

Verified English Working Translation of Book Four
"Plant Varieties" of Law 82 year 2002 Pertaining to the Protection of Intellectual Property Rights
of Egypt, as amended by Law 26 year 2015 and by Law 144 of year 2019
[Original: Arabic]

Article 189 Bis

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

Article 189

For the purposes of this Law:

“breeder” means

- the person who bred, or discovered and developed, a variety,
 - the person who is the employer of the aforementioned person or who has commissioned the latter's work, or
 - the successor in title of the first or second aforementioned person, as the case may be;
- “variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be
- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
 - considered as a unit with regard to its suitability for being propagated unchanged.

Article 190

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

Article 191

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

Article 192

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

- (i) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety
- in the territory of Egypt earlier than one year before the date of filing of the application and
 - in a territory other than that of Egypt earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

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

The provision under the previous paragraph of Article 192.1) shall only apply to applications for protection of the breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species.

- (ii) The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the entering of a plant variety in an official register of plant varieties, or for a breeder's right certificate 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 entering of the said other variety in the official register of varieties, or to the granting of a breeder's right as the case may be.

(iii) The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(iv) The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Any decision to grant protection shall require an examination for compliance with the conditions provided for under this Article.

In the course of the examination, the Office of Plant Variety Protection may grow the variety or carry out other necessary tests, either by itself or by commissioning a third party; provided that, in any case, it takes into account the results of growing tests or other trials which have already been carried out.

Article 192Bis

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

Subject to the Fifth Paragraph of this Article, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, either during the validity of the breeder's right or after its expiration.

The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

The denomination of the variety shall be submitted by the breeder to the Office of Plant Variety Protection. If it is found that the denomination does not satisfy the requirements of the third paragraph of this Article, the Office of Plant Variety Protection shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the Office of Plant Variety Protection at the same time as the breeder's right is granted.

Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of the eighth paragraph of this Article, is obliged to use it, the Office of Plant Variety Protection shall require the breeder to propose another denomination for the variety.

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

The Office of Plant Variety Protection ensures that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the filing, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Office of Plant Variety Protection.

Any person who offers for sale or markets propagating material of a variety protected within the territory of Egypt is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of the fifth paragraph of this Article, prior rights prevent such use.

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

Article 192Bis 1

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

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

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

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

The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Office of Plant Variety Protection, any necessary information, document or material required for the purpose of the examination.

Events occurring within the period provided for in the first paragraph of this Article, such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 193

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

The term of protection shall run from the date of the granting the breeder's right certificate.

Nevertheless, provisional measures are provided to safeguard the interests of the breeder during the period between the filing date and the grant of protection. Such provisional measures shall apply only to those persons who are notified by the breeder of this filing.

Under such provisional measures, the holder of a breeder's right is entitled to equitable remuneration from any person who, during the period mentioned in the preceding paragraph, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 194 of this Law.

Article 194

Subject to Articles 195 and 198 of this Law, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the aforementioned purposes.

The breeder may make his authorization subject to conditions or limitations.

The foregoing provisions under this Article shall apply to acts in respect of harvested material, including entire plants and parts of plants, obtained through the use of propagating material of the protected variety without authorization, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

The foregoing provisions shall also apply in relation to:

- (i) varieties whose production requires the repeated use of the protected variety.
- (ii) varieties which are not clearly distinguishable from the protected variety ,
- (iii) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety

A variety shall be deemed to be essentially derived from the initial variety when

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is clearly distinguishable from the initial variety and

(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

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

Article 194 Bis

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

Article 195

The breeder's right shall not extend to:

- (i) acts done privately and for non-commercial purposes,
- (ii) acts done for experimental purposes
- (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of the Fourth Paragraph of Article 194 of this Law apply, acts provided for under the First and Second Paragraph of Article 194, in respect of such other varieties.

Subject to the safeguarding of the legitimate interests of the breeder, the breeder's right shall not be deemed infringed by farmers who, within reasonable limits, use for propagation purposes the product of the harvest which they have obtained by planting the protected variety or a variety covered by the Fourth Paragraph of Article 194 of this Law, those being done on their own holdings.

Article 196

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

Article 197

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

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

Article 198

The breeder's right shall not extend to acts concerning material of the protected variety, or of any variety covered by the provisions of the fourth paragraph of Article 194 of this Law, or any material derived from the said material, which has been sold or otherwise marketed by the breeder or with his consent in the Arab Republic of Egypt, with the exception of the following acts:

- (i) acts of additional propagation of any variety mentioned in this paragraph
- (ii) acts of export of material of the protected variety which enable its propagation in a country where the variety, its genus or genotype are not protected, unless where the exported material is for consumption purposes.

The materials provided for under the First Paragraph of this Article, which are not covered by breeder's right protection, shall mean,

- (i) propagating material of any kind,
- (ii) harvested material, including entire plants or parts of plants, and
- (iii) any product made directly from the harvested material.

Where the Statute of a regional organization of which Egypt is a Member so provide, acts done in State Members of that regional organization shall be considered to have been done in Egypt.

Article 199

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

Article 200

Cancel Article 200 of the law

Article 201

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

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

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

The Office of Plant Variety Protection shall publish, at the expense of the right holder, in a monthly gazette issued by the Office, applications for certificates and grants of breeders' rights, the proposed denominations for the variety, and approved denominations for the variety. Where an application is rejected, the Office shall notify the rejection decision and the reasons thereof. Any interested party may, within sixty (60) days from the publication date or the date of notification, as the case may be, oppose the decision to grant a certificate of breeder's right or to reject an application for the protection.

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

Article 202

Where any of the following cases is established, the Office of Plant Variety Protection shall issue a decision of annulment of the breeder's right certificate:

- (i) if, at the time of grant of protection, the plant variety does not fulfill any of the conditions provided for under items (i) and (ii) of the First Paragraph of Article 192 of this Law.
- (ii) if, at the time of grant of protection, conditions provided for under either item (iii) or (iv) of the same Paragraph of the same Article referred to in the foregoing Article are not fulfilled, where such protection had been granted based essentially on information and documents furnished by the breeder.
- (iii) if the certificate has been granted to a person who is not entitled to it, unless the right is transferred to the person who is so entitled.

The Office shall notify the annulment decision to the party concerned in a registered letter with acknowledgement of receipt, and may be appealed within sixty (60) days from the date of notification.

Article 202 Bis

The breeder's right shall be cancelled in any of the following cases:

- (i) if any of the conditions laid down in Article 192, paragraphs (3) and (4) of this Law are no longer fulfilled by the plant variety after the grant of protection.
- (ii) if the breeder does not provide the Office of Plant Variety Protection with the information documents or material necessary for verifying the maintenance of the variety. The Executive Regulations shall prescribe such information, documents or material and the rules and procedures to be followed.
- (iii) if the breeder does not pay the fees and expenses payable to keep his right in force,
- (iv) if the breeder does not propose another suitable denomination, where the denomination of the variety is cancelled after the grant of protection.

The provisions of the third and fourth paragraphs of Article 202 of this Law shall apply to notify the concerned party of the cancellation decision, the rules and procedures of examining and deciding the complaint against the decision.

Article 202 Bis 1

The provisions of Book Four of the Intellectual Property Rights Law, as referred to, shall apply to plant genera and species specified by the Minister of Agriculture, and shall apply to all genera and species at the expiration of a period of ten (10) years from the date of implementation of this Law.

Article 203

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

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

Article 204

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

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

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

Article 205

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

Article 206

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

ARTICLE II

This Law shall be published in the Official Gazette, and shall enter into force on the day following the date of its publication. It shall repeal any other provision which is contrary to its provisions.