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**REPUBLIC OF TRINIDAD and TOBAGO**

**THE PROTECTION OF NEW PLANT VARIETIES ACT, 1997<sup>1, 2</sup>**

**Act No. 7 of 1997<sup>3</sup>**

AN ACT to provide for the protection of new varieties of plants and for matters incidental thereto.

Enacted by the Parliament of Trinidad and Tobago as follows:-

**PART I**

**PRELIMINARY**

Section 1

This Act may be cited as the Protection of New Plant Varieties Act, 1997.

Section 2

Interpretation and administration

(1) For the purposes of this Act-

“applicant” means the person who has filed an application for the grant of a breeder's right;

"Authority of a Contracting Party" means the Authority entrusted with the implementation of the law on the protection of new varieties of plants for that Party;

"breeder" means the person who has bred, or discovered and developed, a variety;

"Contracting Party" means a State other than Trinidad and Tobago or intergovernmental organization party to the Convention;

“Controller” means the Controller of the Intellectual Property Office appointed under section 3(2) of the Patents Act, 1996<sup>4</sup>;

"Convention" means the International Convention for the Protection of New Varieties of Plants 1978 and 1991;

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<sup>1</sup> Published in Legal Supplement Part A to the "Trinidad and Tobago Gazette",  
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<sup>2</sup> Assented to 21st April, 1997

<sup>3</sup> Official title of the Act

<sup>4</sup> Act No.21 of 1996

“Court” means the High Court established by the Supreme Court of Judicature Act<sup>5</sup>;

“holder” means the holder of a breeder’s right;

“Minister” means the Minister to whom responsibility for Legal Affairs is assigned;

“Office” means the Intellectual Property Office established under section 3(1) of the Patents Act, 1996;

“periodical” includes the Gazette, daily newspapers circulating in Trinidad and Tobago or other publication issued by the Intellectual Property Office;

“protected variety” means any variety that is the subject of a breeder’s right;

“Register” means the book, file, document or other instrument in which certain facts are required to be recorded in accordance with section 47;

“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 –

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

(2) For the purposes of this Act, the Office shall be responsible for all matters concerning the administration of this Act.

## **PART II**

### **PLANT BREEDER'S RIGHTS**

#### Section 3

##### The breeder’s rights

Subject to this section and any other formal requirements of this Act, a right to be known as a plant breeder's rights shall be granted in respect of plant varieties of those genera or species listed in the Schedule, where the variety is-

- (a) new;
- (b) distinct;
- (c) homogenous;

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<sup>5</sup> Chap. 4:01

(d) stable; and

(e) given a variety denomination which is acceptable for registration in accordance with section 23.

#### Section 4

##### Novelty

(1) Subject to subsections (2) and (3), a variety shall be considered new, where the variety itself has not been offered for sale or marketed with the approval of the breeder or his successor in title-

(a) in Trinidad and Tobago, for longer than one year before the date on which protection is applied from under this Act; and

(b) abroad for longer than four years, before the effective national filing date.

(2) In the case of vines, forest trees, fruit trees and ornamental trees, including their root stocks, the fact that the variety itself may have been offered for sale or marketed abroad for up to six years before the effective national filing date, shall not be considered detrimental to its novelty.

(3) It shall not be considered detrimental to the novelty of a variety if that variety has been offered for sale or marketed in the country with the approval of its breeder or his successor in title, for up to four years prior to the inclusion of the genus or species to which the variety, belongs in the List of Genera and Species published pursuant to section 8 and for a maximum of six months after such inclusion where the application is filed within that six month period.

#### Section 5

##### Distinctness

(1) The variety is 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 or where relevant, at the priority date identified under section 21.

(2) Common knowledge may be established by reference to various factors such as the exploitation of the variety already in progress, grant of a breeder's right in the variety, entry of the variety in a catalogue of varieties admitted to trade or entry in the register of varieties kept by a recognized professional association, or inclusion of the variety in a reference collection.

(3) The filing, in any state, of an application for a breeder's right, or for entry in a catalogue of varieties admitted to trade, shall be deemed to render the variety being the subject of the application a matter of common knowledge from the date of the application, provided that the application leads to the grant of the plant breeder's right or the entry in the catalogue, as the case may be.

#### Section 6

##### Homogeneity

The variety shall be considered homogeneous if its plants show the same expression of the characteristics, subject to the variation which may be expected in view of the particular features of its sexual reproduction, or vegetative propagation.

#### Section 7

#### Stability

The variety is 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.

