

# PLANT VARIETY RIGHTS ACT

Passed 25 March 1998

(RT\* 11998, 36/37, 553),  
entered into force 1 July 1998,  
amended by the following Act: 19.01.2000  
entered into force 0 1.03.2000 - RT 12000, 10, 56.

## CHAPTER I

### GENERAL PART

#### Section 1

##### *Scope of application of Act*

- (1) This Act provides the legal regulation of applications for plant variety rights and the grant of plant variety rights, and ensures the rights of holders of plant variety rights.
- (2) This Act applies to varieties of all plant genera and species, including hybrids between genera or species.

#### Section 2

##### *Variety and essentially derived variety*

- (1) "Variety" means a plant grouping within a single botanical taxon of the lowest known rank which is defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, is distinguished from other plant groupings by the expression of at least one of the said characteristics and is considered as a unit with regard to its suitability for being propagated unchanged. Such plant grouping is deemed to be a variety irrespective of whether the conditions for the grant of a plant variety right are fulfilled or not.
- (2) A plant grouping consists of entire plants or parts of plants (hereinafter variety constituents) which are capable of producing entire plants with the same characteristics.
- (3) A variety is deemed to be essentially derived from another variety if it is predominantly derived from the initial variety or a variety that is itself predominantly derived from the initial variety, it is clearly distinguishable from the initial variety, and, except for the differences which result from the act of derivation, 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.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (4) Essentially derived varieties may be obtained by the selection of a mutant or a variant individual of the initial variety, by back-crossing, transformation by genetic engineering, somatic cloning, or other such method. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

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\* RT = Riigi Teataja = State Gazette

### Section 3

#### *Conditions for grant of plant variety right*

- (1) A plant variety right shall be granted if a variety is:
  - 1) new;
  - 2) distinct;
  - 3) uniform;
  - 4) stable; and
  - 5) has a suitable denomination.
- (2) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).

### Section 4

#### *Novelty*

- (1) A variety is deemed to be new if, on the date of filing an application for the plant variety right with the registrar, the seed, propagating material, variety constituents or plant material of the variety have not been sold or otherwise disposed of to others, by or with consent of the owner, for the purposes of exploitation of the variety for longer than:  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
  - 1) one year in the territory of Estonia;
  - 2) four years in the territory of another state or, in the case of trees and grapevine, for longer than six years.
- (2) The conditions for novelty of a variety are deemed not to be violated if:
  - 1) the variety is sold or used for production without the knowledge of the owner in violation of the owner's rights;
  - 2) the variety is sold for the purpose of transfer of the right of ownership in the variety;
  - 3) the owner of the variety enters into an agreement for the production of seeds or propagating material of the variety for the owner's own use, and the variety has not been sold or used for the production of seeds or propagating material for other varieties;
  - 4) the variety is used under an agreement in field trials, laboratory trials or small scale processing trials with a view to evaluating the variety;
  - 5) the variety is used in national agricultural value and use tests for the purpose of entry into the official list of plant varieties (hereinafter *Variety List*);
  - 6) the variety is used in trials connected to the evaluation of resistance to plant diseases and pests;

- 7) the variety is displayed at an official exhibition or described in an exhibition catalogue;
- 8) the plant material produced or harvested in the course of the activities listed in clauses 3), 4) or 5) of this subsection is sold as a by-product without variety identification.

#### Section 5

##### *Distinctness of variety and known variety*

- (1) A variety is deemed to be distinct if it is clearly distinguishable by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes from any other variety whose existence is a matter of common knowledge at the time of filing of an application.
- (2) A variety is deemed to be a matter of common knowledge from the date of filing an application for the plant variety right or for entry in the *Variety List*, provided that after the submission of the application the plant variety right is granted or the variety is entered in the *Variety List*. All varieties which have been described in print materials, are used in production, sold or have been described in official catalogues are also deemed to be a matter of common knowledge. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 6

##### *Uniformity of variety*

A variety is 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 the expression of those characteristics which are included in the examination for distinctness, as well as of any others used for the variety description.

#### Section 7

##### *Stability of variety*

A variety is 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..

## **CHAPTER 2**

### **STATE PLANT VARIETIES REGISTER**

#### Section 8

##### *Establishment and organisation of activities of plant variety rights register*

- (1) The register of protected varieties (hereinafter plant variety rights register) is a state register which is established pursuant to the Databases Act (RT 11997, 28, 423) on the basis of an application of the Minister of Agriculture and which contains data on applications for plant variety rights, protected varieties, holders of plant variety rights, breeders of protected varieties and issued licences.

- (2) The chief processor of the plant variety rights register is the Minister of Agriculture, and the authorised processor of the register (hereinafter registrar) is the Plant Production Inspectorate. The expenses of the plant variety rights register are covered from the budget of the Ministry of Agriculture.

## Section 9.

### *Maintenance of plant variety rights register and state fees for register entries*

- (1) The plant varieties rights register is maintained, entries are made in the register and data from the register are retained pursuant to this Act, the Databases Act and the statutes of the plant variety rights register.
- (2) State fees shall be paid for the making of register entries specified in this Act in the amount and pursuant to the procedure provided for in the State Fees Act (RT 1 1997, 80, 1344; 86, 1461; 87, 1466 and 1467; 93, 1563; 1998, 2, 47; 4, 63; 23, 321).
- (3) Persons shall provide documentary evidence of payment of state fees before the making of corresponding register entries. The state fee for each year of the term of a plant variety right shall be paid by 31 December of the previous year and the documents certifying payment of the fee shall be submitted to the registrar by 31 January.

