

SEED INDUSTRY LAW

of November 24, 1995

CHAPTER I GENERAL PROVISIONS

Article 1

1. This Law regulates the legal situation in respect of:

- (1) The breeding and assessment of varieties of cultivated plants;
 - (2) the rights and obligations of breeders of varieties and the rights of creators of that varieties;
 - (3) the production, trade, testing and control of seed material.
2. Questions concerning trees, shrubs and herb plants grown in a forest shall not be governed by the provisions of this Law, except the provisions concerning the exclusive right of the breeder to the variety.

Article 2

1. For the purpose of this Law:

(1) “Variety of plant” (hereinafter referred to as “variety”) shall mean a population of plant within a botanical systematic unit of the lowest known rank, which:

- (a) can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- (b) can be distinguished from any other plant population by the expression of at least one of the characteristics,
- (c) remains unchanged after multiplication or at the end of the relevant cycle of multiplications or crosses;

(2) “Hybrid” shall mean a variety produced at every turn by crossings of given populations of plants, in accordance with a given way and successiveness;

(3) “Plant breeding” shall mean the activity which tend towards creation and maintenance of varieties of cultivated plants; it consists of:

- (a) creative breeding, of which the objective is to create new varieties, and
- (b) maintenance breeding, of which the objective is to maintain the essential characteristics as well as uniformity and stability of the varieties created;

(4) “Creator of a variety” (hereinafter referred to as the “creator”) shall mean the natural person who has created or discovered an original variety, and in case of a hybrid — the natural person who has created or discovered one or more populations of plants used in the first stage of

production of a hybrid or who has worked out the way and the successiveness of crosses of that populations;

(5) “Breeder of a variety” (hereinafter referred to as the “breeder”) mean the person who is the owner of plants or parts of plants of this variety and of documents necessary for carry out the maintenance breeding of the variety;

(6) “Seed material” shall mean plants or parts of plants intended for sowing, planting, grafting or budding or only for plant multiplication;

(7) “Nursery material” shall mean seed material of trees and shrubs;

(8) “Certified seed material” shall mean seed material produced by the maintenance breeding of a variety or being a multiplication of that material or the seed of a hybrid, whose varietal identity is confirmed by the Seed Inspection, produced in accordance with the statutory provisions on its production and which satisfies the quality requirements;

(9) “Standard seed material” shall mean seed material produced by the maintenance breeding of a variety or being a multiplication of that material or the seed material of a hybrid, whose varietal identity is confirmed by its breeder, produced in accordance with the statutory provisions on its production and satisfies the quality requirements;

(10) “Commercial seed material” shall mean seed material which satisfies the standards or the other quality requirements;

(11) “Harvested material” shall mean plants or parts of plants obtained by the cultivation of a defined variety not intended to use as the seed material;

(12) “Official examination of a variety” (hereinafter referred to as the “official examination”) shall mean the examination of a variety for the purpose of its official registration or of the grant to its breeder the exclusive right to that variety;

(13) “Economic value of a variety” shall mean the advantage which a variety, taking into consideration a whole of its characteristics having effect on that value, may bring in the production, processing, trade and use of products obtained from its cultivation; a single disadvantageous characteristic may be compensated by an other advantageous characteristic;

(14) “Trade turnover in seed material” (hereinafter referred to as the “trade in seed material” or as the “trade”) shall mean:

(a) the purchase and brokerage of seed material for purpose of its sale,

(b) the offering for sale and the sale of purchased seed material,

(c) the offering for sale and the sale in organized points of seed material produced by the seller, or

(d) the import of the seed material from abroad.

2. Varieties shall be classified according to the following categories:

(1) Original varieties characterized by distinctness, uniformity and stability,

(2) Selected varieties not significantly distinguishable from initial varieties, characterized by uniformity and stability and bred by the other breeders than the breeders of initial varieties.

3. Within the original varieties the derivative¹ varieties discovered or created from initial varieties or from the other derivative varieties shall be distinguished, which:

(1) retain the expression of the essential characteristics of the initial variety that result from its genotype or combination of genotypes, except for the differences which result from the method of creation of the derivative variety,

(2) are distinct from the initial variety.

4. The variety shall be deemed to be the initial variety, from which a derivative variety is discovered or created or from which a selected variety is derived. The derivative variety shall not be deemed as the initial variety.

5. The variety shall be deemed to be distinct, if it is significantly distinguishable from other known including varieties applied to or entered into the official Registers or another official Lists of varieties or into the Rolls or another Lists of protection of the exclusive right to the variety.

6. The variety shall be deemed to be uniform, if its plants are sufficiently similar in the characteristics relevant to that variety, taking into account the particular features of its way of multiplication.

7. The variety shall be deemed stable, if its essential characteristics remain unchanged after multiplication or at the end of the cycle of multiplications or crosses relevant to the variety.

8. The protected variety shall be deemed the variety to which the legitimate breeder has the exclusive right in the Polish Republic.

Article 3

The provisions of this Law concerning the creator of a variety shall be applied *mutatis mutandis* to the co-creators.

Article 4

Unless otherwise provided in this Law, the Code of Administrative Procedure shall govern the procedure applicable to matters dealt with by this Law.

CHAPTER II THE ASSESSMENT AND REGISTRATION OF VARIETIES

Article 5

The Register of Varieties for Cultivated Plants (hereinafter referred to as the “Register”) shall be the official list of original and selected varieties of cultivated plants economically important in the national economy.

¹ The term “derivative variety” corresponds with the term “essentially derived variety” in the International Convention for the Protection of New Varieties of Plants (remark of the translator)

Article 6

1. The variety shall be entered into the Register after verification of whether the original variety is distinct, uniform and stable, and the selected variety is not significantly distinguishable from initial variety from which it is derived, is uniform and stable, and also if:

(1) the variety of the plant in the list referred to in [Article 23 subparagraph 2](#) has satisfactory economic value;

(2) the breeder of the variety:

(a) carried out its maintenance breeding or maintains it by another way and kept a quantity of its seed material sufficient at least to the official examinations,

(b) has given it a denomination.

