

Federal Law No. 17

Issued on 31/12/2009

Corresponding to 14 Muharram 1431 H.

On The Protection Of New Botanical Species

We, Khalifa Bin Zayed Al Nahyan, President of the United Arab Emirates State,

Pursuant to the perusal of the Constitution; and

Federal Law no. 1 of 1972 regarding to the Jurisdiction of the Ministries, the Competences of the Ministers and the amending laws thereof; and

Penal Code issued by virtue of the Federal Law no. 3 of 1987 and the amending laws thereof; and

Criminal Procedures Law issued by virtue of the Federal Law no. 35 of 1992 and the amending laws thereof; and

Federal Law no. 37 of 1992 on Trademarks, and the amending laws thereof; and

Federal Law no. 24 of 1999 on the Protection and Development of the Environment, and the amending laws thereof; and

Federal Law no. 7 of 2002 on the Copyrights and Neighboring Rights, and the amending laws thereof; and

Acting upon the proposal of the Minister of Environment and Water, the consent of the Cabinet and the Federal National Council, and the approval of the Federal Supreme Council,

Have promulgated to following Law:

Article 1

In the implementation of the provisions hereof, the following terms and phrases shall have the meanings assigned for each of them unless the context requires otherwise:

State: The United Arab Emirates

Ministry: The Ministry of Environment and Water

Minister: The Minister of Environment and Water

Species: A group of plants from one kind, differentiated from other groups by virtue of an apparent, physiological, biochemical, genetic or any other characteristic deemed of botanical importance, and which, upon the breeding or multiplication thereof, show such characteristics. Such shall not include wild species, unless developments were made thereto.

Plant Inventor: Natural or juridical person having invented, discovered and developed a new botanical species or the legal heir thereof.

Plant Inventors Certificate: A document that corroborates the rights granted to plant inventors.

Register: New botanical species and rights of plant inventors' register.

Registrar: New botanical species and rights of plant inventors' registrar.

Protected Species: Botanical species granted the protection right as per the provisions hereof.

Derived Species: Species that is similar to another species with respect to main characteristics except for the differences resulting from derivation.

Submitter of the Request: The person submitting the request to obtain the rights of plant inventor.

Holder of Plant Inventors Certificate: Any person granted the plant inventors' certificate.

Right Owner: The plant inventor to whom the registrar grant the right of plants inventor with respect to a specific botanical species.

Breeding and Multiplication Materials: Any botanical material, or a botanical part, cells, tissues, genetic materials used to breed plants, or those used for multiplication through seeding, plantation, grafting or sprouting.

Materials: Breeding or multiplication materials, regardless of the type thereof, and harvest materials, including complete plants or constituents thereof.

Article 2 - Objectives and Application of the Law

1- The present Law shall aim at regulating the rights and obligations pertaining to the invention of new botanical species.

2- The provisions of the present Law shall apply to the species set forth in the list, and botanical types and kinds determined by virtue of a ministerial decision, including the breed, origins, tissues, cells and genetic material.

Article 3 - New Botanical Species Protection Register

A register called "New Botanical Species Protection Register" shall be set in the Ministry for the protection of new botanical species and the rights of plants inventors as per the provisions of the present Law and the Implementing Regulation thereof.

Article 4 - The Registrar and the Jurisdictions Thereof

The Minister shall appoint the registrar to supervise the register, and carry out the jurisdictions set forth in the present Law, mainly:

1- Receive the requests of obtainment of plants inventors rights, the naming of plants and the registration thereof in the register after verifying the documents enclosed with

the requests, and assuring their fulfillment of the conditions set forth in the Implementing Regulation hereof.

2- Supervise the examination of the species to verify the fulfillment thereby of the requirements of innovation, distinction, harmony and stability, and identify the invention method, and estimate the health and environmental risks.

3- Keep the register and all data related to new botanical species and names thereof, and the names of holders of plants inventors' certificates.

4- Coordinate with international, regional and local parties whose work is in line with the work of the registrar.

5- Any other tasks entrusted thereto by the Minister and related to the objectives hereof.

Conditions Related to the Granting of the Plants Inventors' Right

Article 5 - Protection Conditions

The plants inventor's right shall be granted should the species fulfill the following conditions:

- 1- It must be new.
- 2- It must be distinguished.
- 3- It must be homogeneous.
- 4- It must be stable.
- 5- It must not be harmful to the health or the environment.
- 6- It must not contradict the Islamic Shariaa or the law enforced in the State.