#### Section 8

#### List of Genera and Species to which this Act applies

(1) The Minister may by Order, subject to subsection (2), publish a list of those genera and species to which this Act applies and may also amend such list by adding new genera or species to it, modifying the names of the genera or species already published or by deleting such names, with effect from any prospective date specified in the Order.

(2) In compiling the list of genera or species, the Minister may exclude all varieties of that genus or species which are not characterised by a particular manner of reproduction or multiplication or by a certain end-use.

(3) Where a genus or species is deleted from the list of genera and species to which this Act applies with effect from a given date, the deletion shall not affect the rights of applicants who have filed applications for the protection of varieties of that genus or species before that date.

### **PART III**

#### **ENTITLEMENT TO PROTECTION**

#### Section 9

#### Right to apply protection

(1) Subject to this Part, the breeder of the variety or his successor in title is entitled to apply for protection under this Act.

(2) The breeder or his successor in title may be a natural or a legal person.

(3) Where two or more persons have bred, or discovered and developed, a variety jointly, entitlement to protection shall vest in them jointly, and subject to any agreement to the contrary between the joint breeders, their shares in the property of the breeder's rights shall be equal.

(4) Where a variety has been bred, or discovered and developed, by several persons independently of each other, the entitlement to apply for the grant of the breeder's right belongs to the person who has first applied for protection or filed an application with an earlier priority date at the Office.

(5) Where a variety has been bred or discovered and developed, in execution of a commission or an employment contract, the entitlement to apply for protection shall belong in the absence of contractual provisions to the contrary, to the person who commissioned the work or to the employer.

#### Section 10

##### Presumption of title

The applicant shall be considered entitled to protection, in the absence of proof to the contrary, but where the application is made by a successor in title, it shall be accompanied by sufficient proof of succession.

#### Section 11

##### Application by person other than owner

(1) Where an application is filed by a person who is not entitled to protection, the person entitled, may bring action before the Court for the assignment of the application to him or if the application is already granted, for the assignment of the plant breeder's right.

(2) The action shall be statute barred after five years form publication of the grant of the plant breeder's right, save that action brought against a defendant who has acted in bad faith shall not be subject to any limitation period.

#### Section 12

##### Persons entitled to file applications

(1) An application for the grant of a plant breeder's right may be filed by the owner of the variety who is a –

(a) national or resident of Trinidad and Tobago;

(b) national or resident of a Contracting Party;

(c) national or resident of any State which, without being a Contracting Party grants reciprocity of treatment to Trinidad and Tobago.

(2) For the purposes of subsection (1)(b), "national" means where the Contracting Party is a State, the nationals of that State and where the contracting Party is an intergovernmental organization, the nationals of the States that are members of that organization.

(3) Any person having neither residence nor registered office in Trinidad and Tobago may be party to an action instituted pursuant to this Act and assert rights deriving therefrom only if he has an agent resident or with an office in the country.

(4) The Agent shall be given the power to act on his principal's behalf before the office and in legal proceedings relating to the protection of new varieties of plant.

(5) For the purpose of instituting legal proceedings by or against any person represented in the manner defined in subsection (3), the place which the Office identifies as the address of the representative, or where there are several representatives, the address of the main representative, or representative first designated, is deemed to be the place where the right in the variety is located.

#### **PART IV**

### **ASSIGNMENT AND TRANSFER OF THE APPLICATION OR OF THE PLANT BREEDERS' RIGHT**

#### Section 13

##### Assignment and transfer

- (1) An application for the grant of a plant and a plant breeder's right may be assigned or may otherwise be transferred.
- (2) The assignment or transfer shall be in writing and shall be signed by the parties.
- (3) An assignment or transfer shall be registered in the Register on request and on payment of the prescribed fee.
- (4) No assignment or transfer to a successor in title shall have effect against a third party until after such registration.

#### Section 14

##### Joint applicants and joint holders of rights

- (1) Where there are two or more applicants for the grant of a plant breeder's right or where there are two or more holders of such a right in any protected variety, in the absence of any agreement to the contrary, each applicant or holder may separately transfer his shares, or exploit the variety as the case may be, or subject to this Act, exclude others from exploiting it.
- (2) In the case of the grant of an exclusive licence however, the holders of the plant breeder's licence may only jointly grant an exclusive licence to a third party to exploit the variety.

#### **PART V**

### **SCOPE AND DURATION OF THE BREEDER'S RIGHT**

#### Section 15

##### Scope of the Breeder's Right

- (1) The effect of the plant breeder's right is that the prior authorization of the holder of that right shall be required for –
  - (a) the production for purposes of commercial marketing;

(b) the offering for sale; or

(c) the marketing,

of the reproductive or vegetative propagating material, as such, of the variety.

