

OMAN

**ROYAL DECREE 49/2009 PROMULGATING
THE LAW ON THE PROTECTION OF BREEDERS' RIGHTS
IN NEW VARIETIES OF PLANTS***

We, Qaboos bin Said, Sultan of Oman,

Issued on: 8 Ramadan 1430H

After perusal of the Basic Law of the State promulgated by Royal Decree 101/96;

Sultan of Oman
29 August 2009

The Royal Decree No. 92/2000 Promulgating the Law on the Protection of New Plant Varieties;

**CHAPTER I
DEFINITIONS**

The Royal Decree 37/2007 regarding accession of the Sultanate of Oman to some International Treaties related to the Protection of Intellectual Property Rights;

Article 1

In the application of this Law, the following terms and expressions shall have the meaning attached for each:

The Royal Decree 9/2008 defining functions of the Ministry of Agriculture and adopting its Administrative Structure;

(1) "breeder" means

The Royal Decree 67/2008 promulgating the Law on Industrial Property Rights

i- the person who bred, or discovered and developed, a variety, or

And according to the exigencies of public interest.

ii- the person who is the employer of the aforementioned person or who has commissioned the latter's work, or

We decree the following:

iii- the successor in title of the first or second aforementioned person, as the case may be;

Article I : Provisions of the attached Law on the Protection of the Breeders' Rights in New Varieties of Plants shall apply

(2) "breeder's right" means the right of the breeder provided for in this Law;

Article II : Referred Royal Decree 92/2000 shall be rendered null.

(3) "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

Article III : The Minister of Agriculture shall issue the bylaws and regulations necessary for the enforcement of the provisions of this Law. Pending the issuance of the bylaws and regulations, prevailing acts shall remain in force provided they do not contradict with the provisions of the Law.

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

Article IV : The Royal Decree shall be published in the Official Gazette and shall come into effect from the day following the date of its publication.

- distinguished from any other plant grouping by the expression of at least one of the said characteristics and

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* Translation provided by the Office of the Union. The Law entered into force on August 29, 2009.

- considered as a unit with regard to its suitability for being propagated unchanged;

(4) "Minister": Minister of Agriculture;

(5) "Authority": The Ministry of Agriculture is designated as the "authority";

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

(7) "member of UPOV" means a State party to the UPOV Convention of 1961/ Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act.

CHAPTER II GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES

Article 2 Purpose

(1) The purpose of this Law is to grant and protect breeders' rights.

(2) The authority is entrusted with the task of granting breeders' rights.

Article 3 Genera and Species to be Protected

This Law shall be applied to the plant genera and species designated by the Minister, and by the expiration of a period of 10 years from the date of coming into force of this Law at the latest, to all plant genera and species.

Article 4 National Treatment

(1) According to this Law, nationals of a member of UPOV as well as natural persons resident and legal entities having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of the Sultanate

of Oman the same treatment as is accorded by this Law to the nationals of the Sultanate of Oman. The said nationals, natural persons or legal entities of a member of UPOV shall comply with the conditions and formalities imposed on the nationals of the Sultanate of Oman.

(2) Nationals of any State which, not being a member of UPOV, grants reciprocity of treatment to the nationals of the Sultanate of Oman, shall enjoy national treatment in the Sultanate of Oman.

CHAPTER III CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

Article 5 Conditions of Grant

(1) The breeder's right shall be granted where the variety is

new,
distinct,
uniform and
stable.

(2) The grant of the breeder's right shall not be subject to any further conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for in this Law and that he pays the required fees.

Article 6 Novelty

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

(a) in the territory of the Sultanate of Oman earlier than one year before the date of filing of the application and

(b) in a territory other than that of the Sultanate of Oman earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) Where, according to Article 3, this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Sultanate of Oman within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

(3) The provision under paragraph (2) of this Article, shall apply to applications for protection of the breeder's right filed within one year after the provisions of the Law apply to the genera or species concerned.

Article 7 Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 8 Uniformity

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.

Article 9 Stability

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.

CHAPTER IV APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

Article 10 Filing of Applications

(1) The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed as prescribed by the bylaws.

(2) The authority shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

Article 11 Right of Priority

(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) In order to benefit from the right of priority, the breeder shall, in the application filed with the authority, claim the priority of the first application. The authority shall require the breeder to furnish, after a period of not less than 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 member of UPOV in 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.

(3) 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 authority, any necessary information, document or material required for the purpose of the examination under Article 12 of this Law.

Article 12
Examination of the Application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9 of this Law. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material as specified in the bylaws.

Article 13
Provisional Protection

Provisional protection is provided to the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall be entitled to at least equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14 of this Law.

