

PLANT VARIETY PROTECTION BILL, 2025

(Bill No. 10 of 2025)

EXPLANATORY STATEMENT OF THE OBJECTS AND REASONS

This Bill makes provision for plant breeder's rights, also known as plant variety rights. This is a right granted to a breeder of a new variety of plant that gives the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a specified period. With this right, a breeder can choose to become the exclusive marketer of the variety or to license the variety to others.

The Bill is divided into ten Parts as follows —

Part I provides for preliminary provisions such as short title, commencement and interpretation of various expressions used in the Bill.

Part II provides for the Administration of the Act. The Registrar General has been designated as the Plant Variety Protection Authority responsible for the implementation of this Act.

Part III provides for the specific conditions that are required to be met for the granting of a breeder's right.

Part IV provides for the procedure for application for a plant breeder's right.

Part V provides for the specific breeder's right that can be granted and the exceptions.

Part VI provides for a requirement for certain information to be made public by the Authority. In addition to this, this allows for any person who has an objection to any ongoing proceedings to make objection formally to any such proceedings.

Part VII provides for the establishment of a Register for Plant Variety Protection and related matters.

Part VIII provides for the measures that are available for the enforcement of a plant breeders' right.

Part IX provides for the appeal mechanism.

Part X provides for general provisions.

Dated this 13th day of June, 2025.

AHMED AFIF
VICE- PRESIDENT/MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE

PLANT VARIETY PROTECTION BILL, 2025

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(Bill No. 10 of 2025)



A BILL FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A FRAMEWORK FOR THE PROTECTION OF PLANT VARIETIES; TO PROVIDE FOR THE RIGHT OF FARMERS AND PLANT BREEDERS, AND TO PROVIDE FOR AN ENVIRONMENT THAT ENCOURAGES THE DEVELOPMENT OF NEW VARIETIES OF PLANTS; AND FOR CONNECTED OR INCIDENTAL MATTERS.

ENACTED BY THE PRESIDENT AND THE NATIONAL ASSEMBLY

PART I - PRELIMINARY

Short title and commencement

- 1.(1) This Act may be cited as the Plant Variety Protection Act, 2025.
- (2) This Act comes into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Interpretation

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

“applicant” means a person who makes application in terms of section 13;

“authorisation” means a permission from the holder of the breeder’s right to allow exploitation or use of the protected variety in accordance section 22;

“Authority” means the Plant Variety Protection Authority designated as such in terms of section 5;

“breeder” means —

- (a) a person who breeds, or discovers and develops a variety;
- (b) a person who is the employer of the aforementioned person or who has commissioned the latter's work; or
- (c) the successor in title of the first or second aforementioned person, as the case may be;

“breeder’s right” means the right of the breeder provided for in section 22 of this Act;

“Contracting party” means a State or intergovernmental organization that is party to the International Convention for the Protection of New Varieties of Plants;

“denomination” means the generic designation or name of a variety;

“member of the UPOV” means a State party to the UPOV Convention of 1961 / Act of 1972 or the Act of 1978 or a Contracting party to the 1991 Act;

“Minister” means Minister responsible for trade and the term “Ministry” shall be construed accordingly;

“propagation” encompasses reproductive and vegetative propagating material;

“propagating material” means any reproductive or vegetative material of a plant variety, including seeds and any whole plant or part thereof, that may be used for reproduction or multiplication of that variety;

“Registrar” means the Registrar of Plant Variety Protection appointed or designated in terms of section 5;

“territory” in relation to a Contracting party of the UPOV Convention, means, where the Contracting party is a State, the territory of that State and, where the Contracting party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

“UPOV” means the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the Act of 1972, the Act of 1978 and the 1991 Act;

“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 —

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

Genera and species to be protected

3. This Act shall apply to all plant genera and species.

National Treatment

4.(1) For the purposes of this section —

“nationals” means, where the member of the UPOV is a State, the nationals of that State and, where the member of the UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.

(2) Without prejudice to the right specified in this Act —

- (a) nationals of a member of the UPOV;
- (b) natural persons resident and legal entities having their registered offices within the territory of a member of the UPOV,

shall, insofar as the grant and protection of breeder’s right are concerned, enjoy within the territory of Seychelles the same treatment as is accorded by this Act to the nationals of Seychelles:

Provided that, the nationals, natural persons or legal entities of a member of the UPOV to which this section applies shall comply with the conditions and formalities imposed on the nationals of Seychelles.