(2) In the case of an ornamental variety, prior authorization of the holder of that right shall also be required where plants of the protected variety or parts thereof, normally marketed for purposes other than propagation, are used commercially as propagating material in the production of ornamental plants or cut flowers of that variety.

(3) Authorization by the holder of the plant breeder's right shall not be required for the utilization of the variety protected by that right, as an initial source of variation for the purpose of creating other varieties or for the marketing of such other varieties, but shall, however, be required when the repeated use of the variety protected by a plant breeder's right is necessary for the commercial production of another variety.

#### Section 16

##### Maintenance of propagating material

(1) The holder of a plant breeder's right shall be under an obligation to provide the Office with propagating material capable of producing plants which correspond to the characteristics defined for the variety when the right was granted, throughout the period for which the right is exercisable.

(2) The holder of a plant breeder's right shall also provide the Office with all such information and assistance as the Office may request for the purpose of ensuring that the holder of the plant breeder's right is fulfilling his obligations under subsection (1), including facilities for the inspection by or on behalf of the Office of the measures taken for the maintenance of the variety.

#### Section 17

##### Period of Protection

(1) Subject to subsection (2), the plant breeder's right shall expire at the end of the eighteenth calendar year following the grant thereof, in respect of vines, forest trees, fruit trees and ornamental trees including in each case, their rootstocks.

(2) Protection for all other genera or species shall expire at the end of the fifteenth year following the grant thereof.

(3) Where in the cases under section 4(3), the variety has already been offered for sale or marketed in Trinidad and Tobago for a period of more than one year before the date of the filing of the application, the duration of the protection shall be reduced by the number of full years minus one year that have elapsed since the beginning of the offering for sale or the marketing, with the approval of the breeder or his successor in title, before the filing of the application.

#### Section 18

##### Renewal fees

The holder shall pay an annual fee for the whole period of protection which fee shall fall due at the beginning of the calendar year to which it relates and shall be payable by 31<sup>st</sup> January of each year.

## **PART VI**

### **TERMINATION, ANNULMENT AND FORFEITURE**

#### Section 19

##### Termination of protection Annulment - Annulment and forfeiture of Rights

- (1) The plant breeder's right shall terminate before the term expires where the holder of that right renounces it by written declaration addressed to Office. The date of termination shall be that specified, in the declaration or, if none is specified, the date on which the declaration is received by the office
- (2) The Controller shall declare a plant breeder's right null and void at the request of any person, where it is established that –
  - (a) the variety is not new or distinct within the meaning of, and on applicable dates referred to in sections 4 and 5; or
  - (b) the holder of the right is not the owner of the variety.
- (3) The request for the annulment of the plant breeder's right shall be addressed to the Office save, however, that where the prescribed fee is not paid within three months after the request has been filed, that request shall be deemed never to have been filed.
- (4) The Controller shall declare the plant breeder's right forfeit where the holder of the right –
  - (a) is no longer in a position to provide the Office on request with the propagating material capable of producing plants which correspond to the characteristics defined for the variety when the right was granted;
  - (b) does not fulfil his obligation under section 12(2); and
  - (c) does not pay the renewal fee that is due, having been reminded to do so by the Office, and after three months have elapsed since the date of the reminder.
- (5) An appeal shall lie to the Court against any decision of the Office under this section.
- (6) A licence agreement made under this Act, becomes ineffective if the plant breeder's right under which it was granted is declared null and void or forfeit, save however that no payment of any royalty which was due before the date of annulment or forfeiture can be demanded by the licensee in view of that annulment or forfeiture.

## **PART VII**

### **PROCEDURES BEFORE THE OFFICE**



## Section 20

### Application

- (1) An applicant for the protection of a variety shall file an application with the Office in the prescribed form and the application fee shall be paid at the same time.
- (2) The application form shall be accompanied by the technical questionnaire in the prescribed form, for the relevant genus or species, which shall be completed by the applicant to the best of his knowledge.
- (3) At the request of the Office, the applicant shall submit the amount of propagating material determined by it, on the date and at the place fixed by the Office.
- (4) Every application received by the Office and completed in accordance with this section, shall be published in a periodical, including the date of filing, the name and address of the applicant and the original breeder, the variety denomination proposed under section 24 and the main characteristics of the variety as indicated in the application.
- (5) The rejection or withdrawal of an application shall also be published in a periodical.