2. The provision referred to in [paragraph 1 subparagraph 1](#) shall not be applicable concerning:

(1) selected varieties created from the initial varieties entered into the Register;

(2) varieties of fruit trees and berry shrubs;

(3) varieties destined exclusively for export;

(4) if it is necessary for the international agreements to which the Polish Republic is party.

3. The economic value of the varieties of multiyear cultivated plants referred to in [paragraph 2 subparagraph 2](#) shall be assessed after their entry into the Register.

Article 7

The variety shall be deemed to have satisfactory economic value, if one should expect that, in reference to the comparable varieties entered into the Register, the variety in the whole of its characteristics makes a marked improvement of economic value in the cultivation as in the processing and use of the harvested material or of the products made from that material.

Article 8

1. The denomination of the variety:

(1) must enable the variety to be identified and must be different from the denominations of other existing varieties belonging to the same or a related plant, including the denominations of varieties entered into the Register or protected by the exclusive right to their commercial exploitation in Poland or in any other State party to an international agreement on variety denominations, to which the Polish Republic is party.

(2) must not be liable to mislead as to the characteristics of the variety, its economic value, its breeder or its place of origin and may not consist solely of figures;

(3) may not affect the rights of third parties deriving from trademarks and other rights of utilization of designations of seed or harvested material.

2. Only one denomination of the variety applied or entered into the Register is admitted.

3. In justified cases one may give to the variety bred in the Polish Republic additional denominations (synonyms), which after entering into the Register can be used only to:

(a) the offering for sale and to the designation of the seed material of the variety destined for export as well as to the application of that material which may be recognized as certified seed material, or

(b) the application the variety to the official registers of varieties and to the grant of the exclusive breeders right to this variety.

4. The denomination of a variety shall be protected as from the day of the decision of its entry into the Register to the day of its removing from the Register and after that day for as long as seed or harvested material of the variety is traded or sold. The use of the variety denomination entered into the Register shall oblige anyone who assesses, offers for sale, disposes or advertises seed or harvested material of a variety or gives information concerning that variety.

5. To the denomination of a selected variety the designation indicating its breeder must be added.

Article 9

The variety shall be entered into the Register at the request of its breeder but the variety bred abroad at the request of the representative of its breeder in the Polish Republic authorized in writing to represent him in all matters relating to the registration of his varieties in the Polish Republic.

Article 10

1. Before making the decision to enter a variety into the Register, a variety shall be officially examined and assessed unless the application into the Register shows that the requirements referred to in [Article 6 paragraph 1](#) are not fulfilled.

2. Where two or more original varieties are submitted for entry into the Register which do not significantly differ from each other, the variety which is the subject of the earliest application shall be entered into the Register.

Article 11

1. The filling of the application of a variety into the Register, its official examination and entry into the Register and also maintenance of such entry shall be subject to registration fees.

2. If the breeder of the variety submitted for entry into the Register remains unpaid registration fees for official examination of that variety more than 30 days, one may not begin or discontinue that examination.

3. The Minister for Agriculture and Food Economy may reduce or waive the registration fees if economically justified or required by the international agreements to which the Polish Republic is party.

Article 12

1. The breeder shall be granted the right of the insight to the Register in relation to his variety.

2. The offering facilities for foreign institutions and organizations of data and information contained in the Register may take place only in the cases defined by the suitable international agreements to which the Polish Republic is party.

Article 13

1. All matters connected with the official examination and assessment of varieties, keeping of the Register, granting a breeder the exclusive right to the variety as well as with the inspection of breeding of varieties belong to the competence of the Research Center for Varieties of Cultivated Plants (Centralny Ośrodek Badania Odmian Roślin Uprawnych) hereinafter referred to as the "Center".
2. The Center may charge other performers with the official examination of varieties and authorize as equivalent the examinations performed by other natural or legal persons as well as the organizational units not possess a legal status.

Article 14

1. The Center as the state organizational unit shall be liable to the Minister for Agriculture and Food Economy and shall be authorized to use the round seal with the State symbol.
2. The Center shall manage the financial economy by the principles of the provisions of the State Budget Law provided for a state budget unit.

Article 15

The Minister for Agriculture and Food Economy shall lay down by decree the statute of the Center in which the organization, the particular tasks and the mode of activity shall be determined.

Article 16

1. The breeder of a variety who submits the application for entry into the Register shall, after acceptance of that variety to the official examination and in terms determined by the Center, be required:
 - (1) to give a denomination to the variety;
 - (2) to supply free of charge the seed material for the official examination of the variety in determined quality and in minimal quantity indispensable to the performance of examination;
 - (3) to give information and explanations necessary for the official examination and assessment of the variety;
 - (4) to allow inspection of the maintenance breeding of the variety or its maintenance by another way.
2. By the inspection of the maintenance breeding of the variety its breeder must:
 - (1) to make possible to look over breeding plant and seed material;
 - (2) to render to insight into indispensable breeding documents;
 - (3) to make possible to get know with the organizational and technical conditions of the carrying out the maintenance breeding of the variety or of the maintenance of it by another way;
 - (4) to furnish information and explanations concerning the questions referred to in [subparagraphs 1 to 3](#).
3. If the change of the breeder of a variety took place, the new breeder be required to inform in 30 days the Center about that change.

Article 17

1. The decisions to enter a variety into the Register, to refuse its entry, or to remove a variety from the Register shall be made by the Director of the Center after considering the opinion of the corresponding committee for the registration of varieties.
2. The committee ought consist of experts and representatives of scientific, professional and economic organizations interested in the use of varieties indicated by the proper authorities, with the requirement that at least one member of the committee should be a specialist in genetics and plant breeding.
3. The Minister for Agriculture and Food Economy shall set up and discontinue the committees proper to a cultivated plant or a group of related plants.

Article 18

1. After the entry of a variety into the Register the certificate of such entry shall be issued to its breeder.
2. The certificate of the creation or discovery of an original variety created in Poland or partly abroad or discovered in Poland shall be issued to its creator.

Article 19

1. A continuous or periodical official examination and assessment of a variety entered into the Register shall be performed.
2. The provisions of [Article 16](#) shall apply mutatis mutandis.