PART II - ADMINISTRATION

Designation of Plant Variety Protection Authority

5.(1) The Minister may designate by notice in the *Gazette* a competent authority to be the Plant Variety Protection Authority responsible for the administration of this Act.

(2) The Minister may designate a Registrar of Plant Variety Protection.

(3) The Minister may appoint such officers to the Authority as may be necessary to assist the Registrar in the proper performance of the functions under this Act.

(4) There shall be —

- (a) a Registrar of Plant Variety Protection; and
- (b) examiners, assessors and inspectors,

who shall exercise such powers and perform such duties as may be conferred upon them by this Act and the Minister.

(5) Officers appointed under subsection (3) shall be subject to the supervision and instruction of the Registrar.

Functions of Registrar

6. The Registrar shall be responsible for —

- (a) receiving and examining applications and granting breeder's right in accordance with this Act;
- (b) establishing a documentation system for the purposes of dissemination of information on plant breeder's right;
- (c) establishing and maintaining a Register for plant breeder's right in terms of section 41;
- (d) providing information on plant breeders' right that have been granted;
- (e) publishing all matters relating to the application and granting of plant breeder's right;
- (f) collaborating with other regional and international bodies whose functions relate to the protection of new varieties of plants;

- (g) liaising with national authorities in all matters relating to the grant and administration of plant breeder's right; and
- (h) performing such other functions as are necessary.

Plant Variety Protection' Advisory Committee

7.(1) An ad-hoc Committee to be known as the Plant Variety Protection Advisory Committee may be established for the purposes of assisting the Registrar as may be determined by the Minister.

(2) The Minister responsible for trade shall appoint members of the Committee and it shall be composed of one representative each from —

- (a) the Ministry;
- (b) a registered plant breeders association;
- (c) a registered seed traders association;
- (d) a registered farmers association;
- (e) a university offering a course on plant breeding;
- (f) the Attorney-General's Office;
- (g) the Ministry responsible for agriculture;
- (h) the Ministry responsible for environment;
- (i) the Office of the Registrar.

(3) The Minister shall appoint the Chairperson and Vice-Chairperson of the Committee.

(4) The Committee shall regulate its own proceedings.

(5) A member of the Committee shall hold office for a term and under conditions as may be determined by the Minister.

PART III - REQUIREMENTS FOR GRANTING OF PLANT BREEDER'S RIGHT

Requirements for plant breeder's right

8.(1) A plant breeder's right shall be granted where the variety is —

- (a) new;
- (b) distinct;
- (c) uniform; and
- (d) stable.

(2) The grant of a plant breeder's right shall not be subject to any further or different conditions:

Provided that:

- (a) the variety is designated by a denomination in accordance with the provisions of section 21; and
- (b) the applicant complies with the requirements of this Act.

Novelty

9.(1) A variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety —

- (a) in the territory of Seychelles earlier than one year before the date of filing of the application and;
- (b) in a territory other than that of Seychelles earlier than four years or, in the case of trees or of vines, earlier than six years before the date of submission of the application.

(2) For the purposes of subsection (1), all the Contracting parties which are member States of the same intergovernmental organization —

- (a) may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories; and
- (b) shall notify the head of such intergovernmental organization accordingly where they act in accordance with paragraph (a).

Distinctness

10.(1) A 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.

(2) 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 plant breeder's right or to the entering of the other variety in the official Register of Plant Varieties, as the case may be.

Uniformity

11.(1) A 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.

Stability

12.(1) The variety shall be deemed to be stable if its relevant characteristics remain unchanged —

- (a) after repeated propagation; or

- (b) in the case of a particular cycle of propagation, at the end of each such cycle.

PART IV - CERTIFICATION PROCEDURE

Application

13.(1) A breeder may file an application for a breeder's right by submitting such application with the Registrar together with a prescribed fee.

(2) A breeder who is not a resident of Seychelles shall only file an application through an agent with residence in Seychelles.