## Section 21

### Priority

- (1) The applicant may avail himself of the priority of an earlier application (hereinafter referred to as the "right of priority") that has been duly filed for the same variety, by himself or by his predecessor in title, with the Authority of a Contracting Party.
- (2) Where the application filed with the Office is preceded by several applications, priority may be based only on the earliest application.
- (3) The right of priority shall be expressly claimed in the application filed with the Office and may only be claimed within a period of twelve months from the date of filing of the earliest application, but the day of filing shall not be included in the said period.

## Section 22

### Documents and material to be furnished for priority

- (1) In order to avail himself of the right of priority, the applicant shall submit to the Office, within three months from filing the application in Trinidad and Tobago, a copy of the documents that constitute the earlier application, certified to be a true copy by the Authority with which that application was filed.
- (2) The Office may request that a translation of the earlier application, be produced within three months from the date of receipt of the request.
- (3) The effect of the right of priority shall be that, with respect to the conditions of protection attached to the variety, the application shall be deemed to have been filed at the date of the filing of the earlier application.

(4) The applicant shall be entitled to declare that he will submit the material mentioned in section 20(3) or any additional documents required by the Office at a later date, but no later than four years after the end of the priority period, unless the earlier application mentioned in subsection (1), has been withdrawn in the country in which it was filed or has been rejected there.

(5) If any of the provisions of this section are not complied with, the application shall be dealt with as if no priority had been claimed.

### Section 23

#### Application to be in English

Every application and all other supporting documents shall be submitted in the English language.

## **PART VIII**

### **VARIETY DENOMINATION**

#### Section 24

##### Application and procedure for variety denomination

(1) The applicant for a plant breeder's right must, within three months after the filing of the application, propose in accordance with subsection (4), a variety denomination, which should be made on the form issued by the Office for that purpose.

(2) A variety denomination may consist of one word, combination of words subject to a maximum of three, combination of words and figures, of words and letters or of letters and figures, but shall not consist wholly of figures save however that in a word/figure combination, the figures shall have a meaning in relation to the words.

(3) No person shall use as a variety denomination a designation which –

- (a) does not enable the variety to be identified;
- (b) is liable to mislead a person of average attentiveness or to cause confusion concerning the origin, derivation, characteristics, value or identity of the variety, or the identity of the breeder;
- (c) is identical or can be confused with a variety denomination which in the country or in another State party to the Convention designates an existing variety of the same or of a related botanical species, save however that the denomination is admissible, if the other variety is not registered and has not been grown for some considerable time;
- (d) is identical or can be confused with a designation in which a third party enjoys a prior right which would prohibit the use of the designation as a variety denomination;
- (e) is contrary to public policy or morality;
- (f) refers solely to attributes which are also common in other varieties of the species concerned;

- (g) consists of a botanical or common name of a genus or species, or includes such a name, where this is likely to mislead or cause confusion;
- (h) suggests that the variety is derived from or related to another variety when this is not the case;
- (i) includes words such as “variety”, “cultivar”, “form”, “hybrid”, “cross” or translation of such words;
- (j) is, for reasons other than those mentioned above, not suitable as a generic designation of the variety.

(4) Where a variety is already protected by a contracting party or where an application for the protection of the same variety is filed in such State, only the variety denomination which has been proposed or registered in that other State, may be proposed and registered and the Controller shall not register any other designation as a denomination for the variety, save however, that where the variety denomination used in the other State is inappropriate for linguistic reasons, or for any of the reasons mentioned in the preceding paragraph, the applicant may be requested to propose another variety denomination.

#### Section 25

##### Publication

The Controller shall publish in a periodical the variety denominations which have been proposed to it or registered or cancelled by it.

#### Section 26

##### Use of the variety denomination

- (1) Any person who offers for sale or markets propagating material of a variety protected in Trinidad and Tobago shall, even after the expiration of the protection, use the registered variety denomination in so far as prior rights do not prevent such use.
- (2) When a protected variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination provided that the denomination is easily recognizable.
- (3) The holder of a plant breeder’s right may not invoke any trademark, trade name or other right in his possession against a variety denomination legitimately used in the offering for sale or marketing of the variety by another person, even after the expiration of the protection.

#### Section 27

##### Prior rights of third parties

Prior rights of third parties in a designation are not affected by this Act.