Article 20

1. A variety shall be removed from the Register, if:
 - (1) is not identical, uniform or stable;
 - (2) the breeder of the variety:
 - (a) applies for removal of the variety from the Register,
 - (b) ceases to carry out maintenance breeding or to maintain it by another way, as well to keep a quantity of its seed material sufficient to the official examination.

Article 21

A variety may be removed from the Register, if:

- (1) the variety ceased to have satisfactory economic value, with reference to varieties to which that value shall determine the condition for the entry into the Register or the maintenance it by another way,
- (2) the breeder of the variety:

- (a) does not supply seed material or the information required to its official examination and assessment,
- (b) does not allow inspection of the maintenance breeding of the variety or the maintenance it by another way,
- (c) ceases to produce seed material of the variety,
- (d) is more than six month late in paying the registration fees,
- (e) does not give a new denomination to the variety when it does not fulfill the obligatory requirements.

Article 22

Where the entry into the Register is applied for by a non-entitled person or where the entry of a variety into the Register results from such application, the breeder of that variety may demand:

- (1) refusal of the entry or removal of the variety from the Register,
- (2) entry of the variety into the Register, and then:
 - (a) the filling date of the application of the entry the variety into the Register shall be the date of the application of the non-entitled person,
 - (b) the documentation furnished by the non-entitled person and the registration fees to be borne by him as well as the official examination results of the variety shall be accepted.

Article 23

The Minister for Agriculture and Food Economy shall lay down by decree:

- (1) the list of cultivated plants of which the varieties are subject to entry into the Register,
- (2) the list of cultivated plants which are subject to entry into the Register with the confirmation of the satisfactory economic value;^x
- (3) the list of cultivated plants of which the varieties, referred to in [Article 6 paragraph 2 subparagraphs 2](#) and [4](#), are subject to entry into the Register without the confirmation of the satisfactory economic value;
- (4) the detailed provisions concerning application for entry, entry of varieties into the Register and their removal, the denomination of varieties, their official examination, administration of the Register, and also concerning carrying out inspection of the breeding or the maintenance by another way of varieties applied for or entered into the Register;
- (5) the provisions on the competence of the committees referred to in [Article 17 paragraph 3](#);
- (6) the rates and periods of payment of the registration fees - in agreement with the Minister for Finance.

^x ought to be interpreted as in (1) and (3), i.e. "...plants of which the varieties are subject ..."
(remark of the translator)

CHAPTER III

EXCLUSIVE RIGHT ON A VARIETY

Article 24

1. The breeder of a variety shall be granted the exclusive right right to its commercial exploitation (hereinafter referred to as the “exclusive right”), if:

(1) he is the creator of the variety, or

(2) the creator of the variety has created or discovered it in the course of his employment contract or of other contract with the breeder of the variety, unless the contract has decide otherwise.

2. The breeder of the variety who shall be granted the exclusive right shall be hereinafter referred to as the “legitimate breeder”.

Article 25

1. The exclusive right concern the carrying-out the maintenance breeding of the protected variety and concerning its seed material:

(1) its production and multiplication including the conditioning for the purpose of multiplication,

(2) offering for sale, selling or other form of disposal,

(3) exporting and importing,

(4) stocking for any purpose referred to in [subparagraphs 1 to 3](#).

2. The exclusive right shall concern the harvested material of the protected variety, unless the legitimate breeder has had not have reasonable opportunity to exercise his exclusive right in relation to the seed material of the protected variety.

3. The exclusive right shall also concern:

(1) derivative varieties discovered or created directly or indirectly from the protected initial variety, therewith that a indirect discovery or creation of a derivative variety shall be deemed its discovery or creation:

(a) from the protected initial variety, or

(b) from the variety nor significantly different from the protected initial variety,

(2) varieties not significantly distinguishable from the protected variety,

(3) varieties of which production requires repeated use of the protected variety or varieties referred to in [subparagraph 2](#),

4. The exclusive right shall not concern the seed and harvested material:

(1) sold or in any other way disposed by the legitimate breeder or by his consent, unless that material was used by the purchaser for the purpose of:

(a) a reiterated production of the seed material,

(b) export, with the preservation of the conditions making possible the production of the seed material of the protected variety in a country which does not protect the exclusive right of the legitimate breeder concerning varieties of the same plant genus or species;

(2) destined for:

(a) experimental purposes,

(b) private, not commercial purposes,

(c) the creation of new varieties which are not derivative varieties of protected variety, and the exploitation of them for commercial purposes in the scope as referred to in [paragraph 1 subparagraphs 1 to 4](#) and in [paragraph 2](#),

(d) the creation of derivative varieties and varieties of which production requires repeated use of the protected variety.

Article 26

1. The possessor of lands can use without the consent of the legitimate breeder the harvested material as the seed material of a protected variety or varieties referred to in [Article 25 paragraph 3 subparagraphs 1 and 2](#).

2. The provision of [paragraph 1](#) shall concern the harvested material produced and used on the lands of the same possessor.

3. The use of the harvested material as seed material shall require agreement upon the payment of a reward in favour of the legitimate breeder. That payment ought to be lower than the license fees for the use of the seed material of a protected variety.

4. The payment referred to in paragraph 3 does not entitle, if the harvested material of the protected variety is used as the seed material in quantity necessary for sowing or planting

(1) for the cultivation of an agricultural plant - to 50 ha,

(2) for the cultivation of a cultivated plant not referred to in [subparagraph 1](#) - to 1 ha,

(3) for the cultivation under covers of every cultivated plant - to 200 m².

Article 27

A legitimate breeder shall also enjoy other rights not regulated in this Law, if they result from international agreements to which the Polish Republic is party.

Article 28

1. The exclusive right shall:

(1) relate to the varieties of cultivated plants of which varieties can be entered into the Register, and to the varieties of all plants after five years from the day of entry into force in Polish Republic of the Act of March 19, 1991 of the International Convention for the Protection of New Varieties of Plants,

(2) take effect on the day of its grant,

(3) last for 30 years for varieties of vines, trees and their rootstocks,

(4) last for 25 years for varieties not referred to in [subparagraph 3](#).