(3) The application under subsection (1), shall contain information including but not limited to the following —

- (a) the species and denomination of a variety;
- (b) identification of the botanical taxon (botanical and common name);
- (c) the proposed denomination for the variety or provisional designation of the variety;
- (d) technical description of the variety;
- (e) the full name and address of the —
 - (i) applicant; and
 - (ii) any other person who jointly with the applicant bred or discovered and developed the variety.
- (f) information on prior applications and grants of a breeder's right for the same variety.

Filing date of applications

14. The filing date of the application for a breeder's right shall be the date of receipt by the Registrar of the application duly filed in terms of this Act.

Right of priority

15.(1) Any breeder who has duly filed an application for the protection of a variety in another contracting State or a member of an international organization (hereafter referred to as the “first application”) shall, for the purpose of filing an application with the Registrar for the grant of a breeder’s right for the same variety in Seychelles, enjoy a right of priority for a period of twelve months.

(2) The period referred to in subsection (1) shall be computed from the date of filing of the first application and the day of filing shall not be included in the calculation of the twelve-month period.

(3) In order to benefit from the right of priority, a breeder shall, in the application filed with the Registrar, submit a claim for the right of priority of the first application together with a prescribed fee.

(4) The Registrar shall require the breeder to furnish, within a prescribed period which should be no less than three months from the filing date of the application, —

- (a) a copy of the documents which constitute the first application;
- (b) a true copy certified by the Registrar with which that first application was filed; and
- (c) samples or other evidence that the variety which is the subject matter of both applications is the same.

(5) The Registrar shall allow a breeder 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 Registrar any necessary information, document or material required for the purpose of the examination under section 18.

(6) Procedures occurring within the period provided for in subsection (1), which may include the filing of another application or the publication or

use of the variety that is the subject of the first application, shall not constitute grounds for rejecting the subsequent application and shall not give rise to any third-party right.

Provisional Protection

16.(1) A breeder shall be awarded provisional protection during the period between the publication of the application for the grant of the breeder's right and the grant of that right.

(2) An applicant is considered to be the holder of a breeder's right during the period provided for in subsection (1), where the applicant has carried out acts which, once the right is granted, require a breeder's authorisation as provided in section 22.

(3) Pursuant to subsection (2), an applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder's right had been granted to the applicant in respect of the variety concerned.

(4) The rights conferred under this section shall be deemed never to have been conferred if the right applied for is not granted.

Publication of application

17. If, on consideration of an application submitted in terms of section 13, it appears to the Registrar that the plant concerned is a new variety and the applicant is entitled to apply for a breeder's right in respect of it, the Registrar shall publish a notice in the *Gazette* specifying the following particulars —

- (a) the name of the applicant;
- (b) the date of the application; and
- (c) the proposed name of the plant concerned; and
- (d) other particulars relating to the application and the plant variety concerned as may be prescribed or as the Registrar thinks appropriate.

Examination of application

18.(1) The Registrar shall —

- (a) examine an application received in terms of section 13 to determine whether it and its supporting documents and material fulfil the criteria for protection as stipulated under sections 8, 9, 10, 11 and 12;
- (b) examine the formal requirements of the application and entitlement to the breeder's right;
- (c) arrange for the examination of the distinctness, uniformity and stability of the variety in accordance with section 19;
- (d) examine the suitability of the denomination; and
- (e) receive payment of prescribed fees.

Examination for distinctness, uniformity and stability

19.(1) The Registrar may, for the purposes of examination and ensuring compliance with the conditions specified in sections 9, 10, 11 and 12 —

- (a) in consultation with the Department of Agriculture, grow the variety or carry out other necessary tests, or cause the growing of the variety or the carrying out of other necessary tests to be done;
- (b) arrange for the examination to be carried out by any competent institution or of any member of an inter-governmental organization providing an effective system of plant variety protection; or
- (c) take into account the results of growing tests or other trials that have already been carried out by any competent institution or of any member of an inter-governmental organization providing an effective system of plant variety protection.

(2) For the purposes of examination, the Registrar may require the breeder to furnish all the necessary information, documents or material as specified in this Act.

Granting or rejection of breeder's right

20.(1) Where a plant variety fulfils the requirements of novelty, distinctness, uniformity and stability and that the proposed denomination of the variety is suitable for registration, the Registrar shall grant a plant breeder's right.