#### Section 28

### Cancellation of a registered variety denomination

- (1) The Controller shall cancel any registered variety denomination at the request of –
  - (a) any person or on his own initiative, if the denomination should not have been registered or if subsequently, facts become known which would have justified the rejection of the denomination;
  - (b) the holder of the plant breeder's right or of a third person, if a final court decision is delivered according to which the variety denomination must be cancelled or if it is established that a third-party right exists in the denomination and the holder of the plant breeder's right agrees to the cancellation;
  - (c) a person who is obliged to use the variety denomination under section 26(1), if he is prohibited by a final court decision from using that denomination, provided that the holder of the plant breeder's right had participated or had been given the possibility to participate in the court proceedings.
- (2) In the case of the cancellation of the variety denomination, the Office shall request the holder of a plant breeder's right to submit, within an appropriate period fixed by it, a proposal for a new variety denomination, which shall be registered if it is considered admissible for that Office but where the proposal is not acceptable, the request for submission shall be repeated.
- (3) The Office shall establish, at the request of the holder or a third person, a provisional variety denomination where the holder or the third person demonstrates a legitimate interest.
- (4) Where, after the period for submitting a proposal for a new variety denomination has expired, the holder of the plant breeder's right has not submitted the requested proposal, the Office may establish on its own initiative, a provisional variety or permanent variety denomination.

#### Section 29

#### Filing date

The filing date of the application is fixed by the Office as the day on which the application form and the technical questionnaire, duly completed, are received.

### **PART IX**

### **EXAMINATION OF THE APPLICATION**

#### Section 30

#### Formal examination of application; consequences of defects

- (1) The Controller shall examine whether the application and its supporting documents contain all indications required under this Act and whether the required amount of propagating material has been submitted on the due date and at the proper place.

(2) Where any of the requirements under subsection (1) has not been complied with, the application for the grant of a plant breeder's right shall be rejected, unless the Controller grants to the applicant a further period to complete the application or to submit the propagating material, but no such further period may be granted which will expire later than three months after the application date or the date fixed for submission of the material as the case may be.

### Section 31

#### Examination of novelty, distinctness, homogeneity and stability

- (1) The Controller shall examine the variety to determine whether it fulfills the conditions of novelty and where that condition is not fulfilled, the Controller shall reject the application.
- (2) The Controller shall invite the applicant, on a date fixed by him before the beginning of each year or testing period, to pay the prescribed fee, for that year or testing period and failure to do so, shall cause the application to be rejected.
- (3) The Controller shall, after having received the testing fee for the first year or for the first testing period, examine whether the variety fulfills the conditions of distinctness, homogeneity and stability.
- (4) Where the Controller determines that it is expedient to do so, he may arrange to have the examination done by another national or foreign governmental authority and shall base his decision on the results of that examination.
- (5) The Controller may treat examination results obtained from, and expert opinions given by foreign governmental institutions, as results obtained from and opinions given by the Controller himself.
- (6) Subject to section 22(4), the Controller may where necessary for the examination, request the applicant to submit additional material or documents within the period fixed by the Controller and where the applicant fails to do so, without giving valid reasons for such failure, the application shall be rejected.
- (7) Where the examination shows that the application satisfies the conditions of novelty, distinctness, homogeneity and stability and that the proposed denomination of the variety can be registered, the Controller shall grant a plant breeder's right.
- (8) Where examination shows that the variety is neither distinct, homogenous nor stable, the Controller shall reject the application.
- (9) Where the examination shows that the proposed denomination of the variety cannot be registered, the Controller shall request the applicant to submit another denomination within a period fixed by him, failing which the application shall be rejected.
- (10) Where the decision to grant a plant breeder's right or to reject an application is made, such decision shall be published in a periodical.

### **PART X**

### **OPPOSITION**

#### Section 32

## Opposition

- (1) Within three months after the date of publication in a periodical any person may file an opposition against the grant of the right on payment of the prescribed fee.
- (2) The opposition shall be based on the following grounds, namely that:
  - (a) the applicant is not the owner of the variety;
  - (b) the variety is not new or distinct at the pertinent dates in accordance with sections 4, 5 and 22(3);
  - (c) it is neither homogenous nor stable;
  - (d) the variety denomination that the office intends to register is inadmissible.
- (3) Where the opposition is justified the decision that a plant breeder's right is to be granted shall, subject to subsection (5), be revoked and the application rejected.
- (4) Where the opposition is not justified, it shall be rejected.
- (5) Where the opposition based on the claim that the variety denomination is inadmissible is justified, the Controller shall revoke the decision that a plant breeder's right is to be granted and reopen the granting procedure by requesting the applicant to submit another denomination, failing which the application shall be rejected.
- (6) Where no opposition is filed within a period mentioned in subsection (1) or if all oppositions filed within that period have been rejected, the Controller shall grant the plant breeder's right and register the variety denomination.
- (7) The grant of a plant breeder's right shall be published in a periodical.