## Section 10

### *Data entered in plant variety rights register*

- (1) The plant variety rights register is maintained as a register of applications for plant variety rights and of plant variety rights.
- (2) The following is entered in the register with respect to an application for a plant variety right:
- 1) the application for the plant variety right and the date of filing the application;
  - 2) the name and address of the applicant for the plant variety right and, if necessary, a document certifying the legal succession of the applicant;
  - 3) the identification of the botanical taxon, that is, the Latin and common names;
  - 4) the denomination proposed for the variety and the breeder's reference;
  - 5) the name or names and addresses of the breeder or breeders of the variety and the percentage of their participation in the breeding of the variety. The names and addresses of an authorised representative or representatives;
  - 6) the names and addresses of the owner or owners of the variety, and the percentage of their shares if the variety is in common ownership. The names and addresses of an authorised representative or representatives;
  - 7) a technical description of the variety;
  - 8) the date of priority;

- 9) information on acts related to the processing of the application for the plant variety right, including information on termination thereof, along with certification that the information provided by the applicant is true.
- (3) The following is entered in the register with respect to a plant variety right:
- 1) the variety denomination;
  - 2) the identification of the botanical taxon, that is, the Latin and common names;
  - 3) the official description of the variety;
  - 4) a reference of components of the variety if other varieties have to be used repeatedly for the production of propagating material;
  - 5) the names and addresses of the holder of the plant variety right, breeders and the names and addresses of their authorised representatives;
  - 6) the date of grant of the plant variety right, and data relating to the term, termination or extinguishment of the plant variety right;
  - 7) information on persons holding a licence with a reference to the type of licence.
- (4) A description of an initial variety and of a variety essentially derived therefrom is registered in the register of protected varieties, as are the variety denominations, names of holders of plant variety rights and breeders at the request of the holders of the plant variety rights or the breeders, or at the request of one of them with the consent of the others, or on the basis of a court order which includes a decision on identification of the varieties as an initial variety and an essentially derived variety.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 11

### *Access to information registered in plant variety rights register*

- (1) The following is released to persons at their request by the registrar:
- 1) data relating to applications for plant variety rights;
  - 2) data relating to technical examinations;
  - 3) data relating to plant variety rights.
- (2) If the propagating material or constituents of another variety are used for the production of the propagating material of a variety, the information specified in subsection (1) of this section are not released to other persons at the request of the applicant for the plant variety right. Such information may be released on the basis of a court ruling or court judgment, and to state agencies for the performance of duties arising from the statutes.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (3) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- (4) Access to information pertaining to the techniques used for breeding a variety and the proportional relationships of components used for production of an essentially derived variety provided in the official description of a variety registered in the plant variety rights register is restricted. Such information is released to state authorities for the performance of duties arising from their statutes and to other persons on the basis of a court ruling or court order.

## Section 12.

### *Publication of information entered in plant variety rights register*

- (1) The registrar publishes an official publication wherein the following information is published:
- 1) applications for plant variety rights received by the registrar;
  - 2) denominations proposed for varieties;
  - 3) denominations of protected varieties;
  - 4) rejected applications for plant variety rights;
  - 5) decisions on premature termination, nullification or cancellation of plant variety rights;
  - 6) information concerning extinguishment of plant variety rights;  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
  - 7) information on applicants for plant variety rights, holders of plant variety rights and breeders, on the percentages of their shares, and on their representatives;
  - 8) licences issued for the exploitation of varieties with reference to the type of licence;
  - 9) new denominations proposed for protected varieties;
  - 10) other official notices.
- (2) The registrar shall publish the publication specified in subsection (1) of this section regularly according to the receipt of information subject to publication but not less than once every four months.

## Section 13

### *Preservation of data entered in register*

The registrar shall preserve all registered data and the documents which were the bases for registration thereof for five years from the date of denial of an application for a plant variety right, or of premature termination, revocation, cancellation or extinguishment of a plant variety right.

## CHAPTER 3

### APPLICATION FOR PLANT VARIETY RIGHT

#### Section 14.

##### *Persons entitled to apply for plant variety rights*

- (1) A natural person or a legal person who is the breeder or owner of a variety has a right to apply for the plant variety right. If the breeder and owner of a variety are not the same person, the owner of the variety has the right to apply.
- (2) The breeder of a variety is a natural person or a group of persons who has bred or identified the variety by using different breeding techniques.
- (3) The owner of a variety is the person who has acquired the proprietary rights attached to the variety on a legal basis. A breeder of a variety may also be the owner of the variety. If a variety is bred by a breeder in an employment or service relationship or on order, the employer or the customer is deemed to be the owner of the variety.
- (4) If the breeder and owner of a variety are not the same person, the non-proprietary rights attached to the variety belong to the breeder of the variety and the proprietary rights attached to the variety belong to owner of the variety.

#### Section 15

##### *Contestation of right to submit application for plant variety right*

- (1) If an application for a plant variety right is submitted by a person or persons who are not lawfully entitled thereto, an interested person has, regardless of whether the person has or has not previously filed an objection, the right of recourse to the courts to have the application for the plant variety right denied or to annul the rights arising therefrom, or to transfer the rights to the person who has the right to apply for the plant variety right, regardless of whether the variety is protected or not.
- (2) An interested person may request transfer of the rights arising from a plant variety right within five years after the date of publication of the notice concerning the grant of the plant variety right.