- (2) The Registrar shall in respect of each breeder's right granted —
- (a) issue a Breeder's Right Certificate to the person who applied for the grant of the right;
 - (b) enter the applicable particulars in the Register; and
 - (c) publish in the *Gazette* such particulars relating to the grant of such right as may be prescribed.

(3) Where the examination shows that the proposed denomination of the variety cannot be registered and does not satisfy the requirements of section 21(1), the Registrar shall refuse to register it and he or she shall request the applicant in writing to submit another denomination within a period of three months, or such further time period that the Registrar may allow on good cause shown, failing which the application shall be rejected.

- (4) An application shall be rejected if it is established that —
- (a) the applicant is not eligible to file an application in accordance with section 13;
 - (b) the applicant has not replied within the prescribed time limit to the official notifications issued by the Registrar, including where: —
 - (i) the information given was erroneous or incomplete;
 - or

- (ii) the application contained a material irregularity;
 - (c) the variety to which the applicant refers does not satisfy the requirements of sections 9,10,11 and 12;
 - (d) the applicant refuses or is unable to propose an acceptable denomination;
 - (e) the applicant does not comply with the payment of prescribed fees.
- (5) The Registrar shall in respect of each rejected application —
- (a) notify its decision in writing to the applicant;
 - (b) enter the applicable particulars in the Register; and
 - (c) publish in the *Gazette* a notice of rejection.

Variety denomination

- 21.(1)** A variety shall be designated by a denomination which —
- (a) will be its generic designation and enables the variety to be identified;
 - (b) does not consist solely of figures except where this is an established practice for designating varieties;
 - (c) is not liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder; and
 - (d) is different from every denomination which is designated, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(2) Subject to subsection (5), no right 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.

(3) The Registrar shall register the denomination at the same time as the breeder's right is granted.

(4) Prior rights of third persons shall not be affected.

(5) 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 subsection (8) is obliged to use it, the Registrar shall require the breeder to submit another denomination for the variety.

(6) The Registrar shall submit a variety to all members of a contracting state or any inter-governmental organization providing an effective system of plant variety protection under the same denomination.

(7) The Registrar shall ensure that Contracting parties are informed of matters concerning a variety of denominations, in particular the submission, registration and cancellation of denominations and any contracting states and any members of an inter-governmental organization providing an effective system of plant variety protection so informed may address their observations, if any, on the registration of a denomination to the Registrar.

(8) Any person who offers for sale or markets propagating material of a variety protected within the territory of Seychelles shall 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 subsection (5), prior rights prevent such use.

(9) A person who offers for sale or markets a variety may associate a trademark, trade name or other similar indication with a registered variety denomination and ensuring that the indication is easily recognisable.

PART V - RIGHT OF BREEDER

Scope of right of breeder

22.(1) The following acts in respect of the propagating material of a protected variety shall require the authorisation of the breeder, —

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing;
- (g) stocking for any of the purposes mentioned in (a) to (f), above.

(2) A breeder may grant to any person an exclusive or a non-exclusive licence relating to all or any of the rights granted in this section and may give such authorisation subject to conditions and limitations.

(3) The acts referred to in subsection (1) (a) to (g) shall require the authorisation of the breeder in respect of —

- (a) harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise the breeder's right in relation to the propagating material;
- (b) products made directly from harvested material of the protected variety falling within the provisions of paragraph (a) through the unauthorised use of the harvested material, unless the breeder has had reasonable opportunity to exercise the breeder's right in relation to the harvested material.

(4) The provisions of subsections (1), (2) and (3) shall also apply in relation to —

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (b) varieties which are not clearly distinguishable in accordance with section 10 from the protected variety and;
- (c) varieties whose production requires the repeated use of the protected variety.

(5) For the purposes of subsection (4) (a) a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when —

- (a) 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;
- (b) it is distinguishable from the initial variety; and
- (c) 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.

(6) Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a soma clonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Exceptions to right of breeder

23.(1) The right conferred by a plant breeder’s right shall not extend to—

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

- (b) acts done for experimental purposes; and
- (c) acts done for the purpose of breeding other varieties; and
- (d) except where the provisions of section 22(4) apply, acts referred to in section 22 (1), (2) and (3) in respect of such varieties.