## **PART XI**

### **PROCEDURE IN CASES OF REQUESTS FOR ANNULMENT AND FORFEITURE**

#### Section 33

##### Procedure in cases of requests for annulment

- (1) A request for annulment of a plant breeder's right may be filed by any person and shall not be deemed to have been filed unless the fee prescribed is paid.
- (2) A request shall be filed in a written reasoned statement and it may be filed even after the plant breeder's right has expired.
- (3) The request may not be filed during the period within which an appeal may still be made against the grant of the plant breeder's right or while proceedings on such appeal are still pending before the Court.

- (4) The Controller shall declare the request inadmissible if it is not accompanied by a reasoned statement, or if it was filed during the period within which an appeal could still be made against the grant of the plant breeder's right, or while proceedings on such an appeal are still pending before the Court.
- (5) If the request is admissible, the Controller shall hear the holder of the plant breeder's right and may obtain any other evidence and shall conduct the hearing on his own initiative; he shall continue the hearing if the request for the annulment is withdrawn.
- (6) If the Controller finds that the request is not justified, he shall reject it.
- (7) Where the Controller finds that the request is justified, he shall declare the plant breeder's right null and void.
- (8) An appeal shall lie to the Court against any decision taken under this Section.

#### Section 34

##### Procedure for forfeiture of a plant breeder's right

- (1) Proceedings for forfeiture of a plant breeder's right shall be initiated by the Controller on his own initiative if the condition under section 19(4)(a) is fulfilled or may be initiated by the Controller or a third person if any of the conditions under section 19(4)(b) and (c) is fulfilled.
- (2) A request shall not be necessary for the commencement of such proceedings but where any such request is filed, the Controller shall treat it as a suggestion to initiate official proceedings.
- (3) Before declaring a plant breeder's right forfeit, the Controller shall hear the holder of that right.
- (4) Where after having heard the holder of the plant breeder's right, the Controller finds that there is no reason to declare the right forfeit, he shall declare the proceedings terminated and inform the holder of the right accordingly.
- (5) Where the Controller declares a plant breeder's right forfeit, he shall also inform the holder, giving reasons therefor and shall state the date of forfeiture.
- (6) An appeal shall lie to the Court against any decision by which a plant breeder's right is declared forfeit and such appeal may be filed only by the holder of the plant breeder's right.

### **PART XII**

#### **RULES ON THE PROCEEDINGS BEFORE THE OFFICE**

#### Section 35

##### Proceedings before the Office

- (1) The Office may in any proceedings under this Act, conduct an oral hearing.

(2) Hearings in proceedings concerning the assignment of an application, the transfer of a plant breeder's right or the annulment or forfeiture of such right shall be public, unless the legitimate interests of any person might be prejudiced thereby.

(3) In proceedings before the Office evidence may be obtained either by hearing any of the parties to the proceedings or experts or witnesses or by requesting the competent court of the country of residence of the person concerned to take such evidence.

(4) Evidence may also be obtained by requesting the submission of documents and other information by, or in the possession of any party in the proceedings, or information from another government authority, an expert opinion, by inspecting the installations of any party to the proceedings with that party's consent, or by requesting the submission of a sworn statement in writing by any party to the proceedings or by any witness or expert.

(5) A decision of the Controller may be based only on grounds or evidence on which any party to the proceedings whose rights are affected by that decision has had an opportunity to submit his comments.

(6) Facts or evidence which are not submitted in due time by any of the parties to the proceedings may be disregarded by the Office.

(7) Unless stated to the contrary in this Act, the Office may commence the necessary investigations on its own motion and in these investigations, it shall not be restricted to the facts, evidence and arguments provided by any of the parties to the proceedings.

(8) Any person may submit observations or suggestions to the Office concerning any proceedings pending before the Office, but that person shall not become party to those proceedings by the mere fact of such submission.

(9) Observations and suggestions thus submitted shall be communicated to the applicant or the holder of the plant breeder's right as the case may be.

(10) The Controller shall confirm the receipt of such observations or suggestions but need not inform the person having submitted them of any steps taken by it or of its opinion on the observations or suggestions submitted.

(11) The Controller shall apply the same rules of procedure established for the hearing of an application under the Patents Act, 1996 to the hearing of an application under this Act, with such adaptations as may be necessary.