#### Section 16

##### *Conditions for application for plant variety right*

- (1) If there are several owners of a variety, they shall submit a joint application for a plant variety right with an indication of the percentage of the share of each owner.
- (2) If a variety is bred in an employment or service relationship or on order, notarised copies of documents proving such relationship or fulfilment of such order shall be appended to the application.
- (3) Foreign legal persons and citizens of foreign states shall submit an application through a representative. An Estonian citizen, a person who holds a permanent residence permit in Estonia or a legal person registered in Estonia may be a representative.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- (4) If an applicant is the legal successor of a breeder or owner, a notarised copy of the document proving legal succession or, in the case of a legal person in private law, a copy issued by the registrar, shall be appended to the application. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 17

### *Application for plant variety right*

- (1) An application for a plant variety right shall be submitted to the registrar in Estonian in two copies, of which one is retained by the registrar and the other is returned to the applicant for the plant variety right after registration of the application. A separate application shall be submitted for the grant of a plant variety right for each variety.
- (2) The formal and substantive requirements for applications for plant variety rights are established by a regulation of the Minister of Agriculture.
- (3) Documents certifying payment of the state fee shall be appended to an application for a plant variety right.
- (4) An applicant for a plant variety right is responsible for the correctness of the information contained in the application for the plant variety right.

## Section 18.

### *Priority*

- (1) Priority for the grant of protection of a variety shall be determined by the date of receipt of an application for a plant variety right by the registrar. If several applications for the grant of a plant variety right for the same variety are received on one day, priority shall be determined according to the order in which they are received. Provisional protection of a variety commences from the date of priority.
- (2) At the request of an applicant for a plant variety right, priority may be determined based on the date of application for a plant variety right in a foreign state if the applicant for the plant variety right applied for protection of the same variety in another state before submission of the application for the plant variety right, not more than one year has passed from the date of registration in the foreign state, and the person submits to the registrar a copy of the application for a plant variety right registered in a foreign state with a translation in Estonian within three months after the date of receipt of the application for the plant variety right by the registrar.
- (3) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)



## CHAPTER 4

### PROCESSING OF APPLICATIONS, TECHNICAL EXAMINATIONS AND OBJECTIONS

#### Section 19.

##### *Preliminary processing of application*

- (1) The preliminary processing of an application for a plant variety right shall be carried out by the registrar within one month after registration of the application, and includes the determination of priority, and the examination of the existence and conformity of required documents.
- (2) During preliminary processing, the registrar has the right to request additional documents and materials from an applicant for a plant variety right. Such documents and materials shall be submitted by an applicant for a plant variety right within one month after receipt of a request.
- (3) If an applicant for a plant variety right does not submit the requested documents or materials during the term prescribed, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant for the plant variety right shall be notified in writing.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 20.

##### *Official processing*

- (1) Determination of a priority date, and ascertainment of the existence and conformity of necessary documents is followed by the official processing of an application for a plant variety right and the conduct of a state technical examination of the variety, of which the applicant for the plant variety right shall be notified in writing.
- (2) In the course of the official processing of an application for a plant variety right, the registrar determines whether:
  - 1) the variety is new, and
  - 2) the person applying for the plant variety right is so entitled.
- (3) If in the course of official processing it is ascertained that a variety does not comply with the conditions for the grant of a plant variety right provided for in this Act, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant for the plant variety right shall be notified in writing.

#### Section 21.

##### *Technical examination*

- (1) The technical examination of a variety determines:
  - 1) whether it belongs to the botanical taxon stated in an application;

- 2) its distinctness;
  - 3) its uniformity; and
  - 4) its stability.
- (2) Technical examination shall be carried out in a place and during a time prescribed by the registrar.
  - (3) The Procedure for technical examinations is established by a regulation of the Minister of Agriculture.
  - (4) The registrar may decline to carry out the technical examination of a variety if the distinctness, uniformity and stability of the variety have been determined previously by a technical examination by a corresponding national agency of a foreign state, and an official description and report on the results of the examination of the variety are available.

## Section 22.

### *Documents and materials required for technical examinations*

- (1) An applicant for a plant variety right is required to submit the documents and seeds or propagating material necessary for a technical examination to the conductor of the technical examination.
- (2) The conductor of a technical examination determines where, with what quality and in what quantity the seeds or propagating material of the variety specified in an application for a plant variety right, and of reference varieties which may be requested, are to be submitted by the applicant for a plant variety right for the technical examination.
- (3) Upon failure to fulfil or unsatisfactory fulfillment of the obligations provided for in subsections (1) and (2) of this section without good reason the conductor of the technical examination may deem the examination to be a failure. Upon the failure of a technical examination, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant for the plant variety right shall be notified in writing.

## Section 23.

### *Organisers, expenses and results of technical examinations*

- (1) Technical examinations are organised by the Plant Production Inspectorate, state agencies or legal persons authorised by the Ministry of Agriculture for this purpose and state authorities of foreign states engaged in the protection of varieties. Authorised state agencies or legal persons and state authorities of foreign states engaged in the protection of varieties may conduct technical examinations pursuant to agreements entered into with the registrar and under the state supervision of the registrar. Such examination offices are required to conduct technical examinations in accordance with established guidelines for technical examinations. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (2) No state fee is charged for a technical examination. Expenses related directly to the organisation of a technical examination by the Plant Production Inspectorate shall be paid by the applicant for the plant variety right on the basis of an invoice submitted to the applicant. Direct expenses shall be substantiated by expense receipts, the copies of which shall be submitted to the applicant for the plant variety right together with the invoice.

- (3) A technical examination conducted by an authorised state agency or legal person or in a foreign state shall be paid for by the applicant for the plant variety right on the basis of an invoice submitted to the applicant.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (4) If the results of a technical examination show that a variety meets the requirements established in this Act for distinctness, uniformity and stability, the registrar shall compile an official description of the variety on the basis of the results of the technical examination.
- (5) If a variety does not meet the requirements for distinctness, uniformity and stability, the registrar shall make a reasoned decision to refuse to grant a plant variety right with respect to the variety, of which the applicant shall be notified in writing.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 24.