(2) Notwithstanding section 22, for the prescribed list of agricultural crops and vegetables with a historical common practice of saving seed in Seychelles, (which shall not include fruits, ornamentals, other vegetables or forest trees), the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder's right, uses for propagating purposes on his or her farm the product of the harvest which the farmer has obtained by planting, on his or her farm, the protected variety or a variety covered by sections 22 (4) (a) or (b).

(3) The conditions for implementation of the provisions under subsection (2), which include the different levels of remuneration to be paid by small-scale commercial farmers and large-scale commercial farmers and the information to be provided by the farmer to the breeder, shall be as may be prescribed.

Exhaustion of right of breeder

24.(1) For the purposes of this section- "material" means, in relation to a variety, —

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants, and
- (c) any product made directly from the harvested material.

(2) A breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of section 22 (3), which has been sold or otherwise marketed by the breeder or with the breeder's consent in the territory of Seychelles, or any material derived from the material unless such acts —

- (a) involve further propagation of the variety in question; or
- (b) 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.

Restrictions on exercise of right of breeder

25.(1) Pursuant to section 27, a compulsory licence shall be granted to an applicant only for reasons of public interest.

(2) Where the Registrar grants a compulsory licence that authorises a third party to perform any act for which the breeder's authorisation is required, the breeder shall be entitled to receive equitable remuneration.

Issue of licences

26.(1) The holder of a plant breeder's right may apply to the Registrar for the right to be registered as a right in respect of which a licence may be issued.

(2) On receipt of an application in terms of subsection (1), the Registrar shall cause to be entered in the Register notice that licences in respect of the right concerned may be issued by the holder and thereafter, if the holder grants to any person a licence to sell, import, reproduce or multiply reproductive material of the variety concerned, he or she shall, within three months of granting such licence, notify the Registrar in writing of the grant of the licence and of any conditions, limitations or restrictions imposed in terms of subsection (3).

(3) In granting any licence referred to in subsection (2), the holder of the plant breeder's right may impose such conditions, limitations or restrictions as he or she thinks fit.

(4) Within one month of the entry being made in the Register, the Registrar shall publish in the *Gazette* a notice giving such particulars of the entry as the Registrar thinks fit.

(5) Where a plant breeder's right is held by the State, the Minister may, on behalf of the State —

- (a) make an application in terms of subsection (1); and
- (b) grant licences referred to in subsection (2) to such persons and subject to such conditions, limitations or restrictions as the Minister thinks fit.

Compulsory licences

27.(1) Any person who shows that he or she has been unable to obtain a licence referred to in section 26 in respect of a variety in respect of which plant breeder's right has been granted may apply in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public interest with respect to the variety concerned have not or will not be satisfied.

- (2) An application in terms of subsection (1) shall —
 - (a) set out fully the nature of the applicant's interests, the facts on which he or she bases his or her case and the relief he or she seeks; and
 - (b) be accompanied by —
 - (i) an affidavit verifying the facts set out in the application; and
 - (ii) a certificate from the Minister stating that it is in the public interest that the variety concerned be made freely available to the public.

(3) An application in terms of subsection (1) shall be lodged with the Registrar who shall forthwith furnish the holder of the plant breeder's right with a copy of the application and the particulars accompanying the application.

(4) If the holder of the plant breeder's right wishes to contest the application, he or she shall, within one month or such further period as the Registrar may allow from the date he or she is furnished with a copy of the application, lodge with the Registrar a counter-statement setting out particulars of the grounds upon which he or she will contest the application, and the Registrar shall furnish the applicant with a copy of the counter-statement.

(5) On receipt of the counter-statement lodged in terms of subsection (4) or the expiration of the period specified in subsection (4), whichever is the earlier, the Registrar shall, unless the applicant withdraws his or her application, forward the application and the counter-statement, if any, to the Appeals Board, and the Appeals Board may order the holder of the plant breeder's right to grant a licence referred to in section 26 to the applicant subject to such conditions, limitations or restrictions as the Appeals Board may fix, and in fixing the conditions, the Appeals Board shall fix —

- (a) the period of the licence; and
- (b) the amount and method of payment of royalties.

(6) No order shall be made under subsection (5) which would be at variance with the International Convention for the Protection of New Varieties of Plants or with any other international treaty or agreement to which Seychelles is a party.