CHAPTER V
THE RIGHTS OF THE BREEDER

Article 14
Scope of the Breeder's Right

(1)(a) Subject to Articles 15 and 16 of this Law, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

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

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

(2) Subject to Articles 15 and 16 of this Law, the acts referred to in paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

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

"1" varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

"2" varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and

"3" varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)"1", a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

"1" 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,

"2" it is clearly distinguishable from the initial variety and

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

(c) Essentially derived varieties may be obtained 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 or other means.

Article 15
Exceptions to the Breeder's Right

- (1) The breeder's right shall not extend to
- (a) acts done privately and for non-commercial purposes,
- (b) acts done for experimental purposes and
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(3) of this Law apply, acts referred to in Article 14(1) and (2) of this Law in respect of such other varieties.
- (2) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(3)(a) "1" or "2" of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.
- (3) The varieties of fruit trees, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

Article 16
Exhaustion of the Breeder's Right

- (1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(3) of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Sultanate of Oman, or any material derived from the said material, unless such acts
- (a) involve further propagation of the variety in question or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) For the purposes of paragraph (1), "material" means, in relation to a variety,

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

Article 17
Restrictions on the Exercise
of the Breeder's Right

- (1) Except where expressly provided in this Law, the free exercise of a breeder's right shall not be restricted in the territory of the Sultanate of Oman for reasons other than of public interest.
- (2) When any such restriction has the effect of the Minister granting a compulsory license whereby a third party is authorized to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 18
Measures Regulating Commerce

The breeder's right is independent of any measure taken by any relevant authority within its competence to regulate in the Sultanate of Oman 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 19
Duration of the Breeder's Right

The breeder's right shall be granted for a fixed period of 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

CHAPTER VI VARIETY DENOMINATION

Article 20 Variety Denomination

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

(b) Subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination of the variety, even after the expiration of the breeder's right.

(2) 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.

(3) The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority 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 authority at the same time as the breeder's right is granted.

(4) 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 paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to all members of UPOV under the same denomination. The authority 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.

(6) The authority shall ensure that all the other members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any member of UPOV may address its observations, if any, on the registration of a denomination to the authority.

(7) Any person who, in the Sultanate of Oman, offers for sale or markets propagating material of a variety protected in it shall be 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 paragraph (4), prior rights prevent such use.

(8) When a variety is offered for sale or marketed, it shall be 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.

CHAPTER VII NULLITY, CANCELLATION AND TERMINATION OF THE BREEDER'S RIGHT

Article 21 Nullity of the Breeder's Right

The breeder's right shall be declared null and void when any of the following is established

(a) that the conditions laid down in Articles 6 or 7 of this Law were not complied with at the time of the grant of the breeder's right,

(b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 of this Law were not complied with at the time of the grant of the breeder's right,

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

Article 22

Cancellation of the Breeder's Right

(1) The breeder's right may be cancelled if it is established that the conditions laid down in Articles 8 or 9 of this Law are no longer fulfilled.

(2) The breeder's right may be cancelled if, after being requested to do so and within the prescribed period,

(a) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(b) the breeder fails to pay such fees as may be payable to keep his right in force, or

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

Article 23

Termination of the Breeder's Right

(1) The breeder's right shall terminate when the term provided in Article 19 of this Law expires.

(2) The breeder's right shall terminate before the term expires when the breeder renounces it by written declaration addressed to the authority.

(3) Termination and assignment shall be recorded and published according to the conditions and procedures prescribed by the Bylaws.

CHAPTER VIII
FINAL PROVISIONS

Article 24

Bylaws

(1) The Minister of Agriculture shall make bylaws and issue decisions required for the implementation of the provisions of this Law, and, more particularly for the following:

(a) Procedural matters concerning applications for the grant of breeders' rights;

(b) Matters concerning variety denominations;

(c) Matters concerning examination of applications for the grant of breeders' rights;

(d) Publication requirements;

(e) Opposition procedures; and

(f) Fixing the fees to be paid for the filing of applications, breeders' certificates and the compulsory licenses in coordination with the Ministry of Finance.

(g) Data to be included in the registers concerning breeders' rights.

(2) Any interested person may file an appeal against decisions made in respect of that person, within 60 days from the date on which the said person is informed of the relevant decision, before a committee, the constitution and working methods of which shall be prescribed by the Bylaws. Decisions made by the committee shall become final only upon approval by the Minister.

Article 25

Enforcement of Breeders' Rights

(1) The competent court shall expedite the settlement of disputes relating to the application of the provisions of this law and its executive bylaws and decisions.

(2) The provisional, civil, customs and criminal measures provided in the Law of Industrial Property Rights issued by the Royal Decree 67/2008 shall apply in respect of the enforcement of plant breeders' rights provided in this Law.

Article 26

Supervision

Supervision over the implementation of this Law and the Bylaws according to this Law shall be performed by the authority designated by the Minister.

Article 27

Publication

Information concerning applications for and grants of breeders' rights, and proposed and approved denominations shall be regularly published, as prescribed by the Bylaws.