### *Filing of objections*

- (1) Interested persons may file an objection to an application for a plant variety right within six months after publication of the application for the plant variety right. Objections may be filed with regard to:
  - 1) novelty,
  - 2) distinctness,
  - 3) uniformity or
  - 4) stability of a variety; or
  - 5) the right to apply for the plant variety right.
- (2) An objection shall be filed with the registrar in writing with documents substantiating the objection appended thereto. An objection remains in force until it is withdrawn. An objection may be withdrawn at any time by the person who files it. The registrar shall notify the applicant for the plant variety right of the filing and withdrawal of objections in writing.
- (3) A person who files an objection has the right to obtain documents and seeds or propagating material from the registrar, the conductor of the technical examination or the applicant for the plant variety right in order to prove the facts presented in the objection of the person.

## Section 25.

### *Preparation for review of objection*

- (1) Within three months after receipt of an objection or within a longer term agreed to with the registrar, an applicant for a plant variety right shall present the applicant's position concerning the objection and give notice whether the applicant wishes to maintain, amend or withdraw the application.
- (2) If an applicant for a plant variety right does not respond to an objection within the prescribed term, the applicant's application for the plant variety right is deemed to have been withdrawn.
- (3) If an applicant for a plant variety right wishes to maintain, amend or withdraw the application for the plant variety right, the registrar shall notify the person who filed the objection of the action of the applicant and send the position of the applicant with regard to the objection to the objector, and, if needed, the amendments made to the application for the plant variety right. On the basis of such

information, the objector shall give notice within one month as to whether the objector wishes to maintain or withdraw the objection.

#### Section 26.

##### *Review of objections*

- (1) An objection filed with regard to the novelty of a variety or the rights of an applicant and which is maintained shall be reviewed separately from the processing of the application for the plant variety right. If an objection is filed with regard to the distinctness, uniformity or stability of a variety, a new technical examination may be conducted pursuant to a precept of the registrar.
- (2) The conditions for conduct of a new technical examination and the procedure for ascertainment or refutation of facts presented in an objection are established by the registrar.
- (3) The hearing of an objection is organised by the registrar and all persons interested in the ruling may participate personally or through a representative. A reference to the decision adopted at the hearing of an objection shall be made in the decision made by the registrar concerning the grant or refusal to grant the plant variety right.

### CHAPTER 5

#### VARIETY DENOMINATION

#### Section 27.

##### *Variety denomination*

- (1) A proposal for a variety denomination shall be submitted to the registrar for approval in an application for a plant variety right.
- (2) In the case of a known variety, the variety denomination designated earlier shall be proposed in an application for a plant variety right.
- (3) If an applicant applies for a plant variety right simultaneously in Estonia and in one or several foreign states with respect to the same variety, the applicant for the plant variety right shall propose the same variety denomination.
- (4) After the grant of a plant variety right, persons who exploit, offer for sale or sell a variety shall use the variety only under its approved variety denomination.
- (5) After a plant variety right extinguishes, the variety shall continue to be used under the approved variety denomination.

#### Section 28.

##### *Requirements for variety denomination*

- (1) A variety denomination may consist of words or figures, or of a combination of letters and figures provided that the denomination allows the variety to be identified and is in accordance with good morals.

- (2) In addition to the requirements provided for in subsection (1) of this section, a variety denomination shall:
- 1) clearly differ from variety denominations used for other known varieties of the same or a closely related botanical taxon;
  - 2) be clearly distinguishable from relevant officially registered trade marks, trade names and business names registered in the commercial register;  
(19.01.2000 entered into force 0 1.03.2000 - RT 12000, 10, 56)
  - 3) be linguistically suitable.
- (3) A variety denomination shall not:
- 1) consist of signs or indications which are used in the production of seeds or propagating material and which designate a specific product, quality, quantity, intended purpose, or place or time of production;
  - 2) cause confusion or mislead as to the characteristics, value or geographical origin of the variety, or as to the use of the name of the breeder or owner of the variety.

#### Section 29.

##### *Grounds for refusal of proposed variety denomination*

A denomination proposed in an application for a plant variety right shall be declared unsuitable by the registrar if the denomination does not meet the requirements provided for in Section 28 of this Act.

#### Section 30.

##### *Objections to proposed variety denomination*

- (1) Interested persons may file an objection to the registration of a published denomination proposed for a variety within three months after the date of publication of the proposed variety denomination in the official publication of the registrar. An objection shall be filed in writing together with the reasons therefor.
- (2) The applicant for a plant variety right and persons who file objections shall be notified of all objections filed against a proposed variety denomination and of the reasoned decisions made by the registrar concerning such objections within one month after the date on which such decisions are made.

#### Section 31.

##### *Examination of variety denomination, proposal for new denomination and registration of variety denomination*

- (1) The registrar examines the conformity of variety denominations to the requirements provided for in this Act by making inquiries to corresponding databases in Estonia and foreign states. Applicants for plant variety rights are notified of the results of such inquiries.

- (2) If the registrar ascertains that a denomination proposed for a variety does not meet the requirements provided for in this Act, the applicant for the plant variety right shall make a new proposal within thirty days. The new denomination proposed for the variety shall be examined according to subsection (1) of this section.
- (3) If a new denomination proposed for a variety by an applicant for a plant variety right does not meet the requirements provided for in this Act, the registrar has the right to issue a precept to submit a proposal in conformity with the requirements. If an applicant for a plant variety right fails to propose a suitable variety denomination, the registrar shall make a reasoned decision to deny the application for the plant variety right, of which the applicant for the plant variety right shall be notified in writing.
- (4) Variety denominations which meet the requirements arising from this Act shall be approved by the registrar and entered in the plant variety rights register.