2. The exclusive right shall be transmissible by succession or assignable in the form of writing contract.

Article 29

1. In the case of a joint creation or discovery of a variety at two or more breeders the exclusive right shall vest in them jointly.

2. After granting the exclusive right, each of the joint owners may, without consent of the others, exercise the exclusive right and institute infringement actions. However, assignment of a joint ownership share, grant of license and any other form of alienation of the joint right shall require the consent of all joint owners. The joint owners shall be free to regulate their mutual rights and obligations in any other way.

Article 30

1. The exclusive right shall be granted at the proposal of the breeder of the variety.

2. The exclusive right shall be granted, if:

(1) a variety is new, distinct, uniform and stable,

(2) a breeder gave the variety a denomination conforming to the obligatory requirements.

3. The variety shall be deemed to be new, if at the date of filling the application for the exclusive right its breeder has not sold or otherwise disposed the seed or harvested material for purpose of commercial exploitation or did not give the consent to such actions:

(1) for more than one year in Poland,

(2) for more than six years abroad in the case of vines, trees and their rootstocks, or for more than four years in the case of other plants.

4. The exploitation of the seed or harvested material of the variety shall not be deemed as used for commercial purposes, if in the contract contained with the breeder of the variety was predetermined that the material suitable for the production of the seed material does not be disposed to third parties.

Article 31

1. Priority of the grant of the exclusive right shall derive from the filling date of the application for the grant of that right.

2. A breeder who has filed an application for the grant of the exclusive right abroad may avail himself, in Poland, of the priority during a period of 12 months as from the date of the earliest application filed abroad.

3. The provisions of [paragraph 2](#) shall apply only to application for grant of the exclusive right made in States parties to the relevant international agreements to which the Polish Republic is party.

Article 32

1. A breeder who has filed an application for the grant of the exclusive right shall avail from the receiving date of the application of the provisional exclusive right.
2. The provisions concerning the exclusive right shall be applied mutatis mutandis to the provisional exclusive right.
3. The provisional exclusive right shall be deemed as ceased at the date of the decision concerning the grant or the refusal of the grant of the exclusive right.

Article 33

1. Before the exclusive right shall be granted the official examination shall be carry out in order to conform whether the variety is distinct, uniform and stable, unless it is admitted as sufficient the results of examinations and other information supplied by the breeder who has applied for the grant of the exclusive right.

The provisions of [Article 13 paragraph 2](#) shall be applied mutatis mutandis.

2. A legitimate breeder shall be required to supply on term and at his own expense the seed material as well as information and explanations necessary for the examination of the variety, otherwise the exclusive right may be refused.
3. If the change of the legitimate breeder take place, the new legitimate breeder is obliged to inform the Center in 30 days of such change.

Article 34

The filing of the application for the grant of the exclusive right, the official examination of the variety as well as the grant and the maintenance of the exclusive right shall be subject to payment fees, hereinafter referred to as the “protection fees”.

Article 35

1. The decisions concerning the grant or the refusal of the grant, and also of the nullity or cancellation of the exclusive right shall be taken by the Director of the Center.
2. The exclusive right shall be declared as null, if:
 - (1) a variety at the date of the grant of the exclusive right was not new or distinct, or
 - (2) a variety at the date of the grant of the exclusive right was not uniform or stable, when the grant of the exclusive right was based upon information and documents furnished by the legitimate breeder of the variety,
 - (3) the exclusive right was granted to the non-entitled person.
3. The exclusive right of the legitimate breeder shall be cancelled by applying mutatis mutandis the provisions of [Article 20 subparagraph 1](#) and [Article 21 subparagraphs 2a, 2d](#) or [2e](#), or if the legitimate breeder has resigned the exclusive right.

Article 36

1. The Roll of the Protection of the Exclusive Right to Varieties (hereinafter referred to as the “Roll”) and the List of Varieties submitted for the grant of exclusive right (hereinafter referred to as the “List”) shall be kept by the Center.
2. The Roll shall be the official catalogue of protected variety and legitimate breeders.
3. The List shall be the official catalogue of varieties submitted for the grant of the exclusive right and of legitimate breeders who have the provisional exclusive right to those varieties.
4. The provisions referred to in [Article 12](#) shall be applied mutatis mutandis to the Roll and to the List.
5. The Center shall issue to the legitimate breeder a certificate attesting to the grant of the exclusive right and on his request a certificate attesting to the grant of the provisional exclusive right.

Article 37

The variety denomination to which the application for the grant of the exclusive right is applied shall enjoy protection as from the date of the application.

The provisions of [Article 8 paragraph 4](#) shall apply mutatis mutandis.

Article 38

1. A legitimate breeder may grant by contract to another person an authorization (license) to use the exclusive right.
2. The license contract must be in writing, if not, the contract shall not take effect.
3. If the legitimate breeder granted the full license, the licensee shall provide the right to non-exclusive enjoyment of all rights granted to the legitimate breeder, as set out in [Article 25 paragraphs 1 to 3](#), in [Article 26 paragraph 3](#) with reservation of [Article 26 paragraph 4](#), as well as in [Article 27](#), unless otherwise provided in the license contract.
4. The licensee of a license may only grant a sublicense with the written consent of the legitimate breeder.
5. The grant of a license shall exclude neither the grant of a further license for the enjoyment of the exclusive right nor the simultaneous enjoyment of the exclusive right by the legitimate breeder, unless otherwise provided in the license contract.
6. Where the grant of a license authorizes the carrying out of maintenance breeding, the contract shall take effect with respect to third parties as from the date of its entry into the Roll or into the List.
7. An exclusive licensee, in the same way as the licensor, may take action against infringement of the exclusive right, unless otherwise provided in the license contract.

Article 39

1. If the legitimate breeder or his licensee do not maintain the protected variety or the variety referred to in [Article 25 paragraph 3](#), or do not market their seed or harvested material, the Minister for Agriculture and Food Economy may, by decision, grant third parties a compulsory license for the exercise of the exclusive right specifying at the same time the details of the exercise of this right as well as the obligations of the legitimate breeder in relation to the licensee.

