or publication of the order, as may be the case, appeal to the president of the court who issued that order. The president may confirm or revoke the order totally or partly, in accordance with the rules and procedures provided for under the law of civil and commercial proceedings.

Article 206

The Minister of Justice, in agreement with the Minister of Agriculture, shall issue a decision designating law enforcement officers for the purpose of implementing the provisions contained in this Book.

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Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]