Measures regulating commerce

28.(1) A breeder's right is independent of any measure implemented by a country to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material, and any such measure shall not affect the application of the provisions of this Act.

Duration of right of breeder

29.(1) The breeder's right shall be granted for a period of 20 years from the date of it being granted:

Provided that in relation to trees and vines, the breeder's right shall be valid for 25 years from the date of the grant.

(2) The Registrar may extend the duration referred to in subsection (1) for an additional five years if the Registrar receives a six-month written notice from the holder of the breeder's right before the expiration of the original term.

Variety developed in the course of execution of work

30.(1) In the absence of any contractual provision to the contrary, the right on a plant variety developed in execution of an employment contract shall belong to the employer.

(2) Subsection (1) shall apply where an employment contract does not require the employee to exercise any breeding activity but when the employee has developed the plant variety by using resources or means available to him or her during his or her employment.

(3) The employee under subsections (1) and (2) shall have a right to equitable remuneration taking into consideration the benefit derived by the employer from the plant variety developed.

(4) In the absence of an agreement between the parties, the remuneration under subsection (3) shall be fixed by the Supreme Court.

(5) A plant variety developed without any relation to an employment contract and without the use of the employer's resources, data, means, materials, installations or equipment shall belong solely to the employee.

(6) The provisions of this section shall apply to public and private institutions.

(7) In the absence of contractual provisions to the contrary, the right on a plant variety developed in the execution of a commissioned work shall belong to the person having commissioned the work.

Nullity of breeder's right

31.(1) A breeder's right shall be declared null and void by the Registrar when it is established that —

- (a) the conditions set out in sections 9 or 10 were not complied with at the time of the grant of the breeder's right;
- (b) where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions set out in sections 11 and 12 were not complied with at the time of the grant of the breeder's right; or
- (c) unless it is transferred to the person who is so entitled, the breeder's right has been granted to a person who is not entitled to it;
- (d) the applicant failed to disclose the genetic resources or traditional knowledge used in the development of the plant variety;
- (e) when the breeder's right was granted, it was based on fraudulent actions of the applicant or the application contained material misrepresentation.

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

Cancellation of breeder's right

32.(1) The breeder's right may be cancelled if —

- (a) it is established that the conditions set out in sections 11 or 12 are no longer fulfilled; or
- (b) after being requested to do so and within the prescribed period —

- (i) the breeder does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (ii) the breeder fails to pay such fees as prescribed and as may be payable to keep the breeder's right in force; or
- (iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in subsection (1).

Surrender of Breeder's Right

33.(1) A breeder's right may be surrendered before expiry of its term by written declaration of the holder of the right addressed to the Registrar.

(2) The date of surrendering shall be the date specified in the declaration or, if no date is specified, the date on which the declaration is received by the Registrar.

(3) Upon surrender of the breeder's right, the holder of the breeder's right shall return the Breeder's Right Certificate to the Registrar.

PART VI - PUBLICATION OF INFORMATION

Publication of information

34.(1) Any information concerning the following shall be published in the *Gazette* —

- (a) applications for the grant of a breeder's right;
- (b) information on variety denominations;
- (c) withdrawals of applications for the grant of breeder's right;

- (d) rejections of applications for the grant of a breeder's right;
- (e) grants of a breeder's right;
- (f) changes in the persons (applicants for a breeder's right, holders of a right and agents); and
- (g) nullity, surrender, cancellation and expiry of a breeder's right.

(2) No confidential information, as indicated in an application form, shall be published without the written consent of the applicant or the holder of a breeder's right.

Objection

35.(1) Subject to subsection (2), any person who wishes to lodge an objection may lodge the objection when a notice is published in terms of section 34 and shall do so in the prescribed manner.

(2) Any person who wishes to lodge an objection in terms of subsection (1) shall submit a written and reasoned objection to the Registrar together with payment of the prescribed fee within 3 months from the date of the publication the notice.

PART VII - ENFORCEMENT

Court may hear proceedings for infringement of plant breeder's right

36. Proceedings for infringement of a plant breeder's' right may be instituted before the Supreme Court by the holder of the right or his or her assignee or licensee.

Remedies available in proceedings for infringement

37.(1) Subject to this Act, in proceedings for infringement of a plant breeder's right the plaintiff or applicant shall be entitled to any appropriate remedy, whether by way of damages, injunction, attachment, the rendering of accounts, the delivery of infringing articles used or intended to be used for the

purposes of the infringement or otherwise, that is available in respect of the infringement of any other proprietary right.