2. The compulsory license shall be non-exclusive and shall not restrict the right of the legitimate breeder to grant a license under [Article 38 paragraphs 1 to 4](#).

Article 40

Where the grant of the exclusive right is applied for by a non-entitled person or where this right is granted at the request of that non-entitled person, the breeder of the variety may demand:

- (1) the refusal of the grant of the exclusive right or declare it null,
- (2) the grant him the exclusive right, and then:
 - (a) the filing date of the application for the grant of the exclusive right of the non-entitled person shall be considered as the filing date of the application,
 - (b) the documentation furnished by the non-entitled person and the protection fees borne by him as well as the official examination results of distinctness, uniformity and stability of the variety shall be accepted.

Article 41

The Minister for Agriculture and Food Economy shall, by decree:

(1) establish the detailed provisions concerning application for the grant of the exclusive right and of the official examination of varieties, the grant and cancellation of the exclusive right as well as the administration of the Roll and the List.

(2) establish the rates and the method of payment of the protection fees - in agreement with the Minister for Finance.

CHAPTER IV PRODUCTION OF SEED MATERIAL

Article 42

1. The production of certified and standard seed material begins from the seed material produced by the breeder of the given variety in maintenance breeding and makes one or several of its multiplications; the production of that material of a hybrid encompasses the production of hybrid's components as well as their crossing.

2. By the production of certified and standard seed material conditions must be fulfilled, which in particular will assure:

- (1) the maintenance of identity and purity of a variety;

(2) the protection against damage by diseases and pests which will be transferred by the seed material;

(3) the obtainment of seed material quality in accordance with the obligatory requirements or standards.

Article 43

1. The Voivode, on the request of the interested party and after considering opinions of the competent Commune Councils may, by decree, introduce prohibition of the cultivation of certain cultivated plants or of their varieties or prohibition of the use of seed material of which the phytosanitary state is unsatisfactory or prohibition of the location of beehives on lands located near the protected plantations.

2. Prohibition shall be introduced and published in due time so that it can be taken into account before sowing or planting on the farming land concerned.

3. Prohibition may only be enforced, if the interested possessors of farming land are able to buy a proper seed material.

4. If non-proper seed material is used to sowing or planting the Voivode, by decision, may order the possessor of the farming land concerned to destroy the crop within a specified period.

Article 44

1. The Voivode on the request of the interested party and after considering opinions of the competent Commune Councils may, by decree:

(1) create and abolish demarcated regions for the production of certified seed potatoes;

(2) appoint legal persons exclusively responsible for the organization of the production of potatoes and the purchase of certified seed potatoes in such regions.

2. The economic subjects, referred to in [paragraph 1 subparagraph 2](#), shall be required:

(1) to inspect the potato fields;

(2) to advise and train of potato growers;

(3) to sell to possessors of farming land certified seed potatoes in the quantities required for planting on the whole area of potatoes cultivation.

3. Possessors of farming land in a demarcated region shall be required:

(1) to use exclusively seed potatoes meeting the phytosanitary requirements in respect of certified seed potatoes;

(2) to allow inspection of potato fields by the economic subjects referred to in [paragraph 1 subparagraph 2](#).

Article 45

1. The production of nursery material of fruit trees and berry shrubs shall be allowed with the authorization.
2. The authorization referred to in [paragraph 1](#) shall be enacted by the Director of the territorially competent Regional Inspectorate of the Seed Inspection on the request of the interested producer after verification if he met conditions of proper production of nursery material and in particular if he is the possessor of the land to that production as well as if he masters its technology and provisions concerning protection and disposal of nursery material.
3. The authorization may be concerned the production of nursery material without restraints or may restrict its scope to the specified cultivated plants or categories of nursery material (trees, shrubs, rootstocks, grafts, seeds).
4. The Director of the Regional Inspectorate of the Seed Inspection may recall the authorization in the whole or in the part, if the producer does not abide statutory provisions and requirements on production and disposal of nursery material or does not pay obligatory breeding duties.

Article 46

The Minister for Agriculture and Food Economy shall lay down, by order:

- (1) the requirements concerning the production of certified and standard seed material;
- (2) the list of standards of seed material of which compliance in testing and trade shall be obligatory;
- (3) the quality requirements for the seed material which do not contain in standards.

CHAPTER V TESTING AND CONTROL OF SEED MATERIAL

Article 47

1. The testing of seed material consists in the verification, if seed crops satisfy the requirements concerning the production of seed material as well as if the seed material satisfies the quality requirements.
2. The testing of seed material include verification:
 - (1) of seed crops (hereinafter referred to as “field testing”);
 - (2) of the quality of seeds (hereinafter referred to as “laboratory testing”);
 - (3) of the phytosanitary state of seed potatoes or of other seed material (hereinafter referred to as “verification testing”);
 - (4) of the identity and varietal purity of seed material (hereinafter referred to as “identity testing”);
 - (5) of the external characteristics of seed material (hereinafter referred to as “testing of the external characteristics”).

3. The testing of the seed material shall be carried out at the request of an interested party.

Article 48

1. A certificate (hereinafter referred to as “certificate”) attesting to the recognition or the refusal of recognition as certified, conditionally certified, standard or commercial seed material or as mixture of seed material shall be issued on the basis of the test results of the seed material.

2. The following seed material which satisfy the standards and other quality requirements may be recognized as certified or standard:

(1) that of varieties entered into the Register;

(2) that of varieties removed from the Register, during the two years following the year of the removal of the variety;

(3) admitted to trade conforming [Article 66 paragraph 2 subparagraphs 1 and 2](#) for the period longer than one year;

(4) that produced exclusively for export.

3. Recognition as conditionally certified seed material may apply to varieties for which an application has been made for entry into the Register during the period as from their acceptance to the official examination to the taking the decision to enter a variety into the Register.

Recognition as conditionally certified seed material may apply also to the seed material of which production to be started before the decision to refuse of entry of the variety into the Register.