#### Section 32.

##### *Change of variety denomination*

- (1) A change of a variety denomination approved by the registrar and entered in the plant variety rights register is commenced:
  - 1) on the decision of the registrar if after approval of the variety denomination and entry thereof in the plant variety rights register it becomes evident that the variety denomination does not meet the requirements provided for in this Act;
  - 2) at the request of the holder of the plant variety right, if the holder adduces a valid reason for changing the variety denomination;  
(19,01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- 3) at the request of the registrar, holder of the plant variety right or other interested person and on the basis of a court order which has entered into force.
- (2) A change of a variety denomination is effected according to the requirements and procedure provided for approval of variety denominations in this Act. A change of a variety denomination enters into force on the date of entry of the change in the plant variety rights register.

### **CHAPTER 6**

#### **APPLICATION OF PLANT VARIETY RIGHTS**

#### Section 33.

##### *Grant of plant variety right*

- (1) A plant variety right is granted with respect to a variety by a decision of the registrar if the requirements for varieties provided by this Act and legislation established on the basis thereof, the conditions for application for a plant variety right and the requirements and obligations for applicants for a plant variety right are complied with.

- (2) On the date of making a decision to grant a plant variety right, the registrar shall make a corresponding register entry in the plant variety rights register and shall notify the applicant for the plant variety right of the grant of the plant variety right in writing.

Section 34.

*Certificate of plant variety right*

- (1) At the request of a holder of a plant variety right entered in the plant variety rights register, the registrar shall issue a plant variety right certificate to the holder which is valid during the term of the plant variety right.
- (2) The formal and substantive requirements for plant variety right certificates are established by a regulation of the Minister of Agriculture.

Section 35.

*Refusal to grant plant variety right*

- (1) The registrar shall refuse to grant a plant variety right and deny an application for a plant variety right upon non-compliance with any requirement or obligation provided for in this Act or legislation established on the basis thereof.
- (2) An entry concerning denial of an application for a plant variety right is made in the plant variety rights register. Provisional protection of the variety is deemed to cease as of the date of such entry.

Section 36.

*Term of plant variety right and provisional protection of variety*

- (1) The term of a plant variety right entered in the plant variety rights register is twenty-five years or, in the case of varieties of tree and grapevine species, thirty years, after the date of the grant of the right and of making the entry in the plant variety rights register.
- (2) The registrar has the right to extend the term of a plant variety right by up to five years by a decision of the registrar on the basis of a written application submitted by the holder of the plant variety right before expiry of the term of the plant variety right.
- (3) Provisional protection of a variety applies to a variety with respect to which an application for a plant variety right has been submitted to the registrar, according to all the principles of plant variety rights provided by this Act, during the period from the date of submission of an application for the plant variety right to the registrar up to the denial of the application for the plant variety right or the grant of the plant variety right.

Section 37.

*Basic rights of holder of plant variety right*

- (1) With respect to seeds or propagating material of a protected variety, the holder of the plant variety right has the right to:

- 1) produce or reproduce (multiply) the seeds or propagating material for the purposes of sale;
  - 2) condition the seeds or propagating material for the purpose of propagation;
  - 3) offer for sale;
  - 4) sell or transfer in any other way;
  - 5) export
  - 6) import;
  - 7) stock for any of the purposes specified in clauses 1) to 6) of this subsection.
- (2) The holder of a plant variety right has the right to issue licences to other persons for the performance of acts specified in clauses (1) 1) to 7) of this section.

#### Section 38.

##### *Nature of plant variety right*

- (1) Any person who wishes to carry out the acts listed in clauses 37 (1) 1) to 7) of this Act with the seeds or propagating material of a protected variety shall obtain a licence therefor from the holder of the plant variety right.
- (2) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (3) The seeds, propagating material or plant material of a protected variety offered for commercial purposes by the holder of the plant variety right or on the basis of a licence issued by the holder of the plant variety right may be used for any purpose except for further multiplication or export into a foreign state where the varieties of such genera or species are not protected. Such export restrictions are not applied if the plant material of the protected variety is exported for final consumption purposes. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 39.

##### *Scope of plant variety right*

- (1) Clauses 37 (1) 1)-7) of this Act apply also to the production of seeds or propagating material of specific species of a protected variety for the purpose of repeated reproduction (multiplication) for one's own use. The procedure for application and the list of species are established by a regulation of the Minister of Agriculture.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (2) Clauses 37 (1) 1)-7) of this Act apply to harvested material which is produced by using the seeds or propagating material of a protected variety except if the holder of the plant variety right did not use the holder's rights with respect to the seeds and propagating material.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (3) Clauses 37 (1) 1)-7) of this Act also apply to varieties:  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- 1) which are essentially derived from a protected variety if the protected variety is not an essentially derived variety;
  - 2) which are not clearly distinguishable from the protected variety according to subsection 5 (1) of this Act;



- 3) where the protected variety is used repeatedly for production of the seeds or propagating material of the variety.

#### Section 40.

##### *Use of protected variety without licence*

A protected variety may be used without a licence issued by the holder of the plant variety right:

- 1) in scientific research and in official trials conducted for the purposes of comparison;
- 2) as parental material for the purpose of breeding new varieties;
- 3) privately, and for non-profit purposes.

#### Section 41.

##### *Transfer of rights*

- (1) The holder of a plant variety right may transfer the proprietary rights attached to the variety to another person who shall be deemed to be the legal successor of the holder of the plant variety right with respect to the rights transferred. The rights of a holder of a plant variety right who is a natural person transfer to his or her successor,
- (2) Third persons do not have the right to contest the right to apply for a plant variety right, the right to an application already submitted, provisional protection of a variety, the transfer of the rights of a holder of a plant variety right or a change in a share before the corresponding entry is made in the plant variety rights register.