(2) Damages for infringement of a plant breeder's right may, at the option of the person seeking them, be calculated on the basis of the amount that a licensee would reasonably have been expected to pay under the circumstances for his use of the rights concerned:

(3) In determining the amount of damages in an action for infringement of a plant breeder's right, the Court shall take the following factors into account, in addition to all other material considerations —

- (a) the extent and nature of the infringement;
- (b) the market value of the right concerned;
- (c) the amount which could be payable to the holder of the right or his or her assignee in respect of the use of the right by some other person; and
- (d) any dilatory conduct on the part of the holder of the right or the plaintiff in making the infringer aware that the rights was registered.

(4) If it is established, in proceedings for infringement of a plant breeder's right, that an infringement was committed and the Court, having regard to —

- (a) the flagrancy of the infringement; and
- (b) the market value of the right concerned; and
- (c) any benefit shown to have accrued to the person responsible for the infringement as a result of the infringement; and
- (d) the need to deter persons from committing further infringements;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Court shall have power to award additional damages as it thinks fit.

(5) If it is established, in proceedings for an infringement of a plant breeder's right, that an infringement was committed but that at the time of the infringement the person responsible for the infringement was not aware and had no reasonable grounds for suspecting that he or she was not entitled to engage in the infringing activity, the plaintiff or applicant shall not be entitled under this section to any damages against that person in respect of the infringement.

Offences and penalties

38.(1) Any person who knowingly —

- (a) makes a false entry in the Register;
- (b) makes a writing which falsely purports to be a copy of an entry in the Register or of a document lodged with the Registrar;
- (c) produces or tenders a false entry or a copy as evidence;
- (d) submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;
- (e) obstructs or hinders the Registrar or any officer in the exercise of his or her powers or the carrying out of his functions under this Act;
- (f) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse to appear;
- (g) having appeared as a witness in any proceedings under this Act, refuses without lawful excuse to be sworn or to produce any document or answer any question which he or she may be lawfully required to produce or answer;

- (h) contravenes the obligation to use a denomination as required by section 21(8) of this Act;
- (i) gives false information in any application or makes any false statement in evidence;
- (j) violates a breeder's right;
- (k) fails to comply with an order of the Appeals Board;
- (l) contravenes any other provisions of this Act,

commits an offence.

(2) Any person who commits an offence referred to under subsection 1(a) to (i) shall be liable, on conviction —

- (a) as a first offender, to a fine of level 2 on the standard scale or imprisonment for a term of at least one year; and
- (b) in the case of a person having been previously convicted under this section, to a fine of level 3 on the standard scale or imprisonment for a term of at least two years or both.

(3) Any person who commits an offence referred to under section 1(h) and (j) is liable on conviction —

- (a) as a first offender, to a fine of at least level 3 on the standard scale or imprisonment for a term of at least one year; and
- (b) in the case of a person having been previously convicted under this section, to a fine of at least level 4 on the standard scale or imprisonment for a term of at least two years or both.

PART VIII - APPEALS

Establishment of Appeals Board

39.(1) There is established an Appeals Board appointed by the Minister.

- (2) The Appeals Board shall comprise of —
- (a) a representative from the Ministry, who shall be Chairperson;
 - (b) a representative from the Ministry responsible for agriculture;
 - (c) a representative of the office of the Attorney general's Office;
 - (d) an expert in plant breeding; and
 - (e) a representative of a farmers association;

(3) The Chairperson and two other members of the Appeals Board shall form a quorum for the hearing of an appeal.

(4) A decision of a majority of the members of the Appeals Board present at the hearing of the appeal is the decision of the Appeals Board and, in the event of an equality of votes, the Chairperson or the member presiding shall have a casting vote.

(5) Where the Chairperson is on leave of absence, absent from Seychelles or unable for any other reason to preside over the hearing of an appeal, the Minister may, upon being notified, appoint another person to act in the place of the Chairperson to hear the appeal.

- (6) The Appeals Board shall regulate its own proceedings.

Appeal

40.(1) A person aggrieved by a decision of the Registrar may appeal to the Appeals Board.