4. After entry of a variety into the Register the conditionally certified seed material of this variety may be recognized, at the request of an interested party, as certified seed material.

5. Of an application for entry of a variety into the Register has been refused, the conditionally certified seed material of this variety may be recognized, at the request of an interested party, as certified seed material at the lowest level of certification.

6. The conditionally certified seed material may not be recognized as certified seed material, if the refusal of entry of the variety into the Register results from the lack of distinctness of the variety applied for as an original variety or if its economic value is lower than that of all other varieties entered into the Register.

7. The seed material may be recognized as commercial seed material if it satisfies the standards and other quality requirements.

8. The mixture of seed material may be recognized as certified or standard mixture of seed material prepared of the certified or standard seed material released to the trade in the determined share of the particular components of this mixture.

9. The mixture of seed material may be recognized as commercial mixture of seed material prepared in the determined share of the components released to the trade, if at least one of the components is the commercial seed material.

Article 49

1. The seed material for which an application has been made for recognition as certified, conditionally certified or standard seed material shall be subject to a field testing as well as a laboratory testing or a testing of the external characteristics, and may be subject to an identity or verification testing.
2. The seed material for which an application has been made for recognition as commercial seed material shall be subject to a laboratory testing or a testing of external characteristics.
3. The seed material for which an application has been made for recognition as mixture of seed material shall be subject to a laboratory testing with the purpose of verification of the share of the particular components of this mixture.
4. A certificate of recognition of a mixture of seed material as certified or commercial one may be issued on the ground of certificates of laboratory testing of the particular components of a mixture and their share in this mixture.

Article 50

A description of the parental components of a hybrid should be added to an application of seed material of this hybrid for recognition of this material as certified or conditionally certified seed material; this description shall be exploited exclusively for field testing.

Article 51

The testing of seed material, with reservation of [Article 55 paragraphs 1, 2 and 4](#), shall be carried out by the Seed Inspection.

Article 52

1. The Seed Inspection is the organ of the State Administration which shall be subordinate to the Minister for Agriculture and Food Economy and shall be authorized to use the round seal with the State symbol.
2. The Seed Inspection shall manage the financial economy by the principles of the provisions of the State Budget Law for a State budget unit.
3. The Seed Inspection consists of the following organs: the Director of the Central Inspectorate of the Seed Inspection (hereinafter referred to as the “Director of the Central Inspectorate”) and the Directors of the Regional Inspectorates of the Seed Inspection (hereinafter referred to as the “Directors of the Regional Inspectorates”).
4. At the administrative procedure the Director of the Regional Inspectorate shall be the organ of the first instance and the Director of the Central Inspectorate shall be the organ of the second instance.

Article 53

The Minister for Agriculture and Food Economy shall lay down by decree the statute of the Seed Inspection in which the organization, the particular tasks as well as the mode of activity shall be determined.

Article 54

The Director of the Central Inspectorate shall administer the activity of the Seed Inspection, and in particular he shall:

- (1) to establish the methods of testing and control for seed material;
- (2) to define the categories of certification of seed material;
- (3) to draw up the list of cultivated plants of which the seed material may be recognized as standard seed material;
- (4) to draw up the list of varieties of which the seed material may be recognized as certified, conditionally certified or standard seed material;
- (5) to define the seed material subject to identity testing and to verification testing;
- (6) to determine which documents concerning the testing of seed material issued abroad are valid in Poland;
- (7) to determine the categories and the forms of certificates;
- (8) to determine the mode and the particular conditions of enacting the licenses:
 - (a) for the production of nursery material of the fruit trees and the berry shrubs,
 - (b) for the trade in seed material.

Article 55

1. The field and laboratory testing of seed material which be recognized as standard seed material shall be carried out by the authorized breeders as to the seed material of the varieties bred by them concerned.
2. The laboratory testing of the own seed material which be recognized as commercial seed material or commercial composition of seed material may be carried out by the authorized economic subjects which carry out the trade in seed material.
3. Certificates shall be issued by the subjects referred to in [paragraphs 1](#) and [2](#).
4. The testing of external characteristics of seed material shall be carried out by the economic subjects which carry out the trade in seed material.
5. The testing of external characteristics of seed material intended for export shall be carried out by the Seed Inspection. This testing can also be carried out by the economic subjects which carry out the trade in seed material' if it shall be allowed by the international provisions or by the provisions of the importer country.

Article 56

1. The field testing of the seed material applied for recognition as the certified or conditionally certified seed material as well as the official testing of external characteristics of the seed material intended for export shall be carried out at the request of the Director of the Regional Inspectorate by natural persons, hereinafter referred to as the “qualifiers”.
2. Samples of seed material shall be taken for testing at the request of an interested party by natural persons, hereinafter referred to as the “samplers”.
3. The qualifiers and the samplers shall be entitled to remuneration for commissioned operations, the rates of which shall be established by the Director of the Central Inspectorate on the ground of the particular principles defined by the Minister for Agriculture and Food Economy.
4. The provision of [paragraph 3](#) shall not be applied to the samplers employed in the economic subjects authorized to the testing of seed material, if they take samples on the order of those subjects.

Article 57

1. The authorizations referred to in [Article 55 paragraphs 1 and 2](#) and in [Article 56 paragraphs 1 and 2](#) shall be issued by the Director of the Regional Inspectorate, if someone competing for the authorization shall assure a proper exercise of functions connected with the testing of seed material and also shall possess a qualifications, accomodations and installations suitable to performance of functions concerned.
2. The Director of the Regional Inspectorate may recall the authorization referred to in [paragraph 1](#), if someone authorized does not fulfill conditions required to the issue of this authorization or does not abide statutory provisions.

Article 58

The testing of seed material carried out by the organs of the Seed Inspection shall be subject to payment of a fee, the rates of which shall be established by the Director of the Central Inspectorate on the ground of the particular principles defined by the Minister for Agriculture and Food Economy.