### **PART XIII**

#### **APPEALS AND ENFORCEMENT PROCEEDINGS**

##### Section 36

##### Appeal

(1) An appeal shall lie to the Court against any decision of the Controller by which –

(a) an application for the grant of a plant breeder's right was rejected;



- (b) a plant breeder's right is granted;
  - (c) a plant breeder's right is declared null and void or forfeit;
  - (d) an opposition is rejected; or
  - (e) a request to have the plant breeder's right declared null and void is rejected.
- (2) An appeal shall also lie to the Court against any decision of the Controller by which –
- (a) a proposal for registration of a variety denomination is rejected;
  - (b) the decision that a plant breeder's right is to be granted is revoked for inadmissibility of the variety denomination and the granting procedure is reopened.
  - (c) a variety denomination is registered or cancelled;
  - (d) the submission of a new variety denomination is requested; or
  - (e) a new variety denomination is registered.
- (3) An appeal shall also lie to the Court against any decision of the Controller concerning a compulsory licence, a licence of right or any application for the grant of a compulsory licence.
- (4) The appeal may be filed by any person aggrieved by the decision of the Controller.
- (5) The appeal shall be filed within three months after notice of the decision against which the appeal is made has been served on that person or, where no such service of notice has taken place, within three months after the publication of the decision in the periodical.

### Section 37

#### Civil proceedings

- (1) Subject to this Act, infringements of the right of the holder of a plant breeder's right shall be actionable in the Court at the suit of the holder of that right and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available in any corresponding proceedings in respect of infringements of other proprietary rights.
- (2) The Court shall have the authority –
- (a) to grant injunctions to prohibit the committing, or continuation of committing, of an infringement of the holder of the plant breeder's right, pursuant to section 15;
  - (b) to order the forfeiture, seizure and destruction of propagating material which has been produced in contravention of a plant breeder's right;
  - (c) to fix the amount of damages taking into account the pecuniary and non-pecuniary loss suffered by the holder of the plant breeder's right.

(3) Where the person alleged to have infringed a right did not know or could not reasonably be expected to know that he was engaged in activity, that infringed a right the Court may limit damages to the profits attributable to the infringement.

(4) The Court shall not, in respect of the same infringement, both award the holder of the plant breeder's right damages and order that he be given an account of profits.

#### Section 38

##### Criminal liability for non compliance or misuse of variety denomination

(1) Any person who willfully offers for sale or markets propagating material of a variety protected in Trinidad and Tobago without using the registered variety denomination, commits an offence and on summary conviction shall be liable to a fine of ten thousand dollars.

(2) Any person who willfully makes use of the registered variety denomination of a variety protected in Trinidad and Tobago, or a denomination likely to cause confusion therewith, or another variety of the same botanical or a related species commits an offence and on summary conviction shall be liable to a fine of ten thousand dollars.

### **PART XIV**

#### **LICENSES AND LEGAL PROCEEDINGS BY LICENSEE**

#### Section 39

##### Licence contracts

(1) The applicant for or the holder of a plant breeder's right may grant to any person an exclusive or a non-exclusive licence relating to all or any of the rights provided for under this Act.

(2) The licence contract shall be in writing and shall require the signatures of the parties thereto.

(3) A licence contract shall be registered at the Office on request and on payment of the prescribed fee, but the licence shall have no effect against a third party until after its registration.

(4) The grant of an exclusive licence shall be published in a periodical.

#### Section 40

##### Rights of licensor to grant further licences or to exploit the variety

In the absence of any provision to the contrary in the licence contract, the grant of a licence shall not prevent the licensor from granting further licenses to third parties or from exploiting the variety himself.

#### Section 41

##### Non-assignability of licences

In the absence of provisions to the contrary in the licence contract, rights granted therein shall not be assignable to a third party by the licensee, who shall not be entitled to grant a sub-licence.

#### Section 42

##### Certain clauses in contract void

A clause in a licence contract or relating to such a contract shall be null and void, in so far as it imposes upon the licensee, restrictions that do not derive from the rights conferred by the plant breeder's right or are unnecessary for the safeguarding of the right.

#### Section 43

##### Licences of Right

- (1) Any holder of a plant breeder's right or any applicant for the grant of a plant breeder's right may declare that any person prepared to pay a royalty is entitled to use his variety, as from the date on which he has informed the holder or applicant accordingly.
- (2) The declaration shall be addressed to the Office and a remark to that effect shall be entered in the Register.
- (3) The royalty payable by the licensee of right shall be stated in the declaration to which subsection (1) refers, and shall also be entered in the Register.
- (4) After the entry in the Register, the holder of the plant breeder's right shall pay only half of the prescribed renewal fees.
- (5) Where all beneficiaries agree, the Office may cancel the entry under subsection (2), at the request of the holder of the plant breeder's right.
- (6) An appeal shall lie to the Court against any refusal to cancel the entry under subsection (2).