Article 6 - New Species

A species shall be deemed new should the breeding or multiplication material, or the yielded species material not be offered for sale, sold or transferred to any third party in any manner either through the inventor of the species or with the approval thereof, and such for the commercial use prior to the submission of the request for more than one year inside the state, for more than 4 years outside the state, and for more than 6 years with respect to shrubs and trees.

Article 7 - Distinguished Species

The species shall be deemed distinguished should it be clearly differentiated from any other publicly known species on the date of submission of the request, whether inside our outside the state. The submission of a request to obtain the plants inventor's right or

to register another species in an official register for botanical species in a state causes the other species publicly known as of the date of submission of the request, provided that such request entails the granting of the plants inventor's right or the registration of such other species in the official register of botanical species, as the case may be.

Article 8 - Homogeneous Species

The species shall be deemed homogeneous should its main characteristics be sufficiently homogeneous, taking into account expected differences deemed to special traits of the genetic or botanical breeding or multiplication process.

Article 9 - Stable Species

The species shall be deemed stable should the main genetic characteristics thereof not change due to the continuous breeding or multiplication, or at the end of every breeding or multiplication process.

Article 10 - The Person Entitled to the Registration of the Species

The person entitled to register the species shall be:

- 1- The plants' inventor or the person to whom the rights of the species are transferred
- 2- All persons contributing in the invention thereof should such specie be the result of their collective efforts, provided that it is registered equally between them, unless they agree otherwise.
- 3- The first plant inventor to submit the request to register the species, and such in case said species is invented by several independent persons.
- 4- The employer whose employee invents the species upon a contract by which the employee is bound to invent such species, unless the contract stipulated otherwise.

Article 11 - The Request of the Owner of the Species

The owner of the species may submit the request to obtain the plants inventor's right, and shall be governed by the reciprocity conditions. Such literary right may not be assigned to the plants inventor and his general successor in referring the species to the inventor.

Article 12 - Priority Right

- 1- The plants inventor shall be entitled to the priority right that commences as of the date of submission of the request regarding the same species.
- 2- The plants inventor having submitted the protection request in another state shall be entitled to the priority right for a period of 12 months in order to request the protection.

Such period shall be calculated as of the day that follows the date of submission of the first request in said other state.

The registrar may not take into account such priority in exceptional cases.

3- Should the species be invented, discovered or developed by several independent persons, the right to submit the request to obtain the plants inventor's right shall go to the person having first submitted the request of protection or having submitted to the registrar a request with previous priority date.

Article 13 - Necessary Documents and Materials for the Priority

1- Should the request of registration contain a claim of the priority right as set forth in Article 12 hereof, the applicant shall submit the following within a period not exceeding 90 days from the date of submission of the request:

a- A true copy of the documents of the first request provided that they are authenticated by the registrar before whom the request is deposited. The Implementing Regulation hereof shall determine the requested documents and the conditions governing them.

b- Samples or evidences proving that the species, subject of the first request, is the same species of the priority right request. The date of submission of the registration request, in such case, shall be deemed the same date of submission of the request in the other state.

2- Should the applicant not prove the priority right as set forth in Article 12 hereof, the request thereof shall be registered as of the date of submission thereof before the registrar.

3- The applicant may request to be granted a term of two years at most after the elapse of the priority term, in order to provide the registrar with all necessary information, documents and materials requested by the law for the examination referred to in Article 24 hereof. Should the first request submitted in the other country not be accepted, the applicant shall be granted an adequate term from the date of rejection or withdrawal of the application and such in view of submitting the necessary information, documents and materials for the performance of the above-mentioned examination.

Article 14 - Transfer and Reassignment of Requests and Rights

The requests of plants inventors may be transferred and their rights reassigned to third parties as per the restrictions set forth in the Implementing Regulation hereof.

Article 15 - Scope of Right of Plants Inventor

Subject of the provisions of Articles 16 and 17 hereof, the obtainment of an authorization from the holder of the plants inventor's right shall be required upon the carrying out of the following:

- 1- Production, breeding or multiplication
- 2- Preparation of breeding or multiplication
- 3- Offer for sale
- 4- Sale or other marketing works
- 5- Export
- 6- Import

7- Storage for any of the purposes mentioned in the clauses hereof of the breeding or multiplication material of the pertinent species or the material yielded, including the plants, acquired through unauthorized use.

Article 16 - Cases Excluded from Protection

1- The Implementing Regulation hereof shall determine the botanical species that acquire the protection right by virtue of the provisions hereof.