Article 59

1. An interested party who disagrees with the statements appearing on a certificate issued by the qualifier who carried out the field testing or the testing of external characteristics of seed material or with the statements appearing on a certificate issued on the ground of the laboratory testing referred to in [Article 55 paragraph 2](#), may appeal to the Director of the Central Inspectorate and may ask for retesting and the issue of a new certificate.
2. An interested party who disagrees with the statements appearing on a certificate issued by the Director of the Regional Inspectorate, may appeal to the organizational unit indicated by the Director of the Central Inspectorate and may ask for retesting and the issue of a new certificate.
3. The statements of the repeated certificate shall be ultimate.

4. The application referred to in [paragraph 1](#) or [2](#) shall be made within a period of three days, in the case of a certificate of field testing or of testing of external characteristics, and within a period of seven days in the case of a laboratory testing or a verification testing. This period is computed from the date of receipt of the certificate.

Article 60

1. The purpose of the control of seed material is to verify that the obligatory requirements concerning production, stocking and also conditioning for trade and trade in seed material are respected.

2. The control of seed material shall be carried out ex officio

Article 61

1. The employees of the Seed Inspection who carry out the control of seed material or the control of the performance of the testing of this material shall be entitled:

(1) to access to the fields where seed material is produced as well as to the accommodations for seed material or for testing of it;

(2) to control the documents and to request explanations concerning the production, stocking, conditioning for the trade and the trade in seed material;

(3) to secure the necessary documents and the controlled seed material;

(4) to take, free of charge, samples of seed material.

2. The organs of the Seed Inspection shall be authorized:

(1) to prohibit the introduction into and to order the withdrawal from the trade of seed material not satisfying the standards and quality requirements as well as the conditions for the trade in seed material referred to in [Articles 63, 66](#) and [67](#);

(2) to order the denaturing of seed material referred to in [subparagraph 1](#) to render it unfit for sowing, planting, grafting and budding or only to multiplication of plants.

3. The decisions referred to in [paragraph 2 subparagraph 1](#) shall be immediately applicable.

Article 62

The Minister for Agriculture and Food Economy shall determine by decree:

(1) the method and the procedure of carrying out the control of seed material;

(2) the seats and the territorial competence of the Regional Inspectorates of the Seed Inspection, hereinafter referred to as the “Regional Inspectorates”;

(3) in agreement with the Minister for Finance, the detailed principles of establishment of the rates of salaries of qualifiers and samplers as well as the rates of fees for testing of seed material.

CHAPTER VI TRADE IN SEED MATERIAL

Article 63

1. The trade in seed material may be carried out by the economic subjects authorized to this trade by the Director of the Regional Inspectorate territorially competent for the seat of this subject.
2. The Director of the Regional Inspectorate shall issue the authorization at the request of an interested economic subject after the statement, if it fulfill conditions to proper carrying out the trade, and in particular, if it assures abidance of obligatory provisions as well as if it possess accomodations and installations that shall ensure a proper conditioning, storing and selling of seed material.
3. The authorizations may concern to the trade in seed material without limits or may restrain the trade to the groups of cultivated plants, categories of seed material, package as well as to a territory and to a time period.

Article 64

1. The economic subjects which carry out the trade in seed material shall be required:
 - (1) to submit to the territirially competent Regional Inspectorate the half-year information concerning the trade in seed material during the month following a half-year, in the scope defining by decree by the Minister for Agriculture and Food Economy;
 - (2) to give information at the request of an interested breeder and to allow him to insight to the documents concerning:
 - (a) the trade of seed material of his variety,
 - (b) the value of the sold seed material of the variety.
2. The provision of [paragraph 1 subparagraph 2 b](#) shall be applied mutatis mutandis to the economic subjects which sell the seed material produced by them.

Article 65

The Director of the Regional Inspectorate may recall the authorization for the trade in seed material in the whole or in the part for the economic subject that abide the obligatory principles and provisions in the trade or does not pay the obligatory breeding duties.

Article 66

1. The following shall be released to the trade:
 - (1) certified and standard seed material of varieties entered into the Register;
 - (2) certified and standard seed material of varieties removed from the Register, but not longer than during a period of three years after the year of the removal of the variety;
 - (3) certified and standard seed material intended for multiplication and sale for export:

(a) of varieties bred abroad and not entered into the Register,

(b) of varieties bred in Poland and entered into the Register, but intended exclusively for export;

(4) commercial seed material of cultivated plants of which the varieties are subject to entry into the Register, in cases when do not exist the varieties of that plants entered into the Register;

(5) commercial seed material of cultivated plants of which the varieties are not subject to entry into the Register;

(6) certified and commercial mixture of seed material composed of the seed material released to the trade.

2. The Minister for Agriculture and Food Economy may, in cases of lack of sufficient amount of seed material and also justified by other economic reasons, release to the trade:

(1) certified, standard and commercial seed material of varieties not entered into the Register;

(2) certified or standard seed material of domestic varieties entered into the Register and intended exclusively for export;

(3) conditionally certified seed material;

(4) commercial seed material of cultivated plants of which the varieties are subject to entry into the Register;

(5) categories of seed material other than foreseen by this Law, if it results from the international agreements to which the Polish Republic is party, defining the requirements connected with the production and recognition of that material.

3. By the release to the trade the seed material on the ground of provisions of [paragraph 2](#) the category and amount of seed material and the validity period should be determined.

4. A producer may offer for sale and dispose only the nursery material of fruit trees and berry shrubs released to the trade.

Article 67

1. From abroad may be imported the seed material released to the trade, and also the seed material intended to:

(1) works in plant breeding or experiments;

(2) cultivation in the house-gardens and on the little parcels imported without agency of the economic subjects carried out the trade in seed material.

2. The border control of seed material at the places for the phytosanitary control shall be carried out by the Seed Inspection or on its commission by the State Inspection for Plant Protection.

3. The organ who carried out the control shall permit or prohibit, in dependence from the results of this control, the import of the controlled seed material.

4. The custom-houses shall carry out customs formalities only on that seed material to which the permission is issued.

CHAPTER VII BREEDING DUTY

Article 68

1. The breeding duty shall be a fraction of the financial income obtained from the sale of seed material in the trade as well as from the sale of that material by its producer to economic subjects not engaged in the trade in seed material.
2. The breeding duty shall concern the certified and standard seed material.