#### Section 42.

##### *Registration of new holder*

- (1) Legal successors and successors shall register transfers of rights and changes in shares in the plant variety rights register. The documents submitted to the registrar which prove a transfer of rights or a change in shares shall be notarised.
- (2) The registrar shall make a decision concerning amendment of information entered in the plant variety rights register on the basis of an application and documents submitted, and enter the new information in the plant variety rights register within one month after submission of such documents.
- (3) Any act connected with the transfer of the right to apply for a plant variety right, transfer of the rights of a holder of a plant variety right or a change in shares is not binding on third persons or subject to performance before amendment of the entry in the plant variety rights register.

## CHAPTER 7

### LICENCES

#### Section 43.

##### *Issue of licence on basis of licence agreement and validity of licence*

- (1) A holder of a plant variety right, that is, a licensor, has the right to grant the right of exploitation of a protected variety belonging to the holder to another person, that is, a licensee, on the basis of a licence agreement entered into by the parties for a specified term or unspecified term and for a licence fee or without charge.
- (2) If a protected variety has several licensors, a licence may be issued only with the written consent of all licensors. Licence fees paid on the basis of a licence agreement shall be divided among the licensors according to their shares as registered in the plant variety rights register unless otherwise agreed by the licensors.
- (3) The term of a licence issued by a licensor arises from the licence agreement. If a licence agreement is for an unspecified term, the licence is deemed to be issued for the term of the plant variety right.

#### Section 44.

##### *Rights of licensor in issue of licence*

- (1) A licensor has the right to grant the right:
  - 1) to exploit a protected variety on the basis of an exclusive licence only to one licensee;
  - 2) to exploit a protected variety on the basis of non-exclusive licenses to several licensees, or
  - 3) to transfer the right to exploit a protected variety on the basis of sublicences to one or several licensees.
- (2) A licensor has the right to issue several different licences to the same person.
- (3) The issue of any type of licence does not deprive the licensor of the basic rights belonging to the licensor on the basis of subsection 37 (1) of this Act.

#### Section 45.

##### *Requirements for licence agreements*

- (1) A licence agreement shall be entered into in writing.
- (2) A licence agreement shall set out the following:
  - 1) information on the parties to the agreement;
  - 2) the denomination and description of the variety to be exploited;

- 3) the extent, purpose and method of exploitation of the variety;
- 4) the territory of exploitation of the variety;
- 5) the starting date and expiry date of the licence;
- 6) the type of licence and a description of the rights being transferred;
- 7) possible restrictions to third persons in the exploitation of the variety;
- 8) the licence fee to be paid by the licensee, and the term and procedure for payment thereof;
- 9) liability of parties upon failure to perform or unsatisfactory performance of a contractual obligation;
- 10) other terms agreed to by the parties.

#### Section 46.

##### *Registration and disclosure of licence agreements*

- (1) A licensor shall submit a licence agreement to the registrar for registration in the plant variety rights register. The registrar shall register valid licence agreements in the plant variety rights register within ten days after submission thereof ~ 9 (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (2) Parties have the right to request publication of a licence agreement by the registrar. A licence agreement is published in the official publication of the registrar if so requested by at least one of the parties to the licence agreement.

#### Section 47.

##### *Compulsory licences*

- (1) A compulsory licence is a non-exclusive licence which may be issued by a directive of the Minister of Agriculture in the cases provided for in Section 48 of this Act to one or several persons who apply for a licence to exploit a protected variety.
- (2) Legislation on the basis of which a compulsory licence is issued shall include the information provided for in clauses 45 (2) 1) to 8) of this Act.
- (3) The licensor retains the right to issue licences during the term of a compulsory licence.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 48.

##### *Need for compulsory licence*

A compulsory licence is issued if:

- 1) exploitation of a protected variety is necessary in the public interest, and

- 2) the licensor has not exploited the variety or issued a licence to other persons for exploitation of the protected variety during three years after the grant of the plant variety right.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

Section 49.

*Other conditions for compulsory licences*

- (1) A licence fee is prescribed upon the grant of a compulsory licence which is payable by the licensee to the holder of the plant variety right. The licence fee shall be based on the average licence fee applied for corresponding species. In the case of a compulsory licence for exploitation of an essentially derived variety, payment of a fee to the holder of the initial variety right shall also be prescribed.
- (2) A licensor is required to sell seed or propagating material to a licensee in a quantity necessary for reproduction (multiplication) of the variety for the usual price of a similar variety. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (3) A compulsory licence is issued for a term of two to four years. If one of the situations provided for in Section 48 of this Act continues to exist at the end of the term of a compulsory licence, the Minister of Agriculture has the right to extend the term of the compulsory licence by up to four years.

Section 50.

*Revocation of compulsory licence*

A compulsory licence is revoked by the Minister of Agriculture on the proposal of the registrar or the licensor if:

(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- 1) the licensee violates the terms of the compulsory licence;
- 2) the need for the licence ceases to exist.

Section 51.