2- The protection right does not entitle the holder of said rights to prohibit any person from using the protected species should such use be for one of the following objectives:

a- Scientific experiments

b- Works carried out for the invention of new species, other than what is mentioned in Article 15 hereof.

3- Farmers may not be forbidden from using in their lands any protected species, or derived from the original species, or any species that is not easily differentiated from the original species in order to increase the yield through the planting of said species for non-commercial purposes.

Article 17 - Limits of the Plants Inventor's Right

The plants inventor's right does not include the works related to the materials of the protected species thereof, or to materials of any species included in Article 15 hereof, or to materials derived therefrom, and sold by the plants inventor or marketed in any other means, by themselves or with the consent thereof inside the state, unless such works include the following:

- 1- The additional breeding of pertinent species.

2- The export of the materials of the species that allow the breeding thereof to a state where no legislation to protect the species or botanical kinds to which the species pertains, unless the purpose of such exportation is the consumption.

Article 18 - Maintenance of Breeding or Multiplication Material

The holder of the plants inventor's right must provide to the registrar breeding or multiplication material capable of producing plants that are in line with the characteristics of the species upon the granting of the right, and such within the period where the right is practicable. The holder must also provide to the registrar all information and assistance required thereby including facilities to the inspection operation of the work done by the holder of the right to maintain the species.

Article 19 - Protection Term

The term of protection of the protected species shall be of 20 years for the agricultural yields and 25 years for shrubs and trees.

The calculation of the term of protection shall commence as of the date of issuance of the decision to grant the plants inventor's right.

Article 20 - Procedures of Naming of the Species

1- The applicant for the protection shall determine the suggested name of the species, and the Implementing Regulation hereof shall determine the registration of the name and the publication thereof, and the terms related thereto.

2- The name may be composed of one or a multiple words (three words at most), or words and numbers, or words and letters, or letters and numbers, but cannot be composed only of numbers unless such was the custom in naming the species, provided that the number allows the identification of the species in all cases. In case the name contained words and numbers, the numbers must have a meaning linked to the words.

Words referring to the state or a feature thereof may be used.

3- The name of the species may not be registered should the suggested name:

a- violate the provisions of the law.

b- violate the public order and ethics.

c- add confusion to the characteristics, value, nature, origin or inventor of the species.

d- be different than a previous name of the same species, submitted or registered in another state.

Article 21 - Naming the Species

1- Whoever offers for sale or marketing or disposes off the breeding or multiplication materials of a protected species in the state must use the name of such species even after the expiry of the plants inventor's right.

2- The registrar, upon the offer of the species for sale, marketing or disposal thereof for any purpose, may allow that the name be related to a trademark, a trade name or any other mark distinguished from the name of the registered species. In the event of the existence of a link between the name and said mark, the name must be easily distinguishable.

3- No harm must be made to any right of third parties related to the name to be used for any species. In this event, the registrar must request that the plants inventor suggest another name for the species.

Article 22 - The Cancellation of the Name of a Registered Species

1- The registrar shall cancel the name of any registered species in the following cases:

a- Should it appear that the name violates the provisions of Article 20/3 hereof.

b- Should it appear that other parties hold the right to the name and the holder of the plants inventor's right agrees to the cancellation.

c- Should the person be forbidden to use the name of the species by virtue of a final judicial ruling.

2- Should the name of the species be cancelled, the registrar must summon the holder of the plants inventor's right to suggest a new name within the term set thereby.

Article 23 - The Examination of the Request

The species shall be examined to verify the fulfillment of the protection conditions under the supervision of the registrar, based on the results of one of the following method:

1- Test of growth, planting or any other useful tests or examinations performed by a technical party inside or outside the state should such tests or examinations be performed in environmental conditions in line with the state's environmental conditions.

2- Tests and examinations carried out by the registrar or through any party commissioned therewith at the expense of the plants inventor.

Article 24 - The Granting and Refusal of the Plants Inventor's Right

1- Should it appear from the test that the species has fulfilled the protection conditions, the registrar must issue a decision to grant the plants inventor's right and publish same in the Official Gazette.

2- Should it appear from the test that the suggested name may not be registered, the registrar must notify the applicant to suggest another name within a determined timeframe, otherwise the request shall be rejected.

Article 25 - Provisional Protection

The plants inventor shall be granted provisional protection from the date of publication of the request in the Official Gazette until the date of issuance of the decision granting the inventor the right thereof. He may during said period use the species pertaining thereto and take the necessary procedures to prove any violation thereto.

Article 26 - Termination of Protection

The protection right shall be deemed terminated in the following cases:

1- Should the holder of the right relinquish the right thereof by notifying the registrar in writing prior to the expiry of the protection term. The date of notification shall be deemed the date of termination.