Article 69

1. The breeding duty shall be payable by economic subjects:
 - (1) who manage the trade in seed material intended for:
 - (a) users of that material,
 - (b) retailed sale,
 - (c) export;
 - (2) who produce seed material, if they have sold it to economic subjects not engaged in the trade in seed material.
2. The provisions of [paragraph 1 subparagraph 1](#) shall not apply to economic subjects exclusively engaged in the retail trade in seed material purchased or received from economic subjects engaged in the trade in seed material.
3. The breeding duty from the sale of the seed material of a variety shall be paid to its breeder.
4. The breeding duty payable for seed material sold during one quarter shall be paid during the month following that quarter.
5. The rightful interest shall be due for delay in payment of the breeding duty.
6. The breeding duty shall not be payable, if:
 - (1) a breeder of a protected variety did grant a license to the sale of its seed material;
 - (2) a breeder of a variety bred abroad did not specify the amount of that duty in a writing contract concerning the sale of the seed material;
 - (3) the seed material is sold to its breeder.

Article 70

1. The breeder of a variety bred in Poland may, in the writing contract with the purchaser of the seed material of that variety, determine the amount of the breeding duty or resign of the duty.
2. If a breeder of the variety did not determine the amount of the breeding duty or has resigned of the duty, the breeding duty conforming to the rate established by decree by the Minister for Agriculture and Food Economy shall be obliged.

3. A breeder of the variety bred in Poland may resign of the breeding duty or determine its rate lower than those established by the Minister for Agriculture and Food Economy only then, if he does not profit from the budget donation for plant breeding.

CHAPTER VIII RIGHTS OF CREATORS OF VARIETIES

Article 71

1. A creator of the variety created in Poland or partly abroad or discovered in Poland, after enter it into the Register or after granting the exclusive right to it, shall be entitled to a reward for all commercial uses of that variety, unless otherwise provided in the writing contract between the creator and the breeder.

2. A reward of a creator referred to in [paragraph 1](#) shall be established by a breeder of the variety in a reasonable relation to the profits obtained from commercial use of that variety, unless otherwise provided in the contract between the breeder of the variety and its creator.

3. A reward referred to in [paragraph 1](#) for the creation partly abroad of the variety shall not be entitled to a creator, if he is an owner, an employee or a contractor of a foreign organizational unit that collaborates by the creation of the variety.

4. The tax provisions to the reward referred to in [paragraph 1](#), as to the authors in the Law of Copyright and in the related laws, shall be applied mutatis mutandis.

Article 72

1. A creator of the variety referred to in [Article 71 paragraph 1](#) may demand an increase of a reward for the creation or discovery of the variety if the reward established by the breeder of that variety is explicitly to little in relation to profits obtained by the breeder from the commercial use of the variety.

2. A creator of the variety referred to in [Article 71 paragraph 1](#) may institute proceedings to claim his reward for the commercial use of the variety before the competent Voivodship court and shall not be liable to pay court fees.

CHAPTER IX PENAL PROVISIONS

Article 73

1. Anyone who:

(1) uses the denomination of a variety entered into the Register, into the List or into the Roll ([Article 8 paragraph 2](#) and [Article 37](#)) to designate seed or harvested material of another variety or of an unknown variety;

(2) engages in trade in seed material without authorization referred to in [Article 63](#);

(3) introduces into trade seed material other than referred to in [Article 66](#) or does not fulfill the statutory provisions;

(4) disturbs or hinders the activities of the organs of the Seed Inspection;

- shall be liable to arrest, to restraint of liberty or to a fine.

2. Anyone who:

(1) does not utilize the denomination of a variety in accordance with the provisions of [Article 8 paragraph 4](#) and of [Article 37](#);

(2) does not fulfill orders which shall be obligatory in demarcated regions ([Article 44 paragraph 1](#));

(3) does not furnish information referred to in [Article 64](#);

(4) does utilize information obtained by the inspection of maintenance breeding to other purposes as referred to in [Article 16 paragraph 1 subparagraph 3](#);

- shall be liable to a fine.

3. In the cases referred to in [paragraphs 1](#) and [2](#) the penalties shall be imposed in accordance with the procedure applying to misdemeanours.

CHAPTER X TRANSITIONAL AND FINAL PROVISIONS

Article 74

Authorizations to carry out the trade in seed material that are been entitled or obtained on the ground of hitherto prevailing regulations shall be repealed after six month from the day of entry into force of this Law.

Article 75

Authorizations on production of nursery material of fruit trees and berry shrubs obtained on the ground of hitherto prevailing regulations shall be preserved.

Article 76

1. Rights of breeders, creators and natural persons who assisted in creation of varieties existing on the day of entry into force of this Law shall not be affected till their expiration. Such rights shall remain subject to the provisions applicable before that date.

2. A breeder of the variety entered into the Register before the date of entry into force of this Law shall be obliged to provide to the Center information indispensable for establishing a creator's bonus.

Article 77

1. Actions commenced and not terminated before the date of entry into force of this Law shall proceed in accordance with the provisions of this Law, with reservation of the provision of [paragraph 2](#).

2. The exclusive right referred to in [Article 25 paragraph 3 subparagraph 1](#) does not concern to derivative varieties applied for the grant of the exclusive right before entry into force of this Law.

Article 78

The fees referred to in [Article 11](#), [34](#) and [58](#) shall establish the income of the State Budget.

Article 79

The hitherto prevailing Center for Varieties of Cultivated Plants as well as the Seed Inspection shall be mutatis mutandis in the meaning of this Law the Center for Varieties of Cultivated Plants and the Seed Inspection.

Article 80

The Law of October 10, 1987 concerning seed industry (Official Journal of the Polish Republic No 31 text No 166, from 1989 No 6 text No 33, from 1990 No 34 text No 198 and No 89 text No 517) are hereby repealed, but the executive provisions issued on the ground of [Article 37](#) concerning creator's bonus and auxiliary bonus shall not be affected.

Article 81

This Law shall enter into force after 30 days of its issue.

The President of the Polish Republic

(-) L. Wałęsa