*Registration and contestation of compulsory licences*

- (1) The issue, extension, expiry and revocation of compulsory licences are registered in the plant variety rights register.
- (2) A licensor has the right to contest the issue of a compulsory licence or the terms thereof in court.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## CHAPTER 8

### VALIDITY OF PLANT VARIETY RIGHT

#### Section 52.

##### *Cancellation of plant variety right*

- (1) The registrar shall suspend a plant variety right by a decision of the registrar if the holder of the plant variety right:
  - 1) fails to fulfil the obligation to maintain the variety;
  - 2) fails to submit, during the specified term, information or documents concerning maintenance of the variety, or seeds or propagating material of the variety for the exercise of supervision;
  - 3) fails to guarantee the uniformity and stability of the variety;
  - 4) fails to propose a new denomination during the specified term.
- (2) The registrar has the right to suspend a plant variety right if the holder of the plant variety right is previously notified thereof in writing and a term for elimination of deficiencies is specified. If the holder of the plant variety right fails to eliminate the deficiencies during the specified term, the registrar shall make an entry in the plant variety rights register concerning cancellation of the plant variety right on the basis of a decision of the registrar. The plant variety right is suspended as of the date of making the corresponding entry in the plant variety rights register, and the holder of the plant variety right shall be notified thereof in writing.
- (3) The holder of a plant variety right who fails to perform all the acts necessary for elimination of deficiencies during the term specified by the registrar with good reason has the right to apply to the registrar for extension of the term. An application for extension of a specified term shall be submitted in writing before expiry of the specified term.
- (4) The registrar makes decisions to satisfy or deny applications submitted on the basis on subsection (3) of this section. Upon satisfaction of an application, the holder of the plant variety right shall be notified in writing of the new term which shall commence on the date of receipt of the corresponding notice and shall be at least as long as the previous term.

#### Section 53.

##### *Premature termination of plant variety right*

- (1) A plant variety right is terminated prematurely:
  - 1) on the basis of a written application submitted to the registrar by the holder of the plant variety right;
  - 2) on the decision of the registrar if the holder of the plant variety right fails to pay the state fee to keep the plant variety right in force or fails to submit the documents certifying payment of the state fee during the term provided for in Section 9 of this Act.

- (2) The date of termination of the plant variety right shall be indicated by the holder of the plant variety right in an application specified in clause (1) 1) of this section; in the absence of a date of termination, the plant variety right is deemed to expire on the date of receipt of the application.

Section 54.

*Nullity of plant variety right*

- (1) The registrar shall make a decision to declare a plant variety right null and void on the registrar's own initiative or on the basis of an application of an interested person if after the grant of the plant variety right it becomes evident and is proved that:
- 1) the variety did not meet the conditions for novelty and distinctness at the time priority was determined for the plant variety right;
  - 2) the variety was granted protection on the basis of documents and the results of a technical examination conducted by an appropriate agency of a foreign state submitted by the applicant for the plant variety right and did not meet the conditions for uniformity and stability;
  - 3) the plant variety right certificate was issued to a person who was not entitled to apply for the plant variety right.
- (2) The registrar shall make an entry concerning the nullity of a plant variety right in the plant variety rights register, of which the holder of the plant variety right shall be notified in writing. Upon declaring a plant variety right null and void, it is deemed to be null and void from inception.

Section 55.

(Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

**CHAPTER 9**

**SUPERVISION, MAINTENANCE OF VARIETY AND RESOLUTION OF DISPUTES**

Section 56.

*Supervision*

The registrar, through its officials (hereinafter supervisory officials), exercises state supervision over compliance with the requirements and fulfillment of obligations arising from this Act and legislation established on the basis thereof.

Section 57.

*Maintenance of variety*

- (1) The holder of a plant variety right is required to guarantee maintenance of the protected variety or its constituents for the whole term of the plant variety right.

- (2) The registrar shall maintain official samples or samples of protected varieties. At the request of and during the term specified by the registrar, the holder of a plant variety right is required to provide the registrar with samples or constituents of the protected variety for the purposes of:
  - 1) renewing the official sample of the variety; or
  - 2) conducting examinations related to protection of the variety.

#### Section 58.

##### *Supervision over maintenance of protected varieties*

- (1) The registrar exercises supervision over maintenance of a protected variety during the period of protection of the variety. Supervision over a protected variety means verification of the variety identity and identity of its constituents on the basis of information and documents submitted by the holder of the plant variety right pertaining to maintenance of the variety, and on the basis of laboratory or post-control trials, or other field trials conducted with the seed or propagating material of the protected variety.
- (2) At the request of and during the term specified by the registrar, the holder of a plant variety right is required to submit to the registrar information and documents pertaining to maintenance of the protected variety, and seed or propagating material of the protected variety.
- (3) If it is established on the basis of the outcome of supervision that the characteristics of plants grown from the seed or propagating material submitted by the holder of a protected variety do not compare to the characteristics described in the official variety description or to the characteristics of plants grown from the official sample of the variety, the variety is deemed to not have been maintained.

#### Section 59.

##### *Resolution of disputes*

- (1) Disputes arising upon the implementation of this Act and legislation established on the basis thereof are resolved in court. In order to achieve an extra-judicial resolution to a dispute arising from a decision of the registrar, any interested person has the right to file an appeal with the Appeal Board established by a directive of the Minister of Agriculture. The registrar does not have the right of recourse to a court or to file an appeal for review of the conformity of a decision of the registrar with the law.
- (2) The Appeal Board shall meet as required. The Appeal Board has the right to declare the decisions of the registrar lawful or unlawful. If a decision of the registrar is declared unlawful, the registrar is required to make a new decision.
- (3) Any interested person has the right of recourse to a court in order to appeal a decision of the registrar, regardless of the decision of the Appeal Board.