- (2) An appeal under Subsection (1) shall —
- (a) be in writing;

- (b) specify the reasons for making the appeal; and
 - (c) be filed within 14 days of the decision against which the appeal is filed.
- (3) The Appeals Board may, after considering the appeal, —
- (a) reject the appeal and confirm the decision of the Registrar;
 - (b) allow the appeal and vary the decision of the Registrar;
 - (c) direct the Registrar to reconsider his or her decision;
 - (d) set aside the decision of the Registrar; or
 - (e) set aside the decision of the Registrar and substitute any other decision that the Registrar has authority to take as the Appeals Board specifies.
- (4) An appeal filed under subsection (1) shall be decided within 30 days from the date of filing of the appeal.
- (5) At the hearing of an appeal, the Appeals Board may seek the opinion of an expert in any relevant field to which the appeal relates

PART IX - REGISTER

Register of Plant Breeders Rights

- 41.(1)** The Registrar shall establish and maintain a breeders' rights register to be known as "The Register of Plant Breeder's Rights".
- (2) The information to be listed in the Register for each registered variety shall include —
- (a) the application number;
 - (b) the date and time of receipt of the application;

- (c) the species and denomination of a variety;
- (d) the full name and address of —
 - (i) the applicant and holder of the breeder's right, and
 - (ii) the person who bred or discovered and developed the variety, in case the person is different from the applicant or holder of the breeder's right;
- (e) the date and time of granting the breeder's right;
- (f) any assignment and exclusive licence of the rights;
- (g) any declaration of nullity or cancellation of rights;
- (h) any submission, registration, rejection, change or cancellation of variety denomination;
- (i) any other matter which —
 - (i) is required by this Act or any other written law to be entered in the register, and
 - (ii) may affect the validity or ownership of a plant breeder's rights; and
- (j) any other information which may be prescribed.

Inspection of Register

42.(1) The Register shall be open for inspection by any member of the public during business hours upon payment of prescribed fees.

(2) A certified copy of any entry in the register shall be provided upon request and payment of the fees prescribed.

Register to be evidence

43.(1) The Register shall be evidence of all matters directed or authorised by the Act to be noted in it.

(2) A copy of an entry in the Register or an extract from the Register, certified by the Registrar, may be admitted in evidence in any Court without further proof or production of the Register.

(3) A certificate by the Registrar to the effect that an entry has or has not been made in the register, or that any other thing authorised by this Act to be done, has or has not been done shall be first evidence of the matters specified in that certificate.

PART X - MISCELLANEOUS

Directions of Minister

44.(1) The Minister may in writing give general or special directions, not inconsistent with the provisions of this Act, to the Registrar regarding the performance of the Registrar's functions under this Act or any other written law.

(2) The Registrar shall comply with the directions issued under subsection (1).

Indemnity

45. No civil or criminal liability shall attach to the Registrar, a member of a Committee under this Act, an authorised officer, authorised person or employee of the Registrar in respect of any act done or omitted to be done in good faith in the performance of their functions under this Act.

Confidentiality

46. Save as otherwise provided in this Act, any person who discloses, except —

- (a) to the Registrar or any other person for the purposes of the carrying out of his or her duties or the performance of his or her functions under this Act;

- (b) to a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or
- (c) when required to do so by any Court or under any law,

any information acquired by the person in the carrying out of any duty or the performance of any function under this Act in relation to any plant in respect of which an application for the grant of plant a breeder's right has been made under this Act or to the business affairs of any other person commits an offence and is liable upon conviction to a fine not exceeding level three on the standard scale and to imprisonment for a period not exceeding two years.

Regulations

47.(1) The Minister may make regulations for any matter required for the implementation of this Act, in particular —

- (a) procedural matters concerning applications for the grant of breeders' right;
- (b) matters concerning a variety of denominations;
- (c) matters concerning examination of applications for the grant of breeders' right;
- (d) publication requirements;
- (e) opposition procedures;
- (f) appeals;
- (g) fees; and
- (h) data to be included in the registers concerning breeders' right.

(2) Any regulations made under the Act may provide that any person contravening any provision of the Regulations shall be guilty of an offence and liable on conviction to a fine not exceeding level four on the standard scale or imprisonment for a term not exceeding two years or both such fine and imprisonment.