2- The termination of the legal term of the plants inventor's right.

Article 27 - Annulment of Protection

The granted plants inventor's right shall be deemed null, and a decision in this regard shall be issued by the registrar and shall be published in the Official Gazette in the following cases:

1- Should it proven that the species violates the protection conditions upon the date of granting of plants inventor's right.

2- Should the plants inventor's right be granted to other than the real plants inventor, in contradiction of the provisions hereof.

Article 28 - Cancellation of Protection

The plants inventor's right shall be cancelled by virtue of a decision issued by the registrar and published in the Official Gazette in the following cases:

1- The failure to fulfill the condition of homogeneity and stability set forth herein.

2- The failure by the plants inventor to provide the registrar with information and documents or materials necessary for the verification of the maintenance of the species.

3- The cancellation of the name of the species after granting the right, and the failure to provide another adequate name.

4- The failure to pay the due annual fees within 90 days from the notification.

Article 29 - The Objection

Every person may object to the granting of the plants inventor's right in the following cases:

- 1- Should the plants inventor's right be granted to a person other than the plants inventor, unless such right is transferred thereto.
- 2- Should the species not be new or distinguished on the date of submission or the date of priority.
- 3- Should the species not be homogeneous or stable.

Article 30 - Licensing by the Plants' Inventor

The plants inventor may grant third parties a license to use the protected species with or without return by virtue of a written contract registered before the registrar.

Article 31 - Licensing by the Registrar

- 1- The registrar may grant a license to third parties to use the protected species without the consent of the plants inventor should the public interest so require, and such without prejudice to the right of the plants inventor in acquiring a fair remuneration.
- 2- The registrar may, by himself or upon the request of the plants inventor, cancel the license referred to in clause 1 hereof, should the licensed party breach the conditions of the license granted thereto, or should the causes of the granting thereof abate.

Article 32 - Licensing by the Minister

The Minister, in cases of emergency and upon the recommendation of the Ministry of Defense or the Ministry of Interior, may grant an exceptional license to use a protected species, and such without prejudice to the right of the plants inventor in acquiring a fair remuneration.

Article 33 - Sanctions

- 1- Whoever breaches the provisions of Articles 15 and 17 hereof, or illegally acquires the plants inventor's right shall be sentenced to imprisonment for a period of two months at least, and to a fine amounting to AED 10,000 at least and AED 250,000 at most, or to either penalties.

The sanction shall be doubled in case of recidivism.

Whoever breaches any other provision hereof shall be sentenced to a fine amounting to AED 10,000 at least and AED 250,000 at most.

2- The court may rule to confiscate the materials, subject of the action, and order the destruction thereof at the expense of the convict or the referral thereof to public authorities who may deal with or benefit from them. Should the crime be perpetrated in the name or for the account of a juridical person or a commercial or professional establishment, the court may order the shutdown thereof for a period not exceeding six months. A summary of the convicting ruling shall be published in one or more daily newspapers at the expense of the convict.

Article 34

The sanctions set forth herein shall not breach any severer sanction set forth in any other law.

Article 35 - Death of the Inventor without an Inheritor or a Legatee

The Ministry shall undertake the right of the inventor upon the protected species should the latter pass away without an inheritor or a legatee.

Article 36 - Term of Judicial Appeal

A judicial appeal may be filed against administrative decisions issued subsequent to the present law within a period of 60 days from the date of publication in the Official Gazette or the notification of the person concerned, as the case may be.

Article 37 - Judicial Investigation Officers

The Minister of Justice, in agreement with the Minister, shall issue a decision to determine the officials having the capacity of judicial investigation officers in the application of the provisions hereof.

Article 38 - Fees

The holder of the rights shall pay the due annual fees within the first 30 days of every year of the protection period.

Article 39

The Cabinet shall issue a decision to determine the fees as per the provisions hereof.

Article 40

The Minister shall issue the Implementing Regulation hereof and the decision required for the implementation hereof.

Article 41

Every provision contradicting with or contravening the provisions hereof shall be abrogated.

Article 42

The present Law shall be published in the Official Gazette and shall come into force as of the day that follows the date of publication thereof.

Promulgated in the Presidential
Palace in Abu Dhabi
On 14 Muharram 1431 H.
Corresponding to 31/12/2009

Khalifa Bin Zayed Al Nahyan
President of the United Arab Emirates State

This Federal law has been published in the Official Gazette, issue no. 503 p.13