#### Section 44

##### Compulsory Licences

- (1) At any time after the expiration of three years from the date of grant of a plant breeder's right under this Act, any person interested may apply to the Court for the grant of a compulsory licence, in respect of any plant breeder's right on the ground that it is necessary to safeguard the public interest in Trinidad and Tobago.
- (2) Subject to subsections (4), (5) and (6), where the Court is satisfied that the ground referred to in subsection (1) is established, the Court may make an Order for the grant of the licence in accordance with the application on such terms as it thinks fit.
- (3) A licence granted under this section, shall confer on the owner the non-exclusive right to perform all or any of the activities referred to in section 15.

(4) Any person to whom a licence is granted under this section shall pay such remuneration to the licensor as may be agreed, or as may be determined by a method agreed upon between that person and the licensor, or in the default of agreement, as is determined by the Court on the application of either party.

(5) The Court may require the holder of the plant breeder's right to hold available for the owner of the compulsory licence, the amount of propagating material necessary for making reasonable use of the compulsory licence, against payment of adequate remuneration to the holder of the right and under conditions which are economically acceptable to him.

(6) A licence shall not be granted under this section unless –

- (a) the applicant for the licence is financially able and otherwise in a position to exploit the plant breeder's right in a competent and business like manner, and must be prepared to do so;
- (b) the holder of the plant breeder's right has refused to permit the applicant for the licence to produce or market propagating material for the protected variety in a manner sufficient for the needs of the general public as referred to in subsection (1) above or is not prepared to give such permission under reasonable terms;
- (c) no conditions exist under which the holder of the plant breeder's right cannot be expected to permit the use of his variety in the manner requested;
- (d) the applicant for the compulsory licence has paid the prescribed fee for the grant of such licence.

(7) The duration of the licence shall be fixed by the Court and shall not, except under extraordinary circumstances, be granted for less than two or for more than four years but the period may be extended if the Court is satisfied, on the basis of a new application, that the conditions for granting a compulsory licence continue to exist after the expiration of the first period.

(8) Before granting a compulsory licence, the Court may hear the national non-governmental organizations in the field of plant breeding and the seed trade.

(9) Where the Court is satisfied that the grounds on which any licence granted under this section have ceased to exist or that its owner has failed to comply with the conditions under which it was granted, it may, on the application of any interested party, terminate such licence.

#### Section 45

##### Legal proceedings by licensees

(1) Any licensee under a contractual or compulsory licence or a licensee of right may, by registered letter, require the licensor to institute legal action necessary to obtain civil remedies or criminal penalties, in respect of any infringement of the plant breeder's right indicated by the licensee.

(2) Where the licensor refuses or neglects to institute the said legal action within three months after the request has been made, the licensee may institute such action in his own name, without prejudice to the right of the licensor to intervene in such actions.

#### **PART XV**

## REGULATIONS AND REGISTER

### Section 46

#### Regulations

The Minister may make regulations for any matter required to be prescribed by this Act, in addition to the following matters:

- (a) the procedure of the Office in respect of the receiving and handling of applications, the conduct of the examination of varieties and of variety denominations, the handling of opposition, the grant of plant breeder's rights, and the rejection of applications;
- (b) the annulment or forfeiture of plant breeder's rights, the assignment of an application or the transfer of a plant breeder's right to the owner of the variety and the cancellation of variety denominations;
- (c) the maintenance and conservation of samples, the cooperation with germ-plasm banks or other institutions for the conservation of genetic material;
- (d) the establishing and maintenance of a plant variety register and the receiving and filing of any documents concerning plant breeder's rights;
- (e) the amounts and the collection of all fees provided for under this Act;
- (f) the making of additional rules to prevent the use of the same or confusing denominations for more than one variety and to regulate the relationship between variety denominations and trademarks;
- (g) the administration of the Register provided for under section 47 including the determination of the facts to be registered;
- (h) any other matters relating to the administration of this Act.

### Section 47

#### Register

(1) The Office shall have a register, to be known as the Register of Plant Breeder's Rights in which the following shall be entered:

- (a) any grant of a plant breeder's right;
- (b) any change in the holder of that right;
- (c) any annulment or forfeiture of the right;
- (d) any submission, registration, change or cancellation of the variety denomination;

- (e) any licence of right or compulsory licence granted, with an indication of the conditions of such licences; and
- (f) the conclusion of any licence contract at the request of one of the parties to such contract.

#### Section 48

##### Examination of Register

A person who has paid the prescribed fee, is entitled during normal business hours, to examine the Register kept in accordance with section 47, and to make copies of or extracts from the information contained therein.

#### Section 49

##### Commencement

This Act shall commence on a date to be proclaimed by the President<sup>6</sup>.

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<sup>6</sup> December 1, 1997