## CHAPTER 10

### LIABILITY

#### Section 60.

##### *Bases for liability*

- (1) Natural persons are liable for violation of this Act and legislation established on the basis thereof pursuant to the procedure provided for in the Code of Administrative Offences (RT 1992, 29, 396; RT 11997, 60-68, 1109; 73, 120 1; 8 1, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561, 1563, 1564 and 1565; 1998, 2, 42; 17, 265; 23, 32 1) and the Criminal Code (RT 1992, 20, 288; RT I 1997, 21/22, 353; 28, 423; 30, 472; 34, 535; 51, 824; 52, 833 and 834; 81, 1361; 86, 1461; 87, 1466, 1467 and 1468; 1998, 2, 42; 4, 62; 17, 265).
- (2) Legal persons are liable pursuant to this Act.

#### Section 61.

##### *Persons with right to impose punishments and proceedings concerning administrative offences by legal persons*

- (1) The Director General of the Plant Production Inspectorate, his or her deputy and state inspectors have the right to prepare reports on administrative offences by legal persons and to impose administrative punishments pursuant to the Code of Administrative Offences.
- (2) The officials specified in subsection (1) of this section have the right to impose fines of up to 25 000 kroons. Administrative court judges may impose fines in the amounts prescribed in Section 62 of this Act.
- (3) Proceedings concerning administrative offences by legal persons are conducted pursuant to the procedure provided for in the Code of Administrative Offences unless otherwise provided by this Act.

#### Section 62.

##### *Fines imposed on legal persons*

If a legal person:

- 1) submits false information in an application for a plant variety right, a fine of up to 25 000 kroons is imposed;
- 2) violates the obligations regarding the use of variety denominations or unsatisfactorily performs such obligations, a fine of up to 25 000 kroons is imposed;
- 3) fails to fulfil the terms of a compulsory licence or unsatisfactorily performs such terms, a fine of up to 50 000 kroons is imposed;
- 4) violates the obligation to provide samples or constituents or to submit information, documents, seed or propagating material, or unsatisfactorily performs such obligations, a fine of up to 35 000 kroons is imposed;



- 5) conducts a technical examination in violation of the examination guidelines, a fine of up to 75 000 kroons is imposed;
- 6) exploits a protected variety without a licence, a fine of up to 100 000 kroons is imposed.

## CHAPTER 11

### IMPLEMENTATION OF ACT

#### Section 63.

##### *International co-operation*

- (1) The registrar has the right to co-operate within the limits of its competence with state authorities of foreign states in the following areas:
  - 1) exchange of information and documents pertaining to the protection of varieties;
  - 2) testing of varieties;
  - 3) verification of the identity of varieties and of maintenance of varieties.
- (2) In connection with an application for a plant variety right or protection of a variety, the registrar shall if necessary provide information on varieties protected in Estonia to the state authorities of foreign states at their request.

#### Section 64.

##### *Protection of known varieties*

- (1) Notwithstanding the provisions of Section 3 and 4 of this Act, the registrar has the right to grant a plant variety right with respect to a known variety on the condition that the application for the plant variety right was submitted not later than by 1 November 2000, and:  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
  - 1) the variety has been entered in the Variety List, the list of recommended varieties pursuant to Section 7 of the Seed and Plant Propagating Material Act (RT 11998, 52/53, 771), the common catalogue of the European Union or in a catalogue of a foreign state which co-operates with Estonia in the area of plant variety protection;  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
  - 2) the holder of the plant variety right has submitted an application for a plant variety right in a foreign state which co-operates with Estonia in the area of plant variety protection and the plant variety right has been granted in that state;
  - 3) the registrar ascertains that the variety has ceased to be new for the purposes of this Act, or that the variety has become known for any other reason which is not specified in this Act.

- (2) If a plant variety right is granted on the basis of this section, the term of plant variety right is calculated as of the date the variety became known in one of the ways specified in clauses (1) 1)-3) of this section.  
(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (3) If a plant variety right is granted pursuant this section, the holder of the plant variety right shall undertake in writing to issue licences with sufficient terms and to give consent to extend such licences if necessary in order to allow for exploitation of the variety.

#### Section 65.

##### *Protection of varieties with valid certificates*

- (1) Upon the entry into force of this Act, the varieties for which a certificate was issued by the Ministry of Agriculture of the former Union of Soviet Socialist Republics or on the basis of the Plant Variety Rights Act (RT 11994, 23, 385; 1996, 49, 953) are deemed to be known varieties as of the date of issue of the certificate.
- (2) Varieties where twenty five years have not passed from the issue of a certificate specified in subsection (1) of this section or, in the case of varieties of tree and grapevine species, thirty years, are deemed to be registered in the plant variety rights register with respect to applications for the plant variety rights and provisional protection applies thereto until the grant of a plant variety right on the bases of and pursuant to the procedure provided for in this Act or until 31 December 2000.

#### Section 66.

##### *Varieties where processing of application for plant variety right is pending*

- (1) The processing of applications for plant variety rights which were submitted before the entry into force of this Act and which are pending on the date of entry into force of this Act shall be continued pursuant to the requirements provided for in this Act.
- (2) Varieties without a plant variety right certificate which are under state agricultural value and use trials on the date of entry into force of this Act are subject to a grant of protection pursuant to the requirements provided therefor in this Act without applying the requirement for novelty of a variety provided for in this Act.

#### Section 67.

##### *Right of ownership with respect to varieties bred out of state funds*

- (1) The Republic of Estonia is the owner of varieties which were bred using state funds and granted protection before 1 July 1998.
- (2) The state exercises and fulfils the rights and obligations provided for in this Act through the state agencies authorised by the Minister of Agriculture to administer varieties as state assets.

[Sections 68-70 omitted as they amend other legislation].

Section 71.

*Entry into force of Act*

- (1) This Act enters into force on I July 1998.
- (2) The Plant Variety Rights Act (RT 11994, 23, 385; 1996, 49, 953) is repealed.